

Heart Foundation submission on the:

- **Land Use Planning and Approvals Amendment (Tasmanian Planning Policies) Bill 2017;**
- **Tasmanian Planning Policies Explanatory Document April 2017; and**
- **Tasmanian Planning Policies Overview and Suite of Policies – Consultation Draft.**



15 May 2017

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1.1 Introduction

The primary interest of the Heart Foundation is to advocate for policy and activities of State Government and Councils that facilitates and encourages physical activity and better access to healthy food for health and wellbeing, and for governments to avoid processes and activities that are not health promoting.

The importance of this focus on health and wellbeing is expressed in all the data relating to the poor health of Tasmanians and as recognised by the State Government in its goal to make Tasmania the healthiest population in Australia by 2025².

The Heart Foundation seeks prominence to be given to the Part 2(f) Objective in Schedule 1 of the *Land Use Planning and Approvals Act 1993* that states:

‘(f) to promote the health and wellbeing of all Tasmanians and visitors to Tasmania by ensuring a pleasant, efficient and safe environment for working, living and recreation;’

Prominence to health and wellbeing in this objective should be the focus of the statutory instruments related to land use planning, as well as that which can be broadly applied to the activities of State Government and Councils. To the latter, we advocate for a State Policy for Healthy Spaces and Places as providing for a wider mandate to address matters relating to health and wellbeing than that offered by the proposed Tasmanian Planning Policies (TPPs).

1.2 Context

In principal, the Heart Foundation supports the Government’s intent to articulate the policy environment for land use planning. Clearly there is a dearth of policy that expresses desired outcomes on planning and management of resources.

In this, the Heart Foundation has been consistent in its advocacy for policy that promotes health and wellbeing through the planning and development of supportive built environments, and particularly, for this advocacy to be embodied in a State Policy for Healthy Spaces and Places under the *State Policies and Projects Act 1993*³ (SPPA).

¹ See http://www.justice.tas.gov.au/community-consultation/planning_amendments_bill

² See the preamble to the draft ‘Settlement and Liveable Communities Tasmanian Planning Policy’

³ See [draft for a State Policy for Healthy Spaces and Places and supporting document](#)

In our representation on the State Planning Provisions (SPPs)⁴ we submitted a range of matters on health including the submission that the:

'Purpose (draft SPPs clause 2.1) requires a clear set of objectives for use and development of land based on how the LUPAA objectives are furthered and how consistency is found with State Policies.'

It is to be noted that many of the representations on the SPPs similarly contended that the SPPs lacked a policy framework about the outcomes being sought. At an early stage of the SPPs the Government acknowledged the lack of policy substance for the SPPs.⁵

The Tasmanian Planning Commission's (the Commission) report on the representations on the draft SPPs⁶ did not recommend modifications along the lines recommended in the Heart's Foundation representation. Presumably this was because (or at least in part) the Commission was constrained in its ability to modify the draft provisions, with the report stating:

- The Commission ... *'has avoided, wherever possible, making modifications that change the policy intent of provisions'*. (page i) ...
- *'the draft SPPs establish a planning regulatory framework for the state that embodies the government's planning policies, extending beyond compliance with State Policies under the State Policies and Projects Act 1993.'* (page i) ...
- *'The Commission considers it difficult to make any modifications to the draft SPPs without a greater policy mandate to do so.'* (page 18)...

As a result, the final SPPs suffer because of the lack of clear statements on how the provisions do/will further the Resource Management and Planning System (RMPS) objectives and how consistency is found with State Policies. In addition, the Heart Foundation now contends that the SPPs will only have limited ability to deliver on furthering the Schedule 1 Part 2(f) of LUPAA objective for health and wellbeing.

The proposals for TPPs will hopefully provide the policy environment for amendments to the SPPs to provide the necessary focus on health and wellbeing as contemplated in the RMPS objectives.

1.3 Glossary

Commission	The Tasmanian Planning Commission
LUPAA	Land Use Planning and Approvals Act 1993
LPS	Local Provisions Schedules
RMPS	Resource Management and Planning System
SPPs	State Planning Provisions
SPPA	State Policies and Projects Act 1993
TPPs	Tasmanian Planning Policies
TPS	Tasmanian Planning Scheme

⁴ Heart Foundation [Representation on State Planning Provisions](#)

⁵ See

http://www.justice.tas.gov.au/_data/assets/word_doc/0005/335543/Factsheet_1_Overview_planning_reforms_Dec_2015.docx

⁶ [Draft State Planning Provisions Report Tasmanian Planning Commission 9 December 2016.](#)

2.0 Summary of the Heart Foundation's Recommendations

The Heart Foundation makes the following recommendations on the draft Bill and the draft TPPs. Further context is provided for each recommendation in the body of this submission.

1. The Heart Foundation recommends that in lieu of additional legislation for TPPs specific to land use, State Policy under the *State Policies and Projects Act 1993* should be pursued.
2. The Heart Foundation recommends that should there be aspects of the *State Policies and Projects Act 1993* that would improve the operation of that legislation this should also be pursued.
3. The Heart Foundation recommends that the period for the exhibition of draft TPPs under s.12D(4) be 60 days; the same period as that applying to draft SPPs.
4. The Heart Foundation recommends that s.12E be amended to provide for the Commission to conduct an independent inquiry into representations on the draft TPPs and may conduct hearings.
5. The Heart Foundation recommends that s.12F(3)(a) be amended to provide for the Commission, in addition to the report on issues raised, to give its opinion on the merit of each representation, in its report to the Minister.
6. The Heart Foundation recommends that the Explanatory Document be reviewed as to references to TPPs providing guidance to the RMPS. TPPs are to be planning instruments and their drafting of must be directive rather than crafted as guidelines.
7. The Heart Foundation recommends that State Government reassess the merit of establishing an additional policy framework in TPPs that have their scope limited to land use, compared to State Policies where the scope of interest can be significantly broader.
8. The Heart Foundation recommends that a strategy supporting urban agriculture and access to healthy food is incorporated into the strategies under the draft 'Settlement and Liveable Communities TPP'.
9. The Heart Foundation recommends that the qualifier 'wherever possible' be deleted in the draft 'Transport and Infrastructure TPP' under the Integrated Transport and Land Use Planning sub-policy strategy 1.5.
10. The Heart Foundation recommends that the qualifier 'wherever possible' be deleted in the preamble to the Passenger and Active Transport sub-policy in the draft 'Transport and Infrastructure TPP'.
11. The Heart Foundation recommends that the onus be to show cause why policies that would positively contribute to health and wellbeing should **not** be applied, rather than to show why they should be.

12. The Heart Foundation recommends that the strategies within the TPPs be drafted to have ready application and scope for implementation through the regional land use strategies and the TPS.
13. The Heart Foundation recommends that the draft TPPs avoid using qualifiers such as: 'wherever possible' 'unreasonable', 'unnecessary', 'can be demonstrated', 'where appropriate' and 'orderly and proper planning'.
14. The Heart Foundation recommends that the draft TPPs be reviewed and amended such that for critical outcomes, the strategies use 'must' instead of 'should'.
15. The Heart Foundation recommends that under the draft 'Settlement and Liveable Communities TPP', the sub-policy on 'Community Open Space' be amended to read 'Public Open Space and Reserved Land' to be specific on strategies and outcomes being sought on public open space and reserved land, including riparian and littoral reserves.

3.0 The draft Bill for Tasmanian Planning Policies (TPPs)

3.1 Need:

Turning to the draft Bill, the Heart Foundation's principal position is to question the need and effectiveness of proposing legislative provisions for TPPs in addition to State Policies. The additional TPPs will, in effect, duplicate many of the processes and intent for State Policy, but, if approved in their current draft form, are weaker in process, standing and application.

3.2 Process:

A State Policy has more rigor in process, providing for the the Commission to (may) hold hearings and for the State Policy to be subject to disallowance by the Parliament.

At times, it has been claimed that the assessment process for the making of a State Policy is too difficult and presumably this is one of the attractions of the proposed TPPs. The counter position is that s6.1 *State Policies and Projects Act 1993* allows the Minister (Premier) to give a direction to the Commission to prepare a report on a draft State Policy.

Stripped down the processes for a State Policy and TPPs are basically similar:

- Minister directs the assessment by the Commission.
- Commission reports on representations received on the draft policy.
- Commission reports to the Minister.

The Heart Foundation contends, if there are aspects of the *State Policies and Projects Act 1993* that would improve the operation of that legislation, this should be pursued, rather than simply adding to the legislation and regulation around land use and the activities of State Government and Councils.

The significant difference between the two instruments is the standing of those instruments once made. Please see Appendix 1 which compares the processes for the making of a State Policy and TPPs.

3.3 Standing:

A TPP is proposed as an instrument made under LUPAA, initiated and approved by the Minister and confined to the TPS and regional land use strategy environment; whereas a State Policy has the imprimatur of the Parliament and applies across the actions of State Government and Councils.

3.4 Application:

A TPP is confined to effecting regional land use strategies, the SPPs and the Local Provisions Schedules. Implementation of a TPP is essentially confined to those matters that can be reduced to standards in the TPS and where an activity requires a planning permit.

In comparison, a State Policy is implemented by any means available to the Crown (SPPA s.13(3B)).

A State Policy binds the Crown and Councils in terms of the State Policy and is not confined to implementation via the TPS.

A TPP indirectly binds the Crown in respect to instruments enacted under LUPAA (s.4(1)).

In comparison to a State Policy the draft legislation for TPPs seeks to give limited statutory standing to policies primarily initiated and approved at the sole discretion of the Minister. So, what appears to be on offer is a mechanism for making TPPs, that have limited independent review and limited application when compared to State Policies.

3.5 Recommendations on the draft Bill for TPPs generally:

1. That in lieu of additional legislation for TPPs specific to land use, State Policy under the *State Policies and Projects Act 1993* should be pursued.
2. That should there be aspects of the *State Policies and Projects Act 1993* that would improve the operation of that legislation this should also be pursued.

4.0 Specific Provisions of the draft Bill

4.1 The following clauses are supported:

Clause	Provision	Comment
s.5A(a)(3A)	(regional land use strategy) is consistent with each State Policy;	Although s.13(c) SPPA, and probably s.15 LUPAA results in a regional land use strategy being consistent with a State Policy, the requirement specific to regional land use strategies is supported.
s.5(b)(7)	ditto	ditto
s.12B(3)	The TPPs must – (a) seek to further the objectives set out in Schedule 1; and (b) be consistent with any relevant State Policy.	The making of a TPP consistent with a State Policy is supported.

4.2 The following clauses should be reconsidered:

s.12D(4)	The exhibition period, in relation to a draft of the TPPs, is to be a period of 42 days.	<p>For comparison, 42 days is the same period given to a planning authority to deal with a minor permit application requiring discretion. 42 days is insufficient time for the contribution and ownership of a policy by organisations, particularly voluntary and community, to respond in a meaningful way with the endorsement of their members.</p> <p>The ramifications of a too short exhibition period are that a draft TPP will potentially lack alternative views and prevent unintended outcomes being exposed. Under s.12C(2) the Commission, planning authorities and State Service Agencies get prior consultation on a draft policy before it is referred to the Commission under</p>
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		<p>s.12C(3). This process favours government and hinders considered input from the community.</p> <p>S.8 SPPA allows 8 weeks for exhibition of a draft State Policy, compared with LUPPA that provides for 60 days for exhibition of draft SPPs. A longer minimum period for exhibition of a draft TPP that mirrors an existing exhibition period for a SPP is preferred.</p>
s.12E(4)	The Commission must consider all representations under subsection (1) in relation to a draft of the TPPs.	<p>As part of the Commission’s obligation to consider all representations, there is no provision for hearings⁷. This is a significant departure from other matters where the Commission has a role in reviewing representations.</p> <p>Simply reporting to the Minister on the issues raised in written representations does not allow for the implications of a draft policy to be fully explored.</p> <p>The Bill should allow the Commission scope to hold hearings into representations and the draft policy.</p> <p>Note: There is no legislated exhibition or Commission assessment process for regional land use strategies.</p>
s.12F(3)(a)	The report in relation to a draft of the TPPs is to contain – (a) a summary of the issues raised in the representations in relation to the draft of the TPPs; and	The Commission is simply required to provide a summary of the issues raised in representations. For other reporting to the Minister (eg s.25(2)(b)(ii) LUPAA with respect to SPPs), the Commission is to give its opinion as to the merit of representations. The Commission’s opinion on the merit of representations received should be available for the Minister’s consideration of a draft TPP.

⁷ There may be scope for the commission to hold a hearing under a general power at s.6(2) *Tasmanian Planning Commission Act 1997* that provides: ‘*The Commission may do all things necessary or convenient to be done for or in connection with, or incidental to, the performance of its functions.*’

4.3 Clarifications:

s.87E	Savings and transitional – <i>Land Use Planning and Approvals Amendment (Tasmanian Planning Provisions and Planning Panels) Act 2017</i>	This appears to be a mystery reference to a (foreshadowed) <i>Tasmanian Planning Provisions and Planning Panels Act 2017</i> .
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4.4 Recommendations arising from specific Provisions of the draft Bill:

3. That the period for the exhibition of draft TPPs under s.12D(4) be 60 days; the same period as that applying to draft SPPs.
4. That s.12E be amended to provide for the Commission to conduct an independent inquiry into representations and the draft TPPs and may conduct hearings.
5. That s.12F(3)(a) be amended to provide for the Commission, in addition to the report on issues raised, to give its opinion on the merit of each representation, in its report to the Minister.

5.0 Application of Draft Tasmanian Planning Policies

The [Tasmanian Planning Policies Explanatory Document April 2017](#) accompanying the draft TPPs states in the introduction:

'Tasmanian Planning Policies will address a widely recognised gap in the planning system by providing strategic direction on matters of state interest, guiding councils when they make decisions regarding development and land use planning.'

TPPs are therefore directed at providing councils with the state interests when making decisions *'regarding development and land use planning'*. When considering the role of councils under a regime of TPPs we have:

- The TPPs restricted in their application to the Tasmanian Planning Scheme (TPS) and regional land use strategies (s.12B(1) draft Bill).
- The Minister makes the SPPs (s.27 LUPAA).
- The Minister declares a regional land use strategy (s.5A LUPAA).
- The TPPs are not self-executing and therefore not a consideration in the assessment of an application for a permit for use or development (p5 Explanatory Document).

For councils, their scope for applying TPPs is confined to their LPSs and a council participation in setting the land use strategies for their region. Therefore, the scenario of TPPs only informing regional land use strategies and the TPS must at some point be reduced to that which can be made a provision or standard in the TPS, and subsequently defining the matters applying to the granting of a permit by the council (planning authority). Therefore, the scope for councils to be guided by TPPs is extremely limited, as is the scope generally for implementation of TPPs.

6.0 Relationship to State Policies

6.1 TPPs as guidance documents

The Explanatory Document under the heading ‘*Relationship to State Policies*’ (p4) makes the case for a policy arrangement below that of State Policies. Part of this case appears that, unlike the legislation for State Policies, the provisions for TPPs won’t override other planning instruments or have enforcement and penalties attached.

The enforcement of State Policies appears in the Explanatory Document as a negative. Aside from the ability to have penalties and enforcement that at times may be critical to implementation, this has not been a major issue with current State Policies and may be a question of whether the State Policy is drafted as a regulation or as aspirational policy.

In addition, when the TPS is consistent with State Policies and TPPs, the same LUPAA provisions for binding the Crown, and for enforcement and penalties apply.

The Explanatory Document (p9) describes the status of the TPPs as; ‘*draft policies provide guidance to the planning system rather than being implemented directly*’. At another place (Explanatory Document p10) there is reference to providing ‘*support rather than to duplicate the SPPs*’.

In consideration of the ‘final arbiter’ role of the Minister in the making of TPPs, the making of the TPS and declaring of regional land use strategies, the merit for legislated Government policy that only provides guidance is questioned.

On the matter of merit for TPPs, the Explanatory Document (p13) concludes:

‘It is expected that there will be additional supporting material and implementation guidance that sits outside the statutory policies and may assist local government and others to implement the policies within the planning system. This material may include, for example, planning advisory notes, industrial land strategies, agency guidelines and technical manuals’.

For the TPPs to be crafted as guidance documents that have been through a statutory process but additional (non-statutory) guidance documents are anticipated, adds confusion as to their merit, and accordingly the need for the draft Bill as currently drafted.

Despite this view on the need for TPPs, one advantage is that TPPs (as for State Policies) will give instrument status to government ‘small p’ policy. This will mean the Commission will be required to give effect to the TPPs. This issue is raised, as the Commission is not subject to government ‘small p’ policy.

6.2 TPPs limited scope for articulating policy

Unlike the proposed TPPs, State Policies are not specifically tied to land use solely focused on regional land use strategies and the TPS. Therefore, there is scope for State Policy to have increased specificity and to join-up disparate policy across the activities of State Government and councils. For instance, the policy on *Industry, Commerce and Business* could set a preference for particular industries, such as ship building or down-stream processing of wood product, particularly in housing. Now these have a land use component as well as, for instance, education and training. Similarly, through State Policy, relationships can be established for health-in-all policies to make connections, for example between public transport provision, the design of streets and access to employment and services generally.

6.3 Recommendations on the relationship between TPPs and State Policies:

6. That the Explanatory Document be reviewed as to references to TPPs providing guidance to the RMPS. TPPs are to be planning instruments and their drafting of must be directive rather than crafted as guidelines.
7. That State Government reassess the merit of establishing an additional policy framework in TPPs that have their scope limited to land use, compared to State Policies where the scope of interest can be significantly broader.

7.0 Application of TPPs to non-statutory plans, strategies etc

The Explanatory Document (p5) refers to a wider application of TPPs:

'Tasmanian Planning Policies may also inform a range of non-statutory planning instruments and related strategies such as regional transport and infrastructure strategies, structure plans and settlement policies.

Planning authorities should take account of Tasmanian Planning Policies in their strategic land use planning.'

The recognition that planning is more than a concern for regional land use strategies and the TPS is encouraged, and is consistent with the Heart Foundation's advocacy for a State Policy.

The diagram showing relationships under the RMPS (Explanatory Document p6) is not accurate in that the "Objectives of Schedule 1" should sit directly under the RMPS, and above both the *Land Use Planning and Approvals Act 1993* and the *State Policies and Projects Act 1993* (and not just sitting under the *Land Use Planning and Approvals Act 1993* where it is currently placed).

8.0 Draft Tasmanian Planning Policies

Turning to the suite of draft TPPs, it is noted that these are not for detailed review at this time, but they do serve to show what might be submitted for assessment after LUPAA is amended by the current Bill.

The Heart Foundation's interest is in policy that focuses on improving health and wellbeing through the provision of supportive built environments that facilitates and encourages physical activity, and improves access to healthy food. In this context the following statement is encouraging:

*'The Tasmanian Planning Policies take an integrated approach to planning for well-designed settlements and liveable communities that encourage economic growth and social wellbeing, and are supported by the efficient provision of infrastructure.'*⁸

8.1 Structure of draft TPPs

The structure of the draft TPPs which includes stated objectives and strategies is supported. The implementation of the strategies, resolution of competing interests and dealing with the exception (unforeseen event or out-of-ordinary development) will be the challenge and is the

⁸ [Tasmanian Planning Policies, Overview and Suite of Policies Consultation Draft](#) (p2)

role of the regional land use strategies and the TPS. In this context, the anticipated supporting guidelines and practice notes will be valuable.

8.2 Omissions from and draft TPP preferences.

(i) Food:

The current draft TPPs only refer to food as an economic good rather than in terms of improving food security and access to healthy food for Tasmanians. There should be an additional strategy(s) under the 'Settlement and Liveable Communities TPP' which provides support for urban agriculture and access to healthy food⁹.

Recommendation on Food:

8. That a strategy supporting urban agriculture and access to healthy food is incorporated into the strategies under the draft 'Settlement and Liveable Communities TPP'.

(ii) Qualifications on active travel:

On policy and strategies relevant to active travel, the Urban Development sub-policy under the draft 'Settlement and Liveable Communities TPP' refers to:

- 1.5 *Encourage quality, innovative architecture and urban design that:*
 - c) *maximises pedestrian and cyclist connectivity and permeability;*

Then the strategy under the Integrated Transport and Land Use Planning sub-policy under the draft 'Transport and Infrastructure TPS' states:

- 1.5 *Provide for public transport, walking and cycling infrastructure as part of new and upgraded road infrastructure, wherever possible.*

Similarly, the preamble to the Passenger and Active Transport sub-policy under the draft 'Transport and Infrastructure TPS' states:

Land use planning plays a key role in supporting safe and efficient access to Tasmania's public transport, walking and cycling networks. Use and development should align with existing public transport networks, and provide new and upgraded local active transport connections, wherever possible.

The qualifier 'wherever possible' is only used for active travel and no other policy area in the suite of draft TPPs. The qualifier 'wherever possible' weakens the policy, particularly where there is competition for land including road space. The qualifier should be deleted.

The Heart Foundation prefers for key matters that will positively contribute to health and wellbeing (such as active travel), that the onus be to show reasons for not favouring a particular policy in applying the policy, rather than the onus being to show why it should be favoured.¹⁰

⁹ The Heart Foundation submission on the draft State Planning Provisions contended that the definition of agriculture land in the State Policy on the Protection of Agricultural Land precluded land most likely to be used for urban agriculture. In addition the SPPs make urban agriculture prohibited unless a community garden on public land.

¹⁰ An example of where the onus lies is the Positive Provision Policy for Cycling Infrastructure, Tasmanian Government October 2013.

Recommendations on active travel:

9. That the qualifier 'wherever possible' be deleted in the draft 'Transport and Infrastructure TPP' under the Integrated Transport and Land Use Planning sub-policy strategy 1.5.
10. That the qualifier 'wherever possible' be deleted in the preamble to the Passenger and Active Transport sub-policy in the draft 'Transport and Infrastructure TPP'.
11. That the onus be to show cause why policies that would positively contribute to health and wellbeing should **not** be applied, rather than to show why they should be applied.

(iii) Policy that is not readily implemented through the TPS:

The draft policies that concern, for instance, cyclist connectivity and permeability and road design for public transport will not be readily implemented through the TPS. This is because the SPPs are inconsistent and confusing on matters relating to streets and misses the importance of considering streets in a different context to roads. In addition, matters relating to roads will primarily be exempt from the operation of the TPS¹¹. Therefore, the likely case is that some policies will not be able to be readily implemented, or fully realised through the TPS.

An expanded list of strategies that have merit but will be precluded in whole or part from implementation through the TPS include:

Policy	Sub policy	Strategy
Settlement and Liveable Communities Tasmanian Planning Policy	Urban Development	1.5c) maximises pedestrian and cyclist connectivity and permeability;
Settlement and Liveable Communities Tasmanian Planning Policy	Community Open Space	2.5 Improve access to natural areas and foreshore locations whilst providing for nature conservation and maintenance of wildlife corridors.
Settlement and Liveable Communities Tasmanian Planning Policy	Community Open Space	2.7 Create safe urban open spaces to facilitate passive surveillance from nearby housing, roads, businesses or passers-by.
Settlement and Liveable Communities Tasmanian Planning Policy	Community and Social Infrastructure	4.7 Support the development of creative hubs, precincts and co-working spaces to encourage innovation, knowledge sharing, networking and creativity.
Transport and Infrastructure Tasmanian Planning Policy	Road and Rail Networks	2.1(b) Protect last mile urban freight connections as key links in the State's freight network.
Transport and Infrastructure Tasmanian Planning Policy	Road and Rail Networks	2.3 Support heavy vehicle access across the road network that is responsive to industry needs and

¹¹ The SPPs exempt road works (cl. 4.2.4) and minor infrastructure (cl 4.2.4) from the operation of the TPS.

		appropriate to the use and function of a road.
Transport and Infrastructure Tasmanian Planning Policy	Passenger and Active Transport	4.5 Ensure road design can support efficient and reliable public transport services.

The Heart Foundation contends that as the above strategies will be precluded in whole or part from implementation through the TPS, this supports our case for State Policy.

In addition, strategies that require 'encourage expansion', 'encourage development' and 'encourage quality' are not in the realm for the TPS to apply due to the scope to reduce such phrases to planning scheme standards. As noted previously, State Policies are the place for such phrases, as State Policies apply across a much broader canvass of government activities than the TPS.

Recommendation on implementation of TPPs:

12. That the strategies within the TPPs be drafted to have ready application and scope for implementation through the regional land use strategies and the TPS.

(iv) Avoidances:

In a similar vein to 'wherever possible' the policy strategies should avoid using qualifiers such as 'unreasonable', 'unnecessary', 'can be demonstrated', 'where appropriate' and 'orderly and proper planning'. Such qualifiers suggest the strategy containing such words is of lesser importance.

Inherent with policy and strategies, there will be competing interests for finite resources. It is for the planning process to resolve such matters on a case-by-case basis (at the regional land use strategy and design of planning scheme level, rather than on permits). Alternatively, if there is an intended hierarchy of importance within the strategies, then this should be clear such that those matters take precedence.

Recommendation on avoidances:

13. That the draft TPPs avoid using qualifiers such as: 'wherever possible' 'unreasonable', 'unnecessary', 'can be demonstrated', 'where appropriate' and 'orderly and proper planning'.

(v) Should and must:

In any consideration of priority strategies, responsibilities involving 'should' or 'must' need resolution. The draft policies consistently use 'should', 'must' is not used. There is a case for 'must'; for instance in the preamble to Aboriginal Heritage we have:

'Land use planning should recognise and consider protection and preservation of Aboriginal cultural heritage values, for the benefit of Tasmanian Aboriginals and the broader Tasmanian Community.'

In the context of the policy on Aboriginal Heritage 'must' would be appropriate and the preamble amended to; *'Land use planning **must** recognise...'*

Recommendation on should and must:

14. That the draft TPPs be reviewed and amended such that for critical outcomes, the strategies use 'must' instead of 'should'.

(vi) Community Open Space:

Community Open Space, or simply open space are not terms routinely used in planning. Public open space and reserved land have greater meaning in terms of the legislation¹². The preferred policy would concern public open space, riparian reserves, littoral reserves and reserved land.

Recommendation on community open space:

15. That under the draft 'Settlement and Liveable Communities TPP', the sub-policy on 'Community Open Space' be amended to read 'Public Open Space and Reserved Land' to be specific on strategies and outcomes being sought on public open space and reserved land, including riparian and littoral reserves.

9.0 Conclusion

The Government's commitment to articulate policy for land use planning is encouraged. However, the need for a separate policy regime below State Policy is not established, particularly as TPPs offer limited scope to pursue health and wellbeing objectives.

The Heart Foundation contends that matters relating to health and wellbeing and the built environment would be better served through the mechanism of State Policy under the *State Policies and Projects Act 1993* as the latter existing and available mechanism provides a greater opportunity to pursue and implement policy across State Government agencies and councils and are not confined to a land use focus.

The Heart Foundation also contends, if there are aspects of the *State Policies and Projects Act 1993* that would improve the operation of that legislation, this should be pursued, rather than simply adding to the legislation and regulation around land use and the activities of State Government and councils.

¹² Relevant legislation: *Local Government (Building and Miscellaneous Provisions) Act 1993* and *Nature Conservation Act 2002*.

10.0 Appendix 1 Comparison of legislation

Comparison of legislation:

- **State Policies and Projects Act 1993**
- **Land Use Planning and Approvals Amendment (Tasmanian Planning Policies) Bill 2017**

Making policy		
	State Policy	Tasmanian Planning Policies
Legislation	SPP Act 1993	LUPA Act 1993
Responsible minister/department	Premier/DPAC	Planning/Dept of Justice
Legislation purpose	An Act to provide for Tasmanian Sustainable Development Policies, ...	Principal Act: An Act to make provision for land use planning and approvals.
Definition	s.3(1) <i>State Policy</i> means a Tasmanian Sustainable Development Policy.	s.3(1). <i>Tasmanian Planning Policies</i> means the Tasmanian Planning Policies made under section s.12G(2), as amended from time to time under that section as applied by section s.12H(3);
Purpose	No provision	s.12B. Contents and purposes of Tasmanian Planning Policies (1) The purposes of the TPPs are to set out the aims or the principles that are to be achieved or to be applied by – (a) the Tasmanian Planning Scheme; and (b) the regional land use strategies.
Must	s.5(1)(1) A State Policy – (a) must seek to further the objectives set out in Schedule 1 ; and (b) may be made only where there is, in the opinion of the Minister, a matter of State significance to be dealt with in the State Policy; and (c) must seek to ensure that a consistent and co-ordinated approach is maintained throughout the State with respect to the matters contained in the State Policy; and	s.12B(3) The TPPs must – (a) seek to further the objectives set out in Schedule 1; and (b) be consistent with any relevant State Policy (TPP criteria).

	(d) must incorporate the minimum amount of regulation necessary to obtain its objectives.	
Content	s.5A A State Policy may contain matters relating to one or more of the following: (a) sustainable development of natural and physical resources; (b) land use planning; (c) land management; (d) environmental management; (e) environment protection; (f) any other matter that may be prescribed.	s.12B (2) The TPPs may relate to: (a) the sustainable use, development, management, protection or conservation of land; or (b) environmental protection and management; or (c) any other matter that may be included in a planning scheme or a regional land use strategy.
Instigation	s.6(1) Minister satisfied a SP is required. May direct TPC to prepare report	s.12C (1) Minister prepares draft TPPs (2) must consult (3) may refer to TPC to public exhibition.
TPC exhibition	s.6.(2) exhibition period 8 weeks.	s.12D (1) Give exhibition notice. (3)(c) invite representations from persons and bodies (4) exhibition period 42 days (5) & (6) draft TPP to each planning authority for exhibition
Representations	s.8. representations made by any person	s.12E(1) A person or body may make a representation.
Qualified representation		s.12E(3) representation must relate to contents or merits of draft TPPS.
TPC assessment of representations	s.9 (1) must consider the representations. (2) May hold a hearing on representations.	No provision for hearings
TPC assessment of draft policy	s.10 (1) TPC may modify draft SP. (2) TPC may reexhibit modified draft policy.	s.12F (1)(a) must be satisfied draft TPPs meet the TPP criteria (s.12B(3)). (1)(b) assess whether anything of a technical nature relevant to the application to the TPS or each regional land use strategy.

TPC report to minister	s.11 (1) must submit report to Minister. (2) TPC publishes report.	s.12F (2) within 60 days or longer report on the draft TPPs containing: (3) (a) Summary of issues raised representations. (NB does not appear to be a requirement for TPC to provide opinion on merit of representations). (b) Statement on meeting TPP criteria. (c) Statement on any matters of a technical nature
Minister and TPC report on TPP	s.11(3) Minister may recommend to Governor the making of a SP.	s.12G (1) Minister may inform him/her self. (2) Minister may make or refuse TPP as Minister thinks fit. (3) Minister to consider TPC report. (4) must meet TPP criteria
Governor	s.11(4) may make policy	No provision
Policies take effect	s.11(5) gazetted	s.12G (5) gazetted if policy made. (6) gazetted if refused to make policy.
Parliament to approve or disallow	s.11 (6) SP laid before each house (7) either house has 10 sitting days to approve or disallow.	No provision

Amendments to policy		
	State Policy	Tasmanian Planning Policies
Instigation	s.15A (2) Minister may refer proposed amendment to TPC to advise whether constitutes a significant change. (3)-(10) gives process for significant and not significant amendments.	s.12H (1) Minister may prepare draft amendment. (4) Minister may dispense with exhibition for minor amendment. (5) draft amendment subject to same process as draft TPP except for minor amendment.

Review of policy		
	State Policy	Tasmanian Planning Policies
Review	s.15(1) Minister must review at least every 5 years.	s.12I Minister to keep under regular and periodic review

Interim policies		
	State Policy	Tasmanian Planning Policies
Interim policies	s.12(1) a draft SP on exhibition may be brought into operation for a period not exceeding 12 months.	No provisions

Implementation of policy		
	State Policy	Tasmanian Planning Policies
Implementation of policy	s.13 (1) provisions of a planning scheme void to extent of any inconsistency (2) – (3A) TPC to amend planning schemes to remove inconsistency. (3B) SP implemented by any means available to the Crown.	s.15(2)(ca) SPPs criteria consistent with TPPs in force. 30T(4A) review SPPs for consistency with TPPs. s.34(2)(da) LPS criteria consistent with TPPs in force. s.35N(da) LPS consistent with TPPs.

Delegation of implementation		
	State Policy	Tasmanian Planning Policies
Delegation of implementation	s.13A Minister may delegate to another Minister implementation	No provision
Requirements on statutory office holders	s.13B may require statutory office holder to undertake activities, perform functions and exercise powers specified in the State Policy.	No provision
Binding	s.13C SP binds the Crown and a council	s.4(1) Act binds the Crown. s.63(2) contravention and penalty for doing any act contrary to a State Policy or a planning scheme.
Adoption of standards	s.13D SP may adopt standards, rules, codes, specifications, management plans or similar documents.	No provision
Contraventions	s.14 contravention and penalty.	

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