Development Assessment Panel Framework Position Paper

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30th November 2023

State Planning Office
Department of Premier and Cabinet
GPO Box 123
Hobart TAS 7001

Attention: yoursay.planning@dpac.tas.gov.au

To whom it may concern,

DRAFT DEVELOPMENT ASSESSMENT PANEL FRAMEWORK 2024 AND BEYOND

Niche Studio, a specialised planning and urban design consultancy with offices in Victoria, Tasmania, and WA, offers a range of statutory, strategic, and urban design services to government, advocacy groups, and private organisations throughout Australia. Committed to excellence in planning and development processes, we advocate for best-practice outcomes, particularly in the creation of sustainable and liveable communities.

Niche Studio applauds the Tasmanian Government for launching an ambitious Development Assessment Panel Framework (DAP) – 'the framework', which will provide an alternate approval pathway and enhance certainty, transparency, and effectiveness in planning across Tasmania. The initiative will set a benchmark in best practice for dealing with complex and contention planning applications, by mitigating political influences in the planning process.

To meet the ambitious goal of constructing an additional 10,000 homes in Tasmania by 2030 and address challenges in assessing significant projects, especially those aiming to substantially increase housing supply, crucial changes are necessary. Recognising the potential conflicts and biased roles that councillors may play as members of a planning authority (PA), particularly in the context of Tasmania's housing issues, a revamp of the Development Assessment Panels (DAPs) and existing planning processes is essential. This overhaul aims to minimise political conflicts at the local level, ensure practical and transparent decision-making, and maintain a robust and relevant planning framework amid a dynamic and politically challenging environment.

KEY PARTS OF THE DRAFT DAP FRAMEWORK WE SUPPORT

The framework's use of a Development Assessment Panel (DAP), the foundations of which are based upon successful examples already implemented in the planning system is a truly practical solution for addressing a number of issues within the current planning system identified in the Future of Local Government Review Stage 2 Interim Report (May 2023).

The DAP aims to eliminate political bias in decision-making in a sustainable manner, preserving the efficiency of the Tasmanian Planning System. The commitment is evident in the swift determination of significant development applications, to be prioritised by the Tasmanian Government.

The framework employs a criteria-based referral system to identify 'conflicting applications' eligible for DAP determination. This assures proponents subject to the DAP of a responsive, efficient, transparent, and effective assessment, avoiding potential delays and regressive planning decisions that could occur in a local council lacking expertise. The framework's proactive adoption of written criteria for the DAP referral process aligns with the State Government's goal of delivering new social and affordable homes.

We support the framework's recognition of situations where applicants may want to request the Planning Authority (PA) to consider referring their application to a Development Assessment Panel (DAP) or challenge a PA's referral decision. This provides applicants with an appropriate opportunity for such actions. The framework's criteria for DAP referral ensure standardised and consistent processes across all Planning Authorities in Tasmania.

We are particularly pleased with the framework's emphasis on maintaining local input by involving Councils throughout the determination processes. The framework suggests no changes to the current format of pre-lodgement discussions, allowing Councils to contribute local knowledge before decision-making, which we find encouraging.

KEY POINTS FOR FUTHER DISCUSSION

- **Discretionary referral to a DAP determination**
  The draft framework proposes a 7-day timeline for local planning authorities (PA) to refer development applications to a Development Assessment Panel (DAP). While agreeing with this timeframe, there is concern about the PA's capacity to meet it. Emphasising the importance of large-scale developments for Tasmania's economic growth, the suggested $5 million threshold for non-metropolitan municipalities is deemed high and could discourage investment. Advocating for a reduced threshold of $1 million, we feel the aim should be to promote innovative housing and development while aligning with the State Government's commitment to social and affordable housing.

- **Mandatory referral to a DAP determination**
  Section 4b of the framework requires the local planning authority (PA) to refer specific development applications to a Development Assessment Panel (DAP) within 7 days, mirroring the provision in Section 4a. The framework should recognise certain development applications as critical infrastructure, including those related to roads, water treatment, communication, power, renewable energy, and community facilities. We submit applications valued over $1 million submitted by councils should qualify for DAP determination, considering the political nature of council-led projects.

  The DAP position paper identifies several challenging aspects within development applications that could pose difficulties for councils. These issues encompass social and affordable housing, critical infrastructure, conflicts of interest among councillors, potential biases, insufficient skills or resources, applications surpassing a specified value, and other intricate cases. The paper outlines multiple pathways for initiating DAP referrals, presenting options such as involvement from the applicant alone, the applicant with consent from the planning authority, the planning authority

independently, the planning authority with consent from the applicant, or direct involvement of the Minister.

Concerning the timing of DAP referrals, the paper delineates various scenarios. These include initiating referrals at the outset for proposals falling under prescribed categories, conducting referrals after pinpointing contentious proposals through consultation processes, or triggering referrals at the approval stage, particularly when conflicts among councillors come to the fore. The multifaceted nature of such considerations underscores the complexity inherent in the management and assessment of diverse and intricate development applications. It also emphasises the need for a nuanced approach to ensure effective and equitable decision-making in the realm of development assessment.

- **PA requests referral of DA to DAP for determination**
  The framework describes a process where, if the Development Assessment Panel (DAP) disagrees with a development application's alignment with DAP criteria, it communicates its decision, and the application continues assessment under the existing Land Use Planning and Approvals Act (LUPAA). The proposal suggests that if the Planning Authority (PA) incorrectly refers an application to the DAP, the time spent on DAP assessment should count toward the overall assessment period under section 57. This is intended to prevent unfair penalties on applicants for procedural errors. Whilst we broadly support this, implementing this idea will require due consideration to prevent misuse and ensure transparent evaluation processes.

- **Adoption of process to review further information requests similar to LUPAA**
  The framework proposes an opportunity for applicants to request the DAP to review the PA's decision to request further information which must provide a determination within 14 days of receiving the request. The position paper acknowledges that a request for further information can often stall the determination of development applications and therefore reduces the response time of the DAP to 14 days, in comparison to the existing provisions under s40v of the Act. However, we believe this timeframe will add undue cost to the assessment and determination of the application and a request for further information should be made simultaneously within the timescales of the PA's determination to DAP.

- **DAP determination timeframe**
  Compelling anecdotal evidence suggests the additional information process is being strategically employed to intentionally impede prompt assessment of certain contentious proposals, particularly those related to social housing. Although there exists the option to appeal a request for further information to the Tasmanian Civil and Administrative Tribunal (TasCAT), associated financial costs and uncertainty surrounding the resolution timeframe serve as significant deterrents.

  Sections 40A and 40V provide avenues for applicants to seek a Commission review of the planning authority's request for additional information concerning an amendment to a Local Provisions Schedule (LPS) and a combined amendment and planning permit, respectively. Analogous provisions, namely sections 33B and 43EA, apply under the previous provisions of the Land Use Planning and Approvals Act (LUPAA).

The proposed Development Assessment Panel (DAP) framework introduces a comprehensive restructuring by merging the council's advisory role with the DAP's decision-making function. Additionally, it recommends the orchestration of hearings to enable stakeholders to address the panel, leading to the DAP's final determination. This amalgamation essentially combines the initial phase of the current process, involving the Planning Authority's consideration, with a potential appeals process that presently lacks temporal constraints. However, a critical issue emerges as the existing statutory 42-day timeframe, designated for determining discretionary applications, is perceived as inadequate for this more intricate and integrated process.

To address this concern, the suggested DAP framework proposes leveraging the Tasmanian Planning Commission Act 1997 to establish the panel, subjecting it to the Commission's requirements. Panels instituted by the Commission are obligated to uphold the principles of natural justice and procedural fairness, aligning with the standards observed in other Land Use Planning and Approvals Act (LUPAA) processes overseen by the Commission. This encompasses the conduct of hearings, providing concerned parties with the opportunity to present submissions and be heard by the decision-maker, similar to the process of a Tasmanian Civil and Administrative Tribunal (TasCAT) appeal hearing.

The primary goal of appealing a planning authority's decision to TasCAT is to facilitate an independent review of the process in a public forum, free from political interference. By incorporating the Commission in establishing the DAP, this independent review function becomes intrinsic to the DAP framework, aiming to alleviate uncertainties, delays, and costs associated with resolving contested applications through TasCAT. While this approach seeks to enhance transparency and impartiality, there remains a need for careful scrutiny and consideration, particularly regarding the potential implications on timelines, efficiency, and stakeholder engagement in the broader development assessment process.

- **Enforcement of permits**
  The outlined framework suggests a model where the Planning Authority takes charge of the distribution and enforcement of permits, drawing inspiration from the successful approach employed by the Tasmanian Civil and Administrative Tribunal (TasCAT). The proposal recommends that the Planning Authority retains control over permits, being responsible for both their issuance and enforcement, guided by directives from a Development Assessment Panel (DAP). Proponents argue that this setup enables Planning Authorities to remain well-informed about the permitting process while simultaneously alleviating DAPs of potentially burdensome workloads.

  However, a critical examination reveals the need for further attention to several aspects of this proposed arrangement. Firstly, the effectiveness of this model hinges on clear and efficient communication channels between the DAP and the Planning Authority. Any miscommunication or delays in conveying directives could undermine the intended benefits of streamlining the process.

  Secondly, there may be concerns about the potential concentration of power within the Planning Authority, especially if there are insufficient checks and balances in place. This could raise further

questions about transparency, accountability, and the equitable distribution of decision-making authority.

Thirdly, the framework assumes that Planning Authorities have the capacity and resources to effectively handle the additional responsibilities associated with permit issuance and enforcement. Without a careful evaluation of existing workloads, staffing levels, and expertise within Planning Authorities, there is a risk of overburdening the system and compromising the quality and efficiency of permit-related processes.

Whilst the proposed framework aims to optimise the division of responsibilities between DAPs and Planning Authorities, there are notable concerns that warrant further scrutiny. Addressing issues related to communication, power dynamics, and organisational capacity is crucial to ensure that the envisioned benefits of this arrangement are realised without compromising the integrity of the permitting process.

- **Amendments to DAP determined applications**
  The framework raises concerns about minor permit amendments initially decided by a DAP, suggesting a need for impartial evaluation due to potential political influence. It proposes additional attention to the planning scheme amendment process for DAP-assessed applications, advocating for a criteria assessment to identify conflicts with Planning Authorities and ensure unbiased decision-making. However, the lack of specified criteria, potential administrative complexities, and the need for transparent information warrant further attention to enhance the proposal's effectiveness.

CONCLUSION

We genuinely believe the draft Development Assessment Panel Framework 2024 and beyond provides a comprehensive strategy built on unpacking and streamlining a number of limitations and shortcomings associated with the assessment process at a Council level, but also more broadly and structurally within the Tasmanian Planning System.

We also anticipate further engagement with industry will result in a framework that provides a transparent and systematic approach to planning at scale by removing a number of burdens and deterrents from the existing assessment process.

We trust our input will be useful however, should you have any queries relating to the contents of this submission, or should you wish to engage with us further please do not hesitate to contact me via email admin@nicheplanningstudio.com.au

Kind regards,

Nicola Smith
Director
Niche Planning Studio

Sarah Lloyd OAM

28 November 2023

State Planning Office
Department of Premier and Cabinet
GPO Box 123
HOBART TAS 7001

Re: Tasmanian Government's proposed legislation to introduce independent Development Assessment Panels (DAP) to take over some of council's decision-making functions on certain development applications.

I am concerned at the latest efforts by the Liberal Party to seemingly circumvent the planning system by the creation of DAPs and increase ministerial power over the planning system. To claim that this will 'take the politics out of planning' is absurd when the selection of panel members is likely to be political, and the planning minister is a member of the political party in power.

There are likely to be as many 'conflict of interest' situations arising with a DAP as apparently currently (but not proven) happens with local councils.

The current system already takes many decisions out of the hands of local elected councillors who are there as representatives of their constituents. This is causing great concern among many people who are witnessing their communities being overtaken by inappropriate developments, or developments that could be better planned to allow for green space and greater community cohesion.

A healthy democracy is imperative and this will not be the case if a statewide panel is selected to override decisions by local councils. It is imperative that there is transparency, independence, accountability and public participation in decision-making within the planning system.

Decision making should remain local with opportunities for appeal.

The proposal for the planning panels should be abandoned and instead action should be taken to improve governance and the existing Council planning process by providing more resources to councils and enhancing community participation and planning outcomes.

It is also important that property developers are prohibited from making donations to political parties as this is open to corruption. Furthermore, it is important to enhance transparency and efficiency in the administration of the *Right to Information Act 2009*, and create a strong anti-corruption watchdog.

I myself have seen inappropriate developments in many small towns in northern Tasmania. They cause much distress to residents who care for their local community and do not want to see these developments change the nature of their towns. It is not a 'nimby' syndrome, rather a concern that increasing populations are not being properly serviced within the towns. This

is especially the case with the lack of medical services in many rural municipalities. And, with droughts increasing, it will be beyond the capacity of some local towns to meet the water needs of the increasing populations.

Rather than ‘taking the politics out of planning’ as has been claimed, increased ministerial power over the planning system will **increase** the politicisation of planning and the risk of corrupt decisions.

It has been demonstrated on the mainland that planning panels favour developers and undermine democratic accountability. Local planning panels, which are often dominated by members of the development sector, were created in NSW to stamp out corruption, but councillors from across the political spectrum say they favour developers and undermine democratic accountability.

Yours sincerely,

Sarah Lloyd OAM

DEVELOPMENT ASSESSMENT PANEL FRAMEWORK

POSITION PAPER OCTOBER 2023

GLENORCHY CITY COUNCIL FEEDBACK

Thank you for the opportunity to review the DAP framework position paper. Council officers would like to raise the following matters for consideration.

Summary

Council officers are not opposed to the concept of a Development Assessment Panel. However, concerns are raised about the proposed scope and operation of a DAP as outlined in the October 2023 Position Paper. In particular:

- **The proposed scope of referral triggers is too broad and ambiguous.** This contradicts the principles of depoliticisation and a proportional response. A wide net would result in additional time and complexity for otherwise straightforward applications.

- **Non-mandatory referrals should be at the discretion of the planning authority**, not the applicant. However, applicants should have the right to appeal this decision.

- **Removing appeal rights, delaying exhibition until a recommended decision has been made and introducing Ministerial intervention are not supported.** These measures would significantly undermine public confidence in the system and exacerbate controversy.

- **Clarity regarding the operation of the process resulting from different trigger points is required.** An ad-hoc process determined by the Minister on a case-by-case basis does not represent procedural fairness and is not supported.

Detailed comments on the consultation issues and draft framework are provided below.

Consultation issue 1 – Types of applications for DAP referral

a) Options (iii), (iv) and (v) are supported – subject to meeting threshold tests such as a minimum financial value (for Council applications) or a minimum number of representations (for contentious applications). Otherwise, this could trigger referral of applications that planning officers currently have delegation to determine, adding time and complexity to the process. Alternatively, should the DAP have discretion to decide not to accept a referral?

The remaining options are not supported:

(i) Social and affordable housing => if a proposal is not controversial, there is no need to apply a different process. If controversial, this would meet proposed test (v). If included in DAP referrals, 'social and affordable housing' will need to be defined – noting that public housing applications are not always made by Housing Tasmania.

(ii) Critical infrastructure => can be catered for through the existing *Projects of State Significance*, *Major Projects* and *Major Infrastructure Development* processes: https://planningreform.tas.gov.au/planning/major-projects-assessment. If included in DAP referrals, the definition of 'critical infrastructure' in this context will need to be carefully considered.

(vi) Where an applicant considers the planning authority is biased => this scenario is catered for through the existing appeal pathway.

(vii) Lack of appropriate skills or resources => the proposed framework still leaves the assessment with Council officers; reforms would be better focused on providing a shared technical resource pool for planning authorities to access.

(viii) Applications over a certain value => if there is no controversy or conflict of interest, what is the value of referring purely on the basis of $ value?

b) Nomination of referral to a DAP should rest with the planning authority, based on clear criteria. Otherwise, there is significant scope for gratuitous referrals. However, the planning authority's decision not to refer an application to a DAP should be subject to appeal rights.

   Depending on the referral trigger, this may result in an additional planning authority decision point in the process (i.e. whether to refer an application). This would add more time to the process, in order to allow for the planning authority to be briefed, convene to make a decision, and communicate that decision to the relevant parties.

c) The three referral points are potentially supported, given some of the triggers for referral would not be known until those stages. However, how would the processes integrate if an application is referred to a DAP after the initial lodgement and referral process, particularly given the proposed difference in the stage at which public exhibition is required?

Consultation issue 2 – Ministerial direction to prepare amendments

a) The Minister should not have the power to direct the planning authority to prepare an amendment. If such a power is needed it should rest with the Tasmanian Planning Commission (TPC) and should apply only where it is demonstrated that the planning authority has made an error of judgement; that is, where the proposed amendment meets the criteria for preparation.

b) If the intention is to reduce the degree (or perceived degree) of 'politics' in the planning process, it is unclear how providing a political veto power achieves that. The legislation already provides a pathway for the TPC to direct the planning authority to reconsider their decision, in the (rare) instance where a planning authority refuses to 'prepare' an amendment (s40B). The TPC is well versed in making non-political decisions based on planning considerations.

   Introducing a Ministerial power to direct the preparation of amendments would introduce additional complexity into the system by increasing the number of potential decision making pathways and would undermine the role of the TPC. A simpler, more consistent solution to address any need to veto the planning authority's decision would be to provide the TPC with that power.

c) No other tests or criteria should apply. If those are relevant considerations, they should be incorporated into the existing legislative tests, i.e. form part of the LPS criteria for any proposal to be assessed against.

Consultation issue 3 – Incorporating local knowledge and avoiding duplication

a) It is agreed that Council should continue to take carriage of pre-application, lodgement and validity checking, application review, requests for information and assessing the application. It is particularly important the Council retains carriage of these activities where Council assets (such as stormwater and roads) are impacted.

   It is noted that if Council is responsible for making a recommendation to the DAP, then depending on officer delegations, there is potential for a proposed recommendation to still require endorsement by the planning authority. This would involve duplication and undermine the purpose of the DAP. Nevertheless, as the authority responsible for compliance, it is appropriate for Council to draft proposed permit conditions.

   The consultation question omits the proposed Council role of reviewing and summarising representations, and making any proposed changes to the recommended decision and/or permit as a result.

b) Bespoke provisions would be required to cater for potential multi-stage referral points and the way in which a DAP process would integrate with a s57 or s58 process or, potentially, a s43A/s40T process. For simplicity, the DAP process should align with the process for assessment of a discretionary application, not the process for a combined amendment and planning application.

Consultation issue 4 – Requests for information

a) Using s40A and 40V rather than s54 would result in greater divergence between the process and rights that apply to a s57 or s58 application and an application determined

through a DAP. This means the framework does not merely relocate decision making powers, but creates a new class of application assessment.

b) The key contributor to the need for, and length of time in satisfying, requests for information is the extent to which applicants understand the Tasmanian Planning Scheme application requirements. This would be best addressed through:

   i. concerted, coordinated and regular industry education and supporting material, and

   ii. improving the clarity of planning scheme requirements through the SPP review.

   Consideration could also be given to reducing the timeframe within which further information must be satisfied before an application lapses (currently 2 years).

Consultation issue 5 – appeal rights and assessment timeframes

a) Is it reasonable that DAP applications are not subject to TasCAT appeals?

   No, because:

   i. TPC hearings do not require the same standards of evidence as TasCAT appeals.

   ii. Embedding hearings into the decision making pathway would lengthen the decision making process. Timeframes would increase from 42 days (for a discretionary application) in the absence of an appeal, to a maximum of 105 days.

   In the case of a hearing being dispensed with, the timeframe would still be more than 70 days.

   The DAP Framework may be intended to apply primarily to applications that are likely to result in an appeal. The position paper does not provide any data on the frequency of appeals for the types of applications proposed to be subject to the DAP process. Appeals (or their absence) can't be reliably predicted and the DAP process could substantially increase the timeframe for matters that otherwise would be determined within the 42 day timeframe for a discretionary application (or potentially the 28 day timeframe for a permitted application).

   It would make more sense to retain the appeal pathway as a separate, post-decision process that can be pursued at the discretion of the parties, rather than mandating it as part of the decision making process. If the aim is to reduce the timeframe for the appeals process, perhaps changes to that existing process should be proposed.

iii. In the absence of an appeal pathway, parties would have to pre-emptively invest in presenting their entire case prior to a decision being made. This could entail significant costs (time, effort and money) that would not otherwise be incurred, if the decision is favourable to that party.

iv. The public perception may be that their appeal rights have been removed. This could exacerbate contentious issues as the process may be perceived as being less transparent or involving political interference by the State.

However, if an appeal pathway is provided, consideration would need to be given to the responsibilities of the planning authority versus the DAP.

b) Timeframes:

i. Lodging and referrals: What about application validity? An assessment process, including referrals, should not commence until a valid application has been received.

ii. DAP confirms referral: no comment.

iii. Further information period: 21 days from application validity would align with a s57 application. This is supported, as any less time to consider a more complex or contentious proposal would not be appropriate.

Is there to be a timeframe required for Council to advise whether the request has been satisfied/provide any follow-up RFI?

In addition, any interactions between the DAP timeframes and timeframes under other legislation (such as for referrals to TasWater, Heritage Tasmania and the Environment Protection Authority) would need to be considered.

iv. Council assesses development application and makes a recommendation on whether or not to grant a permit: Seven days less than for a standard s57 application may not be appropriate. Applications referred to a DAP would be expected to be more complex and/or contentious than a standard application and should not receive less consideration. Also, does this timeframe include preparing a draft permit and conditions?

v. Exhibition: Exhibiting a recommended decision and permit (rather than just the proposal, prior to that stage) may exacerbate community perception of politicisation of decisions and conflicts of interest. The community may be concerned that Council has ‘predetermined’ the application.

It is also noted that additional time would be needed to allow for publishing deadlines.

vi. Submission to DAP: no comment.

vii. DAP hearing and determination: hearings could increase the workload for Council officers.

viii. Issue permit (timeframe): Is any provision for an extension to any of the timeframes proposed? What would happen if the timeframes are not met?

Consultation issue 6 – role of the planning authority post DAP determination

a) Custodian and issuer of DAP-determined permits: If Council issues the permit, would Council also have to field any questions or clarification required by the applicant, for conditions imposed by the DAP?

b) Enforcement of DAP-determined permit conditions: The TPC's expertise does not include compliance considerations. It is preferable that conditions are specified by the authority responsible for their enforcement. Otherwise, issues of practicality and resourcing may come into play.

c) Minor amendments to DAP-determined permits: Yes, the planning authority could make minor amendments. Note the current legislation does not provide a pathway for minor amendments to permit conditions imposed by the TPC for combined amendment and permit applications (s43K(2), former provisions).

Draft DAP Framework – other matters

Council requests review of proposed legislative changes, if the DAP proposal proceeds.

Other comments relating to the draft framework at Attachment 1 of the position paper are as follows.

Ref 1 Pre-lodgement: Would the TPC also be expected to field queries regarding eligibility for DAP referral?

Ref 2 Lodging: no comment.

Ref 3 Valid application and referral: no comment.

Ref 4A Discretionary referral: Would this process mean a) Council officers would need to consider the need for a referral and make a recommendation to the planning authority and b) the planning authority (eg the Glenorchy Planning Authority, consisting of elected members) would need to consider the recommendation? If

so seven days is not a reasonable timeframe. Also, see comments in response to consultation issue 1 regarding DAP criteria. Further, a different term is preferred, to avoid confusion between a 'discretionary referral' and a 'discretionary application.'

In cases where a dispute arises between the applicant and the planning authority, this should be resolved through existing appeal mechanisms – i.e. via TasCAT.

Ref 4B Mandatory referral: prescribed purposes require further consideration, as per comments in response to consultation issue 1.

Ref 5 PA requests referral of DA to DAP: The timeframe for the DAP to determine that a referral is not valid should count towards the s57 period, provided the timeframe for a request for further information remains at 21 days.

Ref 6 Review of DA to determine if RFI needed: Can the DAP request additional referrals? If so, will they have additional time in which to determine whether they need RFI?

Ref 7 Review of RFIs: this means the treatment of DAP RFI requests differs from the treatment of s54 requests?

Ref 8 Provision and review of additional information: Will there be a timeframe within which the planning authority must advise that the RFI has not been satisfied and issue a follow-up request? Will the application lapse if the further information is not satisfied in a certain timeframe?

Ref 9 Planning authority assesses DA: no comment.

Ref 10 Public notification: for contentious issues, the community may view the advertising of a recommended decision and draft permit as pre-empting their right to consider the proposal.

Ref 11 Planning authority review of representations: no comment.

Ref 12 Provision of documents to the DAP: "any draft permit" – whose responsibility will it be to draft the permit? Presumably all referrals would entail Council drafting a permit?

Ref 13 DAP review: no comment.

Ref 14 DAP hearings: may not provide the evidential rigour of a TasCAT appeal.

Ref 15 DAP determination: Extension request to be approved by the Minister – versus assessment extensions for other applications being at the discretion of the applicant.

Ref 16 Notification of DAP decision: no comment.

Ref 17 Issuing of permit: What is the value of a 1-week delay to the permit coming into effect, if there are no appeal rights?

Ref 18 Enforcement: practical enforcement expertise would be needed to inform any TPC direction to add, remove or revise drafting of conditions.

Ref 19 Appeal rights: This will extend the timeframe in the absence of an appeal and will exacerbate community concern in the case of contentious proposals. If a DAP decision is subject to judicial appeal the timeframe and costs would be expected to be significantly greater than an appeal to TasCAT.

Ref 20 Minor amendments: s56 relates to planning permits issued by the planning authority. Section 43K(2), former provisions does not enable the planning authority to amend conditions imposed by the TPC.

Other opportunities for a development application to be referred to a DAP

Ref 21 Ministerial call in powers: no comment.

Ref 22 Minister referral of DA to DAP: It is inappropriate for the process and timeframes for an assessment to be determined on an ad-hoc basis. The operation of the process in each referral scenario should be specified up-front.

DAP membership

If TPC panels are to determine the conditions on permits, they will need contemporary statutory experience and input from a compliance perspective.

Development application fees

DAP applications would entail additional time from Council officers to consider and determine whether DAP referral applies, prepare for and attend hearings, and (potentially) provide additional briefings to Council executives and/or elected members.

18. SUBMISSION ON THE DEVELOPMENT ASSESSMENT PANEL FRAMEWORK POSITION PAPER

Author:	Strategic Planner (Darshini Bangaru)
Qualified Person:	Director Infrastructure and Development (Emilio Reale)
ECM File Reference:	Planning Reform

Community Plan Reference:

Open for Business

We will create a strong economy and jobs for the future. We will encourage business diversity, innovation and new technologies to stimulate jobs, creativity and collaboration. We will be a place where business can establish, continue and flourish.

Leading our Community

We will be a progressive, positive community with strong council leadership, striving to make Our Community's Vision a reality.

Strategic or Annual Plan Reference:

Open for Business

Objective 3.2	We encourage responsible growth for our City.
Strategy 3.2.1	Maintain a progressive approach that encourages investment and jobs.
Strategy 3.2.2	Plan for the orderly future growth of our City, with particular focus on structure planning for the Northern Suburbs Transit Corridor and at Granton

Leading our Community

Objective 4.1	We are a leader and partner that acts with integrity and upholds our community's best interests.
Strategy 4.1.4	Make informed decisions that are open and transparent and in the best interests of our community.
Objective 4.2	We responsibly manage our community's resources to deliver what matters most.
Strategy 4.2.3	Manage compliance and risk in Council and our community through effective systems and processes

Reporting Brief:

To seek Council's endorsement of a submission to the State Planning Office on the Development Assessment Panel (DAP) Framework Position Paper issued in October 2023.

Proposal in Detail:

The State Planning Office has prepared a position paper to seek input on a proposed Development Assessment Panel (DAP) Framework. The position paper that is currently on consultation is set out at Attachment 1.

Development Assessment Panel Framework

The Tasmanian Government has announced the preparation of new legislation to introduce independent Development Assessment Panels (DAPs) to take over some of Councils' decision-making functions on certain development applications.

The stated intent for introducing DAPs is 'to take the politics out of planning' by providing an alternate approval pathway for more complex or contentious development applications.

The position paper puts forward several consultative questions seeking input on what applications might be suitable to be determined by a DAP, options for what a DAP framework might look like and how it might be integrated into the planning system. An outline of a draft framework is also provided with the position paper for comment.

To summarise, feedback is sought on key aspects of the proposed DAP, including:

- Triggers – which applications should be referred to the DAP, and by whom?

  Proposed triggers include financial value, technical complexity, conflicts of interest on the part of Council, type of application such as for social housing or critical infrastructure. Rights to request (or direct) referrals are proposed for Council, the applicant and/or the Minister.

- Operation of the planning process for a DAP application – at what point should referral occur, whether the process should be modelled on combined planning scheme amendments and planning permit applications (as opposed to the standard Discretionary application process), and timeframes.

  The proposed process includes delaying advertising until after a proposed decision and permit have been drafted and eliminating the TasCAT appeal pathway.

- A substantial role for Ministerial discretion – the proposal seeks input on establishing Ministerial intervention at various stages of the process, including for non-DAP planning scheme amendments, and the right for the Minister to specify (for a given application) the assessment process and timeframes for the DAP or the planning authority to follow.

Summary of the submission to the Development Assessment Panel Framework Position Paper

The DAP Framework position paper has been circulated to internal Council stakeholders for comment. In addition, a Council workshop was held for the Elected Members on 6th November 2023, where the contents of the position paper were discussed, and feedback was provided by the Elected Members.

Detailed comments on the consultation issues and draft framework are provided in the feedback submission under Attachment 2.

To summarise the proposal, Council officers are not opposed to the concept of a Development Assessment Panel. DAPs are supported in certain circumstances. However, this proposed model is not considered appropriate. Concerns are raised about the proposed scope and operation of a DAP, in particular:

- **The proposed referral triggers are too broad and ambiguous.** This contradicts the principles of depoliticisation and a proportional response. A wide net would result in additional time and complexity for otherwise straight forward applications.

- **Non-mandatory referrals should be at the discretion of the planning authority**, not the applicant. However, applicants should have the right to appeal this decision.

- **Removing appeal rights, delaying exhibition until a recommended decision has been made and introducing Ministerial intervention are not supported.** These measures would significantly undermine public confidence in the system and exacerbate controversy.

- **The DAP process should align with the process for assessment of a discretionary application, not the process for a combined amendment and planning application.** Essentially mirroring this process is not appropriate and is an unnecessarily complex response.

- **Clarity regarding the operation of the process resulting from different trigger points is required.** An ad-hoc process determined by the Minister on a case-by-case basis does not represent procedural fairness and is not supported.

Consultations:

Council workshop
General Manager
Director Infrastructure and Development
Manager Development
Planning Services Section

Human Resource / Financial and Risk Management Implications:

Financial

Review of the Development Assessment Panel Framework and responses on the next steps of this project will be managed within the Planning Services budget.

Human resources

Council officers would prepare Council reports on future steps in the Development Assessment Panels project.

Risk management

It is considered that there is no material risk to Council if it does not provide a response to the position paper. However, Council officers have identified a few matters for consideration by the State Planning Office which will help formulate and adopt more robust processes. Participation in these processes, and provision of responses to the State Government ensures our community's views are represented.

Community Consultation and Public Relations Implications:

The Position Paper was released for community consultation by the State Government. Council officers also attended a Council workshop to seek Aldermen's views on the Development Assessment Panels Framework.

Recommendation:

That Council:

1. MAKE a submission to the State Planning Office about the Development Assessment Panels Framework Position Paper, October 2023, in the form set out in Attachment 2.

Attachments/Annexures

1 ⇨ Development Assessment Panel Framework Position Paper, October 2023

2 ⇨ Feedback Response to the Development Assessment Panel Framework Position Paper

From: Debbie Quarmby <>
Sent: Tuesday, 28 November 2023 9:33 AM
To: State Planning Office Your Say
Subject: Submission regarding the 'Development Assessment Panel (DAP) Framework Position Paper'

To Whom it may concern,

I wish to fully endorse the submission of Nicholas Sawyer, made on behalf of the Tasmanian National Parks Association (TNPA), dated 26/11/2023.

Including that submission's conclusion:

'The proposed framework will not only fail "to take … politics out of planning decisions", but will cause further political problems by diminishing accountability through removing decision making from elected local representatives and denying appeals.'

In addition, I believe the proposed framework may result in public perception that the 'independent' consultant would be chosen by Government on the basis of expected compliance with the Government's agenda, an agenda that might be perceived to prioritise private development over nature conservation values. If such a perception were to result from the proposed framework it would risk lessening public trust in Government.

Therefore, I concur that the framework and wider proposal of which it forms part should therefore be abandoned.

Yours sincerely,
Deborah Quarmby

From:
Sent: Tuesday, 28 November 2023 9:34 AM
To: State Planning Office Your Say
Subject: Comment on the proposed Development Assessment Panel (DAP) Framework

To whom it may concern

I am aware that the government is proposing having a Development Assessment Panel where this would take decision making control from local councils. This would be the case for any large or complex or controversial projects. It would also have no rights to appeal.

This is fundamentally wrong in a democratic country. Democracy starts at the local level and must be respected. We elect local councillors ourselves and they should be responsible for decisions made within our local council areas.

These decisions on development proposals should not be made by panellists, who are not democratically elected by the people, but decided upon by the state government's Minister of the day. Close deals between developers and Ministers of their sitting governments create a potentially corruptible situation. This is far from being an independent and democratic system.

Please do not go ahead with the proposed Draft Land Use Planning and Approvals (Development Assessment Panel) Amendment Bill 2024, for the reasons provided above.

Yours sincerely,

Thomas Hennicke

From: David Halse Rogers <>
Sent: Tuesday, 28 November 2023 11:49 PM
To: State Planning Office Your Say
Subject: The proposed Bill name is Draft Land Use Planning and Approvals (Development Assessment Panel) Amendment Bill 2024.

I write to oppose the planned Legislation that would enable developers to bypass council planning rules. I also object to the Minister being given powers to interfere with proper planning procedures, which would make a mockery of the democratic process and lock Tasmanians out of their inalienable right to be involved in the planning process in this State. I oppose the creation of planning panels and increasing ministerial power over the planning system, for the following reasons:-

- It will create an alternate planning approval pathway allowing property developers to bypass local councils and communities. Hand picked State-appointed planning panels will decide on development applications not your elected local council representatives. Local concerns will be ignored in favour of the developers who may not be from Tasmania. Also, if an assessment isn't going their way the developer can abandon the standard local council process at any time, and have a development assessed by a planning panel. This could intimidate councils into conceding to developers demands.

- **Makes it easier to approve large scale contentious developments** like the kunanyi/Mount Wellington cable car, high-rise in Hobart, Cambria Green and high-density subdivision like Skylands at Droughty Point.

- **Remove merit-based planning appeal rights** via the planning tribunal on issues like height, bulk, scale or appearance of buildings; impacts to street scapes, and adjoining properties including privacy and overlooking; traffic, noise, smell, light and other potential amenity impacts and so much more. **Developments will only be appeal-able to the Supreme Court based on a point of law or process.**

- **Removing merits-based planning appeals has the potential to increase corruption and reduce good planning outcomes.** The NSW Independent Commission Against Corruption recommended the expansion of merit-based planning appeals as a deterrent to corruption.

- **Increased ministerial power over the planning system increases the politicisation of planning and risk of corrupt decisions.** The Planning Minister will decide if a development application meets the planning panel criteria. The Minister will be able to force the initiation of planning scheme changes, but perversely, only when a local council has rejected such an application, threatening transparency and strategic planning.

- **Flawed planning panel criteria.** Changing an approval process where one of the criteria is on the basis of 'perceived conflict of interest ' is fraught. The Planning Minister has political bias and can use this subjective criteria to intervene on any development in favour of developers.

- **Undermines local democracy and removes and local decision making.** State appointed hand-picked planning panels are not democratically accountable, they remove local decision making and reduce transparency and robust decision making.

- **Mainland experience demonstrates planning panels favour developers and undermine democratic accountability.** Local planning panels, which are often dominated by members of the development sector, were created in NSW to stamp out corruption, but councillors from across the political spectrum say they favour developers and undermine democratic accountability.

- **Poor justification – there is no problem to fix.** Only about 1% of council planning decisions go to appeal and Tasmania's planning system is already among the fastest, if not the fastest, in Australia when it comes to determining development applications.

- **Increases complexity in an already complex planning system.** Why would we further increase an already complex planning system which is already making decisions quicker than any other jurisdiction in Australia?

- **I call on you to ensure transparency, independence, accountability and public participation in decision-making within the planning system**, as they are critical for a healthy democracy. Keep decision making local with opportunities for appeal. Abandon the planning panels and instead take action to improve governance and the existing Council planning process by providing more resources to councils and enhancing community participation and planning outcomes.

- I also call on you to **prohibit property developers from making donations** to political parties, **enhance transparency and efficiency in the administration of the *Right to Information Act 2009***, and **create a strong anti-corruption watchdog**.

Yours sincerely,
David Halse Rogers.

G Fenton

27/11/23

Dear Madam or Sir,

I will keep this short as I'm sure you have received many submissions against the Position Paper on a proposed Development Assessment Panel (DAP) Framework. I oppose this for the following reasons.

It will create an alternate planning approval pathway allowing poroperty developers to bypass local councils and communities

Makes it easier to appove large scale contentious developments

Remove merit-based planning appeal rights

Removing merit-based planning appeals has the potential to increase corruption and reduce good planning outcomes.

Increased ministerial power over the planning system increases the politicisation of planning and risk of corrupt decisions.

Flawed planning panel criteria.

Undermine local democracy and removes local decision making

I could go on further, but as I said, I will keep this short

yours sincerely

State Planning Office
Department of Premier & Cabinet
GPO Box 123
Hobart
TAS 7001

23-11-2023

Re. The proposed bill 'Draft Land Use Planning and Approvals

Please Accept my submission,

Because our local councils mean all levels of our general public's real ability to exercise our democratic rights and opinions (especially those that involve such important things as our natural environment, impacts on our personal and community space, our health eg. regarding a developments possible toxic effects, etc), we do not want "planning panels".

Smaller communities especially, can be very negatively impacted by unwise planning decisions, ruining the very thing that brings people to visit such a beautiful State, known around the world for its natural beauty's and charms of its history.

I think Tasmanias economy depends on these things. I just dont believe that our natural treasures should be put at risk by people with agendas, whether political or financial.

By all accounts our existing planning system works well and fairly. If something so important isn't broken, why fix it.

Thankyou

From:
Sent: Tuesday, 28 November 2023 10:51 PM
To: State Planning Office Your Say
Subject: Submission against Development Assessment Panels

I oppose the introduction of Development Assessment Panels because:
* they will add further complication to the existing system
* they reduce the democratic rights of the community.

Issue 1 Types of Development applications
* Critical infrastructure does not need a new panel because Major Projects Legislation or Projects of State Significance already provide an avenue for approval.
* Perceived bias exists at all levels of the planning system. DAPs will only increase community perceptions of bias favouring developers in the planning scheme.
* State Governments through the planning scheme limit or encourage certain types of development and the public perception is that a DAP is only to provide another mechanism to remove the local authority.
* Councils can share skills and resources in the planning area to ensure access to deal with complex issues.

Issue 2 An enhanced role for the Minister
* The Minister should not be given an enhanced role. Sufficient authority exists in current legislation.

Issue 3 Retaining local input
* Council should be the primary contact for applicants and its role should not be diminished.
* Consultation on any proposal should occur at the beginning of the process. The current system of Council being the Planning Authority provides for this.
* This proposal reduces democratic rights for no perceived public good.

Issue 4 Resolving issues associated with requests for, and responses to, further information
* Requests for further information will occur where the developer does not submit the relevant supporting documents with their application. The cable car proposals for Mt Wellington was a perfect example of failure to provide satisfaction of the requirements of the planning scheme in the original proposal. This led to continual requests and responses.
* Annecdotal evidence is never reliable data. Mention of it in this document is an example of bias being allowed to intrude on the planning scheme. Collect reliable evidence-based data before you implement DAPs and get community approval

Issue 5 Appeal rights and assessment time frames.
* Special pathways are not faster, cheaper, simpler or FAIRER.
* Applications that require approval under discretionary provisions rather than acceptable solutions and performance criteria will always take longer to assess
* Public right of consultation and comment must be guaranteed.
* All structures are permanent features on the landscape and within the community so should be assessed under existing systems with local input at all stages.

Issue 6 Roles of the planning authority after DAP determination
* The expectation that the DAP will 'engage extensively with the planning authority' provides no

simplification to the process or reduction of Council work loads but simply adds more red tape and cost.

It is not the planning system which is stopping development currently it is a lack of qualified workers and shortage of materials. Within Hobart there are a number of developments approved and awaiting construction.

Your name: Raewyn McNamara

Your email:

My additional comments::

From: Jordan Smith <>
Sent: Tuesday, 28 November 2023 10:01 PM
To: State Planning Office Your Say
Subject: Protect our local democracy - say no to the Liberals new planning panels

Say no to the Liberals new planning panels

I opppose the creation of planning panels and increasing ministerial power over the planning system, for the following reasons:

- **It will create an alternate planning approval pathway allowing property developers to bypass local councils and communities.** Handpicked state appointed planning panels will decide on development applications not your elected local council representatives. Local concerns will be ignored in favour of the developers who may not be from Tasmania. Also, if an assessment isn't going their way the developer can abandon the standard local council process at anytime and have a development assessed by a planning panel. This could intimidate councils into conceding to developers demands.
- **Makes it easier to approve large scale contentious developments** like the kunanyi/Mount Wellington cable car, high-rise in Hobart, Cambria Green and high-density subdivision like Skylands at Droughty Point.
- **Remove merit-based planning appeal rights** via the planning tribunal on issues like height, bulk, scale or appearance of buildings; impacts to streetscapes, and adjoining properties including privacy and overlooking; traffic, noise, smell, light and other potential amenity impacts and so much more. **Developments will only be appealable to the Supreme Court based on a point of law or process.**
- **Removing merits-based planning appeals has the potential to increase corruption and reduce good planning outcomes.** The NSW Independent Commission Against Corruption recommended the expansion of merit-based planning appeals as a deterrent to corruption.
- **Increased ministerial power over the planning system increases the politicisation of planning and risk of corrupt decisions.** The Planning Minister will decide if a development application meets the planning panel criteria. The Minister will be able to force the initiation of planning scheme changes, but perversely, only when a local council has rejected such an application, threatening transparency and strategic planning.
- **Flawed planning panel criteria.** Changing an approval process where one of the criteria is on the basis of 'perceived conflict of interest ' is fraught. The Planning Minister has political bias and can use this subjective criteria to intervene on any development in favour of developers.

- **Undermines local democracy and removes and local decision making.** State appointed hand-picked planning panels are not democratically accountable, they remove local decision making and reduce transparency and robust decision making.
- **Mainland experience demonstrates planning panels favour developers and undermine democratic accountability.** Local planning panels, which are often dominated by members of the development sector, were created in NSW to stamp out corruption, but councillors from across the political spectrum say they favour developers and undermine democratic accountability.
- **Poor justification – there is no problem to fix.** Only about 1% of council planning decisions go to appeal and Tasmania's planning system is already among the fastest, if not the fastest, in Australia when it comes to determining development applications.
- **Increases complexity in an already complex planning system.** Why would we further increase an already complex planning system which is already making decisions quicker than any other jurisdiction in Australia?

Say yes to a healthy democracy

- **I call on you to ensure transparency, independence, accountability and public participation in decision-making within the planning system**, as they are critical for a healthy democracy. Keep decision making local with opportunities for appeal. Abandon the planning panels and instead take action to improve governance and the existing Council planning process by providing more resources to councils and enhancing community participation and planning outcomes.
- I also call on you to **prohibit property developers from making donations** to political parties, **enhance transparency and efficiency in the administration of the *Right to Information Act 2009***, and **create a strong anti-corruption watchdog**.

The Position Paper on a proposed Development Assessment Panel (DAP) Framework public comment has been invited between the 19 October and 30 November 2023.

The submissions received on the Position Paper will inform a draft Bill which will be released for public comment most likely in January 2024, for a minimum of five weeks, before being tabled in Parliament in early 2024.

The proposed Bill name is *Draft Land Use Planning and Approvals (Development Assessment Panel) Amendment Bill 2024*.

Yours sincerely,

Jordan

From:	Jenni Burdon <>
Sent:	Tuesday, 28 November 2023 9:53 PM
To:	State Planning Office Your Say
Cc:	
Subject:	Protect our local democracy - say NO to the Liberals new planning panels

Say no to the Liberals new planning panels

I oppose the creation of planning panels and increasing ministerial power over the planning system, for the following reasons:

- **It will create an alternate planning approval pathway allowing property developers to bypass local councils and communities.** Handpicked state appointed planning panels will decide on development applications not your elected local council representatives. Local concerns will be ignored in favour of the developers who may not be from Tasmania. Also, if an assessment isn't going their way the developer can abandon the standard local council process at anytime and have a development assessed by a planning panel. This could intimidate councils into conceding to developers demands.

- **Makes it easier to approve large scale contentious developments** like the kunanyi/Mount Wellington cable car, high-rise in Hobart, Cambria Green and high-density subdivision like Skylands at Droughty Point.

- **Remove merit-based planning appeal rights** via the planning tribunal on issues like height, bulk, scale or appearance of buildings; impacts to streetscapes, and

adjoining properties including privacy and overlooking; traffic, noise, smell, light and other potential amenity impacts and so much more. **Developments will only be appealable to the Supreme Court based on a point of law or process.**

- **Removing merits-based planning appeals has the potential to increase corruption and reduce good planning outcomes.** The NSW Independent Commission Against Corruption recommended the expansion of merit-based planning appeals as a deterrent to corruption.

- **Increased ministerial power over the planning system increases the politicisation of planning and risk of corrupt decisions.** The Planning Minister will decide if a development application meets the planning panel criteria. The Minister will be able to force the initiation of planning scheme changes, but perversely, only when a local council has rejected such an application, threatening transparency and strategic planning.

- **Flawed planning panel criteria**. Changing an approval process where one of the criteria is on the basis of 'perceived conflict of interest ' is fraught. The Planning Minister has political bias and can use this subjective criteria to intervene on any development in favour of developers.

- **Undermines local democracy and removes and local decision making**. State appointed hand-picked planning panels are not democratically accountable, they remove local decision making and reduce transparency and robust decision making.

- **Mainland experience demonstrates planning panels favour developers and undermine democratic accountability.** Local planning panels, which are often dominated by members of the development sector, were created in NSW to stamp out corruption, but councillors from across the political spectrum say they favour developers and undermine democratic accountability.

- **Poor justification – there is no problem to fix.** Only about 1% of council planning decisions go to appeal and Tasmania's planning system is already among the fastest, if not the fastest, in Australia when it comes to determining development applications.

- **Increases complexity in an already complex planning system.** Why would we further increase an already complex planning system which is already making decisions quicker than any other jurisdiction in Australia?

Say yes to a healthy democracy

- **I call on you to ensure transparency, independence, accountability and public participation in decision-making within the planning system**, as they are critical for a healthy democracy. Keep decision making local with opportunities for appeal. Abandon the planning panels and instead take action to improve

governance and the existing Council planning process by providing more resources to councils and enhancing community participation and planning outcomes.

- **I** also call on you to **prohibit property developers from making donations to political parties**, **enhance transparency and efficiency in the administration of the *Right to Information Act 2009***, and **create a strong anti-corruption watchdog**.

The voters have been calling on the Tasmanian Government to ensure political donations are all visible and transparent to the public.This request has gone unanswered for too many years. I call on the government to ensure that political donations are visible to all immediately.

Yours sincerely,
Jen Burdon
28/11/2023

From: Maria Riedl <
Sent: Tuesday, 28 November 2023 8:41 PM
To: State Planning Office Your Say
Cc:
Subject: Comments on Development Assessment Panel (DAP) Framework Position Paper by Maria IE Riedl

28 November 2023

Please say a resounding YES to a healthy democracy and keeping planning decision local!

Please, I ask that you say NO to the any new planning panels esp this proposed DAP.

This is 'Development Assessment Panel (DAP) Framework Position Paper' is a proposal to remove councils control of planning for proposals which are large or complex or controversial and this means all but the most minor proposals! Supposedly assessed by "independent" assessment panels appointed by the Tasmanian government and any decisions will not be subject to appeal!

This proposal has massive implications for the opportunities for the public to challenge proposed developments such as the Mt WELLINGTON CABLE CAR, HIGH-rise in Hobart, Cambria Green and high- density subdivision like Skylands at Droughty Point as well in (horrific idea) our National Parks!

1 It will create an alternative planning approval pathway allowing property developers to bypass local councils and communities.
2. Makes it easier to approve large scale contentious developments already voted down.
3. It removes merit-based planning appeal rights. Eg issues such as heights, bulk, scale, appearance of buildings, impacts on areas and adjoining properties, traffic, noise, smell, light and other amenity impacts! Developments will only be appealable to the Supreme Court based on a point of law or process.
4. Removing merits-based planning appeals has potential to increase corruption and reduce good planning outcomes!
5. Increase ministerial power over planning system increases the politicising of planning and risk of corrupt decisions threatening transparency and strategic planning.
6. Flawed planning panel criteria. Political bias in other words.

7. Undermines local democracy and removes local decision making via a hand picked panel not democratically accountable and removes local decision making…
8. Mainland experience demostraits planning panels FA or developers and undermine democratic accountability.
9. Poor justification- there is NO PrOBLEM TO FIX! Only 1% go to appeals.
10. Increases complexity in an already complex planning system.

I call on YOU to ensure transparency, independence, accountability and most importantly PUBLIC participation in decision making within the planning system! This ensures a healthy democracy and keeps decision making local with opportunities for appeal! Provide more resources to council planning and enhance community participation and planning outcomes,

I also call on YOU to PROHIBIT property developers from making donations to political parties, enhance transparency and efficiency in the administration of the Right to Information Act 2009, and create a strong anti-corruption watchdog!

I am also very very concerned about proposed developments in our National Parks which has had the requirement for approval of any development application via the local council, with the associated rights of appeal and this proposal has massive implications for denying any opportunities for the public to challenge proposed developments in our National Parks and in fact our World Heritage areas!!! This is simply unacceptable.

Of particular concern is the suggestion that "complex" planning development application may be referred to DAPs. What's complex? Hmmmm.

Your sincerely

Maria IE Riedl B.S.Ed., M.Env.L., M.Env.Gov

Maria IE Riedl
B.S.Ed., M.Env.L., M.Env.Gov

'When we try to pick out anything by itself, we find it hitched to everything else in the Universe.' John Muir

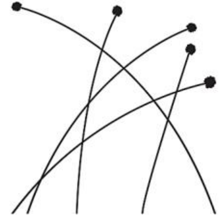
From: Lynette Taylor <>
Sent: Tuesday, 28 November 2023 6:35 PM
To: State Planning Office Your Say
Cc: MY OPPOSITION TO LIBERALS PROPOSED PLANNING PANELS
Subject:

Dear Parliamentarians,
I strongly oppose the creation of planning assessment panels and to increasing Ministerial power over the planning system in Tasmania.

* The creation of an alternative planning approval pathway would allow property developers to bypass local Councils and our local communities.
* This would have the effect of undermining local democracy and potentially removes decision making from the local Council, this is not acceptable.
* Creates an alternative planning approval pathway allowing developers to bypass local Councils and communities and allows a developer to abandon the local Council planning system at any stage in that process to then choose an alternate planning process. What a waste of Council time and resources.
* Would remove merit based appeal rights, developments will only be appealable to the Supreme Court based on process or a point of law, a hugely expensive undertaking for any individual or Council.
* There is a potential to increase corruption and politicisation and, reduce good planning outcomes by reducing democratic accountability,
* Ministerial powers should not be increased, There is a need to retain transparency and to reduce any notion of political bias.

I fear that these proposed changes will make it easier to approve large scale contentious developments such as the local Cambria Estate development which has taken more than five years of struggle through the system to be rejected.
In closing, please retain the opportunity for public participation, independence and transparency within our current planning system.

Thank you for the opportunity to make comments.
Lyn Taylor.



Comments on *Development Assessment Panel (DAP) Framework Position Paper*

Introduction

The Tasmanian National Parks Association Inc. (TNPA) understands that the Position Paper has been prepared as part of a proposal "to take … politics out of planning decisions".[i] The planning system (including planning decisions) is inherently political, because it is about balancing competing public and private interests. Therefore the proposal cannot achieve its stated purpose.

Misperceptions of conflict

The Position Paper suggests that perceptions of conflicting roles of councillors could be one ground for removing planning decisions from elected local councils and giving those decisions to development assessment panels (DAPs). The material in the Position Paper strongly indicates that the conflicts are not a significant problem at present. Given the inherently political nature of the planning system, it is appropriate that planning decisions on controversial matters are made by elected councillors who are accountable to voters, rather than by panellists who are not. Responsible government (including the responsibility of executive decision-makers to voters) is a fundamental feature of all levels of government in Australia.

Suggested grounds for involving DAPs

There is also a suggestion in the Position Paper that applications over a certain value should be determined by a development assessment panel rather than an elected local council. Proponents of controversial developments often make questionable claims about the value of their proposals. The suggestion seems likely to encourage this practice, which runs counter to making of well-informed planning decisions.

Of particular concern to the TNPA is the suggestion that "complex" planning development applications may be referred to DAPs. Any development application on reserved land has the potential to be deemed "complex" because it needs to demonstrate compliance with both the *National Parks and Reserves Management Act 2002* and the *Land Use Planning and Assessment Act 1993.* Hence there is potential for any development application on reserved land to be assessed by a DAP with no right of appeal.

A number of options are suggested in the Position Paper for allowing applicants for development approvals to have a role in choosing that their applications be decided by DAPs.

Postal address: GPO Box 2188, Hobart Tasmania 7001
Email: info@tnpa.org.au • Web: www.tnpa.org.au

The TNPA believes these options are inappropriate. The TNPA also believes that the suggested option for the Minister to nominate applications for assessment by DAPs is inappropriate, and likely to increase controversy around proposed developments and perceptions of undue political influence in the planning system.

Reducing accountability by removing appeals

The Position Paper suggests that provision for appeals to an independent tribunal from decisions of development assessment panels is not warranted, in part because of the expertise of the Tasmanian Planning Commission and panellists. Longstanding Australian Government guidance indicates that expertise of decision-makers is not a valid justification for denying merits review of their decisions.[ii]

It is not clear from the Position Paper what degree of expertise or independence panellists will have. The paper refers to various Acts as possible models, but only one of them (the *Land Use Planning and Assessment Act 1993*) currently provides for development assessment panels (in Division 2A of Part 4). Those provisions allow the Minister a significant degree of influence in the appointment of a development panel, given that the Minister can determine what qualifications or experience 2 of the required appointees to the panel need to have.[iii] Those 2 appointees could constitute a majority of the quorum of 3 panellists.[iv] This hardly seems a model “to take … politics out of planning decisions”.

Conclusion

The proposed framework will not only fail “to take … politics out of planning decisions”, but will cause further political problems by diminishing accountability through removing decision-making from elected local representatives and denying appeals.

The framework and wider proposal of which it forms part should therefore be abandoned.

Nicholas Sawyer, President, TNPA

26 November 2023

Endnotes

[i] https://www.premier.tas.gov.au/site_resources_2015/additional_releases/development-assessment-panel-consultation.

[ii] https://www.ag.gov.au/legal-system/administrative-law/administrative-review-council-publications/what-decisions-should-be-subject-merit-review-1999#:~:text=The%20Council%20prefers%20a%20broad,2.5. (see paragraphs 5.16 and 5.17).

[iii] See subsections 60Q(3) and 60W(4) and (5) of the *Land Use Planning and Approvals Act 1993*.

[iv] See subsection 60X(1) of the *Land Use Planning and Approvals Act 1993*.

Submission regarding the proposed changes to the planning approval process in Tasmania

I oppose the creation of Development Assessment Panels as proposed in the *Draft Land Use Planning and Approvals (Development Assessment Panel) Amendment Bill 2024*.

I oppose increasing ministerial power over the planning system, for the following

reasons:

It will create an alternative planning approval pathway allowing property developers to bypass local councils and communities.

There is no guarantee that the proposed Development Assessment Panels will be unbiased and "independent". It will be too easy for the government to set up panels which will favour developers and government priorities. Developers will be able to remove the approval process from elected local councils. The "position paper" admits that the biases which may be apparent in local council decisions are often only "perceived" rather than real. Are we going to kowtow to elements in the community which refuse to look at the facts and continue to spread mis/disinformation?

It will make it easier to approve large scale contentious developments

Examples of such developments are the kunanyi/Mount Wellington cable car, high-rise development in Hobart, Cambria Green and high-density subdivisions like Skylands at Droughty Point.

It will remove merit-based planning appeal rights via the planning tribunal. **Developments will only be appealable to the Supreme Court based on a point of law or process.**

Issues like height, bulk, scale or appearance of buildings; impacts to streetscapes, and adjoining properties including privacy and overlooking; traffic, noise, smell, light and other potential amenity impacts will not be regarded as grounds for appeal.

Removing merits-based planning appeals has the potential to increase corruption and reduce good planning outcomes.

The NSW Independent Commission Against Corruption in its Report on planning matters in that state (February 2012) stated that "merit appeals provide

a safeguard against biased decision-making by consent authorities and enhance the accountability of these authorities. The extension of third-party merit appeals acts as a disincentive for corrupt decision-making by consent authorities.” I doubt that the potential for corruption has changed a lot in the last few years! It seems that Tasmania is an exception in the eyes of the government – a highly unlikely situation!

Increased ministerial power over the planning system increases the politicisation of planning and risk of corrupt decisions.

The Planning Minister will decide if a development application meets the planning panel criteria. The Minister will be able to force the initiation of planning scheme changes, but perversely, only when a local council has rejected such an application, threatening transparency and strategic planning.

In my opinion, politicisation of the planning process will not be decreased under the proposed changes. The Planning Minister is not apolitical, by definition. How can there be any guarantee that those people hand-picked by the state to sit on the panels are without political bias? Local councillors are elected by the people. They may have particular political leanings, but the people are aware of this when the council elections are held. The people won’t have any say in the appointment of panel members.

Flawed planning panel criteria.

Changing an approval process where one of the criteria is on the basis of “perceived conflict of interest” is fraught. Basing any decision on perceptions is not sound decision-making. Whose perceptions? The developer’s? The Minister’s? The perceptions of some ill-informed members of the public? The creation of hand-picked panels to assess development applications, merely because there is a “perceived conflict of interest” is not the way to resolve planning issues. It is simply a way of removing the democratic rights of the people to have input into planning decisions which affect them. The panels will not be representing the people because they will not have been chosen by the people. Local democracy will be excluded and transparency in decision-making will be reduced. There will be an increased risk of corruption, because transparency and democracy have been removed from the assessment process.

There is no problem to be fixed

Only about 1% of council planning decisions go to appeal and Tasmania’s planning system is already among the fastest, if not the fastest, in Australia when it comes to determining development applications. Again, the proposal to introduce Development Assessment Panels comes from a “perceived” problem

with the current system of planning approvals. Some developers have been unhappy when a decision has gone against them. This does not mean the decision was wrong. A section of the public has been persuaded that local councils are rejecting a large number of proposals. These people have been conned by clever statistical manipulations. Facts not beliefs should be the basis of any proposed change to the planning system.

(https://clause1.com.au/planning-permit-decision-time-frames%E2%80%AF/)

Increases complexity in an already complex planning system

The introduction of Development Assessment Panels for some projects will give rise to a two-tiered system of planning approvals. Why would we further increase the complexity of a planning system which is already making decisions quicker than any other jurisdiction in Australia?

Democracy is important in planning decisions

Removing some planning decisions from local councils means that the public is excluded from the planning process. Instead of creating a two-tiered system, action should be taken to improve deficiencies in the existing system by providing more resources to councils and enhancing public participation. Local councils are elected by the public. Now that voting in local government elections is compulsory, the voting public has a duty, as well as a right, to select councillors with due consideration to ensure better planning outcomes. Democracy, transparency and accountability are best served when the public is able to have input to the planning approval process.

Developers would have more power to influence decisions

For this reason, property developers should be prohibited from making donations to political parties. This would be even more important if planning decisions were to be removed from local councils. Ideally, local councils would be free from party politics, in so far as that is possible. State governments are likely to remain party-political for the foreseeable future. In this scenario, transparency regarding the source and amount of political donations is paramount. It is just not appropriate for a developer to provide funds for a political party who could then be swayed to approve an application from the same developer.

Thank you for the opportunity to express my views on the proposed legislation.

Yours sincerely

Paula Woodward

28 November 2023

Cleaner.
Smarter.
Diverse.

The Officer in Charge
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Dear Sir or Madam,

RE: Draft Land Use Planning and Approvals (Development Assessment Panel) Amendment Bill 2024

Thank you for extending an invitation to the Tasmanian Minerals, Manufacturing and Energy Council (TMEC) to contribute to consultation on the *Draft Land Use Planning and Approvals (Development Assessment Panel) Amendment Bill 2024*.

TMEC's membership base represents an important wealth creating sector within the Tasmanian economy. The combined minerals and manufacturing sector employs 18,484 people and contributed $2.795B in exports in the 22/23 FY. Most of our members are based in regional areas of Tasmania and therefore provide critical employment opportunities away from public funded employers. Minerals exports alone account for 63.2% of Tasmania's commercial exports and is the foundation stone of many regional communities with 4,536 direct jobs and it provided $54.9M in royalties and $2M in rental payments to the State Government.

Introducing a development which changes any element of the fabric of a community and location requires considerable sensitivities from all stakeholders – none more so than the proponent, the community, and the approving authorities.

Getting the balance right for each of the stakeholders' cohorts to be heard equally and for those views to be able to be assessed against a criterium, which enables repeatable and predictable results outcomes is a key feature in building trust between stakeholders.

There are cases in Tasmania where the rules by which a developer assesses its project appear to be overridden at times based on populism and / or politics which does not bode well for future developments in Tasmania. In situations where perverse outcomes result, TMEC advocates for changing the rules when perverse outcomes result – but do so through a formal process for all to participate in rather than bend the rules or apply an individual's personal beliefs mid-way through an assessment process, and thereby being seen as "changing the rules on the fly".

The proposed changes outlined in the Development Assessment Panel (DAP) Framework Position Paper provide a platform to rebalance the tension between populism and therefore potentially personal preferences and biases and increase the analytical and fact-based considerations involved in Development

Applications (DA) which rely on compliance with LUPA and therefore the EMPC Act and/or EPBC Act which may be contested between stakeholders.

TMEC has been lobbying for improvements in the efficiencies of the planning approvals processes, which the DAP does not primarily address, other than where conflicted interests are featured in the assessment process, and the wasted time which can arise. TMEC will always encourage an efficiency lens to be applied to each and every change being proposed to ensure as a minimum the change does not add inefficiencies and ideally improves the efficiencies around planning assessment and approval.

Consultation issue 3 contains a comment regarding, "...review application and request additional information if required". While on the face of it, this may be directed at ensuring the DA has all supporting documentation, but equally it could permit requests for peripheral and thereby superfluous documents and reports, which slow down the assessment process and requires additional costs being incurred by the developer.

Like the relatively recent Major Projects Assessment Process, there remains uncertainty at this juncture. The process lacks substantial track record of success or failure to guide/test their decision on whether to voluntarily apply the DAP as a risk mitigation strategy. For those proponents capable and willing to utilise the DAP in its existing state, the mechanics of the process are currently shrouded in ambiguity, making it challenging to provide a precise submission.

The above summary is distilled from the following, more detailed observations / considerations:

- In principle, the premise of the proposed DAP is a change to the planning assessment process providing an alternative assessment and approval pathway for (potentially) contentious proposals.
- It would eliminate any perceived or actual political bias commonly associated with Councillor decision relating to large and contentious projects, such as:
    - Rezoning
    - Inner-city development that does not trigger activities under Schedule 2 of EMPCA, such as large hotels and multi-dwelling and/or mixed-use development.
    - State/Council-funded development such as housing or hospitals, and
    - Subdivision.
- It would be attractive for proponents of projects *not* associated with the following:
    - Proposals using assessment processes that already have an independent assessment panel, such as those under the Major Projects Assessment Process (MPAP) or the Major Infrastructure Developments Assessments (MIDA), and
    - Proposals located in 'industry friendly' municipalities where communities and Council are generally supportive of industrial development.
- From TMEC's perspective, and in consultation with member organisations, many of this industry sectors approved plans over the last decade would not have proceeded any more efficiently than they did, primarily due to the general alignment between community – Council and the specific development type.

− It is important to note TMEC accepts the status of pro-industry communities and Councils may not always be the case and therefore the changes proposed by the DAP could become more critical to this sector in time. Hence having the ability to activate an assessment via this route may become more important in the future.

− If DAP seeks to "remove the politics" from planning, then any application can be viewed as the proponent purely seeking an unbiased assessment. So rather than using DAP to avoid conflict it can be viewed that the proponent wants the best outcome where there are technical/complex components of the application which would be difficult or time consuming for Council officers to assess.

Be that as it may, right now, there remains numerous ambiguities surrounding the mechanics of the DAPs implementation including:

- How the DAP is formed or chosen for their relevant technical experience.
- Whether a Council can lodge representations and respective appeal rights.
- Whether or not the DAP's statutory assessment timeframes are still subject to 'stop the clocks' associated with requests for further information.
- Who pays for the DAP's assessment.

TMEC appreciates the opportunity to contribute to the consultation on the to consultation on the Draft Land Use Planning and Approvals (Development Assessment Panel) Amendment Bill 2024. Please do not hesitate to contact me should you require further clarification of any of the points raised herein.

Yours sincerely,

Ray Mostogl
Chief Executive Officer

Ref: 13/026/013 - EM

28th November 2023

State Planning Office
Department of Premier and Cabinet
GPO Box 123
HOBART TAS 7001
Via email: yoursay.planning@dpac.tas.gov.au

To whom it may concern

Re: Draft Land Use Planning and Approvals (Development Assessment Panel) Amendment Bill 2024

Thank you for the opportunity to provide input on the proposed Development Assessment Panel (DAP) Framework as outlined in the Position Paper that is open for consultation until the 30th November 2023.

Council considered and endorsed the attached submission at its meeting on the 20th November 2023. The submission is divided into two parts – (1) answers to the consultation questions outlined within the position paper, and (2) a response against each step of the application process outlined within Attachment 1 to the position paper.

This submission further outlines Council's concerns around the establishment of a Development Assessment Panel, as previously raised in a letter dated 12th September 2023 to the Hon. Jeremy Rockliff MP on the matter.

Should you have any further questions, please do not hesitate to contact Council, either by email council@nmc.tas.gov.au or by phone 6397 7303.

Yours Sincerely

Des Jennings
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CONSULTATION QUESTIONS:

Consultation issue 1 – Types of development applications suitable for referral to a DAP for determination

a) What types of development applications are problematic, or perceived to be problematic, for Councils to determine and would therefore benefit from being determined by a DAP?

Options

i. Applications for social and affordable housing which often attract considerable opposition within the local community based on social stigma rather than planning matters;

There is generally no way of community members knowing which developments are for social and affordable housing, and which are private development. In many cases, applications for social and affordable housing (residential) are a permitted/no permit required use (in the General Residential zone), which does not require the planning application to go through the public exhibition process. While there may be a general NIMBY (not in my back yard) sentiment amongst many communities towards potential social and affordable housing, it is very rare for this to have any impact on the application process of a development application and has no bearing on the assessment of the application against the planning scheme provisions. The Position Paper itself supports that the evidence demonstrates that political influence of such applications is 'isolated'.

ii. Critical infrastructure;

Critical infrastructure developments are generally a) supported by early community consultation which allow issues to be worked through prior to application lodgement, b) are exempt if at the direction of a government authority, or c) are of a scale to be assessed under separate legislative pathways, such as a Major Project/Projects of State Significance or under *Major Infrastructure Development Approval Act 1999.* It is Council's experience that critical infrastructure applications are well serviced by the existing statutory processes.

iii. Applications where the Council is the applicant and the decision maker;

Council has historically had an independent planning consultant assess applications where Council is the applicant, to ensure an independent and non-bias assessment and recommendation to the Planning Authority.

Council projects also have the option of being amended or withdrawn in light of community concerns raised during the public exhibition process, or incorporating features separate to the planning process to both meet the needs of the community and fulfil the role of the Planning Authority.

iv. Applications where Councillors express a conflict of interest in a matter and a quorum to make a decision cannot be reached;

This is not an issue regularly experienced by Council but may be a circumstance that warrants an external decision-making option.

v. Contentious applications where Councillors may wish to act as elected representatives supporting the views of their constituents which might be at odds with their role as a member of a planning authority;

It is not uncommon for Council to be required to make a decision as a Planning Authority that is at odds with their personal views or views of their constituents; however, the two are not mutually exclusive. While an issue may not be able to be resolved through the statutory planning process, understanding community sentiment/values and ambitions is vital to successfully fulfilling the role as a Councillor and informs strategic decision making within Council.

vi. Where an applicant considers there is bias, or perceived bias, on the part of a Council or Councillors;

- In making a decision, the Planning Authority must provide reasons for their decision, and the decision-making process is supported by the advice of a planner.

- There is insufficient evidence that a perceived bias has any bearing on the final decision of Council.

- The criteria for referring an application to a DAP is likely to exclude those applicants most likely to have a perceived bias regarding a Council decision.

- There is insufficient statistical evidence to support these changes on the grounds of bias – community education should be priority.

vii. Complex applications where the Council may not have access to appropriate skills or resources;

It is not uncommon for Council's to outsource an assessment or get technical reports peer reviewed by an appropriate consulting firm if resources (or lack of) require it. Council Planners have not only significant experience and knowledge in house, but also have established working relationships with Planners in other municipalities, regularly discussing interpretation of scheme provisions and ensuring consistency in assessment across the regions. Further, the Northern Councils Legal Advice Database provides an important resource and legal underpinning to complex assessments and consistency in decision making.

viii. Application over a certain value;

Development value is not indicative of whether an application will be contentious or not, and should not form part of the referral criteria. Council has a sound history of assessing a range of projects of varied value.

ix. Other?

b) Who should be allowed to nominate referral of a development application to a DAP for determination?

Options

i. Applicant

ii. Applicant with consent of the planning authority;

iii. Planning authority

iv. Planning authority with consent of the applicant

v. Minister

It is imperative that the Planning Authority is involved in the referral process, although it is unlikely to do so without consultation with the applicant. Minister call in powers should only

be exercised where there is a demonstrated serious breach of legislated responsibility by the Planning Authority.

c) Given the need for a referral of an application to a DAP might not be known until an application has progressed through certain stages of consideration (such as those set out in a) above) have been carried out, is it reasonable to have a range of referral points?

Options

i. At the beginning for prescribed proposals;

ii. Following consultation where it is identified that the proposal is especially contentious;

iii. At the approval stage, where it is identified that Councillors are conflicted.

A range of referral points creates inconsistency in the assessment process and promotes confusion for both the public and the applicant, particularly where there are differences in the documentation being placed on public exhibition. Ministerial Call in Powers should be reserved only for serious breaches of conduct by the Planning Authority.

Consultation issue 2 – Provision of an enhanced role for the Minister to direct a council to initiate a planning scheme amendment under certain circumstances.

a) Under what circumstances should the Minister have a power to direct the initiation of a planning scheme amendment by a Council?

The initiation of a planning scheme amendment should remain a decision of Council. There are already alternative legislative pathways for the consideration of major infrastructure projects that are in the broader public interest/critical infrastructure etc.

b) Is it appropriate for the Minister to exercise that power where the Council has refused a request from an applicant and its decision has been reviewed by the Tasmanian Planning Commission?

For example:

Section 40B allows for the Commission to review the planning authority's decision to refuse to initiate a planning scheme amendment and can direct the planning authority to reconsider the request. Where that has occurred, and the planning authority still does not agree to initiate an amendment, is that sufficient reason to allow Ministerial intervention to direct the planning authority to initiate the planning scheme amendment, subject to the Minister being satisfied that the LPS criteria is met?

There are a range of factors that may play into a Council's decision of whether or not to initiate an amendment, and the existing review process is already available under Section 40B with Council giving due consideration to any matters raised by the TPC. It would be inappropriate for Ministerial intervention in this process and it should remain with those elected to represent their community.

c) Are there other threshold tests or criteria that might justify a direction being given, such as it aligns to a changed regional land use strategy, it is identified to support a key growth strategy, or it would maximise available or planned infrastructure provision

It is within Council's capacity to consider all these matters, without the need for ministerial direction.

Consultation issue 3 –

i. Incorporating local knowledge in DAP decision making.

ii. DAP framework to complement existing processes and avoid duplication of administrative processes.

a) To allow DAP determined applications to be informed by local knowledge, should a Council continue to be:

- the primary contact for applicants;
- engage in pre-lodgement discussions;
- receive applications and check for validity;
- review application and request additional information if required;
- assess the application against the planning scheme requirements and make recommendations to the DAP.

Further comment on each step of the process is provided within Attachment 1.

b) Is the current s43A (former provisions of the Act) and s40T of the Act processes for referral of a development application to the Commission, initial assessment by Council and hearing procedures suitable for being adapted and used in the proposed DAP framework?

Further comment on this process is provided within Attachment 1. Broadly, the additional processes/time delays and workload is unjustified for applications that are able to be considered under the existing Planning Scheme provisions and legislated application process. The changes do not represent a better outcome for applicants or the community/representors.

Consultation issue 4 – Resolving issues associated with requests for, and responses to, further information.

a) Should a framework for DAP determined development applications adopt a process to review further information requests similar to the requirements of section 40A and 40V of LUPAA?

Council Planners work extensively with applicants to ensure that applications are valid and provide the required information in order to make a determination against the planning scheme provisions. Applicants can appeal a request for additional information under section 61 (3) of LUPAA. If this process is not being adequately utilised because of costs and uncertainty, then this is the process that requires reform (rather than duplication).

b) Are there any changes that could be made to the Act or planning scheme to improve requests for, and responses to, additional information?

There is the potential to charge applicants to cover the cost of Planners time, for applications that are grossly insufficient or don't meet basic requirements (ie. out of date reports/major errors/information not provided). It is not uncommon for Council to receive applications with insufficient information, as some applicants use the further information process as a 'checklist' for what they need to provide. Requests for further information are an additional workload for Council Planners and could be avoided if applications were of sufficient quality/provided correct information when first submitted.

Consultation issue 5 – Appeal rights and assessment timeframes for DAP determined applications.

a) Is it reasonable that decisions on DAP determined applications are not subject to TasCAT appeals where the TPC holds hearings and provides all parties the opportunity to make submissions and test evidence?

The lack of appeal rights for DAP determined applications undermines the existing appeal process and does not promote fairness within the Resource Management and Planning System (RMPS) in Tasmania – a key objective of the Act. If the existing appeal process is insufficient to handle the types of applications being directed to the DAP for determination, then it is the appeal process that requires reform.

b) Given the integrated nature of the assessment, what are reasonable timeframes for DAP determined applications?

OPTIONS

Lodging and referrals, including referral to DAP	7 days	Running total
DAP confirms referral	7	14
Further information period (can occur within the timeframes above, commencing from time of lodgement)	7	21
Council assesses development application and makes recommendation whether or not to grant a permit	14	35
Development application, draft assessment report and recommendation on permit exhibited for consultation	14	49
Council provide documents to DAP, including a statement of its opinion on the merits of representations and whether there are any modifications to its original recommendation	14	63
DAP hold hearing, determine application and give notice to Council of decision	35	98
If directed by the DAP, Council to issue a permit to the applicant	7	105 max

It is unclear how any of the timeframes proposed will result in improved outcomes for applicants, especially given that Tasmanian currently has one of the best development assessment timelines in the country. Data is required around the timeframes for applications that are appealed and resolved via consent decisions for comparison.

Consultation issue 6 – Roles of the planning authority post DAP determination of a development application

a) Should the planning authority remain the custodian of planning permits and be required to issue permits in accordance with a direction from a DAP?

While this process is not dissimilar to conditions imposed by the Tasmanian Civil and Administrative Tribunal (TASCAT), TASCAT decisions are the result of an appeal process. Conditions imposed by the DAP should be clearly indicated on the permit, so that there is transparency for the community regarding which decision maker is responsible for the

conditions imposed. If the condition imposed by the DAP require additional workload from Councils to enforce, then Council should be remunerated for expenses incurred.

b) Is it appropriate for planning permits associated with a DAP determined application to be enforced the Council?

If the condition imposed by the DAP require additional workload from Councils to enforce, then Council should be remunerated for expenses incurred.

c) Is it appropriate for minor amendments (in accordance with s56 of LUPAA) to DAP determined permits to be made by the planning authority?

Clarity is required regarding if amendment of a DAP imposed permit condition will be possible, or will be restricted as per a condition required, imposed or amended by the Appeal Tribunal. The existing minor amendment process currently operates effectively.

ATTACHMENT 1 - Draft DAP Framework

Draft Development Assessment Panel (DAP) Framework

Ref	Stage of assessment process	Responsible person/ authority	Proposed Framework	Comments and additional Questions for consultation	NORTHERN MIDLANDS COUNCIL COMMENTS
1	Pre-lodgement discussion between applicant and planning authority	Planning Authority and applicant	No change to current process.	Existing informal processes undertaken on an as needs basis. Discussions may include whether or not the development application is eligible for DAP referral.	Clear guidelines regarding eligibility for DAP referral need to be developed.
2	Lodge Development Application	Applicant lodges with Planning Authority	No change to current process	Existing process for the lodgement of development applications.	Consideration to be given to the need for applications to be 'pre-approved' as complying with DAP criteria prior to lodgement.
3	Determination of valid application and referral to other entities	Planning Authority	Planning Authority reviews application and determines if the application is valid in accordance	Existing process for determining that a development application is valid[1].	Comment regarding fees at section 24 & 25.

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[1] must comply with 51(1AC) and (1AB) and 51A;

(1AC) For the purpose of subsection (1AB), a valid application is an application that contains all relevant information required by the planning scheme applying to the land that is the subject of the application.

(1AB) A planning authority must not refuse to accept a valid application for a permit, unless the application does not include a declaration that the applicant has-

- *a) notified the owner of the intention to make the application; or*
- *b) obtained the written permission of the owner under section 52.*

Section 51A refers to the payment of application fee.

			with the existing provisions of the Act. Refers application to TasWater, Tasmanian Heritage Council or EPA as required.	See section 24 and 25 of this section for information regarding application fees.	
4A	Planning Authority reviews Development Application and decides if it is to be determined by a DAP. **Discretionary referral**	Planning Authority	Planning Authority to determine if the Development Application should be referred to a DAP for determination. The Planning Authority **may** determine that the development application meets the criteria for DAP referral and, if so, notifies, and seeks endorsement from the applicant, to refer the development application to the DAP for determination, within 7 days of the Planning Authority receiving a valid application. The applicant **may** also make a request to the Planning Authority for it to consider referring the application to a DAP for determination subject to the Planning Authority being satisfied that the application meets the criteria for DAP referral.	Refer to Consultation issue 1 in the Position Paper. Additional considerations: *Is 7 days a reasonable timeframe for this function to be undertaken by the Planning Authority? Could it be delegated to senior planning staff?* *Where a dispute arises between the Applicant and the Planning Authority over a development application being referred to a DAP for determination, is it appropriate for the Minister to have a role in resolving, subject to being satisfied that the development application meets the DAP criteria?* *If not the Minister, who should be responsible for resolving the matter?*	**Referral:** 7 days is an inadequate timeframe to achieve the referral process. It would be unlikely for Planning Authorities to want such a referral to be delegated to senior staff; therefore, consideration of timing in relation to a Council meeting must occur for the Planning Authority to make a decision. Consultation with the applicant must also occur within this timeframe. Clear guidelines/flow chart required to avoid the requirement for a dispute resolution process at this stage. **DAP Guidelines:** Council as applicant – refer section 4B. Value - The value of a development is not linked to impact – many of the development applications considered within Council to be ‘contentious’ are often of nominal value. Further clarification is

			DAP Criteria An application **may** be suitable for referring to a DAP if it is a discretionary application and the referral is endorsed by both the Planning Authority and the applicant, provided one or more of the following criteria for DAP referral is satisfied: • where the council is the proponent and the planning authority; • the application is for a development over $10 million in value, or $5 million in value and proposed in a non-metropolitan municipality; • the application is of a complex nature and council supports the application being determined by a DAP; • the application is potentially contentious, where Councillors may wish to act politically, representing the views of	*Is it appropriate to consider the value of a development as a criteria for referral to a DAP for determination? If so, what should the stated value be?* Note: See sections 21 and 22 of this table which provides options for development applications to be referred at later stages of the assessment process as issues become apparent, such as after exhibition.	required regarding development values – particularly relating to reference to non-metropolitan municipalities. Northern Midlands Council is a rural municipality but receives many applications that are of multi-million-dollar value within the Translink Industrial Precinct. Council is well placed to process and assess these types of applications and has a sound history of doing so. Complex applications – This is largely dependent on the nature of a Council and planning resources available. Northern Midlands Council regularly utilises the services of suitably qualified consultants when required (ie. peer reviews/specialist advice). Contentious applications – A Councillors role within the Planning Authority does not prevent a Councillor from achieving the functions of a Councillor under section 28 of the *Local Government Act 1993.* In fact, it is important for Councillors to understand the views of the community they represent, in order to make strategic land use

			their constituents, rather than as a planning authority; or • Where there is a case of bias, or perceived bias, established on the part of the Planning Authority.		decisions outside of acting as a Planning Authority. Bias – Proving or quantifying a 'perceived bias' is difficult to do and has no place within the planning assessment process.
4B	Planning Authority reviews Development Application and decides if it is to be referred to DAP **Mandatory Referral**		The Planning Authority **must** determine to refer the development application to a DAP for determination, within 7 days of the Planning Authority receiving a valid application, if the development application is a discretionary application and for a prescribed purpose: **Prescribed purpose**: • An application over $1 million where the council is the proponent and the planning authority; • An application from Homes Tas for subdivision for social or affordable housing or development of dwellings for social and affordable; • An application for critical infrastructure;	Refer to Consultation issue 1 in the Position Paper. Additional considerations: *Is 7 days a reasonable timeframe for this function to be undertaken by the Planning Authority? Could it be delegated to senior planning staff?* *Are there any other examples of development applications under the prescribed purposes that might be suitable for referral to a DAP for determination?* *Is it appropriate to consider the value of a development for DAP referral where council is the applicant?* *If so, what value is reasonable?* *What might be considered as 'critical infrastructure'?*	Referral timeline – refer section 4A. Prescribed purposes – Council developments - $1 million is a low threshold for Council development applications and would capture the majority of Councils major developments. There are a number of reasons development applications become discretionary, including permitted uses that a within a Heritage Precinct for instance. The status or value of an application is not necessarily indicative of the complexity or public involvement in an application. For Council projects, sometimes the planning process brings up issues that Council are able to deal with outside of the statutory process or via an changes to the DA. This local link to the community and understanding community concerns

			• Other(?)		and expectations is vital to Council achieving its statutory functions. Homes Tas – More information is required to understand how this will be determined. Homes Tas applications are often submitted by a consulting firm on their behalf – are Council's required to investigate via property ownership if it is a Homes Tas proposal? How do Homeshare/MyHome proposals fit into this criteria and how is social and affordable housing defined? It is unclear how a separate pathway for decision making of Homes Tas applications meets the objectives of the *Land Use Planning and Approvals Act 1993* (the Act), notably (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… (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. Critical infrastructure – there are numerous other approval pathways for critical infrastructure already in operation.
5	PA requests referral of DA to DAP for determination.	Planning Authority and DAP	Planning Authority requests referral of the development application to the DAP within 7 days of the Planning Authority determining that the development application is suitable for DAP referral in accordance with section 4A and 4B above. The Planning Authority's written referral request includes all the material that comprises the development application (at this stage). If the DAP does not agree that the development application meets the DAP criteria or is for a prescribed purpose, the DAP must give notice to the Planning Authority and applicant of its decision.	*Should the time taken for an application that has been referred to a DAP for determination that, in the opinion of the DAP, does not satisfy the relevant referral criteria or is not for a prescribed purpose, count towards the relevant period referred to in s57(6)(b) of the Act given the assessment will continue in accordance with a s57 application if it is not eligible for DAP referral?*	There is a significant administration workload required by this process yet there is no avenue for Council to recoup costs. The time taken for the DAP to determine if the relevant criteria are met should **not** count toward the statutory assessment timeframes referred to under s57 of the Act. If a referral of the application is at the request of the applicant, consent from the DAP that the criteria are met should be received prior to the application becoming valid. It is a concern that there could be inconsistency in acceptance of applications by the DAP, depending on resourcing availability.

			If the DAP does not agree that the development application meets the DAP criteria, the assessment of the development application continues in accordance with the existing LUPAA provisions. If the DAP accepts the Planning Authority's request that the development application meets the criteria for DAP referral or is for a prescribed purpose, the DAP must give notice, within 7 days of receiving the Planning Authority's request, to the Planning Authority and applicant of its decision.		
6	Review of DA to determine if further information is required to undertake the assessment	Planning Authority	Where the DAP has accepted the Planning Authority's request to refer the development application to the DAP for determination, the Planning Authority reviews the development application to determine if additional information is required and, if so, must make a request within 21 days of receiving a valid application.	Additional information request can occur simultaneously with the Planning Authority's request for DAP determination. Regardless of the outcome of the request to refer the development application to the DAP, the Planning Authority is required to ensure it has the necessary information it needs to undertake the assessment. The 21 day timeframe and 'stopping the clock' is consistent with section 54 of the Act.	The DAP should be involved in the initial request for further information in case it requires different information than the Planning Authority in which to make a decision. Multiple requests for further information is a significant time delay for applicants, and should be avoided at all costs.

			Clock stops while waiting for the applicant to provide additional information to the satisfaction of the Planning Authority.		
7	Review of further information requests	Applicant	Within 14 days after being served a request for further information in accordance with 6 above, the applicant may request the DAP to review the Planning Authority's additional information request. The DAP, within 14 days of receiving a request to review the PA's additional information requirement must: • Support the Planning Authority's request for additional information; • Revoke the Planning Authority's request for additional information; or • Issue a new notice to the applicant requesting additional information. The DAP must give notice of its decision to the Planning Authority and applicant.	Refer to Consultation issue 4 in the Position Paper. Because the DAP has agreed that the DA will be DAP determined, it already has a copy of the development application. The review of a Planning Authority's request for additional information is similar to the existing provisions under s40V of the Act.	It is unclear if the DAP may review the request for further information without being requested to do so by the applicant.

8	Provision and review of additional information.	Applicant and Planning Authority	Once the applicant provides the additional information and, in the opinion of the planning authority, it satisfies either the original request or one that has been modified by the DAP, the assessment clock recommences. If the additional information does not satisfy the original request or one that has been modified by the DAP, the Planning Authority advises the applicant of the outstanding matters and the clock remains stopped.	This part of the framework is similar to existing processes.	This process requires the Planning Authority to be satisfied a request for further information has been satisfied, regardless of whether it has been modified by the DAP or not. The authority responsible for requesting (or modifying) the information must review the information provided and be satisfied the request is met in order for this process to operate effectively.
9	Planning Authority assesses DA	Planning Authority	Planning Authority assesses the application against the requirements of the planning scheme and recommends either: • granting a permit; or • refusing to grant a permit.	Refer to Consultation Issue 3 in the Position Paper. Note: The proposed framework has adopted a process that is similar to the section 40T of the Act process where council assesses the application and then places the application and the Planning Authority's report on exhibition (as below).	A standard development application allows for public input via the public exhibition process, prior to Council making a decision. The exhibition process exposes issues that should be considered in the assessment process. This also encourages public participation and engagement with the planning process – a key objective of the Act. Consideration should be given as to whether it is appropriated that a standard development application is considered under the same process as a use or development that

					requires an amendment to the Planning Scheme provisions.
10	Public notification of application and Planning Authority recommendations	Planning Authority	Planning Authority to advertise the development application, its assessment report and recommendations, including a draft permit (if recommended for approval), for a period of 14 days (and in accordance with section 9 of the LUPAA Regulations) during which time representations are received.		Consideration required regarding timeframes for assessment.
11	Planning Authority to review representations	Planning Authority	Planning Authority to review representations and prepare a statement of its opinion as to the merits of each representation and the need for any modification to its recommendation on the development application, including the draft permit and conditions.	This part of the proposed framework is similar to the existing provisions of section 42 of the Act.	Refer comments to section 9 & 12.
12	Provision of all documents to the DAP	Planning Authority	The Planning Authority provides DAP with: • a copy of the application (although they should already have it) and any further information received;	This part of the proposed framework is similar to existing processes for a section 40T(1) application	An avenue must be available to Council to recoup cost associated with the additional workload this process presents. A current discretionary planning application attracts a fee for a discretionary use of $594, under the 2023-2024 Northern Midlands Fees and Charges Schedule. A Planning Scheme

			• a copy of the recommendation report and any draft permit; • a copy of all the representations; and • a statement of its opinion as to the merits of each representation and any modifications to its original recommendations on the DA as a consequence of reviewing the representations; • DAP fee (refer to section 25) within 14 days of the completion of the exhibition period.		amendment attracts an initial application fee of $1158 and processing fee of $1158 once initiated under the same fee schedule, reflective of the additional workload this process requires. It is noted that Councils have 35 days from completion of the exhibition period to complete a section 40K report for a section 40T(1) application, and the 14 day timeframe proposed should be extended to reflect this.
13	DAP review and publication of information and hearing determination	DAP	DAP reviews and publishes all the information provided by the Planning Authority (as listed in 12 above) and notifies all parties advising that they have received the relevant documents from the Planning Authority, where those documents can be viewed and requesting advice regarding which parties would like to attend a hearing.	An option is given to dispense with the requirement for a DAP to hold a hearing in situation where there are no representations, all representations are in support, representations have been revoked or there are no representations that want to attend a hearing.	Given the proposed 35 day timeframe proposed for DAP hearings/determination/notification, it is unclear how this process is improving and shortening timeframes for applicants. Data is required around the timeframes for applications that are appealed and resolved via consent decisions for comparison.

			If there are no representations or no parties that wish to attend a hearing, the DAP may dispense with the requirement to hold a hearing. The DAP must notify the Planning Authority, applicant and representors of their determination to hold, or dispense with holding, a hearing.		
14	DAP hearing into representations	DAP	Representors, applicant and Planning Authority invited to attend hearing and make submissions to the DAP on the development application. Parties to the proceedings must be given at least one weeks' notice before the hearing is scheduled. Natural justice and procedural fairness for conduct of hearings consistent with *Tasmanian Planning Commission Act 1997*. DAP hearings are encouraged to be held locally.	The draft permit conditions are subject to contemplation by the parties at the hearing. It is anticipated that this will resolve issues around the future enforcement of those conditions by council or other issues that would otherwise arise and be subject to appeal through TasCAT.	Clarity is required regarding whether the Planning Authority must be represented at a hearing. One weeks' notice is insufficient for planners, to not conflict with existing diary entries and organise appropriate resourcing to maintain existing operations. Attendance must also be adequately remunerated via appropriate fees for DAP determined applications. It is **vital** that hearings are held locally, to ensure the objectives of the Act are upheld.

15	DAP determination	DAP	DAP undertakes the assessment considering all the information and evidence presented at the hearing and determines the development application. DAP must determine application within 35 days from receiving documents from Planning Authority (under section 12 above) DAP may request an extension of time from the Minister.	Refer to Consultation Issue 5 in the Position Paper for questions regarding assessment timeframes.	Clarity is required around how decisions will be used in providing case law, compared to tribunal decisions (and the potential for conflict between these decisions). It is also unclear if a decision is not in the applicant's favour, if a similar application may be lodged for assessment by the Planning Authority, or whether restrictions similar to section 62 (2) of the Act will be put in place.
16	Notification of DAP decision	DAP	Within 7 days of the DAP determining the development application it must give notice of its decision to the Planning Authority, applicant and representors.	Similar to existing notification provisions under section 57(7).	
17	Issuing of Permit	DAP/ Planning Authority	If the decision of the DAP is to grant a permit, the DAP must, in its notice to the Planning Authority (under section 16 above), direct it to issue a permit in accordance with its decision within 7 days from receiving the notice from the DAP.		

			The permit becomes effective 1 week from the day it is issued by the Planning Authority.		
18	Enforcement	Planning Authority	The Planning Authority is responsible for enforcing the permit.	Refer to Consultation Issue 6 in the Position Paper. This is the same process for permits issued by TasCAT.	
19	Appeal rights	All parties	There is no right of appeal on the grounds of planning merit as the decision has been made by an independent panel with all parties engaged in the process.	Refer to Consultation Issue 5 in the Position Paper for questions regarding appeal rights. While the draft framework proposes that DAP determined development applications are not subject to a merit appeal, the decision of the DAP is subject to judicial review by virtue of the *Judicial Review Act 1997*.	The lack of appeal rights for DAP determined applications undermines the existing appeal process and does not promote fairness within the RMPS in Tasmania. If the existing appeal process is insufficient to handle the types of applications being directed to the DAP for determination, then it is the appeal process that requires reform.
20	Minor amendment to permits	Planning Authority	A Planning Authority can receive a request for a minor amendment to a permit involving an application that has been determined by a DAP.	Refer to Consultation Issue 6 in the Position Paper. Minor amendments to permits are assessed by the Planning Authority against the existing provisions of section 56 of the Act.	Clarity is required regarding if amendment of a DAP imposed permit condition will be possible, or will be restricted as per a condition required, imposed or amended by the Appeal Tribunal

Other opportunities for a development application to be referred to a DAP

Ref	Stage of assessment process	Responsible person/ authority	Proposed Framework	Comment

21	Ministerial Call in Powers	Planning Authority or applicant	At any stage of the assessment process the applicant or Planning Authority may make a request to the Minister that a development application be referred to a DAP for determination. The Minister may refer the application to a DAP provided the Minister is satisfied that the development application meets the DAP criteria.	This provides an opportunity for referral when issues only become apparent at the later stages of the assessment process. *Is it appropriate for the Minister to have the power to call in a development application in these circumstances?* *In this scenario, is it necessary for the applicant and Planning Authority to agree to the request?*
NORTHERN MIDLANDS COUNCIL COMMENTS: It is proposed that Ministerial Call in Powers should be reserved only for serious breaches of conduct by the Planning Authority. Switching the processes in which an application is assessed and determined at different stages of the application creates inconsistency, and promotes confusion, particularly where there are differences in the documentation being placed on public exhibition.				
22	Ministerial referral of DA to DAP	Minister	Where the Minister refers the DA to a DAP for determination (in accordance with 21 above), the Minister must, by notice to the DAP and Planning Authority (if required), direct the DAP and Planning Authority (if required) to undertake an assessment of the development application and specify the process and timeframes for the DAP and Planning Authority (if required) to follow. The Minister can also specify that the Planning Authority must provide all relevant documents relating to the application and	Because this type of referral can occur at any stage, there needs to be a direction to specify those parts of the assessment process that still needs to be completed. These processes will include elements that need to be undertaken by the DAP and may include elements that need to be undertaken by the Planning Authority. The Planning Authority is required to provide all relevant documents to the DAP

			its assessment to the DAP within a timeframe.	

NORTHERN MIDLANDS COUNCIL COMMENTS:
Refer to comments regarding inconsistency in part 21.

DAP membership

Ref	Stage of assessment process	Responsible person/ authority	Proposed Framework	Comment
23	Establishment of Panel	Tasmanian Planning Commission (Commission)	No change to existing Commission processes.	The framework adopts the Commission's well established processes for delegating assessment functions to panels.

Development application fees

Ref	Stage of assessment process	Responsible person/ authority	Proposed Framework	Comment
24	Lodging DA	Planning Authority	Planning Authority charges applicant normal application fees.	Planning Authority doing the same amount of work, just not making the determination so is entitled to the application fee.
25	DAs referred to DAP for determination	Planning Authority and DAP	A DAP determined development application will incur an additional application fee. The Planning Authority is to charge the applicant an additional fee at the time the DAP notifies the Planning Authority that they have accepted the Planning Authority's	Additional fee is to cover some of the costs incurred by the Commission. The additional application fee is going to be cheaper than the cost of going to a full tribunal hearing.

			request to refer the development application. The DAP application fee is to be included in the information provided to the DAP following the exhibition of the development application (section 12 above). No order for costs can be awarded by the DAP.	

NORTHERN MIDLANDS COUNCIL COMMENTS:

Consideration must be given to the extra cost that Council will incur as a result of this process – through additional administration, level of detail in assessment, consultation and extra reporting, and IT functionality. Currently, Council's project management system is set up to follow the existing legislative processes of the various types of development applications currently received by Council. Amendments to this system will be required to adequately accommodate a new legislated process and associated templates.

From: Robin Badcock <>
Sent: Tuesday, 28 November 2023 4:55 PM
To: robin@badcockirrigation.com
Subject: Submission to protect our rights of taking some planning away from local Government by a DPA (Development Assessment Panel)

To whom it may concern,

I oppose the creation of planning panels and increasing ministerial power over the planning system, for the following reasons:

- **It will create an alternate planning approval pathway allowing property developers to bypass local councils and communities.** Handpicked state appointed planning panels will decide on development applications not your elected local council representatives. Local concerns will be ignored in favour of the developers who may not be from Tasmania. Also, if an assessment isn't going their way the developer can abandon the standard local council process at anytime and have a development assessed by a planning panel. This could intimidate councils into conceding to developers demands.

- **Makes it easier to approve large scale contentious developments** like the kunanyi/Mount Wellington cable car, high-rise in Hobart, Cambria Green and high-density subdivision like Skylands at Droughty Point.

- **Remove merit-based planning appeal rights** via the planning tribunal on issues like height, bulk, scale or appearance of buildings; impacts to streetscapes, and adjoining properties including privacy and overlooking; traffic, noise, smell, light and other potential amenity impacts and so much more. **Developments will only be appealable to the Supreme Court based on a point of law or process.**

- **Removing merits-based planning appeals has the potential to increase corruption and reduce good planning outcomes.** The NSW Independent Commission Against Corruption recommended the expansion of merit-based planning appeals as a deterrent to corruption.

- **Increased ministerial power over the planning system increases the politicisation of planning and risk of corrupt decisions.** The Planning Minister will decide if a development application meets the planning panel criteria. The Minister will be able to force the initiation of planning scheme changes, but perversely, only when a local council has rejected such an application, threatening transparency and strategic planning.

- **Flawed planning panel criteria**. Changing an approval process where one of the criteria is on the basis of 'perceived conflict of interest ' is fraught. The Planning Minister has political bias and can use this subjective criteria to intervene on any development in favour of developers.

- **Undermines local democracy and removes and local decision making**. State appointed hand-picked planning panels are not democratically accountable, they remove local decision making and reduce transparency and robust decision making.

- **Mainland experience demonstrates planning panels favour developers and undermine democratic accountability.** Local planning panels, which are often dominated by members of the development sector, were created in NSW to stamp out corruption, but councillors from across the political spectrum say they favour developers and undermine democratic accountability.

- **Poor justification – there is no problem to fix.** Only about 1% of council planning decisions go to appeal and Tasmania's planning system is already among the fastest, if not the fastest, in Australia when it comes to determining development applications.

- **Increases complexity in an already complex planning system.** Why would we further increase an already complex planning system which is already making decisions quicker than any other jurisdiction in Australia?

Say yes to a healthy democracy

- **I call on you to ensure transparency, independence, accountability and public participation in decision-making within the planning system**, as they are critical for a healthy democracy. Keep decision making local with opportunities for appeal. Abandon the planning panels and instead take action to improve governance and the existing Council planning process by providing more resources to councils and enhancing community participation and planning outcomes.

- I also call on you to **prohibit property developers from making donations to political parties**, **enhance transparency and efficiency in the administration of the *Right to Information Act 2009***, and **create a strong anti-corruption watchdog**.

Regards,

Robin Badcock

From:	Jane G
Sent:	Tuesday, 28 November 2023 3:10 PM
To:	State Planning Office Your Say
Subject:	Protect our local democracy - say no to the Liberals new planning panels

Say no to the Liberals new planning panels

I've copied and pasted the text below, I'm sure you'll see plenty of emails like this one. It's not because I don't care enough to reword or want to take the time, it's because this says what I want to convey perfectly.

I opppose the creation of planning panels and increasing ministerial power over the planning system, for the following reasons:

- **It will create an alternate planning approval pathway allowing property developers to bypass local councils and communities.** Handpicked state appointed planning panels will decide on development applications not your elected local council representatives. Local concerns will be ignored in favour of the developers who may not be from Tasmania. Also, if an assessment isn't going their way the developer can abandon the standard local council process at anytime and have a development assessed by a planning panel. This could intimidate councils into conceding to developers demands.
- **Makes it easier to approve large scale contentious developments** like the kunanyi/Mount Wellington cable car, high-rise in Hobart, Cambria Green and high-density subdivision like Skylands at Droughty Point.
- **Remove merit-based planning appeal rights** via the planning tribunal on issues like height, bulk, scale or appearance of buildings; impacts to streetscapes, and adjoining properties including privacy and overlooking; traffic, noise, smell, light and other potential amenity impacts and so much more. **Developments will only be appealable to the Supreme Court based on a point of law or process.**
- **Removing merits-based planning appeals has the potential to increase corruption and reduce good planning outcomes.** The NSW Independent Commission Against Corruption recommended the expansion of merit-based planning appeals as a deterrent to corruption.
- **Increased ministerial power over the planning system increases the politicisation of planning and risk of corrupt decisions.** The Planning Minister will decide if a development application meets the planning panel criteria. The Minister will be able to force the initiation of planning scheme changes, but perversely, only when a local council has rejected such an application, threatening transparency and strategic planning.
- **Flawed planning panel criteria.** Changing an approval process where one of the criteria is on the basis of 'perceived conflict of interest ' is fraught. The Planning

Minister has political bias and can use this subjective criteria to intervene on any development in favour of developers.

- **Undermines local democracy and removes and local decision making.** State appointed hand-picked planning panels are not democratically accountable, they remove local decision making and reduce transparency and robust decision making.
- **Mainland experience demonstrates planning panels favour developers and undermine democratic accountability.** Local planning panels, which are often dominated by members of the development sector, were created in NSW to stamp out corruption, but councillors from across the political spectrum say they favour developers and undermine democratic accountability.
- **Poor justification – there is no problem to fix.** Only about 1% of council planning decisions go to appeal and Tasmania's planning system is already among the fastest, if not the fastest, in Australia when it comes to determining development applications.
- **Increases complexity in an already complex planning system.** Why would we further increase an already complex planning system which is already making decisions quicker than any other jurisdiction in Australia?

Say yes to a healthy democracy

- **I call on you to ensure transparency, independence, accountability and public participation in decision-making within the planning system**, as they are critical for a healthy democracy. Keep decision making local with opportunities for appeal. Abandon the planning panels and instead take action to improve governance and the existing Council planning process by providing more resources to councils and enhancing community participation and planning outcomes.
- I also call on you to **prohibit property developers from making donations** to political parties, **enhance transparency and efficiency in the administration of the *Right to Information Act 2009***, and **create a strong anti-corruption watchdog**.

The Position Paper on a proposed Development Assessment Panel (DAP) Framework public comment has been invited between the 19 October and 30 November 2023.

The submissions received on the Position Paper will inform a draft Bill which will be released for public comment most likely in January 2024, for a minimum of five weeks, before being tabled in Parliament in early 2024.

The proposed Bill name is *Draft Land Use Planning and Approvals (Development Assessment Panel) Amendment Bill 2024*.

Youse sincerely,

Jane Gee

From: Richard Vietz <>
Sent: Tuesday, 28 November 2023 2:42 PM
To: State Planning Office Your Say
Cc:
Subject: Say no to the Liberals new planning panels

Say no to the Liberals new planning panels

I oppose the creation of planning panels and increasing ministerial power over the planning system, for the following reasons:

- **It will create an alternate planning approval pathway allowing property developers to bypass local councils and communities.** Handpicked state appointed planning panels will decide on development applications not your elected local council representatives. Local concerns will be ignored in favour of the developers who may not be from Tasmania. Also, if an assessment isn't going their way the developer can abandon the standard local council process at anytime and have a development assessed by a planning panel. This could intimidate councils into conceding to developers demands.

- **Makes it easier to approve large scale contentious developments** like the kunanyi/Mount Wellington cable car, high-rise in Hobart, Cambria Green and high-density subdivision like Skylands at Droughty Point.

- **Remove merit-based planning appeal rights** via the planning tribunal on issues like height, bulk, scale or appearance of buildings; impacts to streetscapes, and

adjoining properties including privacy and overlooking; traffic, noise, smell, light and other potential amenity impacts and so much more. **Developments will only be appealable to the Supreme Court based on a point of law or process.**

- **Removing merits-based planning appeals has the potential to increase corruption and reduce good planning outcomes.** The NSW Independent Commission Against Corruption recommended the expansion of merit-based planning appeals as a deterrent to corruption.

- **Increased ministerial power over the planning system increases the politicisation of planning and risk of corrupt decisions.** The Planning Minister will decide if a development application meets the planning panel criteria. The Minister will be able to force the initiation of planning scheme changes, but perversely, only when a local council has rejected such an application, threatening transparency and strategic planning.

- **Flawed planning panel criteria**. Changing an approval process where one of the criteria is on the basis of 'perceived conflict of interest ' is fraught. The Planning Minister has political bias and can use this subjective criteria to intervene on any development in favour of developers.

- **Undermines local democracy and removes and local decision making**. State appointed hand-picked planning panels are not democratically accountable, they remove local decision making and reduce transparency and robust decision making.

- **Mainland experience demonstrates planning panels favour developers and undermine democratic accountability.** Local planning panels, which are often dominated by members of the development sector, were created in NSW to stamp out corruption, but councillors from across the political spectrum say they favour developers and undermine democratic accountability.

- **Poor justification – there is no problem to fix.** Only about 1% of council planning decisions go to appeal and Tasmania's planning system is already among the fastest, if not the fastest, in Australia when it comes to determining development applications.

- **Increases complexity in an already complex planning system.** Why would we further increase an already complex planning system which is already making decisions quicker than any other jurisdiction in Australia?

Say yes to a healthy democracy

- **I call on you to ensure transparency, independence, accountability and public participation in decision-making within the planning system**, as they are critical for a healthy democracy. Keep decision making local with opportunities for appeal. Abandon the planning panels and instead take action to improve

governance and the existing Council planning process by providing more resources to councils and enhancing community participation and planning outcomes.

- **I** also call on you to **prohibit property developers from making donations to political parties**, **enhance transparency and efficiency in the administration of the *Right to Information Act 2009***, and **create a strong anti-corruption watchdog**.

Yours sincerely,

Richard Vietz

From:
Sent: Tuesday, 28 November 2023 2:01 PM
To: State Planning Office Your Say
Subject: Submission against Development Assessment Panels

I oppose the introduction of Development Assessment Panels because:
* they will add further complication to the existing system
* they reduce the democratic rights of the community.

Issue 1 Types of Development applications
* Critical infrastructure does not need a new panel because Major Projects Legislation or Projects of State Significance already provide an avenue for approval.
* Perceived bias exists at all levels of the planning system. DAPs will only increase community perceptions of bias favouring developers in the planning scheme.
* State Governments through the planning scheme limit or encourage certain types of development and the public perception is that a DAP is only to provide another mechanism to remove the local authority.
* Councils can share skills and resources in the planning area to ensure access to deal with complex issues.

Issue 2 An enhanced role for the Minister
* The Minister should not be given an enhanced role. Sufficient authority exists in current legislation.

Issue 3 Retaining local input
* Council should be the primary contact for applicants and its role should not be diminished.
* Consultation on any proposal should occur at the beginning of the process. The current system of Council being the Planning Authority provides for this.
* This proposal reduces democratic rights for no perceived public good.

Issue 4 Resolving issues associated with requests for, and responses to, further information
* Requests for further information will occur where the developer does not submit the relevant supporting documents with their application. The cable car proposals for Mt Wellington was a perfect example of failure to provide satisfaction of the requirements of the planning scheme in the original proposal. This led to continual requests and responses.
* Annecdotal evidence is never reliable data. Mention of it in this document is an example of bias being allowed to intrude on the planning scheme. Collect reliable evidence-based data before you implement DAPs and get community approval

Issue 5 Appeal rights and assessment time frames.
* Special pathways are not faster, cheaper, simpler or FAIRER.
* Applications that require approval under discretionary provisions rather than acceptable solutions and performance criteria will always take longer to assess
* Public right of consultation and comment must be guaranteed.
* All structures are permanent features on the landscape and within the community so should be assessed under existing systems with local input at all stages.

Issue 6 Roles of the planning authority after DAP determination
* The expectation that the DAP will ‘engage extensively with the planning authority’ provides no

simplification to the process or reduction of Council work loads but simply adds more red tape and cost.

It is not the planning system which is stopping development currently it is a lack of qualified workers and shortage of materials. Within Hobart there are a number of developments approved and awaiting construction.

Your name:	Lyn Smith
Your email:	
My additional comments::	

From: Leon Yates <>
Sent: Tuesday, 28 November 2023 1:35 PM
To: State Planning Office Your Say
Cc:
Subject: Protect our local democracy - I say NO to the Liberals new planning panels

I definitely say NO to the Liberals new planning panels

I oppose the creation of planning panels and increasing ministerial power over the planning system, for the following reasons:

- **It will create an alternate planning approval pathway allowing property developers to bypass local councils and communities.** Handpicked state appointed planning panels will decide on development applications, not the elected local council representatives. Local concerns will be ignored in favour of the developers who may not be from Tasmania. Also, if an assessment isn't going their way the developer can abandon the standard local council process at any time and have a development assessed by a planning panel. This could intimidate councils into conceding to developers' demands.

- **Makes it easier to approve large scale contentious developments** like the kunanyi/Mount Wellington cable car, high-rise in Hobart, Cambria Green and high-density subdivision like Skylands at Droughty Point.

- **Remove merit-based planning appeal rights** via the planning tribunal on issues like height, bulk, scale or appearance of buildings; impacts to streetscapes, and

adjoining properties including privacy and overlooking; traffic, noise, smell, light and other potential amenity impacts and so much more. **Developments will only be appealable to the Supreme Court based on a point of law or process.**

- **Removing merits-based planning appeals has the potential to increase corruption and reduce good planning outcomes.** The NSW Independent Commission Against Corruption recommended the expansion of merit-based planning appeals as a deterrent to corruption.

- **Increased ministerial power over the planning system increases the politicisation of planning and risk of corrupt decisions.** The Planning Minister will decide if a development application meets the planning panel criteria. The Minister will be able to force the initiation of planning scheme changes, but perversely, only when a local council has rejected such an application, threatening transparency and strategic planning.

- **Flawed planning panel criteria**. Changing an approval process where one of the criteria is on the basis of 'perceived conflict of interest ' is fraught. The Planning Minister has political bias and can use this subjective criteria to intervene on any development in favour of developers.

- **Undermines local democracy and removes local decision making**. State appointed hand-picked planning panels are not democratically accountable, they remove local decision making and reduce transparency and robust decision making.

- **Mainland experience demonstrates planning panels favour developers and undermine democratic accountability.** Local planning panels, which are often dominated by members of the development sector, were created in NSW to stamp out corruption, but councillors from across the political spectrum say they favour developers and undermine democratic accountability.

- **Poor justification – there is no problem to fix.** Only about 1% of council planning decisions go to appeal and Tasmania's planning system is already among the fastest, if not the fastest, in Australia when it comes to determining development applications.

- **Increases complexity in an already complex planning system.** Why would we further increase an already complex planning system which is already making decisions quicker than any other jurisdiction in Australia?

Say yes to a healthy democracy

- **I call on you to ensure transparency, independence, accountability and public participation in decision-making within the planning system**, as they are critical for a healthy democracy. Keep decision making local with opportunities for appeal. Abandon the planning panels and instead take action to improve governance and the existing Council planning process by providing more

resources to councils and enhancing community participation and planning outcomes.

- I also call on you to **prohibit property developers from making donations to political parties**, **enhance transparency and efficiency in the administration of the *Right to Information Act 2009***, and **create a strong anti-corruption watchdog**.

Yours sincerely,
Leon Yates,

From: Clarktassie <>
Sent: Tuesday, 28 November 2023 1:06 PM
To: State Planning Office Your Say
Subject: RE: Protect democracy in Tasmania, no to new planning panels

From: Stephanie Gleeson

Dear State Planning Office,

RE: Draft Land Use Planning and Approvals (Development Assessment Panel) Amendment Bill 2024

Thank you for the opportunity to comment on proposed changes to Tasmania's planning laws. As a concerned member of the public I am aware that there is a growing problem of widespread corruption in Australia, much of it linked to property development. There are places on the Mainland covered in ugly Lego-land urban sprawl, some of which has already been built in Tasmania, such as in Latrobe. Tasmania needs a strong and transparent public planning system. Aside from the issue of corruption, I oppose the creation of planning panels and increasing ministerial power over the planning system for the following reasons:

- **Remove merit-based planning appeal rights** via the planning tribunal on issues like height, bulk, scale or appearance of buildings; impacts to streetscapes, and adjoining properties including privacy and overlooking; traffic, noise, smell, light and other potential amenity impacts and so much more. **Developments will only be appealable to the Supreme Court based on a point of law or process.**

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appointed planning panels will decide on development applications not your elected local council representatives. Local concerns will be ignored in favour of the developers who may not be from Tasmania. Also, if an assessment isn't going their way the developer can abandon the standard local council process at anytime and have a development assessed by a planning panel. This could intimidate councils into conceding to developers demands.

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- **Undermines local democracy and removes and local decision making**. State appointed hand-picked planning panels are not democratically accountable, they remove local decision making and reduce transparency and robust decision making.

- **Poor justification – there is no problem to fix.** Only about 1% of council planning decisions go to appeal and Tasmania's planning system is already among the fastest, if not the fastest, in Australia when it comes to determining development applications.

- **Increases complexity in an already complex planning system.** Why would we further increase an already complex planning system which is already making decisions quicker than any other jurisdiction in Australia?

The health of our democracy

- **I call on you to ensure transparency, independence, accountability and public participation in decision-making within the planning system**, as they are critical for a healthy democracy. Keep decision making local with opportunities for appeal. Abandon the planning panels and instead take action to improve governance and the existing Council planning process by providing more resources to councils and enhancing community participation and planning outcomes.

- I also call on you to **prohibit property developers from making donations to political parties**, **enhance transparency and efficiency in the administration of the *Right to Information Act 2009***, and **create a strong anti-corruption watchdog.**

Yours faithfully,

Stephanie Gleeson

From: Alexis Clarke <>
Sent: Tuesday, 28 November 2023 12:27 PM
To: State Planning Office Your Say
Subject: Draft LUPAA (DAP) Amendment Bill 2024/not in support

Good afternoon,

I'd like to provide feedback on the proposed Development Assessment Panel. I do not support the creation of an alternative pathway for approval bypassing councils.

I feel the basic premise is flawed and this has been tried and it has failed across other States. We should be looking to ideas that work not old ideas that have already been trial and shown not to work.

It is undemocratic to take power away from an elected group to an appointed group especially when what happens in local communities matters to them so much and there is a strong desire to be able to at least share opinions.

We've seen developers with too much influence (thinking about Auburn Council in NSW as just one example). Stopping political donations from developers is a more modern way of ensuring no undue influence and I'd like to see this.

The landscape has changed. Tasmania used to have to try to encourage investment and now it's sought after and a highly desirable place to develop. There is now a need to get the best outcomes for the community and State rather than trying to get development at any cost (which was more the case previously but no longer).

Sustainable, considered development is needed more than ever and the timeframes for decisions are already the fastest in the country with no need for this change. There is a need for better stronger planning laws – better environmental protections especially to protect wildlife. Improvements rather than bypasses I would strongly support.

This is a personal submission.

Kind regards

Alexis Clarke

38 Bligh St Rosny Park
PO Box 96
Rosny Park TAS, 7018
Ph 03 6217 9500
E clarence@ccc.tas.gov.au

28 November 2023

Brian Risby
State Planning Office
Department of Premier and Cabinet
GPO Box 123
HOBART TAS 7001

Dear Mr Risby

DEVELOPMENT ASSESSMENT PANEL FRAMEWORK POSITION PAPER

At its meeting of 20 November 2023 Council considered the Development Assessment Panel Framework Position Paper and formally endorsed its submission in response to the public consultation process. A copy of the submission is attached.

If you have any queries regarding this matter please do not hesitate to contact Ms Robyn Olsen, Council's Acting Head of City Planning on telephone or email .

Yours sincerely

Ian Nelson
Chief Executive Officer

evelopmen ppli ion P nel (P)
Fr mework
Posi ion P per
Submission from Cl ren e Ci y Coun il

Than you for the opportunity to ma e a submission on the Position Paper regarding the Development Assessment Panel (DAP) Framewor . Clarence City Council understands that this proposal directly results from the Interim Report of the Future of Local Government Review. While there may be some potential benefits to broadening the use of DAPs, we consider there to be some fundamental issues with the current proposal.

This submission provides commentary on the questions posed within the position paper, along with other items that should be considered prior to the preparation of a draft Bill for further consultation before finalisation and presentation to Parliament.

Consultation issue 1 – Types of development applications suitable for referral to a DAP for determination

The justification for the proposed DAP Framewor originates from the Future of Local Government Review Stage 2 Interim Report (Interim Report) that identified three options to address the conflict between councillors' role as community advocates and their role as a planning authority. While these options have been paraphrased in the position paper, the report provides a broader range of options than simply a DAP Framewor :

> *"Reform 1: Remove councillors' responsibility for determining development applications entirely. All developments would be determined by council planning officers, or referred to an independent panel for determination."*
>
> *"Reform 2: Give councils a framework for the referral of development applications to an independent panel for determination."*
>
> *"Reform 3: Provide guidelines for the consistent delegation of development applications to council staff."*

To date, there has been little consideration given to other components of the proposed reforms, such as consistent delegations, and the focus has been entirely on broadening the powers of the DAP.

ustificatio pro ided in the I te im Report is t em e the issues a isi g f m the pe cei ed conflict betwee councillors acting as commu ity ad cates a d c u cill s sitti g as the planning authority. At no time is it suggested that the e is a p p sal t make the p cess easier for applicants to usurp the current plan ing p cess. I deed, it is stated i the p sition paper that “*These statistics indicate that overall, our planning syst m is alr ady among the fastest, if not the fastest, in the country wh n it com s to d t rmining d v lopment applications.*”.

This suggests that there is no reason to furthe speed up the p cess, the p p sed DAP Framework should simply be focused on resolvi g the c flicts that c u cill s may ha e. It is for this reason that it is critical that the refer al t a p te tial DAP sh uld be u de taken nly by the relevant pla ing authority.

A response to those types f application to be c side ed by a p te tial DAP p sed i the position pape , is outlined below.

Application type	**Response**
Applications fo social a d affordable housing	Supp ted, h we e the e ha e bee e y few c te ti us applicati s submitted to Cla e ce City C u cil.
Critical infrastructure	Ca al eady be c side ed di ectly by the State.
Applications where Cou cil is the applicant	Supp ted.
Applications where Cou cillors express a conflict of interest a d a quorum to make a decision can ot be eached	The Pla i g Auth ity sh uld efe t a p te tial DAP.
Contentious applicatio s where Councillors may wish to act as elected representatives supporting the iews of their constituents which might be at odds with their role as a member of a planni g authority	The Pla i g Auth ity sh uld efe t a p te tial DAP.
Where an applicant co siders there is bias or perceived bias on the part of Council or Councillors	The applica t sh uld t efe applicati s t a p te tial DAP. The e is i sufficie t i f mati as t h w the legislati w uld defi e a bias pe cei ed bias. This ca al eady be tested at TASCAT.
Complex applications whe e the Council may not have access t appropriate skills or resources	The Pla i g Auth ity sh uld efe t a p te tial DAP.

Application over a certain value (under the proposed Framework is suggests over $10 million in value, or $5 million in value and proposed in a non-metropolitan municipality)	Can already be considered directly by State. The stated values may need to be reviewed.

Another application type that should be considered by a potential DAP is an application made by a Councillor or council staff member. However, this should be at the discretion of the Planning Authority.

The proposed DAP Framework is not consistent with the current planning application process. Should an application be considered to meet the criteria to be determined by the DAP, the application should have progressed through the application process in the usual manner until it is to be considered by the DAP; i.e. the DAP acts as the Planning Authority in the same way as a council acts as the Planning Authority. The application should only be referred at the point the application is required to be assessed for approval or refusal, with the same information provided to the DAP as would be provided to the Planning Authority.

Consultation issue 2 – Provision of an enhanced role for the Minister to direct a council to initiate a planning scheme amendment under certain circumstances

The powers currently delegated to the Minister under section 40C of the *Land Use Planning and Approvals Act 1993* (LUPAA) are sufficient.

There is no justification provided for the potential for this power to be broadened. In fact, in the Interim Report for the Future of Local Government, it says "*The Board supports the important role of councillors in land-use planning and the development of local provision schedules incorporated into the Tasmanian Planning Scheme. This is central to a council's role in enhancing the long-term wellbeing of the community through 'place-shaping', and the Board is not proposing any changes to this role.*"

Strategic planning and the content of the Local Provisions Schedule (LPS) should be left to the Planning Authority to decide. The existing powers provided to the Minister under section 40C of LUPAA relate to the State determined areas of planning, however, LPS's should continue to be regarded as an extension of the broader municipal plan as established by each local government organisation.

Consultation issue 3 –

i. Incorporating local knowledge in DAP decision making
ii. DAP framework to complement existing processes and avoid duplication of administrative process

If the expanded powers of a DAP are to be supported, the current proposed DAP Framework must be altered. The current proposal imposes a significantly higher administration burden than that which is currently required.

Should a DAP process be adopted, the existing development assessment process is sufficient to provide enough information to make a determination. It is also the best way to ensure that local knowledge is incorporated. The existing process is considered to be adequate for a Planning Authority to determine a development application and should therefore also be sufficient for a DAP.

It is particularly burdensome and complex to require public notification to include the assessment report, recommendations and draft permit. Utilising the steps in the proposed DAP Framework would make the process confusing for those who are notified, as it is substantially different from the existing process where this information is not provided. These issues are resolved by having a single point at which the application can be referred to a DAP, at the end of the process.

The proposed DAP Framework should utilise the existing process by which development assessments are considered. While there are existing provisions within LUPAA to consider development applications through a combined permit and amendment process, by the Tasmanian Planning Commission (TPC), these should only apply to development applications where they are combined with an amendment. The existing process of considering development applications could be more simply adapted to result in a DAP decision, with consideration at the Tasmanian Civil and Administrative Tribunal (TASCAT).

The proposed DAP Framework would result in two entities, TASCAT and TPC being responsible for decisions on development assessments. There would have to be a mechanism to ensure consistency of decisions from both parties, or a revision of responsibilities to ensure only one body used to determine development assessments.

Consultation issue 4 – Resolving issues associated with requests for, and responses to, further information

Under section 54 of LUPAA the existing process provides an applicant with the opportunity, during the development assessment ,to have requests for further information made by the Planning Authority reviewed by TASCAT. It would seem fair and equitable to maintain TASCAT's authority to review requests for further information during the development assessment process whether considered by a DAP or Planning Authority.

Consultation issue 5 – Appeal rights and assessment timeframes for DAP determined applications

As already noted, there is no justification to change the timeframes for the Planning Authority to prepare the documentation required for a DAP to consider the application.

The proposed timeframes in the DAP Framework do not align with the existing timeframes allowed for development assessments. As timeframes are not relevant to the reason for introducing the broadened powers of the DAP, the timeframes should remain as they are with the addition of the DAP decision as the final stage.

The existing appeal pathway allows third parties to appeal decisions made by a council as the Planning Authority. If the third party appeal rights remain in place, and third parties could appeal a DAP's decision to TASCAT, it is essentially retaining the same pathway. Third party appeal rights are an effective way of keeping decisions accountable and providing natural justice.

Consultation issue 6 – Roles of the Planning Authority post DAP determination of a development application

The proposed process is consistent with those applications currently determined by TASCAT and is therefore supported. However, the format of conditions on permits is critical to ongoing enforcement. The party responsible for each condition (e.g. TasWater) should have conditions delegated as per the existing format of planning authority permits. This way planning authorities are not required to enforce conditions outside of their jurisdiction.

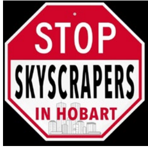
Summary

The existing development assessment framework operates in accordance with the objectives of planning in Tasmania which 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."* [emphasis added]

The objectives of planning are fundamental to the existing planning framework and should continue to be. From that perspective, the Council's summary position is:

- That the proposed DAP should be limited to a specified range of development application types only.
- Referral of an application to the DAP should be at the discretion of the Planning Authority only.
- Referral to a DAP should occur only at the decision making phase.
- The DAP process should be based on the existing development assessment process and timelines and should not extend to the planning scheme amendment process.
- There should be no changes to the Minister's powers to initiate a planning scheme amendment.



HOBART NOT HIGHRISE

State Planning Office
Department of Premier and Cabinet
GPO Box 123
HOBART TAS 7001

We request that the following matters be considered in the establishment of Development Assessment Panels and referred to the Minister responsible.

Our Members contend that Planning Panels are an unnecessary complication to the Planning System. If they are to be introduced it is vital that the community has the right to make submissions before approval is given and that the independence and integrity of the panels is assured.

Issue 1 Types of Development applications

- Critical infrastructure does not need a new panel because Major Projects Legislation or Projects of State Significance already provide an avenue for approval.
- Perceived bias exists at all levels of the planning system. DAPs will only increase community perceptions of bias favouring developers in the planning scheme.
- State Governments through the planning scheme limit or encourage certain types of development and the public perception is that a DAP is only to provide another mechanism to remove the local authority.
- Councils can share skills and resources in the planning area to ensure expertise to deal with complex issues.
- Housing developers frequently want to put too many structures on the available land. Any large scale housing development needs to include provision for parkland and greenspace.

Recommendation

1. Establishment of DAPs should give clear guidance as to when they can be accessed by proponents so it is not just a means of avoiding Council interaction.
2. The Tasmanian Planning Commission should appoint the DAPs without political interference and ensuring the Members have detailed knowledge of the planning system and its requirements
3. The Planning Authority should make referrals to the DAP. The process should allow referrals at any stage of the process.

Issue 2 An enhanced role for the Minister

- This would definitely be seen as adopting a system with bias – no matter who is the Minister of the day.

Recommendation

1. The Minister should not be given an enhanced role. Sufficient authority exists in current legislation.

Issue 3 Retaining local input

- Council should be the primary contact for applicants and its role should not be diminished.
- Consultation on any proposal should occur at the beginning of the process. The current system of Council being the Planning Authority provides for this.
- This proposal reduces democratic rights for no perceived public good.

Recommendation

1. That if an application goes straight to the panel it should be published at the beginning of the process with the opportunity for public consultation within a fair and reasonable time.
2. Council should retains its role.
3. As outlined on page 10 of the Position Paper, the current s43A (former provisions of the Act) and s40T of the Act provide processes for referral of a development application to the Commission. After initial assessment by Council and hearing procedures, this model should be used in the proposed DAP framework?

Issue 4 Resolving issues associated with requests for, and responses to, further information

- Requests for further information will occur where the developer does not submit the relevant supporting documents with their application. The cable car proposals for Mt Wellington was a perfect example of failure to provide satisfaction of the requirements of the planning scheme in the original proposal. This led to the need for continual requests and responses.
- Anecdotal evidence is never reliable data. Mention of it in this document is an example of bias being allowed to intrude on the planning scheme.

Recommendations

1. There should be no weakening of the planning scheme. Perhaps developers should have to meet with Council to ensure they know what will be required for any application?
2. The current provisions are satisfactory.
3. Developers should pay associated costs.
4. Reliable evidence-based data should be obtained before attempting to implement DAPs or gain community approval.

Issue 5 Appeal rights and assessment time frames

- Special pathways are not faster, cheaper, simpler or FAIRER.
- The DAP position paper acknowledges that Tasmania is already assessing claims faster than other states.

- Public right of consultation and comment must be guaranteed. A system which would require the Community to employ lawyers and experts to represent their interests is not a fair system. It is a system for the wealthy.
- All structures are permanent features on the landscape and within the community, so should be assessed with local input at all stages.
- It is not the planning assessment system which is stopping or slowing development currently, it is a lack of qualified workers and shortage of materials. Within Hobart there are a number of developments approved and awaiting construction.

Recommendations

1. It needs to be made clear that applications requiring approval under discretionary provisions rather than acceptable solutions and performance criteria or those which do not provide all information will always take longer to assess
2. The public should have the right to make a submission before approval is granted.
3. It is reasonable that decisions on DAP determined applications are not subject to TasCAT appeals where the TPC holds hearings and provides all parties the opportunity to make submissions and test evidence before a decision is made?

Issue 6 Roles of the planning authority after DAP determination

- The expectation that the DAP will 'engage extensively with the planning authority' provides no simplification to the process or reduction of Council work loads but simply adds more red tape and cost.

Recommendations

1. The Council Planning Authority should retain the role of receiving applications and implementing the provisions of the planning scheme, [issueing a draft permit, undertaking the notification procedures in accordance with the LUPAA, receiving representations and addressing the issues raised by the representation
2. The Planning Authority should remain the custodian of planning permits and be required to issue permits in accordance with a direction from a DAP.
3. Planning permits associated with a DAP determined application should be enforced by the Council as Planning Authority.
4. Minor amendments (in accordance with s56 of LUPAA) to DAP determined permits can be made by the Planning Authority.

On behalf of Hobart not Highrise

Margaret Taylor [President]
Peter Black [Treasurer]
Brian Corr [Secretary]
Rosemary Scott [Committee]
Julian Bush [Committee]

From: kathryn tubb <>
Sent: Tuesday, 28 November 2023 11:32 AM
To: State Planning Office Your Say
Subject: Position paper on a proposed Developmental Assessment Panel(DAP) Framework

Re: Position Paper on a proposed Development Assessment Panel (DAP) Framework

I am writing to express my opposition to the creation of planning panels and to an increase in ministerial power over the Tasmanian planning system. In this regard, I would like to draw your attention to my specific concerns with the proposed changes as follows:

DAP will create an alternate planning approval pathway allowing property developers to bypass local councils and communities. Handpicked state appointed planning panels will decide on development applications not elected local council representatives. Local concerns may be marginalised or ignored in favour of the development at all costs, to the detriment of Tasmania and the Tasmanian community. It also opens up the possibility that where conventional assessments are not progressing as a developer wishes, they will be able to abandon the standard local council process at any-time and opt to have a development assessed by a planning panel. This is likely to hamper existing processes and may be used as an instrument to intimidate councils into conceding to developers demands.

DAP is likely to make approval of large scale contentious developments easier. As examples consider the following: the kunanyi/Mount Wellington cable car, high-rise in Hobart, Cambria Green and high-density subdivision like Skylands at Droughty Point.

DAP will remove merit-based planning appeal rights via the planning tribunal on issues like height, bulk, scale or appearance of buildings; impacts to streetscapes, and adjoining properties including privacy and overlooking; traffic, noise, smell, light and other potential amenity impacts and so much more. **Developments will only be appealable to the Supreme Court based on a point of law or process. This is an extremely worrying lack of oversight of such major changes to the planning system**

Removing merits-based planning appeals has the potential to open up the risk of an increase in corruption and a reduction in balanced planning outcomes. The NSW Independent Commission Against Corruption recommended the expansion of merit-based planning appeals as a deterrent to corruption.

Increased ministerial power over the planning system increases the politicisation of planning and risk of politically driven decisions. The Planning Minister will be able to decide if a development application meets the planning panel criteria. The Minister will be able to force the initiation of planning scheme changes, but perversely, only when a local

council has rejected such an application, threatening transparency and strategic planning.

Flawed planning panel criteria. Changing an approval process where one of the criteria is on the basis of 'perceived conflict of interest ' is fraught. The Planning Minister may face political pressure or display bias and may use this subjective criteria to intervene on any development in favour of developers and /or the interests of his/her political party.

Has the potential to **undermines local democracy and removes local decision making**. State appointed hand-picked planning panels are not democratically accountable, they remove local decision making and reduce transparency and robust decision making.

Mainland experience demonstrates planning panels favour developers and undermine democratic accountability. Local planning panels, which are often dominated by members of the development sector, were created in NSW to stamp out corruption, but councillors from across the political spectrum say they favour developers and undermine democratic accountability.

There has been poor justification for DAP in the position paper. Only about 1% of council planning decisions go to appeal and Tasmania's planning system is already among the fastest, if not the fastest, in Australia when it comes to determining development applications. This raises concerns about the underlying motivation for the proposal to introduce DAP.

I am recommending:

- **Abandoning the planning panels** proposal and instead take action to improve governance and the existing Council planning process by providing more resources to councils and enhancing community participation and planning outcomes.
- **Ensuring transparency, independence, accountability and public participation in decision-making within the planning system**, as these are all critical for a healthy democracy. Keep decision making local with opportunities for appeal.
- I also call on you to **prohibit property developers from making donations to political parties**, **enhance transparency and efficiency in the administration of the *Right to Information Act 2009***, and **create a strong anti-corruption watchdog**.

Kind regards
Kathy Tubb

From:
Sent: Tuesday, 28 November 2023 11:27 AM
To: State Planning Office Your Say
Subject: Submission against Development Assessment Panels

I oppose the introduction of Development Assessment Panels because:
* they will add further complication to the existing system
* they reduce the democratic rights of the community.

Issue 1 Types of Development applications
* Critical infrastructure does not need a new panel because Major Projects Legislation or Projects of State Significance already provide an avenue for approval.
* Perceived bias exists at all levels of the planning system. DAPs will only increase community perceptions of bias favouring developers in the planning scheme.
* State Governments through the planning scheme limit or encourage certain types of development and the public perception is that a DAP is only to provide another mechanism to remove the local authority.
* Councils can share skills and resources in the planning area to ensure access to deal with complex issues.

Issue 2 An enhanced role for the Minister
* The Minister should not be given an enhanced role. Sufficient authority exists in current legislation.

Issue 3 Retaining local input
* Council should be the primary contact for applicants and its role should not be diminished.
* Consultation on any proposal should occur at the beginning of the process. The current system of Council being the Planning Authority provides for this.
* This proposal reduces democratic rights for no perceived public good.

Issue 4 Resolving issues associated with requests for, and responses to, further information
* Requests for further information will occur where the developer does not submit the relevant supporting documents with their application. The cable car proposals for Mt Wellington was a perfect example of failure to provide satisfaction of the requirements of the planning scheme in the original proposal. This led to continual requests and responses.
* Annecdotal evidence is never reliable data. Mention of it in this document is an example of bias being allowed to intrude on the planning scheme. Collect reliable evidence-based data before you implement DAPs and get community approval

Issue 5 Appeal rights and assessment time frames.
* Special pathways are not faster, cheaper, simpler or FAIRER.
* Applications that require approval under discretionary provisions rather than acceptable solutions and performance criteria will always take longer to assess
* Public right of consultation and comment must be guaranteed.
* All structures are permanent features on the landscape and within the community so should be assessed under existing systems with local input at all stages.

Issue 6 Roles of the planning authority after DAP determination
* The expectation that the DAP will ‘engage extensively with the planning authority’ provides no

simplification to the process or reduction of Council work loads but simply adds more red tape and cost.

It is not the planning system which is stopping development currently it is a lack of qualified workers and shortage of materials. Within Hobart there are a number of developments approved and awaiting construction.

Your name:	Bibiana
Your email:	
My additional comments::	

From: Heidi Auman <>
Sent: Tuesday, 28 November 2023 10:53 AM
To: State Planning Office Your Say
Subject: proposed Development Assessment Panel (DAP) Framework

I oppose the creation of planning panels and increasing ministerial power over the planning system, for the following reasons:

- **It will create an alternate planning approval pathway allowing property developers to bypass local councils and communities.** Handpicked state appointed planning panels will decide on development applications, not your elected local council representatives. Local concerns will be ignored in favour of the developers who may not be from Tasmania. Also, if an assessment isn't going their way the developer can abandon the standard local council process at any time and have a development assessed by a planning panel. This could intimidate councils into conceding to developers' demands.
- **Makes it easier to approve large scale contentious developments** like the kunanyi/Mount Wellington cable car, high-rise in Hobart, Cambria Green and high-density subdivision like Skylands at Droughty Point.
- **Remove merit-based planning appeal rights** via the planning tribunal on issues like height, bulk, scale or appearance of buildings; impacts to streetscapes, and adjoining properties including privacy and overlooking; traffic, noise, smell, light and other potential amenity impacts and so much more. **Developments will only be appealable to the Supreme Court based on a point of law or process.**
- **Removing merits-based planning appeals has the potential to increase corruption and reduce good planning outcomes.** The NSW Independent Commission Against Corruption recommended the expansion of merit-based planning appeals as a deterrent to corruption.
- **Increased ministerial power over the planning system increases the politicisation of planning and risk of corrupt decisions.** The Planning Minister will decide if a development application meets the planning panel criteria. The Minister will be able to force the initiation of planning scheme changes, but perversely, only when a local council has rejected such an application, threatening transparency and strategic planning.
- **Flawed planning panel criteria.** Changing an approval process where one of the criteria is on the basis of 'perceived conflict of interest ' is fraught. The Planning Minister has political bias and can use this subjective criteria to intervene on any development in favour of developers.
- **Undermines local democracy and removes local decision making.** State appointed hand-picked planning panels are not democratically accountable, they

remove local decision making and reduce transparency and robust decision making.

- **Mainland experience demonstrates planning panels favour developers and undermine democratic accountability.** Local planning panels, which are often dominated by members of the development sector, were created in NSW to stamp out corruption, but councillors from across the political spectrum say they favour developers and undermine democratic accountability.
- **Poor justification – there is no problem to fix.** Only about 1% of council planning decisions go to appeal and Tasmania's planning system is already among the fastest, if not the fastest, in Australia when it comes to determining development applications.
- **Increases complexity in an already complex planning system.** Why would we further increase an already complex planning system which is already making decisions quicker than any other jurisdiction in Australia?
- **I call on you to ensure transparency, independence, accountability and public participation in decision-making within the planning system**, as they are critical for a healthy democracy. Keep decision making local with opportunities for appeal. Abandon the planning panels and instead take action to improve governance and the existing Council planning process by providing more resources to councils and enhancing community participation and planning outcomes.
- I also call on you to **prohibit property developers from making donations** to political parties, **enhance transparency and efficiency in the administration of the *Right to Information Act 2009***, and **create a strong anti-corruption watchdog**.
- As a resident of Fern Tree, I strongly object to a cable car on kunanyi.

Respectfully submitted,

Heidi Auman

From:
Sent: Wednesday, 29 November 2023 12:46 PM
To: State Planning Office Your Say
Subject: Submission against Development Assessment Panels

I oppose the introduction of Development Assessment Panels because:
* they will add further complication to the existing system
* they reduce the democratic rights of the community.

Issue 1 Types of Development applications
* Critical infrastructure does not need a new panel because Major Projects Legislation or Projects of State Significance already provide an avenue for approval.
* Perceived bias exists at all levels of the planning system. DAPs will only increase community perceptions of bias favouring developers in the planning scheme.
* State Governments through the planning scheme limit or encourage certain types of development and the public perception is that a DAP is only to provide another mechanism to remove the local authority.
* Councils can share skills and resources in the planning area to ensure access to deal with complex issues.

Issue 2 An enhanced role for the Minister
* The Minister should not be given an enhanced role. Sufficient authority exists in current legislation.

Issue 3 Retaining local input
* Council should be the primary contact for applicants and its role should not be diminished.
* Consultation on any proposal should occur at the beginning of the process. The current system of Council being the Planning Authority provides for this.
* This proposal reduces democratic rights for no perceived public good.

Issue 4 Resolving issues associated with requests for, and responses to, further information
* Requests for further information will occur where the developer does not submit the relevant supporting documents with their application. The cable car proposals for Mt Wellington was a perfect example of failure to provide satisfaction of the requirements of the planning scheme in the original proposal. This led to continual requests and responses.
* Annecdotal evidence is never reliable data. Mention of it in this document is an example of bias being allowed to intrude on the planning scheme. Collect reliable evidence-based data before you implement DAPs and get community approval

Issue 5 Appeal rights and assessment time frames.
* Special pathways are not faster, cheaper, simpler or FAIRER.
* Applications that require approval under discretionary provisions rather than acceptable solutions and performance criteria will always take longer to assess
* Public right of consultation and comment must be guaranteed.
* All structures are permanent features on the landscape and within the community so should be assessed under existing systems with local input at all stages.

Issue 6 Roles of the planning authority after DAP determination
* The expectation that the DAP will ‘engage extensively with the planning authority’ provides no

simplification to the process or reduction of Council work loads but simply adds more red tape and cost.

It is not the planning system which is stopping development currently it is a lack of qualified workers and shortage of materials. Within Hobart there are a number of developments approved and awaiting construction.

Your name:	Trudy Woodcock
Your email:	
My additional comments::	

From: Jim Collier <>
Sent: Wednesday, 29 November 2023 12:13 PM
To: State Planning Office Your Say
Cc:
Subject: Submission Re Proposed New Planning Panels

SUBMISSION
IN RESPECT OF THE
PROPOSED DEVELOPMENT ASSESSMENT PANEL LEGISLATION

I oppose the creation of planning panels and increasing ministerial power over the planning system, for the following reasons:

- **It will create an alternate planning approval pathway allowing property developers to bypass local councils and communities.** Handpicked state appointed planning panels will decide on development applications not your elected local council representatives. Local concerns will be ignored in favour of the developers who may not be from Tasmania. Also, if an assessment isn't going their way the developer can abandon the standard local council process at anytime and have a development assessed by a planning panel. This could intimidate councils into conceding to developers demands.

- **Makes it easier to approve large scale contentious developments** like the Gorge Hotel and other inappropriate high rise buildings in Launceston, kunanyi/Mount Wellington cable car, high-rise in Hobart, Cambria Green and high-density

subdivision like Skylands at Droughty Point.

- **Remove merit-based planning appeal rights** via the planning tribunal on issues like height, bulk, scale or appearance of buildings; impacts to streetscapes, and adjoining properties including privacy and overlooking; traffic, noise, smell, light and other potential amenity impacts and so much more. **Developments will only be appealable to the Supreme Court based on a point of law or process.**

- **Removing merits-based planning appeals has the potential to increase corruption and reduce good planning outcomes.** The NSW Independent Commission Against Corruption recommended the expansion of merit-based planning appeals as a deterrent to corruption.

- **Increased ministerial power over the planning system increases the politicisation of planning and risk of corrupt decisions.** The Planning Minister will decide if a development application meets the planning panel criteria. The Minister will be able to force the initiation of planning scheme changes, but perversely, only when a local council has rejected such an application, threatening transparency and strategic planning.

- **Flawed planning panel criteria**. Changing an approval process where one of the criteria is on the basis of 'perceived conflict of interest ' is fraught. The Planning Minister has political bias and can use this subjective criteria to intervene on any development in favour of developers.

- **Undermines local democracy and removes and local decision making**. State appointed hand-picked planning panels are not democratically accountable, they remove local decision making and reduce transparency and robust decision making.

- **Mainland experience demonstrates planning panels favour developers and undermine democratic accountability.** Local planning panels, which are often dominated by members of the development sector, were created in NSW to stamp out corruption, but councillors from across the political spectrum say they favour developers and undermine democratic accountability.

- **Poor justification – there is no problem to fix.** Only about 1% of council planning decisions go to appeal and Tasmania's planning system is already among the fastest, if not the fastest, in Australia when it comes to determining development applications.

- **Increases complexity in an already complex planning system.** Why would we further increase an already complex planning system which is already making decisions quicker than any other jurisdiction in Australia?

Say yes to a healthy democracy

- **I call on you to ensure transparency, independence, accountability and public participation in decision-making within the planning system**, as they are critical for a healthy democracy. Keep decision making local with opportunities for appeal. Abandon the planning panels and instead take action to improve governance and the existing Council planning process by providing more resources to councils and enhancing community participation and planning outcomes.

- I also call on you to **prohibit property developers from making donations to political parties**, **enhance transparency and efficiency in the administration of the *Right to Information Act 2009***, and **create a strong anti-corruption watchdog**

THANK YOU for taking the time to read this submission, ; …your interest is sincerely appreciated.

Kind regards

.

Jim Collier

30 Burnett St
North Hobart TAS 7000
T (03) 6230 4600
hia.com.au

29 November 2023

State Planning Office
Department of Premier and Cabinet
By email
yoursay.planning@dpac.tas.gov.au

HIA Submission on the Position Paper - Development Assessment Panel Framework

Thank you for the opportunity to provide comment in response to the *Position Paper - Development Assessment Panel Framework*.

HIA welcomes inter-governmental collaboration and consultation with the residential construction industry on major policy reform that supports the development of new housing, through streamlined approval and cutting of red tape in the planning system.

About the Housing Industry Association (HIA)

The HIA is Australia's only national industry association representing the interests of the residential building industry, including new home builders, renovators, trade contractors, land developers, related building professionals, and suppliers and manufacturers of building products.

As the voice of the residential building industry, HIA represents a membership of 60,000 across Australia. HIA members are involved in land development, detached home building, home renovations, low & medium-density housing, high-rise apartment buildings and building product manufacturing.

HIA members are comprised of a mix of residential builders, including the Housing 100 volume builders, small to medium builders and renovators, residential developers, trade contractors, major building product manufacturers and suppliers and consultants to the industry. HIA members construct over 85 per cent of the nation's new building stock.

Background

State government is undertaking a number of concurrent policy reviews with the objective of introducing planning system reform, cutting red tape and preparing for housing growth in Tasmania. In recent times HIA has made written submissions in relation to the following reviews:

- *Medium Density Residential Development Standards Project.*
- *Tasmanian Housing Strategy Discussion Paper.*
- *State Planning Provisions review*.
- *Regional Planning Framework.*
- *Tasmanian Planning Policies review*.
- *30 Year Greater Hobart Plan*.
- *Future of Local Government review*.
- *Draft Tasmanian Housing Bill*.

While these reviews are being led by government, it appears they are being independently pursued without an overarching assessment of their holistic effect. It is critical that members of each Policy Team collaborate to ensure the findings are thoroughly interrogated, and final recommendations lead to consistent, practical, integrated and effective statutory policy. A failure to do this will only hinder the pursuit of the ambitious housing growth targets that have been set in Tasmania.

HIA response to the DAP Framework

Please note this response is not intended to address each question individually in the position paper. In principle, HIA supports the DAP Framework. However, it does not go far enough and in its current form it appears to provide an assessment advantage for a limited number of applications that qualify. This creates a planning system that gives one applicant a significant advantage over another and fails to address the significant number of applications that are being derailed.

In regard to residential development, the planning system should be an enabler of new or adapted housing, through streamlined approval and cutting of red tape. A broad spread of Tasmanian residential builders were primarily responsible for delivering the 3,300 homes last financial year in Tasmania. Unfortunately, very few residential development applications would qualify, as they are not valued at over $10 million or $5 million in a non-metropolitan municipality. Yet these applications are more prevalent and often just as likely to be impacted by red tape.

Where the DAP is supported and implemented, HIA would like to see concurrent regulatory reform that addresses the weaknesses in other parts of the planning system. For example, proliferation of council sub-standards to the state planning controls yields them far too much control and power in the application process. Appeals to the Tasmanian Civil and Administrative Tribunal are lengthy and costly, in many cases for minor disputes. Furthermore, many councils are citing under-resourcing to be able to efficiently process the volume of planning applications received in a timely manner. HIA has supported large scale amalgamation of councils, particularly where there can be efficiencies gained from a well-resourced and experienced planning department processing applications at scale.

HIA has made many submissions to this effect in the aforementioned stakeholder consultations, primarily calling for increased state-wide planning regulations and deregulation of assessment power by local councils. This is particularly critical for residential applications in Tasmania, where builders should be able to follow a simple structure of planning rules and regulations and receive streamlined decisions.

Thank you for the opportunity to provide comment at this initial stage. HIA would appreciate being involved in the next round of consultation for the DAP Framework to evaluate any changes proposed post this public consultation.

Please do not hesitate to contact us if you wish to discuss matters raised in this correspondence – Roger Cooper HIA Senior Planning Advisor (03) 9280 8230 or Stuart Collins or

Yours sincerely
HOUSING INDUSTRY ASSOCIATION LIMITED

Stuart Collins
Executive Director
Tasmania

From: Dennis O'Donnell <>
Sent: Wednesday, 29 November 2023 11:17 AM
To: State Planning Office Your Say
Cc:
Subject:

Say no to the Liberals new planning panels

I oppose the creation of planning panels and increasing ministerial power over the planning system, for the following reasons:

- **It will create an alternate planning approval pathway allowing property developers to bypass local councils and communities.** Handpicked state appointed planning panels will decide on development applications not your elected local council representatives. Local concerns will be ignored in favour of the developers who may not be from Tasmania. Also, if an assessment isn't going their way the developer can abandon the standard local council process at anytime and have a development assessed by a planning panel. This could intimidate councils into conceding to developers demands.

- **Makes it easier to approve large scale contentious developments** like the kunanyi/Mount Wellington cable car, high-rise in Hobart, Cambria Green and high-density subdivision like Skylands at Droughty Point.

- **Remove merit-based planning appeal rights** via the planning tribunal on issues like height, bulk, scale or appearance of buildings; impacts to streetscapes, and adjoining properties including privacy and overlooking; traffic, noise, smell, light

and other potential amenity impacts and so much more. **Developments will only be appealable to the Supreme Court based on a point of law or process.**

- **Removing merits-based planning appeals has the potential to increase corruption and reduce good planning outcomes.** The NSW Independent Commission Against Corruption recommended the expansion of merit-based planning appeals as a deterrent to corruption.

- **Increased ministerial power over the planning system increases the politicisation of planning and risk of corrupt decisions.** The Planning Minister will decide if a development application meets the planning panel criteria. The Minister will be able to force the initiation of planning scheme changes, but perversely, only when a local council has rejected such an application, threatening transparency and strategic planning.

- **Flawed planning panel criteria**. Changing an approval process where one of the criteria is on the basis of 'perceived conflict of interest ' is fraught. The Planning Minister has political bias and can use this subjective criteria to intervene on any development in favour of developers.

- **Undermines local democracy and removes and local decision making**. State appointed hand-picked planning panels are not democratically accountable, they remove local decision making and reduce transparency and robust decision making.

- **Mainland experience demonstrates planning panels favour developers and undermine democratic accountability.** Local planning panels, which are often dominated by members of the development sector, were created in NSW to stamp out corruption, but councillors from across the political spectrum say they favour developers and undermine democratic accountability.

- **Poor justification – there is no problem to fix.** Only about 1% of council planning decisions go to appeal and Tasmania's planning system is already among the fastest, if not the fastest, in Australia when it comes to determining development applications.

- **Increases complexity in an already complex planning system.** Why would we further increase an already complex planning system which is already making decisions quicker than any other jurisdiction in Australia?

Say yes to a healthy democracy

- **I call on you to ensure transparency, independence, accountability and public participation in decision-making within the planning system**, as they are critical for a healthy democracy. Keep decision making local with opportunities for appeal. Abandon the planning panels and instead take action to improve governance and the existing Council planning process by providing more

resources to councils and enhancing community participation and planning outcomes.

- I also call on you to **prohibit property developers from making donations to political parties**, **enhance transparency and efficiency in the administration of the *Right to Information Act 2009***, and **create a strong anti-corruption watchdog**.

Yours sincerely,

Dennis O'Donnell

From:	Anne
Sent:	Wednesday, 29 November 2023 11:11 AM
To:	Protect our local democracy - say no to the Liberals new planning panels
Subject:	

Say no to the Liberals new planning panels

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Yours sincerely,

Anne Wennagel

From: Jane Davis <>
Sent: Wednesday, 29 November 2023 11:04 AM
To: State Planning Office Your Say
Subject: Land Use Planning and Approvals (Development Assessment Panel) Amendment Bill 2024

I strongly disagree with the Tasmanian Government's proposal to remove from councils control of planning for proposals whether large, complex or controversial as it would allow developments to go ahead without any community consultation and without an appeal process. This prosposal is undemocratic and will allow rampant unwanted development.
The so-called "independent" assessment panels appointed by the Tasmanian government could easily be swayed by the politicians of the day thus would not take the politics out of planning.

The current Tasmanian Government's review of the Reserve Activity Assessment has been stalled for several years without sufficient explanation.

I concur with the Tasmanian National Park Association's concerns relating to developments in parks could be addressed by defining in legislation the Parks and Wildlife Service's Reserve Activity Assessment (RAA) and its relationship to local government planning requirements.

The legal basis of most of the Tasmanian National Parks Association's (TNPA) recent successes in constraining development in national parks has been the requirement for approval of the development application by the local council, and the associated rights of appeal, so this proposal has huge implications for the opportunities for the public to challenge proposed developments in parks.

The system currently works reasonably well with full and due democratic process. I am against any changes to legislation which would weaken this process.

yours sincerely

Jane Davis

From: Dorothy Darden <>
Sent: Wednesday, 29 November 2023 10:58 AM
To: State Planning Office Your Say
Cc:
Subject: I am opposed to removal of merit-based planning appeals.

- **I call on you to ensure transparency, independence, accountability and public participation in decision-making within the planning system**, as they are critical for a healthy democracy. Keep decision making local with opportunities for appeal. Abandon the planning panels and instead take action to improve governance and the existing Council planning process by providing more resources to councils and enhancing community participation and planning outcomes.
- I also call on you to **prohibit property developers from making donations** to political parties, **enhance transparency and efficiency in the administration of the *Right to Information Act 2009***, and **create a strong anti-corruption watchdog**.

We live in a democracy where citizens expect the government to allow voters to participate in decisions regarding major development projects. Without the support of citizens, the government will fail in its responsibilities to protect the natural and historical resources that remain in our fair state.

Thank you,

Dorothy Darden

From:	Rob & Annette Aldersea
Sent:	Wednesday, 29 November 2023 10:34 AM
To:	State Planning Office Your Say
Cc:	
Subject:	Protect our local democracy - say NO to the new planning panels
Importance:	High

You don't often get email from . Learn why this is important

I Say NO to the new planning panels.

I ask you to please say NO to the creation of planning panels.

Tasmania will lose its communities voices which must continue to be strong and listened to. Locals MUST continue to have a say on what matters to them.

Planning panels will have a deep negative impact on our heritage. Sensitive environmental areas will be encroached upon, even destroyed.

The deep pocketed developers who are the only ones who will benefit from the planning panels, (many who will be from interstate and overseas), must not be allowed to have priority access to our state.

I strongly oppose the creation of planning panels and increasing ministerial power over the planning system, for the following reasons:

- **The alternate planning approval will clearly favour developers and real estate agents who have long lobbied for this pathway at the expense of communities, rural areas, heritage, and the environment.**

- **It will create an alternate planning approval pathway allowing property developers to bypass local councils and communities.** Handpicked state appointed planning panels will decide on development applications not our elected local council representatives. Local concerns will be ignored in favour of the developers who may not be from Tasmania. Also, if an assessment isn't going their way the developer can abandon the standard local council process at any time, and have a development assessed by a planning panel. This could intimidate councils into conceding to developers demands.

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Say yes to a healthy democracy

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- I also call on you to **prohibit property developers from making donations to political parties**, **enhance transparency and efficiency in the administration of the *Right to Information Act 2009***, and **create a strong anti-corruption watchdog**.

If Tasmania's unique character, significant heritage and natural beauty is allowed to be impacted upon by inappropriate development, we cannot turn back the clock, the damage will never be reversed, it will be too late.
Please do not let that happen.

Yours sincerely,
Annette Aldersea

Enquiries to: Office of the CEO
☎: 03 6238 2727
✉: ceo@hobartcity.com.au
Our Ref: 14/140

29 November 2023

State Planning Office
Department of Premier and Cabinet
GPO Box 123
HOBART TAS 7001

Via Email: yoursay.planning@dpac.tas.gov.au

To Whom it May Concern,

I write to thank you for the opportunity to comment on the draft *Land Use Planning and Approvals (Development Assessment Panel) Amendment Bill 2024* that has been developed.

The City of Hobart submission reiterates the City's position that statutory planning functions must remain with local councils as they are better placed to understand local issues and the potential planning impacts on a community.

Please do not hesitate to contact my office should you have any questions or queries.

Yours sincerely,

(Jacqui Allen)
ACTING CHIEF EXECUTIVE OFFICER

City *of* **HOBART**

Response to Development Assessment Panel (DAP) Framework

About the City *of* **HOBART**

The City of Hobart is the local government body covering the central metropolitan area of Lutruwita/Tasmania’s capital city Nipaluna/Hobart.

The present-day council entity was legislated in 1852 with the role of Lord Mayor created in 1934.

As enshrined in legislation, the key function of local government is:

- To provide for the health, safety and welfare of the community;
- To represent the interests of the community; and
- To provide for the municipal area's peace, order and good government.

The City of Hobart delivers a range of services to over 56,000 residents and employs over 550 staff.

The Role of Local **Government**

The City of Hobart is responsible for statutory planning within the city. As the Planning Authority, it has responsibility for directing strategic planning and establishing, interpreting, revising and enforcing the local planning scheme.

Introduction

Responsible planning has always been vital to the sustainability of safe, healthy, and secure urban environments. Tasmania’s population is growing, and, with more people, the planning profession must increasingly deal with complex issues.

The City of Hobart’s Community Vision and Capital City Strategic Plan identifies the importance of Hobart keeping a strong sense of place and identity even as the city changes. The City of Hobart – in collaboration with communities and stakeholders – is best-placed to implement city shaping activities and precinct improvements.

The City of Hobart holds the view that statutory planning functions must remain with local councils. While the City recognises that the current council planning application and approval process could and should be improved to increase housing supply, local councils understand local issues and the potential planning impacts on a community in a way that other tiers of government do not. Beyond bringing knowledge of the local area and relevant policies to the decision-making process, Local Government elected members have an important role in reflecting the aspirations of local communities. And in the City of Hobart, the majority of developments proceeding through the local council planning process unimpeded, with a 98% approval rate.

The City of Hobart disagrees with the assumption that the introduction of a DAP will quash controversy, and that community pressure and political pressure detracts from desirable planning outcomes.

More broadly, this shift in decision making represented by the proposed framework raises issues associated with the fundamental and interrelated principles of why and how we should do planning and what problem based, or topic-based issues can and should be addressed through planning.

The City of Hobart is currently undertaking a comprehensive work program of strategic planning to establish a robust and contemporary strategic framework from which to direct future growth and development. To date, this has involved the recent adoption of the Central Hobart Plan and the commencement of Neighbourhood (Structure) Plans for North Hobart and Mount Nelson & Sandy Bay.

It is envisaged that this strategic framework will provide the necessary impetus for both Council initiated and proponent led planning scheme amendments to proceed, for sufficiently justified sustainable development outcomes to be realised.

To this end, Council provides the following commentary in response to the following questions posed in the Position Paper:

Key issues

Consultation issue 1: Types of development applications suitable for referral to a DAP for determination

<table>
<tr><td colspan="3">What types of development applications are problematic, or perceived to be problematic, for Councils to determine and would therefore benefit from being determined by a DAP?</td></tr>
<tr><td colspan="2">Options</td><td>CoH Response</td></tr>
<tr><td>i</td><td>Applications for social and affordable housing which often attract considerable opposition within the local community based on social stigma rather than planning matters;</td><td>Social housing proposals tend to generate a high number of representations and at the City of Hobart, this means that those proposals are usually considered by the Planning Committee. Representations often raise non-planning grounds, which some perceive as a resistance to this type of development close to their existing housing. Despite this, the Elected Members have made decisions on this type of development by following officer recommendations.</td></tr>
<tr><td>ii</td><td>Critical infrastructure;</td><td rowspan="2">There are no issues with applications for critical infrastructure or Council applications and while this is another category of applications where the community tend to raise non-planning issues, again, all decisions in this context have been robust at the City of Hobart. Council works hard to ensure that the Council as applicant is making an application that meets the planning scheme and there is no reason to either approve or refuse any application against officer recommendation. Introducing a DAP into this scenario would just add red tape for no benefit.</td></tr>
<tr><td>iii</td><td>Applications where the Council is the applicant and the decision maker;</td></tr>
<tr><td>iv</td><td>Applications where Councillors express a conflict of interest in a matter and a quorum to make a decision cannot be reached;</td><td>The inability to reach a quorum due to conflict of interest is not an issue for the City of Hobart.</td></tr>
<tr><td>v</td><td>Contentious applications where Councillors may wish to act as elected representatives supporting the views of their constituents which might be at odds with their role as a member of a planning authority;</td><td>Elected Members are aware before they are elected that they will undertake the role of planning authority and are required to do so without regard to their political preferences. They receive adequate training on the difference and are supported during the decision-making process by Council officers. The Supreme Court of Tasmania has recognised that when carrying out its role as</td></tr>
</table>

<table>
<tr><td></td><td></td><td>planning authority, Elected Members are entitled to have strong views and are able to engage with the community about applications; so long as they retain an open mind and consider the application properly. In doing so, the Supreme Court has confirmed that these dual roles are feasible and has provided guidance on the requirements of Elected Members.</td></tr>
<tr><td>vi</td><td>Where an applicant considers there is bias, or perceived bias, on the part of a Council or Councillors;</td><td>Due to the subjective nature of the applicant considering bias or perceived bias, this trigger would be open to misuse and would add significant uncertainty and ambiguity to planning processes.</td></tr>
<tr><td>vii</td><td>Complex applications where the Council may not have access to appropriate skills or resources;</td><td rowspan="2">The City of Hobart has sufficient resources to properly assess and determine applications. It is accepted that this is not necessarily the same for all councils throughout Tasmania. However, the difficulty is not necessarily in the decision-making part of the process; the challenge is often having sufficiently experienced staff or consultants to carry out the request for information process and assess an application to make a recommendation to the decision maker. The introduction of a DAP would not solve this issue. It is not considered that a particular cost of works is necessarily aligned with the most controversial applications and the City of Hobart does not support this being a basis for referral to a DAP.

Applicants are able to use the major projects process where appropriate so that their application is separately assessed.</td></tr>
<tr><td>viii</td><td>Application over a certain value;</td></tr>
<tr><td>ix</td><td>Other?</td><td>Any involvement of the Minister to make referrals or to resolve any dispute between the planning authority and applicant as to whether an application should be referred is opposed. This would politicise planning and is highly inappropriate.</td></tr>
<tr><td colspan="3">Who should be allowed to nominate referral of a development application to a DAP for determination?</td></tr>
<tr><td colspan="2">Options</td><td>CoH Response</td></tr>
<tr><td>i</td><td>Applicant</td><td rowspan="2">The planning authority must either refer an application to a DAP or consent to this occurring, otherwise, this leaves the planning process open to “forum</td></tr>
<tr><td>ii</td><td>Applicant with consent of the planning authority</td></tr>
</table>

iii	Planning authority	shopping" if the applicant would prefer not to have the decision made by the planning authority for some reason.
iv	Planning authority with consent of the applicant	
v	Minister	
Given the need for a referral of an application to a DAP might not be known until an application has progressed through certain stages of consideration (such as those set out in a) above) have been carried out, is it reasonable to have a range of referral points?		
Options		***CoH Response***
i	At the beginning for prescribed proposals;	Yes
ii	Following consultation where it is identified that the proposal is especially contentious;	
iii	At the approval stage, where it is identified that Councillors are conflicted.	

Consultation issue 2: Provision of an enhanced role for the minister to direct a council to initiate a planning scheme amendment under certain circumstances

<table>
<tr><th>Options</th><th>CoH Response</th></tr>
<tr><td>Under what circumstances should the Minister have a power to direct the initiation of a planning scheme amendment by a Council?</td><td rowspan="3">In principle, Council recognises the long-established legislative role of local government acting as a Planning Authority, with responsibility for directing strategic planning and establishing, interpreting, revising and enforcing the local planning scheme.

Notwithstanding this, Council acknowledges the existing power of the Minister to direct a planning authority to prepare a draft amendment under section 40C of the Land Use Planning and Approvals Act 1993. Council is reluctant for these powers to be expanded, except in the most prudent manner.

For the strategic planning process to remain firmly embedded with the principles of integrity and transparency, the proposed changes must ensure that the onus is firmly reinforced upon the proponent to comprehensively justify the strategic necessity of any amendment.

For example, if the Minister’s role is enhanced as proposed, the proponent of any amendment would have to demonstrate its consistency with the relevant sections of:

• any endorsed land use strategy
• any adopted Structure Plan
• the applicable Regional Land Use Strategy
• the Tasmanian Planning Policies
• the State Planning Provisions
• the Local Provision Schedule

It would also be incumbent upon the proponent to provide any technical studies that are required to adequately demonstrate the necessity for such an amendment.</td></tr>
<tr><td>Is it appropriate for the Minister to exercise that power where the Council has refused a request from an applicant and its decision has been reviewed by the Tasmanian Planning Commission?</td></tr>
<tr><td>Are there any other threshold tests or criteria that might justify a direction being given, such as it aligns to a changes regional land use strategy, it is identified to support a key growth strategy or it would maximise available or planned infrastructure provision?</td></tr>
</table>

	It is noteworthy that this position paper does not address the huge cost implications that would have to be borne by Council in preparing and processing additional planning scheme amendments should the proposed changes be enacted. As it stands, Council is currently under enormous pressure to meet its strategic planning obligations through its transition to the Tasmanian Planning Scheme. The City of Hobart is not alone in operating in the fiscally constrained environment of the local government sector. Furthermore, this proposal highlights the broader issue of the increasing trend towards cost shifting from State to Local Government that is being manifest in planning jurisdictions across the country. This resourcing issue could be resolved by either the State Government or the proponent of any scheme amendment being made wholly responsible for funding the work associated with any scheme amendments that would result from this proposal.

Consultation issue 3: i. Incorporating local knowledge in DAP decision making; ii. DAP framework to complement existing processes and avoid duplication of administrative processes

To allow DAP determined applications to be informed by local knowledge, should a Council continue to be:	
Options	***CoH Response***
the primary contact for applicants;	Yes
engage in pre-lodgement discussions;	
receive applications and check for validity;	
review application and request additional information if required;	
assess the application against the planning scheme requirements and make recommendations to the DAP.	

Is the current s43A (former provisions of the Act) and s40T of the Act processes for referral of a development application to the Commission, initial assessment by Council and hearing procedures suitable for being adapted and used in the proposed DAP framework?
CoH Response These applications are very rare and are not considered to be problematic. It is not clear how the introduction of a DAP framework in this context would be beneficial. Reference is made to the City's response to Issue 2, above, with the concern on the ability for the Minister to become involved in strategic planning issues.

Consultation issue 4: Resolving issues associated with requests for, and responses to, further information

Should a framework for DAP determined development applications adopt a process to review further information requests similar to the requirements of section 40A and 40V of LUPAA?
CoH Response No. This process is very rarely used and it is hard to see the benefit of having this as a DAP process rather than a TASCAT process.
Are there any changes that could be made to the Act or planning scheme to improve requests for, and responses to, additional information?
CoH Response 1. The timeframes are unclear if the application is reviewed and is considered to satisfy the request for information (RFI). Our interpretation is that we must restart the clock on the day the application has been received if it is satisfactory. However, if we have taken 8 business days to assess (as the legislation suggests that we can) then we lose that time from the assessment clock. 42 days sounds like a long time but if we take 21 days to issue an RFI and then lose 8 days assessing that information, plus preparation of the advertising process and advertising itself (14 days), we're already over the 42 days and there is insufficient time to assess the application. There is rarely enough time to get an application onto a planning authority meeting agenda within 42 days (noting there are statutory timeframes for agenda publication etc); extensions of time are routinely required to be provided by an applicant to do so, often with frustration on their part. Given this, we suggest that the wording in ss.60(4) & (5) should be replicated in s.54 to provide clarity. 2. Expand the days which are not counted to all days in which the planning authority office is closed i.e. remove the words "during normal business hours in that part of the State where the land subject to the application for a permit is situated". The City of Hobart often closes between Christmas and New Year. At a time when our staff are trying to relax and enjoy the festive season like others, they are under enormous pressure with days removed from the clock. 3. To address the confusing mix of calendar and business days throughout the *Land Use Planning and Approvals Act 1993* (LUPAA), it is proposed that all timeframes in LUPAA business days and that the term "business days" is defined to exclude any day that the planning authority office is closed. Note in particular that the statutory advertising period is extended in s.57(5AA) when the planning authority office is closed but the overall assessment clock is not extended, which only places greater

pressure on officers to carry out their assessment and does not allow for sensible breaks particularly over the Christmas period.

4. Clarify whether the 14 / 21 day clock stops if the overall assessment clock is stopped. Our current interpretation is that the RFI clock continues regardless of the overall clock being stopped.

5. Clarify the status of RFIs sent before the application becomes valid. We often send a letter which says "this application is not valid but when it becomes valid then you need to provide the following further information...". We currently treat an application as having the clock stopped at the moment it becomes valid in this circumstance, due to subsection (2) but this scenario doesn't necessarily sit well with the other subsections.

6. Clarify the status of applications which are not valid and sit with us without becoming valid. These can sit in our system for years since they are not valid applications and are not captured by the lapsing provision in s.54.

7. Clarify the circumstances in which the applicant can insist that despite the RFI not being satisfied that they would like the application assessed anyway (likely to be a refusal).

8. The lapsing subsection operates where there have been efforts to meet an RFI but those efforts are not satisfactory. Rather than a two-year limit, we suggest adding 6 months from the date that further information was provided to the planning authority. The "agreement" requirement is quite hard to track when many applications are at RFI status.

9. While restrictive timeframes may seem like a good approach, in practice this can lead to sub-optimal outcomes. For example, the restrictive timeframes can incentivise the planning authority to issue an RFI to stop the clock as soon as possible. In some cases, a planning authority might issue multiple RFIs while different referral officers do their assessments, noting that the RFI clock is understood to not stop despite the overall clock being stopped when the first RFI is issued. While this allows the planning authority time to have discussions with the applicant, feedback from applicants suggests that they would prefer to have less RFIs and more up-front discussions. The current timeframes do not allow for this constructive approach at the outset, causing frustration.

10. There is an inconsistency with the RFI process for TasWater and Tasmanian Heritage Council (THC). The THC process is clear and preferred. The TasWater process relies on the Council's ability to issue an RFI via s.54, which is unsatisfactory in the case of a mistakenly late referral to TasWater.

11. There is no RFI process for planning permit amendments in s.56. If we are not satisfied with the application, the only option is to refuse the application within the statutory time period. There should be a process replicated elsewhere in LUPAA to ask for further information and to stop the clock during the period that this information has not been provided.

Consultation issue 5: Appeal rights and assessment timeframes for DAP determined applications

Is it reasonable that decisions on DAP determined applications are not subject to TasCAT appeals where the TPC holds hearings and provides all parties the opportunity to make submissions and test evidence?
CoH Response The consideration of an application by TasCAT is completely different to the role of planning authority: • A planning application has an assessment report; an appeal has a statement of evidence which has usually been reviewed and considered by a legal team to ensure that the evidence is sufficiently detailed. • A planning application is assessed on the papers, although the City of Hobart does allow 5 minutes for a deputation from an applicant. In contrast, a planning appeal allows for detailed cross-examination of witnesses which may go for days. • A planning application is summarised in a planning report by the City of Hobart, which gives an overview of the planning scheme provisions and an assessment of the application against those provisions. An appeal allows for detailed legal submissions, with a legal lens cast over the issues in dispute. • A planning application involves consideration of all discretions under the planning scheme. An appeal will only focus on those which are in dispute. • A planning authority must consider representations; an appeal is focused on the issues raised by the parties and does not continue to take into account the views of non-parties. To suggest that a DAP would replace the ability to appeal does not reflect the significant differences between the two processes. If it is suggested that the processes for a TASCAT appeal are incorporated into a DAP decision, then the timeframes which are separately suggested are wildly insufficient and there will be substantial additional cost to prepare such applications. This will mean that developers will have to pay significant additional fees to ensure that local councils are not disadvantaged by this process. This would also mean that representors must prepare much more significant and costly submissions in support or opposing an application if appeal rights were to be removed or compromised. The City of Hobart considers that the TASCAT appeal process is highly valuable and allows an applicant to make amendments to its application which are not available in the context of the application made to the planning authority. This significant change occurred when the Supreme Court handed down the decision in October 2020: *Tomaszewski v Hobart City Council* [2020] TASSC 48. Applicants are no longer able to amend their applications, which causes frustration. This has not been addressed by the State Government. This is

the sort of issue which could be raised and resolved through a working group with representatives from the state government, local government and others. Allowing parties to appeal is a vital part of the planning process and enables the community to ensure that their concerns have been properly considered. However, the City of Hobart would support limiting third party appeal rights to only those grounds which would impact them.
Given the integrated nature of the assessment, what are reasonable timeframes for DAP determined applications?
CoH Response There are a number of issues that render the timetable proposed in the discussion paper as impractical. First, it is unrealistic to think that an application could be referred to a DAP by the planning authority within 7 days as suggested in the discussion paper. This power is unlikely to be delegated to officers and the expectation that the mechanics of Elected Members making a well-informed decision (report written / agenda completed / meeting held) could be completed in a 7-day window is in no way feasible. This is even more evident when considering the statutory timeframes for publishing agendas. Second, the proposed timetable includes an assessment report before advertising – this undermines the role that representations play in responding to an application.

Consultation issue 6: Roles of the planning authority post DAP determination of a development application

Should the planning authority remain the custodian of planning permits and be required to issue permits in accordance with a direction from a DAP?
CoH Response Yes. There is no reason to differentiate between permits issued by different bodies. Councils already issue permits in accordance with directions from TASCAT. It is important Council has a full record of all permits issued as they are relevant for consideration of building and plumbing permits.
Is it appropriate for planning permits associated with a DAP determined application to be enforced the Council?
CoH Response Yes, provided officers have input to drafting conditions to ensure they are appropriately drafted and enforceable and provided that referral bodies such as TasWater and Tasmania Heritage Council remain responsible for enforcement of their own conditions.
Is it appropriate for minor amendments (in accordance with s56 of LUPAA) to DAP determined permits to be made by the planning authority?
CoH Response Yes. S56 amendments are generally delegated to council officers in the City of Hobart. Councils have power to determine s56 amendments of TASCAT permits subject to limitations. There is no reason to differentiate between permits issued by different bodies.

State Planning Office
Tasmanian Government

29 November 2023

Dear Sir/Madam

SUBMISSION – DEVELOPMENT ASSESSMENT PLANNING FRAMEWORK

I am writing on behalf of the Taroona Community Association (TCA) to oppose the Tasmanian Government's proposal to create development assessment planning panels, increase ministerial power over the planning system and reduce the power of local government.

Fundamentally this proposal is contrary to the system of democratic governance as it removes community appeal rights and local input into our planning system via elected members of local government. This is contrary to the democratic principle of transparent and accountable government.

Listed below are the TCA's reasons for opposing Development Assessment Planning Panels.

1. Planning panels allow developers to bypass local councils and communities
State government will directly appoint planning panels that will decide on development applications not community elected local council representatives. Community and local concerns may be ignored in favour of the developers who may not be local. Also, if an assessment isn't going the developers way, they can abandon the standard local council process at any time and reapply to have a development assessed by a planning panel. This could lead to councils conceding to developer demands.

2. Large scale contentious developments that have already been rejected can be reassessed and approved. Developments that have been rejected on sound legal grounds such as the kunanyi/Mount Wellington cable car, high-rise in Hobart, Cambria Green and high-density subdivisions like Skylands at Droughty Point.

3. Removing merit-based planning appeal rights has the potential to reduce good planning outcomes and increase corruption. Removing merit-based planning appeal rights via the planning tribunal on issues like height, bulk, scale or appearance of buildings; impacts to streetscapes, and adjoining properties including loss of sunlight, privacy and overlooking; traffic, noise, smell, and other potential amenity impacts will reduce good planning outcomes that impact the varied and distinct character and inherent values of our places.

Developments will only be appealable to the Supreme Court based on a point of law or process which is often not a financially accessible option for community.

4. Increased ministerial power over the planning system increases the politicisation of planning and risk of corrupt decisions. The Planning Minister will decide if a development application meets the planning panel criteria. The Minister will be able to force the initiation of planning scheme changes, but strangely, only when a local council has rejected an application, threatening transparency, informed strategic planning and potentially leading to corruption.

5. Flawed planning panel criteria. Changing an approval process where one of the criteria is on the basis of 'perceived conflict of interest' is fraught. The Planning Minister has political bias and can use this subjective criteria to intervene on any development in favour of developers.

6. Interstate experience demonstrates planning panels favour developers and undermine democratic accountability. Local planning panels, which are often dominated by members of the development sector, were created in NSW to stamp out corruption, but councillors from across the political spectrum have been quoted as saying that they in fact favour developers and undermine democratic accountability.

7. **Why do we need to change it?** Tasmania's planning system is already one of the fastest in Australia when it comes to determining development applications. Only about 1% of council planning decisions go to appeal and Tasmania's planning system.

8. The new panel will increase complexity in an already complex planning system.

The TCA looks forward to being kept informed regarding the outcome of community consultation and the government's next steps.

Thank you for the opportunity to comment.

Yours sincerely

JILL HICKIE
SECRETARY

Taroona Community Association, 4 Devon Walk, Taroona TAS 7053 Email taroonacasecetary@gmail.com

From: Nigel Sugden <>
Sent: Wednesday, 29 November 2023 9:12 AM
To: State Planning Office Your Say
Cc:
Subject: FW: YOUR URGENT action needed pls: Say no to the Liberals planning panels

Say no to the Liberals new planning panels

I oppose the creation of planning panels and increasing ministerial power over the planning system, for the following reasons:

- **It will create an alternate planning approval pathway allowing property developers to bypass local councils and communities.** Handpicked state appointed planning panels will decide on development applications not your elected local council representatives. Local concerns will be ignored in favour of the developers who may not be from Tasmania. Also, if an assessment isn't going their way the developer can abandon the standard local council process at anytime and have a development assessed by a planning panel. This could intimidate councils into conceding to developers demands.

- **Makes it easier to approve large scale contentious developments** like the kunanyi/Mount Wellington cable car, high-rise in Hobart, Cambria Green and high-density subdivision like Skylands at Droughty Point.

- **Remove merit-based planning appeal rights** via the planning tribunal on issues like height, bulk, scale or appearance of buildings; impacts to streetscapes, and adjoining properties including privacy and overlooking; traffic, noise, smell, light and other potential amenity impacts and so much more. **Developments will only be appealable to the Supreme Court based on a point of law or process.**

- **Removing merits-based planning appeals has the potential to increase corruption and reduce good planning outcomes.** The NSW Independent Commission Against Corruption recommended the expansion of merit-based planning appeals as a deterrent to corruption.

- **Increased ministerial power over the planning system increases the politicisation of planning and risk of corrupt decisions.** The Planning Minister will decide if a development application meets the planning panel criteria. The Minister will be able to force the initiation of planning scheme changes, but perversely, only when a local council has rejected such an application, threatening transparency and strategic planning.

- **Flawed planning panel criteria**. Changing an approval process where one of the criteria is on the basis of 'perceived conflict of interest ' is fraught. The Planning Minister has political bias and can use this subjective criteria to intervene on any development in favour of developers.

- **Undermines local democracy and removes and local decision making**. State appointed hand-picked planning panels are not democratically accountable, they remove local decision making and reduce transparency and robust decision

making.

- **Mainland experience demonstrates planning panels favour developers and undermine democratic accountability.** Local planning panels, which are often dominated by members of the development sector, were created in NSW to stamp out corruption, but councillors from across the political spectrum say they favour developers and undermine democratic accountability.

- **Poor justification – there is no problem to fix.** Only about 1% of council planning decisions go to appeal and Tasmania's planning system is already among the fastest, if not the fastest, in Australia when it comes to determining development applications.

- **Increases complexity in an already complex planning system.** Why would we further increase an already complex planning system which is already making decisions quicker than any other jurisdiction in Australia?

Say yes to a healthy democracy

- **I call on you to ensure transparency, independence, accountability and public participation in decision-making within the planning system**, as they are critical for a healthy democracy. Keep decision making local with opportunities for appeal. Abandon the planning panels and instead take action to improve governance and the existing Council planning process by providing more resources to councils and enhancing community participation and planning outcomes.

- I also call on you to **prohibit property developers from making donations to political parties**, **enhance transparency and efficiency in the administration of the *Right to Information Act 2009***, and **create a strong anti-corruption watchdog**.

We need less opportunities for corruption in the management of the planning process, not more.

Sincerely
Nigel Sugden

Comments on Development Assessment Panel (DAP) Framework Position Paper

I understand that in July 2023, the Tasmanian Premier announced the development of new legislation to allow certain development applications to be determined by an independent development assessment panel (DAP) appointed by the Tasmanian Planning Commission. The preparation of a DAP framework will inform the drafting of an amendment to the *Land Use Planning and Approvals Act 1993*.

My first query is, will the proposed DAP be a panel of land use planning experts who will take into account and balance legal, social, environmental and economic factors? If not, perhaps the wording of the Amendment Bill needs to be reconsidered. Furthermore, we need to consider how members of the DAP are appointed as we need to ensure it is representative of the community (not just one tier of government) and doesn't just consist of politically appointed members. There must be specialists on the DAP. The Amendment Bill needs to specify this.

It also appears in the Government's Position Paper that development applications over a certain value will be determined by a development assessment panel rather than an elected local council. However, there is no mention of how the value of the project is to be determined and it may well often be exaggerated by proponents. I suggest how value is determined needs to be clarified in the amendment Bill.

Also of concern is the suggestion that any 'complex' planning development application may be referred to DAPs. Any proposed development application on reserved land has the potential to be deemed 'complex' as it needs to demonstrate compliance with both the *Land Use Planning and Assessment Act 1993* and the *National Parks and Reserves Management Act 2002*. Complex matters surely need to be considered by legal and other experts. There also needs to be a right of appeal, so it doesn't seem right that the proposed amendment Bill suggests such development applications are to be assessed by a DAP with no right of appeal. I would like to see the Amendment Bill amended so there is a right of appeal.

I trust you will take my comments into account.

Kind regards

Katherine Tongs

B.Sc/LLB

29/11/2023

Kingborough

Date: 27 November 2023

Our Ref: 17.53

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

email: yoursay.planning@dpac.tas.gov.au

Dear Mr Risby

PROPOSED DEVELOPMENT ASSESSMENT PANEL (DAP) FRAMEWORK

Thank you for the opportunity to make a submission in relation to the DAP Framework position paper.

At its Council meeting held on 21 November 2023, Kingborough Council considered the proposed changes to the Tasmanian Planning system to allow an alternative assessment pathway for complex and contentious applications. The commentary below reflects the content of the report tabled in the agenda (attached) and the commentary provided by the elected members during the discussion, noting that there is a range of opinions on this matter.

The need for a DAP Framework

Reflecting on the success of independent planning assessment panels in other states, and those already operating in Tasmania, it could be argued that there are both positive and negative aspects involved with a DAP framework in the Tasmanian planning context. For some Councils there may be a benefit having the option to refer complex and contentious applications to an independent body for determination as they may lack the right skills and resources to do so. However, for others that operate well within the existing system, the positive aspects associated with an independent DAP framework will be marginal.

The panels will allow independent experts in the planning field to make determinations on complex and/or controversial applications outside the authority of the Local Government on where the development will occur, however the system will likely come with additional workloads, cost increases, time delays and the risk of taking the 'local knowledge' out of the assessment and decision-making process. Without knowing how the DAP framework will operate, there is a risk that it could increase the level of complexity in the planning system (more red tape) with little benefit for applicants or the communities the elected members represent.

Having regard to the above, the need for another assessment pathway in the existing Tasmanian Planning system appears unnecessary, however if the Government's intention is to proceed with the proposed DAP framework, then perhaps the existing planning system could be retrofitted in a manner where Councils still can still play a role in representing its community, by providing recommendations to an independent assessment body for consideration for certain types of applications.

The types of development applications suitable for referral to a DAP for determination?

The position paper is seeking feedback on the criteria that should be applied to determine if an application must be referred to a DAP. The following criteria are suggested in the paper:

- *Applications for social and affordable housing which often attract considerable opposition within the local community based on social stigma rather than planning matters.*

  It is understood that there have been a few, highly publicised cases, where applications for social and affordable housing have been refused on the grounds of the social stigma around that type of housing, rather than the applicable use and development standards. The DAP framework could provide an alternate pathway to make sure that those social and affordable housing applications are assessed against the existing planning provisions and determined by an independent panel. For these types of applications, it is suggested that the standard assessment and public consultation process apply, and that the Council recommendation then be forwarded to an independent panel for final determination. It may also be appropriate for the Panel to be notified when an application is lodged with an opportunity to provide additional input at that stage prior to the issue of an information request. The process for public consultation can remain the same.

- *Critical infrastructure.*

  It is felt that the existing assessment pathway for Major Infrastructure, Linear Infrastructure Projects, and Projects of State Significance already capture critical infrastructure proposals and another assessment pathway for infrastructure projects is considered unnecessary.

- *Applications where the Council is the applicant and the decision maker.*

  In the instance of Council making decisions on their own projects or where in their opinion there is an agreement of conflict of interest, the DAP framework could be utilised for an independent decision.

- *Applications where Councillors express a conflict of interest in a matter and a quorum to make a decision cannot be reached.*

  When Councillors are, or perceived to be, conflicted or compromised, or making decisions based on non-planning related grounds then it could be dealt with under existing legislation that governs those matters. However, if the intention is to make this option available to Councils, it will be important to have a sound administrative process in place, to avoid the system being burdened with applications where Councils simply don't want to make decisions on planning related matters.

- *Contentious applications where Councillors may wish to act as elected representatives supporting the views of their constituents which might be at odds with their role as a member of a planning authority.*

  Complex and contentious applications generally seek to undertake changes to the planning scheme. Planning Scheme Amendments are already determined by the Tasmanian Planning Commission which functions as an independent assessment panel under the provisions of the LUPAA. For contentious applications that do not involve planning scheme amendments, appeal rights are also available. An additional assessment pathway for 'contentious applications' seems unnecessary.

- *Where an applicant considers there is bias, or perceived bias, on the part of a Council or Councillors;*

  Even though some jurisdictions allow applicants to 'opt in' or 'opt out' in a referral to an independent assessment panel, it is not considered appropriate as it will be inconsistent with effective and good governance practices. The criteria for types of applications that may be referred will be important to avoid the system being burdened by applications referred by applicants who simply do not like Council's position. An 'opt in' or 'opt out' process will also be very difficult to navigate and administer. For example, if an

application is lodged with a Council and halfway through the process it is referred to a DAP by an applicant, it could result in additional information requests that may result in a redesign of the development and readvertising that could also negatively impact on statutory assessment timeframes.

- *Complex applications where the Council may not have access to appropriate skills or resources.*

  There is nothing in the current planning system preventing a Council from obtaining independent advice on the merits of an application. Councils can also appoint consultants to undertake independent assessments where they may not have access to appropriate skills or resources. Notwithstanding the existing opportunity to obtain independent inputs, the DAP framework could be used in such instances, noting that it will simply shift resource constraints within Councils elsewhere.

- *Application over a certain value.*

  The New South Wales (NSW) model provides a good example where developments with a capital investment value of over $30 million, or developments with a capital investment value of over $5 million that are lodged or on behalf of a Council or the Crown, are determined independently. However, this potentially could be a double up on the Major Projects mechanism.

Retaining local input

The position paper acknowledges that one of the concerns of a DAP framework is that it relies on decisions being made by experts who do not necessarily have the local knowledge that would otherwise be available within a local council and considered and applied when determining a development application. It is suggested that the existing planning system could be retrofitted in a manner where Councils can still play a role in representing their community, by providing recommendations to an independent assessment body for consideration for certain types of applications, similar to the process for Planning Scheme Amendments and/or combined scheme amendments and development permits. The existing process for pre-lodgement discussion, lodging of applications, review of submitted reports, issuing of information requests, public exhibition and assessments can continue as per current arrangement with the only difference that the final decision be made by an independent panel, having regard to Council's recommendations. However, this may create additional workloads in the system and may also create scenarios where the panel may have to request additional information resulting in further additional reports from applicants and further time delays.

Resourcing

It is not clear at this stage who will sit on the panels. In NSW, independent experts come from a pool of qualified people who have qualifications in the fields of architecture, economics, engineering, government and public administration, heritage, law, planning, the environment, tourism, traffic and transport or urban design.

If it is the Government's intention to proceed with the DAP framework, it is recommended that the Government consider a similar model for Tasmania, and that additional funding be made available to establish these panels and to alleviate immediate pressure points in the planning system particularly in the State Planning Office and the Tasmanian Planning Commission.

Yours sincerely,

GARY ARNOLD
GENERAL MANAGER

15.1 PROPOSED INDEPENDENT PLANNING DEVELOPMENT ASSESSMENT PANELS (DAP'S)

File Number: **17.53**

Author: **Adriaan Stander, Senior Strategic Planner**

Authoriser: **Tasha Tyler-Moore, Manager Development Services**

Strategic Plan Reference

Key Priority Area:	3	Sustaining the natural environment whilst facilitating development for our future.
Strategic Outcome:	3.4	Best practice land use planning systems are in place to manage the current and future impacts of development.

1. PURPOSE

1.1 The Tasmanian Government has released a position paper on a proposal to introduce new legislation to allow independent Development Assessment Panels (DAPs) to take over some of Councils' decision-making functions on certain development applications and planning scheme amendments.

1.2 The position paper is currently open for comment and the purpose of this report is to seek Council's input on a response to the above proposal.

2. BACKGROUND

2.1 In his letter of 19 October 2023 (provided in Attachment 1) the Minister of Planning is informing Council of '*the introduction of new legislation to allow certain development applications to be determined by independent Development Assessment Panels (DAPs) appointed by the Tasmanian Planning Commission (the Commission). The introduction of DAPs is intended to help take the politics out of planning by providing an alternate approval pathway for more complex or contentious development applications.*'

2.2 The Minister's letter refers to a position paper that is currently open for comment until 30 November 2023.

2.3 The position paper includes a background outlining why the framework has been initiated; the role of planning authorities; and, a brief outline of the planning system. It then proceeds to outline of the 'identification of issues' that were extrapolated from the earlier 'Future of Local Government Review Stage 2 Interim Report'. The issues listed include:

- Conflicting roles of Councillors
- Retaining local input
- Request for further information
- Timeframes for assessment and appeal rights
- Post determination roles for Council

The final part of the paper includes an explanation of the DAP framework and indication of the next steps which includes amendments to the *Land Use Planning and Approvals Act 1993 (LUPAA)* that would be tabled in early 2024.

2.4 The position paper guides submissions by posing several questions for response, they are broadly summarised as:

- The types of development applications suitable for referral to a DAP for determination?

- Who should be allowed to nominate a referral of a development application to a DAP for determination?
- To allow DAP-determined applications to be informed by local knowledge, how will the Councils be involved?
- Given the integrated nature of the assessment, what are reasonable timeframes for DAP-determined applications?

2.5 As part of seeking feedback on a legislative framework for DAPs, the scope of the position paper has been broadened to seek feedback on whether it may be appropriate for the Minister to have the power to direct a Council to initiate planning scheme amendments where Councillors are, or perceived to be, conflicted or compromised, on making a decision based not on planning considerations.

3. PLANNING DELEGATIONS IN KINGBOROUGH

3.1 Council's Planning Authority Delegations Policy (Policy 1.1) outlines delegations under LUPAA.

3.2 In accordance with the policy, development applications with three (3) or more opposing representations or the officer's recommendation is for refusal, the application must be referred to Council (acting as the Planning Authority) for determination.

4. DISCUSSION

4.1 The use of independent planning assessment panels is common practise in other states and abroad. Although the nature of each independent assessment framework in each jurisdiction differs according to the underlying planning system and legislation, typically each model relies on meeting certain 'criteria' to be suitable for referring an application to a panel for determination with the assessment and determination functions of other development applications remaining with the local government acting as the planning authority.

4.2 Development assessment panels are already used in the determination of certain developments in the Tasmanian planning system. The table below identifies where panels are currently used to determine development applications in the State's planning system.

Legislation	Type of applications	Panel established by:
Land Use Planning and Approvals Act 1993	Major Projects	Tasmanian Planning Commission
Land Use Planning and Approvals Act 1993	Planning Scheme Amendments or combined Planning Scheme and permit applications.	Tasmanian Planning Commission or combined Planning Authority.
Major Infrastructure Development Approvals Act 1999	Linear infrastructure proposals across multiple municipalities	Tasmanian Planning Commission
State Policies and Projects Act 1993	Projects of State Significance	Tasmanian Planning Commission

4.3 The above-mentioned applications are often complex and large in scale. To be eligible to be assessed by an independent panel, applications are required to meet eligibility requirements specified in the respective Acts.

4.4 In addition to the above, the respective Acts also allows for appeal rights through the Tasmanian Civil and Administrative Tribunal which functions as an independent dispute body under the *Tasmanian Civil and Administrative Tribunal Act 2020*.

4.5 Having regard to the above, the need for another assessment pathway in the existing Tasmanian Planning system appears unnecessary. The planning system already provides several pathways to deal with more complex (and often contentious) applications. Complex applications that are not deemed Major Projects, Projects of State Significance or those that do not involve linear infrastructure across multiple municipalities, generally also seek to undertake changes to the planning scheme. Planning Scheme Amendments are determined by the Tasmanian Planning Commission which functions as an independent assessment panel under the provisions of the *Land Use Planning and Approvals Act 1993 (LUPAA).*

4.6 Reflecting on the success of independent planning assessment panels in other states, and those already operating in Tasmania, it could be argued that there are both positive and negative aspects involved with a DAP framework in the Tasmanian planning context. The panels will allow independent experts in the planning field to make determinations on complex and/or controversial applications without political influence, however the system comes with additional workloads, cost increases, time delays and have the risk of taking out the 'local knowledge' in the assessment and decision-making process. The Government's position paper indicates that the DAP will be appointed by the Tasmanian Planning Commission, however it's unclear who will be selected to sit on the panel.

4.7 If the Government's intention is to proceed with the proposed DAP framework, then perhaps the existing planning system could be retrofitted in a manner where Councils still can still play a role in representing its community, by providing recommendations to an independent assessment body for consideration. For example, development applications that qualifies to be determined by a DAP, must be assessed as per usual and then be presented to the Council for consideration. The Council must then forward their recommendation to a DAP for final decision. This approach will not be very different from the existing planning scheme amendment process, where Councils assess planning scheme amendments and then forward its recommendation to the Tasmanian Planning Commission for a final decision.

4.8 The position paper is seeking feedback on the criteria that should be applied to determine if an application must be referred to a DAP. The following criteria is suggested in the paper:

- *Applications for social and affordable housing which often attract considerable opposition within the local community based on social stigma rather than planning matters;*
- *Critical infrastructure;*
- *Applications where the Council is the applicant and the decision maker;*
- *Applications where Councillors express a conflict of interest in a matter and a quorum to make a decision cannot be reached;*
- *Contentious applications where Councillors may wish to act as elected representatives supporting the views of their constituents which might be at odds with their role as a member of a planning authority;*
- *Where an applicant considers there is bias, or perceived bias, on the part of a Council or Councillors;*
- *Complex applications where the Council may not have access to appropriate skills or resources; and*
- *Application over a certain value.*

4.9 From an operational point of view, it is suggested that that the Government have regard to NSW model as good example where developments with a capital investment value of over $30 million or developments with a capital investment value over $5 million that is lodged or on behalf of a Council or the Crown are determined independently.

4.10 Even though some jurisdictions allow applicants to 'opt in' or 'opt out' in a referral to an independent assessment panel, it is not considered appropriate as it will not only go against the grain of effective and good governance but will also procedurally be very difficult to navigate and administer.

4.11 The criteria for types of applications that may be referred will be important to avoid the system being burdened by applications referred by applicants who simply do not like Council's position.

4.12 Where Councillors are, or perceived to be, conflicted or compromised, or making decisions based on non-planning related grounds this should be dealt with under existing legislation that governs those matters for elected members.

4.13 In the instance of Council making decisions on their own projects or where in their opinion there is an agreement of conflict of interest the DAP framework could be utilised for an independent decision.

5. STATUTORY REQUIREMENTS

5.1 If the proposed DAP framework proceeds, it is likely to require amendments to the *Land Use Planning and Approvals Act 1993 (LUPAA).*

6. FINANCE

6.1 There are no financial implications associated with this report and recommendation.

7. ENVIRONMENT

7.1 There are no environmental implications associated with this report and recommendation.

8. COMMUNICATION AND CONSULTATION

8.1 The position paper is currently open for comment until 30 November 2023 and anyone can make a submission on the Government's Planning Reform Website.

8.2 The decision of this report will be communicated by way of a letter to the State Planning Office.

9. RISK

9.1 There are no risks associated with this report and the recommendation.

10. SUMMARY/CONCLUSION

10.1 The Tasmanian Government has released a position paper on a proposal to introduce new legislation to allow independent Development Assessment Panels (DAPs) to take over some of Councils' decision-making functions on certain development applications. The main intention of the proposed change is to *'take politics out of planning'*.

10.2 There are positive and negative aspects associated with independent assessment and decision-making panels in a planning system.

10.3 The Tasmanian Planning system already provides independent assessment pathways to deal with complex applications and it's not clear why another assessment layer should be added to a system that is already constrained in terms of resources. It is

suggested that the introduction of the proposed DAP framework will be expensive and could potentially lead to unnecessary extensions in processing timeframes.

10.4 If the Government intends to proceed with the DAP framework, it is suggested that the existing planning assessment system be utilised and retrofitted to deal with complex and/or contentious applications, allowing Council with the ability to make recommendations to an independent planning panel.

10.5 The statutory process for public engagement and input on development proposals, should be retained.

11. RECOMMENDATION

That Council

(a) Note the Government's intention to introduce new legislation to allow independent Development Assessment Panels (DAPs) to take over some of Councils' decision-making functions on certain development applications.

(b) Provide the General Manager with delegation to respond to the position paper as outlined in this report.

ATTACHMENTS

1. Letter from Minister of Planning seeking feedback on DAP framework

28th of November 2023

State Planning Office
Department of Premier and Cabinet
GPO Box 12. Hobart TAS 7001
Email: yoursay.planning@dpac.tas.gov.au

Feedback - Draft Land Use Planning and Approvals (Development Assessment Panel) Amendment Bill 2024

Dear State Planning Office team,

Would you be against protecting our democracy and good governance?

So far what you've told us is that our local government model doesn't work because planning authorities are democratically elected by local ratepayers who respond only to local ratepayers and that this gets in the way of complex or contentious development applications. And, as a result, you feel that those development applications could be doing so much better if we, as a state, had a duplicated authority called *Development Assessment Panel* for these to be assessed.

If it wouldn't be too out there, would you humour me with a thought experiment?

Imagine establishing an unelected body under the federal government that could approve legislation that overlaps with the Tasmanian State Government's areas of authority. That way if a proponent of a law did not get satisfaction at the state level, they could go to this body and have it imposed by people who had no connection to Tasmania and were completely unaccountable to Tasmanians. To make it even better, the Tasmanian government could not appeal those decisions except to the supreme court, and they would not get any other federal funding to manage the impacts of those decisions. This is what is being proposed in the form of a *Development Assessment Panel*, except its being done to the councils by the state government.

And again, it's probably going to be tough to swallow, and I'm just going to sound like another person that's making demands… but democracy and good governance is at stake, so here it goes…

Are you against protecting our democracy and good governance by stopping the *Development Assessment Panel* from circumventing it?

Thanks for reading this letter.

Wishing you a good day.

The very best regards,

Marisol Miró Quesada Le Roux
Building Designer, Sorell Councillor (This letter does not represent the views of the council)

If you have any further questions regarding this matter, please do not hesitate to contact me.

From:
Sent: Wednesday, 29 November 2023 8:02 AM
To: State Planning Office Your Say
Subject: Submission against Development Assessment Panels

I oppose the introduction of Development Assessment Panels because:
* they will add further complication to the existing system
* they reduce the democratic rights of the community.

Issue 1 Types of Development applications
* Critical infrastructure does not need a new panel because Major Projects Legislation or Projects of State Significance already provide an avenue for approval.
* Perceived bias exists at all levels of the planning system. DAPs will only increase community perceptions of bias favouring developers in the planning scheme.
* State Governments through the planning scheme limit or encourage certain types of development and the public perception is that a DAP is only to provide another mechanism to remove the local authority.
* Councils can share skills and resources in the planning area to ensure access to deal with complex issues.

Issue 2 An enhanced role for the Minister
* The Minister should not be given an enhanced role. Sufficient authority exists in current legislation.

Issue 3 Retaining local input
* Council should be the primary contact for applicants and its role should not be diminished.
* Consultation on any proposal should occur at the beginning of the process. The current system of Council being the Planning Authority provides for this.
* This proposal reduces democratic rights for no perceived public good.

Issue 4 Resolving issues associated with requests for, and responses to, further information
* Requests for further information will occur where the developer does not submit the relevant supporting documents with their application. The cable car proposals for Mt Wellington was a perfect example of failure to provide satisfaction of the requirements of the planning scheme in the original proposal. This led to continual requests and responses.
* Annecdotal evidence is never reliable data. Mention of it in this document is an example of bias being allowed to intrude on the planning scheme. Collect reliable evidence-based data before you implement DAPs and get community approval

Issue 5 Appeal rights and assessment time frames.
* Special pathways are not faster, cheaper, simpler or FAIRER.
* Applications that require approval under discretionary provisions rather than acceptable solutions and performance criteria will always take longer to assess
* Public right of consultation and comment must be guaranteed.
* All structures are permanent features on the landscape and within the community so should be assessed under existing systems with local input at all stages.

Issue 6 Roles of the planning authority after DAP determination
* The expectation that the DAP will ‘engage extensively with the planning authority’ provides no

simplification to the process or reduction of Council work loads but simply adds more red tape and cost.

It is not the planning system which is stopping development currently it is a lack of qualified workers and shortage of materials. Within Hobart there are a number of developments approved and awaiting construction.

Your name: David and Jane Jupe
Your email:

My additional comments::

From:	maloney
Sent:	Wednesday, 29 November 2023 5:14 AM
To:	State Planning Office Your Say
Cc:	roger.jaensch@parliament.tas.gov.au; jeremy.rockliff@parliament.tas.gov.au; jo.palmer@parliament.tas.gov.au; rob.valentine@parliament.tas.gov.au
Subject:	Protect our local democracy - say no to the Liberals new planning panels

I opppose the creation of planning panels and increasing ministerial power over the planning system, for the following reasons:

- **It will create an alternate planning approval pathway allowing property developers to bypass local councils and communities.** Handpicked state appointed planning panels will decide on development applications not your elected local council representatives. Local concerns will be ignored in favour of the developers who may not be from Tasmania. Also, if an assessment isn't going their way the developer can abandon the standard local council process at anytime and have a development assessed by a planning panel. This could intimidate councils into conceding to developers demands.
- **Makes it easier to approve large scale contentious developments** like the kunanyi/Mount Wellington cable car, high-rise in Hobart, Cambria Green and high-density subdivision like Skylands at Droughty Point.
- **Remove merit-based planning appeal rights** via the planning tribunal on issues like height, bulk, scale or appearance of buildings; impacts to streetscapes, and adjoining properties including privacy and overlooking; traffic, noise, smell, light and other potential amenity impacts and so much more. **Developments will only be appealable to the Supreme Court based on a point of law or process.**
- **Removing merits-based planning appeals has the potential to increase corruption and reduce good planning outcomes.** The NSW Independent Commission Against Corruption recommended the expansion of merit-based planning appeals as a deterrent to corruption.
- **Increased ministerial power over the planning system increases the politicisation of planning and risk of corrupt decisions.** The Planning Minister will decide if a development application meets the planning panel criteria. The Minister will be able to force the initiation of planning scheme changes, but perversely, only when a local council has rejected such an application, threatening transparency and strategic planning.
- **Flawed planning panel criteria.** Changing an approval process where one of the criteria is on the basis of 'perceived conflict of interest ' is fraught. The Planning Minister has political bias and can use this subjective criteria to intervene on any development in favour of developers.

- **Undermines local democracy and removes and local decision making.** State appointed hand-picked planning panels are not democratically accountable, they remove local decision making and reduce transparency and robust decision making.
- **Mainland experience demonstrates planning panels favour developers and undermine democratic accountability.** Local planning panels, which are often dominated by members of the development sector, were created in NSW to stamp out corruption, but councillors from across the political spectrum say they favour developers and undermine democratic accountability.
- **Poor justification – there is no problem to fix.** Only about 1% of council planning decisions go to appeal and Tasmania's planning system is already among the fastest, if not the fastest, in Australia when it comes to determining development applications.
- **Increases complexity in an already complex planning system.** Why would we further increase an already complex planning system which is already making decisions quicker than any other jurisdiction in Australia?

Say yes to a healthy democracy

- **I call on you to ensure transparency, independence, accountability and public participation in decision-making within the planning system**, as they are critical for a healthy democracy. Keep decision making local with opportunities for appeal. Abandon the planning panels and instead take action to improve governance and the existing Council planning process by providing more resources to councils and enhancing community participation and planning outcomes.
- I also call on you to **prohibit property developers from making donations** to political parties, **enhance transparency and efficiency in the administration of the *Right to Information Act 2009***, and **create a strong anti-corruption watchdog**.

The Position Paper on a proposed Development Assessment Panel (DAP) Framework public comment has been invited between the 19 October and 30 November 2023.

The submissions received on the Position Paper will inform a draft Bill which will be released for public comment most likely in January 2024, for a minimum of five weeks, before being tabled in Parliament in early 2024.

The proposed Bill name is *Draft Land Use Planning and Approvals (Development Assessment Panel) Amendment Bill 2024*.

Feel free to also write why this is important to you….

Youse sincerely,

Nick Maloney

Australia ICOMOS Secretariat
Faculty of Arts & Education
Deakin University
221 Burwood Highway
Burwood VIC 3125
ph: +61 3 9251 7131
e: austicomos@deakin.edu.au
w: www.icomos.org/australia

29 November 2023

Honourable Michael Ferguson MP
Deputy Premier and Minister for Planning
Level 10, Executive Building
15 Murray Street
Hobart Tasmania 7000

Dear Deputy Premier

Draft Land Use Planning and Approvals (Development Assessment Panel) Amendment Bill 2024

Australia ICOMOS is grateful for the opportunity to provide a submission to the *Draft Land Use Planning and Approvals (Development Assessment Panel) Framework*, and respond to the Position Paper released by the Department of Premier and Cabinet in October 2023.

ICOMOS – the International Council on Monuments and Sites – is a non-government professional organisation that promotes expertise in the conservation of cultural heritage. ICOMOS is also an official Advisory Body to the World Heritage Committee under the World Heritage Convention. Australia ICOMOS, formed in 1976, is one of over 100 national committees throughout the world. Australia ICOMOS has over 750 members in a range of heritage professions. We have expert members on a large number of ICOMOS International Scientific Committees, as well as on expert committees and boards in Australia, which provides us with an exceptional opportunity to see best-practice within Australia and internationally.

Australia ICOMOS has a particular interest in the broader development of policies and processes that have the potential to either enhance or prejudice a best practice approach to the conservation and management of Australia's cultural heritage places. We are also committed to the application of the principles of *The Burra Charter: The Australia ICOMOS Charter for Places of Cultural Significance 2013*, the nationally recognized guideline for achieving appropriate heritage outcomes, which is also acknowledged internationally.

Australia ICOMOS understands that this Position Paper sets out the Government's intention to develop a Development Assessment Panel framework for the purpose of assessing development applications where:

- there is a perceived or clear conflict of interest of elected Councillors;
- there can be tension between a Councillor's role as a community advocate and as a member of a statutory planning authority, such as in the case of applications for new social and affordable housing;
- applications for critical infrastructure;
- other complex applications; and
- applications over a high value.

Australia ICOMOS acknowledges the provision within the *Land Use Planning and Approvals Act 1993* (LUPAA 1993) for the Tasmanian Planning Commission to appoint a person to be a member of the Panel in relation to a major project if the Commission is of the opinion that the scale, specialist nature or complexity of the major project makes it desirable to appoint a person with particular qualifications or experience that the Commission thinks appropriate to assist in the assessment of the project. As such, Australia ICOMOS strongly recommends that Development Assessment Panels include representatives with high-level heritage expertise. This extends to having heritage expertise in a discipline relevant to the project whether that be in environmental heritage, architectural design,

archaeology, cultural landscapes, industrial heritage etc. The inclusion of heritage expertise on Development Assessment Panels will benefit assessments by ensuring that heritage impacts and issues are given appropriate consideration.

The use of heritage expertise on Development Assessment Panels should extend to existing Panels used for the assessments identified in Table 1 of the Position Paper.

Australia ICOMOS is committed to the best practice conservation and management of our heritage places and looks forward to the opportunity to provide comment on draft legislation to implement the Government's Position Paper.

Yours sincerely

Professor Tracy Ireland M.ICOMOS FSA
President

From: Mark Lawrene
Sent: Wednesday, 29 November 2023 10:37 PM
To: State Planning Office Your Say
Subject: planning

Having recently been involved with several significant local planning issues and finding that assistance from both state and federal protection agencies was totally inadequate due to continued reduction in their budgets and emasculation of their powers , I would be horrified if these crucial planning decisions were left to anyone but a local council with the local knowledge that they share with the local population .
Otherwise planning decisions are only decided when the money runs out as exemplified by the ongoing saga with chairlifts on Mt. Wellington ,
private camping opportunities in national parks and the Cambria development , to name a few.
Many councils are already cash strapped and placed in situations of prioritising decisions , surely when discretionary use is practiced it should be at the discretion of the council not the developer
Pushing these developments are tax deductible for companies but just relentless punishment for anyone standing against it.
Apologies for the brevity of my submission but I am totally against the removal of planning powers from councils and allowing a remote , non invested , unelected and potentially politically motivated commission making decision for me
The value of our state is more than “jobs and Growth” its preserving the elements that bring in the tourist dollars
The Goose needs protection or we will run out of golden eggs , so does our state
With Thanks Mark Lawrence

From:
Sent: Wednesday, 29 November 2023 10:21 PM
To: State Planning Office Your Say
Subject: Submission against Development Assessment Panels

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* they will add further complication to the existing system
* they reduce the democratic rights of the community.

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Issue 6 Roles of the planning authority after DAP determination
* The expectation that the DAP will ‘engage extensively with the planning authority’ provides no

simplification to the process or reduction of Council work loads but simply adds more red tape and cost.

It is not the planning system which is stopping development currently it is a lack of qualified workers and shortage of materials. Within Hobart there are a number of developments approved and awaiting construction.

Your name:	Thomas E Chapman
Your email:	
My additional comments::	It seems all these proposals are simply a way to obviate Council Agreed issues. TE Chapman

From:	Ian Cooper <> Wednesday, 29 November 2023
Sent:	10:05 PM
To:	State Planning Office Your Say
Subject:	Opposition to Proposed Planning Changes

I oppose the creation of planning panels and increasing ministerial power over the planning system, for the following reasons:

• It will create an alternate planning approval pathway allowing property developers to bypass local councils and communities. Handpicked state appointed planning panels will decide on development applications not your elected local council representatives. Local concerns will be ignored in favour of the developers who may not be from Tasmania. Also, if an assessment isn't going their way the developer can abandon the standard local council process at anytime and have a development assessed by a planning panel. This could intimidate councils into conceding to developers demands.

• Makes it easier to approve large scale contentious developments like the kunanyi/Mount Wellington cable car, high-rise in Hobart, Cambria Green and high-density subdivision like Skylands at Droughty Point.

• Remove merit-based planning appeal rights via the planning tribunal on issues like height, bulk, scale or appearance of buildings; impacts to streetscapes, and adjoining properties including privacy and overlooking; traffic, noise, smell, light and other potential amenity impacts and so much more. Developments will only be appealable to the Supreme Court based on a point of law or process.

• Removing merits-based planning appeals has the potential to increase corruption and reduce good planning outcomes. The NSW Independent Commission Against Corruption recommended the expansion of merit-based planning appeals as a deterrent to corruption.

• Increased ministerial power over the planning system increases the politicisation of planning and risk of corrupt decisions. The Planning Minister will decide if a development application meets the planning panel criteria. The Minister will be able to force the initiation of planning scheme changes, but perversely, only when a local council has rejected such an application, threatening transparency and strategic planning.

• Flawed planning panel criteria. Changing an approval process where one of the criteria is on the basis of 'perceived conflict of interest ' is fraught. The Planning Minister has political bias and can use this subjective criteria to intervene on any development in favour of developers.

• Undermines local democracy and removes and local decision making. State appointed hand-picked planning panels are not democratically accountable, they remove local decision making and reduce transparency and robust decision making.

• Mainland experience demonstrates planning panels favour developers and undermine democratic accountability. Local planning panels, which are often dominated by members of the development sector, were created in NSW to stamp out corruption, but councillors from across the political spectrum say they favour developers and undermine democratic accountability.

• Poor justification – there is no problem to fix. Only about 1% of council planning decisions go to appeal and Tasmania's planning system is already among the fastest, if not the fastest, in Australia when it comes to determining development applications.

- Increases complexity in an already complex planning system. Why would we further increase an already complex planning system which is already making decisions quicker than any other jurisdiction in Australia?

Say yes to a healthy democracy

- I call on you to ensure transparency, independence, accountability and public participation in decision-making within the planning system, as they are critical for a healthy democracy. Keep decision making local with opportunities for appeal. Abandon the planning panels and instead take action to improve governance and the existing Council planning process by providing more resources to councils and enhancing community participation and planning outcomes.

- I also call on you to prohibit property developers from making donations to political parties, enhance transparency and efficiency in the administration of the Right to Information Act 2009, and create a strong anti-corruption watchdog.

Thank You
Ian Cooper

From: Joe Erftemeyer <>
Sent: Wednesday, 29 November 2023 10:00 PM
To: State Planning Office Your Say
Cc:
Subject: I do not support increasing ministerial planning power

I oppose the creation of planning panels and increasing ministerial power over the planning system, for the following reasons:

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- **Makes it easier to approve large scale contentious developments** like the kunanyi/Mount Wellington cable car, high-rise in Hobart, Cambria Green and high-density subdivision like Skylands at Droughty Point.
- **Remove merit-based planning appeal rights** via the planning tribunal on issues like height, bulk, scale or appearance of buildings; impacts to streetscapes, and adjoining properties including privacy and overlooking; traffic, noise, smell, light and other potential amenity impacts and so much more. **Developments will only be appealable to the Supreme Court based on a point of law or process.**
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- **Flawed planning panel criteria.** Changing an approval process where one of the criteria is on the basis of 'perceived conflict of interest ' is fraught. The Planning Minister has political bias and can use this subjective criteria to intervene on any development in favour of developers.
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- I also call on you to **prohibit property developers from making donations** to political parties, **enhance transparency and efficiency in the administration of the *Right to Information Act 2009***, and **create a strong anti-corruption watchdog**.

Thank you

Joe Erftemeyer