Development Assessment Panel Framework Position Paper

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From: Robin Thomas
Sent: Thursday, 30 November 2023 5:13 PM State
To: Planning Office Your Say
Subject: Protect our local democracy

I am very much against any creation of 'planning assessment panels', and any increase of ministerial powers in our planning processes for these following reasons.

The existing system is dependent on cumulative, respective important knowledge and choices of Local Councils,who exist in turn as representatives, democratically elected, of their council area's population. Thus this system works best for the people who intimately know their area, their own needs and desires. These may well not be anything to do with criteria such as money, and can in many cases be to do with protection from the destructive possibilities caused by such a criterion. We are wise as we have to live where we do, and are knowledgeable from generations, and not silly.
So as opposed to our current Premier claiming local councils may be politically biased, the opposite has been proven, time and again, with various proposed developments. In fact, the fact that membership of proposed 'planning assessment panels' would be influenced by the State government, and the minister of the day, suggests the complete opposite, and would obviously invite corruption.

Tasmania is so beautiful, physically and with its townships' idiosyncratic charms and 'vibes', overseas and Mainland 'Big Money' would of course want development power for all sorts of projects, however many of them would be absolutely ruinous to all sorts of spirit and physical environment positives that currently exist, and ironically upon which our whole economy substantially depends. And all this depends on a planning system of real grassroots democracy.
Speaking of which, with Tasmania's existing planning system being the most efficient, and fastest, of those of all the Australian States', why on earth would we risk changing it? [Aswell one notices LGAT feels the same.]

Proposed new ministerial powers sound extremely alarming and totally undemocratic, in fact supremely ***autocratic,*** in that, in the case of a developer being unhappy with a council's development application process, a minister can assume take-over! This sounds like a sort of definition of corruption.

Proposed lack of communities' rights to appeal is also dangerous. Proposed removal of merit-based planning appeal rights, only being able through the Supreme Court on a law or process point, definitely is against the basic criterion of EQUITY I've read claimed in your government info packs (ie, appeals dependent on an individual's or a council's available funds).
Aswell, NSW's ICAC recommends merit-based planning appeals as a corruption deterrent).

A very basic and obvious anti-corruption action for our government to make as soon as possible, is to stop any donations by property developers to political parties or politicians, by law, and to strengthen transparency with the 2009 Right to Information Act, and to create a strong anti-corruption watchdog, all this to obviate current and future degradations of our very beautiful and treasured island, and with it our economy.

Mrs Robin Thomas,

SORELL COUNCIL

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29 November 2023

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SUBMISSION ON DEVELOPMENT ASSESSMENT PANEL POSITION PAPER

Thank you for providing the opportunity to comment on the above position paper.

Our submission provides some initial comments before turning to the specific questions outlined in the paper.

The Sorell Planning Authority (SPA) considered the paper at its meeting of 14 November 2023. The submission below is broadly supportive of a wider use of Development Assessment Panels (DAPs) in the planning system. It should, however, be noted that Councillors had a range of views on the merit of DAPs, and we expect this range to be reflective across our community. As the position paper considered DAPs in a general sense, Council would hope that further consultation on a detailed framework occur prior to drafting an amendment to the *Land Use Planning and Approvals Act 1993*.

The position paper omitted a number of matters that we consider critical to how DAPs would operate. For instance:

- will a DAP be part of the TPC, TASCAT, agency or independent statutory authority and what are the strengths and weaknesses of different options;
- where will the planning resources come from given the shortage of qualified and experienced planners;
- how much may the DAP system cost and how many assessments are likely for the referral scenarios discussed;
- whether Councils in fact do lack the resources to assess complex or large developments given the ability to supplement existing resources with consultants, experts and advice from agencies;
- should existing LUPAA referral provisions be broadened and strengthened to improve the quality and efficiency of decision-making generally and ensure that the State's interests are reflected irrespective of the authority making the decision;
- whether complex proposals requiring ongoing compliance should, in all cases, be subject to a licence fee, similar to scheduled premises regulated by the Environment Protection Agency (EPA);
- what viable fee structures, such as a cost recovery model similar to the EPA, could be used, particularly if DAPs rely heavily of existing Council resources as appears to be intended.

Consultation Issue 1 - The type of application suitable for referral to a DAP, including who should be able to refer and when.

Referral of a project to a DAP should only be for prescribed circumstances or be called-in by the Minister. This call-in could be either by the Minister directly or in response to a call-in request from the applicant or Council.

The prescribed circumstances should be limited and reflected by scale of development and scale of Council and could be also negotiated with each Council as can occur in other States. However, there is no straightforward approach to scale. Some high dollar value projects, such as the $20 million redevelopment of Sorell school, are quite simple to assess. Conversely, an innovative dairy operation proposed in Sorell, and not seen elsewhere in Tasmania, will be challenging to regulate without sub-optimal outcomes.

A prescribed circumstance should include potential conflicts between a Council as regulator and developer. Recent developments at Kangaroo Bay, Rosny Hill or the former Kingston High School site are considered examples of where a DAP should be used. It is also not practical for any and all applications made by Councils to be considered by a DAP. For a Council the size of Sorell a suitable threshold for a DAP assessment could be:

- where a Council is the applicant, owner or lease holder, and
- if the application is discretionary, and
- the design and construction value is greater than $100,000.

We also submit that applications where State agencies are the applicant, owner or lease holder should be referred to a DAP in appropriate circumstances.

Call-in provisions may be appropriate to provide flexibility for circumstances that cannot be readily anticipated and prescribed. Yet, with only a limited 42 day statutory timeframe it may be challenging to include this aspect in LUPAA. One option could be that a call-in request is made by the applicant prior to lodgement or by Councils within 7 days of lodgement. If a Council makes a call-in request the assessment clock should stop while awaiting the Minister's decision.

There are robust meeting procedures and judicial review processes in place to deal with perceived or actual conflict of interests with individual Councillors and this does not require any new mechanism. In the unlikely scenario that a quorum does not exist due to perceived or actual conflict of interest, the application could be determined by a DAP, rather than TASCAT, and this circumstance could be prescribed.

A situation in which an applicant considers that there is a bias on the part of Council or Councillors may arise but are very difficult to demonstrate or for that to become clear at an initial stage of a planning application. This does not appear to be a reasonable basis for referral to a DAP and does not appear to be a criteria in other jurisdictions.

Consultation Issue 2 - the ability for the Minister to direct a Council to initiate a planning scheme amendment

The existing certification process should be reviewed so that a Council does not have to certify an amendment as being consistent with the Schedule 1 objectives without first asking the community for input (which is the current circumstance).

A TASCAT review of an initiation refusal could be an alternative to Ministerial intervention. Broadly, however, the Tasmanian system should align with other Australian states and provide greater Ministerial powers.

Consultation Issue 3 - Integration with existing processes and incorporation of local knowledge

The use of existing Council administrative functions in a DAP framework requires careful consideration if the community is to fully understand respective roles and responsibilities. Moreover, the framework must enable the direct costs to Council to be recouped both at the assessment stage and for ongoing compliance functions.

Consultation Issue 4 - Additional information requests

It is not accepted that additional information processes are misused to delay projects.

The planning system has evolved from a conceptual approval process to a final approval process whereby the application requirements and level of detail are much higher. This change has positives and consequences and is often misunderstood. There may well be a need to review whether the application requirements at the planning stage are too high, however, whether or not the DAP framework enables review of additional information requests is inconsequential.

Consultation Issue 5 - appeal rights and assessment timeframes

No comment.

Consultation Issue 6 - role of local planning authority post approval.

The cost of permit compliance can be significant and communities should not have to pay through their rates for the cost of compliance of permits that the Council did not issue. The costs of permit compliance should be met by the developer through one-off or annual fees.

Thank you for providing Council with the opportunity to comment on this matter.

If you have any further queries regarding this letter please do not hesitate to contact Shane Wells, Manager Planning.

Yours sincerely,

ROBERT HIGGINS
GENERAL MANAGER

From: Gill Gravell <>
Sent: Thursday, 30 November 2023 5:03 PM
To: State Planning Office Your Say
Subject: Draft Land Use Planning and Approvals (Development Assessment Panel) Amendment Bill 2024

I oppose a proposed Development Assessment Panel and increased ministerial power for the following reasons:

- It would allow property developers to bypass local councils and communities. Local concerns could be ignored in favour of developers, who could be foreign owned.
- It will remove merit based planning appeal rights via the planning tribunal, which could potentially increase the risk of corruption and reduce good planning options.
- The Planning Minister will have the power, if a local council has rejected an application, to force the initiation of planning scheme changes, threatening transparency and good strategic planning. Increased ministerial power over the planning system increases the politicisation of planning and risk of corrupt decisions.
- Where is the justification? Only about 1% of council planning decisions go to appeal and Tasmania's planning system is already among the fastest in Australia when it comes to determining development applications. The Panel would also add more complexity to the existing planning system.

For a healthy democracy, please ensure that transparency, independence, accountability and public participation in decision-making within the planning system remain. I also call on you to prohibit property developers from making donations to political parties and to create a strong anti-corruption watchdog.

Yours sincerely

Gillisan Gravell

From: Vicki Campbell <>
Sent: Thursday, 30 November 2023 4:59 PM
To: State Planning Office Your Say
Cc:
Subject: Proposed DAP Framework

I have very serious concerns over the proposal to create Development Assessment Panels (DAPs).

Local governments, elected by local people, and in touch with local issues, are best placed to make planning decisions. It is important to note that councillors act on the advice of qualified planners, rather than on their own whims.

Providing developers with the means to bypass standard process is not appropriate.

Increasing the powers of the Planning Minister only increases politicisation of the planning process, and increases the risk of corruption. It would increase the risk of politicians being influenced by developers.

Removal of merit-based planning appeal rights further increases the risk of corruption. In addition, this would be a threat to democracy. Public participation is important!

We need a planning system based on transparency, accountability and public participation.
I doubt the true independence of a DAP chosen by government.

Thank you for the opportunity to comment.

Vicki Campbell

From: Helen Tait
Sent: Thursday, 30 November 2023 4:59 PM
To: State Planning Office Your Say
Cc:
Subject: Land Use Planning and Approvals (Development Assessment Panel) Amendment Bill 2024

PMAT (Planning Matters Alliance Tasmania) is the body on the ground which has the ability and the language to voice my concerns about planning policy, legislation and administration in Tasmania. My concerns are registered in the PMAT submission which I endorse.
PMAT represents some 75 groups with local and broad scale community interest in Planning Matters.

Please register my heart felt concern about;

Not fast tracking contentious planning proposals
Keeping planning decisions and challenge at local council level
Diminishing the ability to locally reject, on discretion, contentious planning decisions
Loosing the power to retain local character by applying generalised State Wide planning provisions
Removing merits-based planning appeals that has the potential to subvert good planning outcomes both locally and State wide

DEVELOPMENT ASSESSMENT PANELS

SUBMISSION FROM ANN MCCUAIG
Member of ROSNY HILL FRIENDS NETWORK

I strongly object to the proposed creation of Development Application Panels (DAPs) and increasing Ministerial powers over the planning system for the following reasons:

1. Poor justification

The Position Paper acknowledges that the proposal is based on 'a perception' that exists, '**despite statistical evidence**…that some Councils are less supportive of new development than others'.

My experience is the reverse, that Councils tend to favour development, regardless of the merits of a proposed development or genuine community concerns.

It has been made clear through a number of statements from the Liberal government, that the purpose of creating DAPs is to remove blockages in the current system and somehow that this will 'depoliticise' the planning permit process.

I do not accept that there is a reasonable justification for making the proposed changes.

- I note that the 'perception' of bias is not supported by statistical evidence.
- I observe that many Councillors are elected as independents and therefore have no particular political agenda to adhere to.
- Councillors are required to represent their community and make decisions where there are conflicting points of view all the time (as are all elected representatives, including government Ministers). I do not see that assessing development permits is any different in principle from other controversial issues that come before Council.
  In practice, it is acknowledged that developers need to recoup the large costs incurred in preparing plans, and that delays in decision-making, or the costs incurred in responding to an Appeal are unwelcome.
- I note that only about 1% of Council planning decisions are taken to Appeal.

2. Easier pathway for developers

The apparent intention behind the proposed changes is to remove blockages for the benefit of developers, and it is also clear that the DAPs could be used by developers to sidestep other assessment processes.

I do not accept that this is a desirable outcome that will lead to long-term benefit for the community, which should surely be the purpose of the Tasmanian planning system.

- I understand and accept that large development proposals are costly to prepare and that developers need to recover those costs in a timely manner. However, I maintain that all developers should be prepared to explain, justify, and withstand challenges to their proposals in the community where they propose to develop, and where the long-term impacts of their work will live on, long after they have moved to another project.
- I understand that developers behind proposals such as the kunanyi-Mt Wellington cable car, Cambria Green, Kangaroo Bay, or Skylands, feel frustration at what they label as negativity in the community. However, in all cases their proposals have been challenged on planning compliance issues, not political bias. Allowing an alternative 'easier pathway' for

assessment, on the other hand, seems to create every opportunity for political interference and bias.

- I believe that the enthusiasm already shown by some developers for these changes is ample evidence that easing the pathway for them will be at the expense of community concerns.
- ***In our Appeal against the proponents for the Tourist development on Rosny Hill our evidence showed that the developer's surveys were incomplete and inaccurate to some degree. As a result of our Appeal, changes were made to the plans to offer better protection to endangered plant species that would otherwise have suffered major impact. This demonstrates that there is a legitimate purpose behind the existing Appeal process when local knowledge and commitment can usefully challenge the preparatory survey work undertaken by developers.***

3. Undermines democratic processes

I strongly believe our current system of democratic elections and representative and accountable decision-making should be upheld.

- Easing the path for developers as proposed will lead to a situation in which local communities will have little information, little opportunity to raise concerns or ask questions, and no opportunity to Appeal.
- DAPs appointed by the Tasmanian government will not be accountable to their electors in the same way that Councillors are.
- I consider that Councillors can have an important role in acting as a conduit for information between developer and the community by asking questions and reviewing responses on behalf of community members, who even under the present system are rarely able to have direct access to the developer or their team members.
- I consider that the concept of 'independent planners' is flawed. ***In our experience of the Appeal against the tourist development on Rosny Hill, it was extremely difficult to find a planner in Tasmania who could honestly claim to be independent. Nearly all have worked for, or hope to work in the future, for government bodies or major developers and are therefore could be compromised if giving an opinion that might be considered unfavourable to the proponent/s.***
- I understand that interstate experience in NSW has shown convincingly that DAPs are often subject to intense lobbying from developers, leading to some instances of corruption and political interference.

IN CONCLUSION

I want to ensure that Tasmanians can rely on transparency, accountability, independence, accountability and public participation in all aspects of the planning assessment and decision-making system.

I maintain that DAPs will not deliver this outcome. If reform is undertaken it should more properly be to strengthen the resources available to local Councils to enable them to undertake their role as a Planning Authority with confidence and responsibility.

From:
Sent: Thursday, 30 November 2023 4:53 PM
To: State Planning Office Your Say
Subject: DEMOCRACY IS UNDER ATTACK - NO TO THE NEW PLANNING PANEL

To whom it may concern,

I absolutely reject the formation of Planning Panels. The Liberal Government, of all people, the leaders in our community, should believe in and act in a democratic and honest manner, which free of corrupting influences. I strongly oppose the formation of planning panels and the increased ministerial power over the planning system for the following reasons:

1. 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.

2. It Makes it easier to approve large scale contentious developments.

3. It will remove 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.

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 perversely, only when a local council has rejected such an application, threatening transparency and strategic planning.

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

6. 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.

7. 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.

8. 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.

9. 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?

Democracy is a concept we can take for granted. This proposal will completely undermine democracy.

Yours faithfully,
Ian Johnnson

Submission on Development Assessment Panel (DAP) Framework Position Paper

30 November 2023

Neil I Smith, Deloraine, Tasmania

I have several concerns with the proposal to have many development applications determined by a DAP appointed by the Tasmanian Planning Commission, rather than by an elected municipal council acting as a planning authority.

Firstly, although the DAP is formally appointed by the Planning Commission, there is virtually unlimited scope for its members to be in fact those preferred by the State Government of the time – hence the stated aim of "taking politics out of planning" could have entirely the opposite effect.

Certainly some Councillors with a duty to implement the prescriptions of LUPAA could see themselves in some sort of conflicted position in that they have been elected by constituents with preferences for the sort of developments they want to see in their area. But to date such problems have been infrequent – and it is my view that it is preferable to have elected people, with extensive appreciation of the local situation, as the decision makers rather than a body which may in fact be facilitating statewide, overarching development wishes of (possibly transitory) Government Ministers.

It is not as though Councillors have unlimited scope to do as they wish when sitting as a planning authority – the Tasmanian Planning Scheme already prescribes things to a great extent – and "discretionary" decisions are almost always made with commendable common sense.

Secondly, the proposal that decisions of a DAP not be subject to appeal to a tribunal such as TasCAT is anathema. This proposal would also block any formal route to the Supreme Court, which has previously happened in some highly contentious situations. Lack of appeal rights following a decision is at odds with our Australian societal convention that there should be a judiciary independent of the Government, to which people always have the right of access in cases where there is a perception of erroneous decisions and/or inappropriate Government interference.

Appeal rights are absolutely central to justice.

The position paper states:

The purpose of appealing a planning authority's decision to TasCAT is to provide for an independent review of the process, in a public forum and without political interference. By using the Commission to establish the DAP, the independent review function will be built into the DAP framework. This removes uncertainty, delays and costs associated with determining contested applications through TasCAT.

"Removing uncertainty, delays and costs" it may well do – but there is absolutely no guarantee of "an independent review.., in a public forum and without political interference". A cynic could say that the purpose of the DAP framework, with no appeal rights, is precisely to keep the review private and to *facilitate* political interference.

My third concern is with applications for developments on publicly-owned reserved land such as in National Parks, and particularly in the Tasmanian Wilderness World Heritage Area.

There are of course many who want the “wild kept wild” and desire no built infrastructure in a national park except such things as visitor interpretation centres near the edges. I agree; keeping commercial developments out is central to the idea of reserving land for its natural values, and in the case of the TWWHA this has been expressed numerous times by the World Heritage Committee in its communications with our governments.

Currently developments in Parks are subject to approval by a Council (and appeal rights to TasCAT) – which is perhaps not ideal since many councillors are not expert in such conservation issues, and they have often expressed alarm at having to take such responsibility. However, they have in many cases made well-considered, sensible decisions after listening to numerous public inputs.

Such a planning process should definitely not be handed to a general-purpose “development assessment panel” with abbreviated public involvement rights before and after the decision.

I would suggest instead that developments in parks and reserves be taken entirely outside the ordinary planning process. Instead the “Reserve Activity Assessment” (RAA) process currently implemented (in a disappointingly ad hoc manner) by the Parks and Wildlife Service should be given a statutory framework which guarantees sensible outcomes in keeping with the principles of the World Heritage Committee and International Union for the Conservation of Nature.

Establishing a legislative basis for an RAA process clearly requires wider consideration than the current proposal for incorporating DAPs into the state’s planning process. But this should be done. Allowing DAs in world-standard public reserves to come under the proposed DAP regime would be a disaster.

I thank you for the opportunity to make a submission into the process.

West Tamar COUNCIL

Our Ref: LP.PLA.9
Enquiries: Kristen Desmond – Chief Executive Officer
Phone: (03) 6323 9300
Email: wtc@wtc.tas.gov.au

30 November 2023

State Planning Office
Department of Premier and Cabinet
GPO Box 123
HOBART TAS 700

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

Dear Sir /Madam

Submission – Development Assessment Panel Framework Position Paper

Thank you for providing Council with the opportunity to provide feedback in relation to the proposed introduction of Development Assessment Panels (DAP) as outlined in the Position Paper. Council provides the following feedback as endorsed at its meeting of 21 November 2023.

As the positon paper does not provide specific direction on how the DAP will function, it is difficult at this time for Council to form a particular view as to their suitability as an alternative pathway for determining planning applications.

Council raises the following concerns:

- Loss of a merit based appeal process should the same approach for matters considered by the Tasmanian Planning Commission be adopted. This removes both applicant and representor rights to appeal a decision as currently allowed for under the Act. Council's view is that a merit based appeal process should be available.

- The potential DAP process is longer and more complicated than the existing assessment process. The timeframe for a decision by a DAP is predicted to be 105 days as compared to 42 days for a discretionary application currently.

- Defining the circumstances when applications can be referred to a DAP for decision needs to be carefully considered to ensure applicants are not unnecessarily requesting consideration by a DAP. A request to refer an application to a DAP for assessment should require the approval or advice of Council as to the rationale for referral to ensure the proposed grounds are reasonable and appropriate.

- Further, if DAPs are proposed to assist in the assessment of controversial applications where a planning authority may have difficulty separating community interests from the planning

requirements, the value of a proposal should not be the determining factor in referring an application.

- Use of DAPs for initiating amendments to Local Provisions Schedules (LPS) is not supported. It is Council's role to undertake strategic planning and there is no evidence to suggest Councils are refusing requests for amendments to LPS without sufficient grounds. There are existing mechanisms in the Act for an applicant to request that the Tasmanian Planning Commission review a request for further information and a decision not to prepare a draft amendment if an applicant is dissatisfied with Council's response.

- DAPs should be convened in the local area and preferably with local representation to ensure decisions are based on a clear understanding of the context and local environment.

- The proposed process where, prior to public exhibition, Council is required to complete a full assessment and propose draft conditions is not supported. Representations are an important consideration in assessing a planning application and, rather than require re-assessment post public exhibition, it would be more streamlined and resource efficient to complete a full assessment post public exhibition.

- It is unclear what the problem that the introduction of DAPs is attempting resolve when Councils are processing applications in a timely manner and relatively few appeals considering the number of applications that are determined by Councils. There are likely to be other, more appropriate options, to ensure specific types of development, such as social housing, can be subject to a more streamlined process.

If you would like to discuss this matter further please contact me on or via email at wtc@wtc.tas.gov.au.

Kristen Desmond
HIEF EXECUTIVE OFFICER

From: Rocelyn Ives <>
Sent: Thursday, 30 November 2023 4:48 PM
To: State Planning Office Your Say
Cc:
Subject: Proposal for legislation to empower the Planning Minister to remove assessment and approval of developments from the normal local council process and have it done by planning assessment panels.
Planning changes

Thank you for this opportunity to comment. 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 anyt-ime and have a development assessed by a planning panel. This could intimidate councils into conceding to developer's 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. Promoting fear and trepidation of community members who will be left with no direct recourse to have input with major development proposals being taken out of local council hands.
• 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.
It is my contention that such a proposed change may benefit Tas state government to remove time impediments for developments/ projects it sees from their point of view to be "progressing" Tasmania's tourism and economic positioning. However this proposal would be at the expense of much more vital matters such as the local communities' deep knowledge of priorities for their patch and their views for the most appropriate developments, to be by-passed, and for democratic processes that local councils now afford with the planning laws they use for assessment of projects and in the cultural and architectural landscapes being dramatically compromised. To make decisions from afar as this change proposes, is counter to what Tasmania has as its best asset : it is a small geographic island in which its citizens value the architecture, history, land and recreational spaces, take ownership of them and maintain a pride in caring for their immediate landscapes. We are not like anywhere else and therefore we need to develop unique sets of planning rules that maintain what we have here. Bigger is not necessarily better. Growth that is considered and appropriate for its locale will enhance this state and its future needs.

Yours sincerely,
Rocelyn Ives

GLAMORGAN SPRING BAY COUNCIL

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29 November 2023

Enquiries: Planning Department
Planning ref:

Regional Planning Framework consultation
State Planning Office
Department of Premier and Cabinet

Email submission via: yoursay.planning@dpac.tas.gov.au

Dear Sir

Development Assessment Panel
Response to Position Paper

The Glamorgan Spring Bay Planning Authority thanks the State Planning Office for the opportunity to comment on the proposed reform and legislation. The matter was considered at the meeting on 28 November 2023.

The full planning authority unanimously endorsed the following submissions:

1. Whilst Council may support the concept of DAP's within the Tasmanian Planning System, the proposal within the Position Paper is premature and cannot be supported.
2. The detailed responses to the consultation questions and draft framework prepared by staff were supported and form part of this submission (following this letter); and
3. The preparation of draft legislation for DAP's is opposed until the concerns within this submission are addressed.

We look forward to working with the State Planning Office to resolve our concerns and the opportunity for input to resolve the matters raised in this submission.

Should you have any queries in this matter please do not hesitate to contact Council on 6256 4777 and ask for Greg Ingham (General Manager) or Alex Woodward (Director Planning & Development), or via the email above.

Yours sincerely

Cheryl Arnol
Mayor

Consultation issue 1 – Types of applications suitable for DAP referral

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;*

ii. *Critical infrastructure;*

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

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

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;*

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

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

viii. *Application over a certain value;*

ix. *Other?*

The criteria for referral are critical to the operation of the reform and integrity of the process/outcomes.

The options listed at i through ix are not justified except through their establishment. There is no discussion. This is inconsistent with the requirements that will be imposed on local government and the community for evidence based decisions under the Tasmanian Planning Policies.

Criteria iv and vi are the only matters that cannot be resolved through internal assessment or administration processes within the Council.

The application types must be clarified, i.e., sections 57 and/or 58, and minor amendments and informed by a review of how interstate systems operate and what actual applications experience problems under the current process.

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

Referrals should be from the applicant or Council.

Legislating a *with consent* process is not supported and is unlikely to address the reasons cited for the reform. Consent may be part of a nomination by the parties but should not be required.

No information was provided to support Ministerial direction. Ministerial directions for planning scheme amendments are addressed at section 40C of the act. This section of the Act could be amended to include *any other prescribed purpose*, rather than the cumbersome process for the minister to instruct initiation of a planning scheme amendment through a process that deals with DAP's.

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.

The referral process needs to establish different criteria for developer and council referred proposals.

Designation in the DAP process from the beginning must provide for the Delegates to have input as part of the initial assessment, any requests for further information and the assessment of representations.

Options ii and iii in the paper effectively have the same outcome.

Consultation issue 2 – Provision of an enhanced role for the Minister

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

The circumstances established at section 40C of the Act for the Minister to direct an amendment to a local provisions schedule.

The proposal creates a complex situation that could be easily addressed if that section of the Act were amended to include *any other prescribed purpose.*

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?

No. The State either accepts the responsibility of the LG sector in determining planning scheme amendment requests or it does not.

This reform may be subject to other drivers. Any proposal for the Minister to overrule the planning authority to initiate amendments must require carriage of the entire process by the Minister or State.

Any process outside of section 40C must require the instructing party to carry the obligations and associated burdens of that process for the full assessment/determination and implementation process.

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?*

The examples are or can be addressed through provisions at 40C of the Act.

No other circumstances were identified for planning scheme amendments.

Any intervention by the Minister on initiation of planning scheme amendments must be consistent with the provisions at 40C of the Act. Where other mechanisms are established, the State must be responsible for the processing and assessment of the amendment to enable the planning authority to represent its community (assuming all potential conflicts between roles are addressed).

Consultation issue 3 – Local knowledge and process

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.*

Where there are issues with resources, perceptions of bias or Ministerial call in, the DAP process should provide for all functions.

The Planning Authority should be represented in the reporting process (either as author, reviewer or referral agency) and on the DAP itself (as delegate).

The DAP reform must also provide a process to deal with the advice from the other statutory authorities within the Council for functions such as roads (access, road layouts and infrastructure, design standards, etc), risk & liability, finances, open space and works. Those authorities sit under other legislation and outside LUPAA.

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?*

Generally yes, except:

- where there are perceptions of bias against Council/staff by the applicant;
- where there are resource limitations within the Planning Authority;
- suitable processes are established for corrections, revisions and amendments to permits issued through the DAP process; and
- the legal complications between the DAP and TASCAT processes me be resolved.

In addition, the potential for conflict of roles for the administration and enforcement of planning permits must be resolved, as discussed earlier.

Consultation issue 4 – 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?

More information is required on how information requests would work with the DAP process.

DAP referral should include opportunity for review of the responses in addition to the initial request. Experience suggests there are significant delays due to partial or inconsistent information responses following information requests.

Independent review may assist with those issues.

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 should be a maximum number of opportunities for response to information requests or the application automatically lapses. This would require the quality and coordination of responses to improve.

Consultation issue 5 – Appeal rights and timeframes.

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?

Applications under s.57 LUPA have appeal rights. The position paper does not provide any evidence to substantiate or prove the argument that appeals are an overwhelming and unjustified burden on the assessment and permit process. Available data appears to contradict reasons for the reform.

Based on the principle of evidence based decisions, this aspect of the reform must fail.

Noting there are other pressures for this aspect of the proposal, any change to remove appeal rights must deal with the legal function of the different assessment (TPC/inquisitorial v TASCAT/judicial).

The TPC takes on the role of the Planning Authority under the DAP process, which means the same body determining the application will be completing the review. Comparisons to planning scheme amendment processes are not valid as the planning authority retains its own determination roles, with the TPC providing review of those decisions and a second stage of assessment.

The DAP proposal is different as the same body will be completing the assessment and the independent review. This is further complicated by the provision for Ministerial Directions to initiate amendments and does not deal with other arguments in the Position Paper around conflict of interest and perceptions of bias.

Equivalent processes must be provided to enable participation and maintain equity for all parties in the process, refer comments at items 14 and 15.

It is not clear how the independence of the review process will be maintained on the available information.

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

The identified timeframes are generally supported, noting the following:

- the process needs to deal with other statutory referrals and associated approval processes that are required such as heritage or EMPCA and the time impacts they have;
- at least 28 days is required for submission of reporting to the DAP following exhibition. 14 days is unreasonable and will not allow for proper consideration of the representations or internal review processes. A sign off will be required within the Planning Authority prior to submission of the report to the DAP;
- consistent with normal appeal process, opportunity for additional information, submissions and responses must be provided before, during and post the hearing phase;
- timeframes need to be realistic and enable proper consideration rather than force a fast decision, particularly for scheduling the hearing and issuing the determination.
- procedural matters need to be addressed through the process and factored to the timeframe, particularly where and how the DAP decides they want additional information in response to the application or to deal with matters through the determination process. Is this by directions and what are the time implications?

Timeframes must be revised to:

- enabling extension of the statutory consultation period, consistent with a normal application process;
- allow proper investigation and reporting on representations by allowing at least 28 days for reporting to the DAP following the close of exhibition; and
- clarify that public hearings must be subject to at least a 14-day notice period; and
- requiring the decision to be issued within 35 days of the completion of the hearings.

Consultation issue 6 – Post DAP determination issues.

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?

This is consistent with the current 40T and TASCAT processes.
Further work is required on the potential conflicts between roles for administration and enforcement of planning permits.

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

This is consistent with the current 40T and TASCAT processes. Further work is required on the potential conflicts between roles for administration and enforcement of planning permits.

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

Criteria 1a iii, iv and vi (refer consultation issue 1, Council as applicant, conflict of interest and perceived bias by applicant) suggest that there are circumstances where the DAP should retain these functions as the reforms suggest there are questions over the capacity or independence of the Planning Authority.

Further work is required on the potential conflicts between roles for administration and enforcement of planning permits. If permit amendments are to be addressed by the Planning Authority, a referral and consent process is appropriate for the DAP as part of the assessment process.

Draft DAP Framework Responses

Generally, Ministerial direction for DAP assessments must provide for the DAP to assume administration of the process for the entire amendment.

The lack of information from other DAP style systems interstate in development of this reform must be addressed, and the outcomes used to inform revisions to the DAP Position Paper.

Item	Issue	Response
1, 2	Should allow for DAP participation where conflict of interest or Ministerial direction identified at start of process.	Revise to reflect better process.
3	Must allow referral to other statutory functions within Council.	Clarify how addressed, noting jurisdictional constraints

Item	Issue	Response
4A	Does this include where Council is the applicant, proponent or both?	Clarify
4A	Discretionary DAP criteria.	
	Dispute over DAP criteria. Ministerial direction is not appropriate.	DAP to determine, clarify process
	Value based referral – unclear how value determined when subdivision or staged – better information required to determine calculation of $ value.	Clarify
	Establishment of bias is unclear and a process must be identified to resolve this conflict. Discretionary referral process questioned as fit for purpose where bias raised.	Establish process to identify and determine perceived bias. Transfer to mandatory referral, even if only to determine bias issue.
	Timeframe for determination of referral	7 days forces delegation to staff and prevents decision by the planning authority.
4B	Mandatory DAP referral	
	Set $ based thresholds for compulsory referral for clear operation	Set $ threshold
5	Timeframe to determine DAP suitability must not penalise Council for attempting to use process	Exclude DAP suitability from s.57 timeframe
6	Information requests DAP should have input to information requests to ensure the required information is provided. If not, the subsequent assessment process must clarify how any additional information requirements will be addressed through the process	Clarify
7	Appeal for information requests Proposal consistent with normal application process	Support.
8	Response to information should address bias issues and enable DAP input or assessment	Revise to reflect
9	Assessment, recommendation and exhibition Completion of reporting and assessment prior to exhibition is not required under a normal assessment process. The proposal parallels the planning scheme amendment process and is not consistent with the DA process, where exhibition is completed prior to the reporting.	Resolve conflict between planning scheme amendment and normal DA processes.

Item	Issue	Response
	40T is not relevant to the normal PA process.	
10	Exhibition process Consistent with normal DA process and Regulation 9: • 14 days exhibition • Site notices • Newspaper Exhibition ought to allow for extended exhibition process to align with s.57 process and contentious or complex proposals.	Support with revisions to extend exhibition period at discretion of Planning Authority.
11	Section reads as though it is dealing with a planning scheme amendment and not a normal PA under the planning scheme. Section 42 of the Act is not relevant to a normal PA process.	Resolve conflict between planning scheme amendment and normal DA processes.
12	Provision of documents Revise to reflect the normal planning application process and not the planning scheme amendment process. A report is required on: • assessment of the representations against the planning scheme; and • review of the original recommendation and draft in light of the representation.	Revise to reflect planning application process and not planning scheme amendments.
	14 days following exhibition for submission of completed assessment to DAP is not sufficient and will not allow for proper consideration of issues raised in representations, peer review of reports or delegated sign off of reports for submission from the Planning Authority to the DAP. Additional time will also be required for particularly contentious proposals or those with extensive representation.	Revise to 28 days. Establish process for extension to timeframe
13	DAP may hold hearing. Clarify to require DAP to hold hearing where parties want to be heard, consistent with Schedule 1 objectives for participation. Clarify whether hearing process allows for directions to be issued prior to hearing and impacts on timeframes	Require DAP to hold hearing where parties wish to be heard. Clarify ability of DAP to issue directions prior to hearings.
14	Hearing participation Planning Authority participation at hearing must be mandatory rather than discretionary.	Mandate Planning Authority participation.

Item	Issue	Response
	Confirm the nature of the hearings (inquisitorial or judicial).	Confirm nature of hearing process.
	One week notice of hearings is impractical and can deny parties opportunity to attend. It is also unrealistic for scheduling absent identification of key dates at the same time as designation as a DAP occurs. A minimum of 14 days' notice is consistent with other similar processes.	Mandate 14 days minimum notice for hearings. Require scheduling of key dates at same time as designation for DAP assessment.
15	DAP determination Decision issued within 35 days of referral, subject to extensions from Minister. Does not address ability of DAP to issue directions during and following hearings. This denies opportunity for true and thorough review of information and proposal available through normal appeal process with evidence and submissions. 35 days from referral also likely to result in rushed decisions and prevent same.	Revise to: • enable DAP to issue directions prior, during and post hearings; • allow DAP to postpone hearings pending submission of additional information to reflect the nature of Commission hearings, opportunity for participation and equity of access to and consideration of relevant materials; • require decision from completion of hearings rather than initial referral.
16	Notification of DAP decision 7 days to all parties, the same as the normal planning application process	Support.
17	Planning Authority to issue permit Same as normal Planning Application and Appeal processes.	Support
18	Enforcement Proposed to sit with the Planning Authority. Same as normal Planning Application and Appeal processes.	Support Consider additional enforcement options through DAP process.
19	Appeals of decisions No appeals proposed, different to normal process. Has process issues in comparison to normal appeals through TASCAT process and Commission	Revise to reflect inquisitorial nature of Commission operation and hearings. Ensure equity with appeal process maintained.

Item	Issue	Response
	processes for planning scheme amendments and the inquisitorial nature of their operation.	
20	Minor Amendments to decisions Same as normal Planning Application process. Different to normal TASCAT decisions from Appeals as no limitation on nature of amendments.	Enable DAP assessment for limited circumstances and referral for requests to amend decision.
21	Ministerial call in Cited as necessary at any stage of the application process where working relationship effectively fails. For planning applications, this may be useful under a range of circumstances. For planning scheme amendments, this is ***not*** supported. The TPC has capacity to assess compliance with the DAP criteria. This mechanism may be useful for other circumstances. Shared consent for the referral does not appear to be a required matter for this type of referral.	NOT supported for planning scheme amendments. May support for planning applications, but further discussion is required on the circumstances and triggers. Shared consent is not required.
22	Ministerial Direction (follows 21) If required, then the same timeframe and process requirements should be applied as other mechanisms and triggers. A timeframe should be established for determination of the request, and this must be outside the normal application timeframes.	Establish timeframe for determination of referral by Minister, 7 days for consistency with other processes. Timeframe must apply in addition to the normal statutory processing timeframes.
23	Establishment of Panel Proposes current TPC process with no local representation. Not supported. Current timeframes for assessments identify additional expertise will be required in the Local Government and planning fields. Local representation from the planning authority should be required on the DAP, subject to completion of suitable education or qualification requirements.	Not supported. Additional staff will be required to ensure suitable representation of current experience and qualifications in both planning and local government sectors, and elected members.
24	Normal planning application fees No change to the current process.	Resolve potential validity conflict

Item	Issue	Response
	Potential legal issues with determination of validity and issue of invoice under s.51A	
25	DAP fees Proposed to be lodged following Council referral to DAP for assessment. Does not address applicant referrals to DAP and should do.	DAP fee should apply to applicant regardless of referral source.

Annexure 1 - Extracts *Resource Management & Planning Appeals Tribunal Annual Report 2020-2021*

ACTIVITY:

The following tables set out the relevant numbers and statistics to report on the Tribunals functions for the year 2020-2021.

TABLE 2

This table sets out the number of proceedings by reference to legislation.

Appeals By Legislations	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21
LUPAA	117	101	119	131	126	123	124	126
Heritage	10							
SOL	1					1		
Marine	1	1						
Water			1			1		1
Strata Titles	2	5	4	11	1	6	1	3
EMPCA	1	2	8	2	1	2	1	
Threatened Species								
Local Government Act				1		1	4	3
Local Government Highways Act				1				
Water & Sewerage Industry Act							1	
Building Act	3	9	9	10	5	3	5	9
NDAP Act					8	8	10	9
Total	**135**	**118**	**141**	**155**	**141**	**144**	**146**	**151**

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TABLE 6

This table sets out the number of substantive decisions, that is, decisions which dispose of proceedings by either consent orders or a final merits decision arising from a hearing.

% Consent / Hearings to substantive decisions	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21
Total For Year	85	72	69	101	66	84	84	94
Consent	72.94%	79.17%	79.71%	73.27%	71.21%	79.76%	69.05%	74.47%
Hearings	27.06%	20.83%	20.29%	26.73%	28.79%	20.24%	30.95%	25.53%

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TABLE 7

This table sets out the duration of proceedings which were closed during the year 2020-2021. The table also identifies the amount of time attributable to parties who requested and consented to deferment of proceedings for a range of reasons.[2]

Average Duration of Files Closed in Financial Year 2020-21						
Type	**Number**	**Days[3]**	**Average Days**	**Discount Days[4]**	**Total Days**	**Average Total Days**
Consent	70	10407	148.67	5321	5086	72.66
Decision	20	2707	135.35	828	1879	93.95
Withdrawals	51	3337	65.43	1273	2064	40.47
Others	5	442	88.40	85	357	71.40
Neighbourhood Disputes About Plants Files						
Consent	0	0	0	0	0	0
Decision	4	1171	292.75	651	520	130.00
Withdrawals	7	588	84.00	100	488	69.71
Other	2	0	0	0	0	0
Total	**159**	**18652**	**117.31**	**8258**	**10394**	**65.37**

TABLE 8

Percentage of appeals resolved within the 90th day statutory timeframe or within such extension required by the parties to an appeal.

Performance Indicator	Unit of Measure	2013-2014 Actual	2014-2015 Actual	2015-2016 Actual	2016-2017 Actual	2017-2018 Actual	2018-2019 Actual	2019-2020 Actual	2020-2021 Actual
Percentage of appeals resolved within 90 days without extension	%	72.41	61.48	55.47	57.52	63.87	62.68	59.71	57.45
Percentage of appeals which did require extensions due to parties[5]	%	92.50	92.31	91.23	84.62	91.30	98.11	100%	96%

(page 13)
Source: 2020-2021-RMPAT-Annual-Report-FINAL.pdf (tascat.tas.gov.au)

Extracts TASCAT Annual Report 2021-2022

	Appeals Due	Within timeframe		Outside timeframe		Extension required due to Tribunal		Extension required due to parties	
Number of Files where 90 day time limit fell due in Fin Year	150	67	45%	83	55%	8	10%	75	90%

This table sets out how many files were closed during the period and the average number of days for the completion of those files.

Timeframe	Number of Files Closed	Average number of days
Financial Year 2021-2022	148	103

Percentage of Substantive decisions

	Year to Date 2021-2022	% of decision
Consent	72	69%
Final Decision - Published	32	31%
TOTAL	**104**	**100%**

TASCAT.TAS.GOV.AU

(source:p51, TASCAT-Annual-Report-2021-2022.pdf)

KENTISH & LATROBE COUNCILS

Our Ref:
Your Ref:

30 November 2023

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

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

Dear Sir/Madam,

COUNCILS' SUBMISSION TO THE STATE DEVELOPMENT ASSESSMENT PANEL (DAP) FRAMEWORK POSITION PAPER CONSULTATION

Thank-you for the opportunity to submit early stage comments on the State proposal to establish a Development Assessment Panel (DAP) assessment process under the *Land Use Planning & Approvals Act* (LUPAA) 1993. As reflected in the position paper, the proposal will have a significant impact on a Council's role as a planning authority.

Latrobe & Kentish Council reiterates its submissions to the Future of Local Government Review, that planning decisions are best placed with Council acting as a planning authority. The Councils submitted that, at times, there may be circumstances where it could be appropriate to refer an application to an independent panel, however these circumstances are limited to where Council is the applicant, or where Council chooses to refer the application because of the size or potentially disruptive influence within the community.

In this regard, the content and questions posed in the position paper require careful scrutiny as Latrobe and Kentish Councils are acutely aware that acting as a statutory planning authority is a complex role that can confine or support the imperatives of an elected Council, depending upon the type of statutory process being engaged. This submission is based on the Council's long experience acting as a planning authority in strategic planning process in setting land use and development aspirations for the future as well as statutory process in the determination of development applications. Both of these roles are significantly impacted by the proposed framework.

The position paper states that the intention for introducing DAPs is *"to take the politics out of planning by providing an alternate approval pathway for more complex or contentious development applications" (p.4).* The inference in the content of the paper is that Councils fail to exercise the separation of their statutory role from their elected role to such an extent, that an entirely new component of the planning system must be introduced to address it. This inference is in direct conflict with the development assessment data cited in section *2.2 Planning System,* which proves that in fact (including taking into consideration the relatively low number of applications that are subject to appeals), the Tasmanian system of planning authority decisions by a Council is functioning efficiently.

The value of the proposed framework is questioned due to the lengthening of timeframes, given the low percentage of applications that are actually subject to a full appeal process. The timeframe options suggested at page 14 do not reflect the suggested benefits to a Council in being able to act as an elected body. Clearly, the 7 day period for lodging and referral is not a feasible amount of time for the Council (not the planning authority or delegate) to consider the matter and refer to a DAP. In addition, the timeframes do not account for delays due to notification timing and the consideration of any representations by the Council at a meeting in order to provide recommendations to the DAP. This would require at least an additional 65 days to provide for the Council 'benefits' described in the discussion paper. Therefore, the assertions that timeframes are similar to those of an appeal to TASCAT are quite incorrect.

The supporting rationale expressed in the position paper refers to the *Future of Local Government Review Report* discussion on the role of Councils in strategic planning versus development assessment as planning authorities and options under the Planning Portfolio to - 'Deconflict the role of councillors and planning authorities' by:

- Referring complex applications to independent assessment panels; and
- Removing council responsibility for determining development applications,

as well as including recommendations regarding delegation.

The Councils acknowledge that there are, at times, circumstances where Council would prefer to hold a position as an elected body, consistent with the stated objectives in its Strategic Plan under the Local Government Act, rather than be bound by deficient planning scheme standards that are not fit for purpose to address the often highly unique characteristics of a site, or the community its sits within.

However, the Councils submit that the framework, as proposed, does not effectively alleviate this situation due to an overly-complicated hybrid process. The position paper misconstrues the statutory processes required for the consideration of discretionary development applications and appeals, in assuming it can simply translate to the planning scheme amendment processes with the Tasmanian Planning Commission (TPC). The process does not directly translate and Council's role remains inflexible as a planning authority and therefore the process, as drafted, provides no inherent value for Councils to 'deconflict' their role as stated.

This is because the proposed process still requires a planning authority assessment against the planning scheme, requests for further information and recommendations to the TPC.

Essentially, the Councils do all the procedural and technical work, including an additional administrative layer for a DAP process, whilst still being constrained to planning authority parameters, without actually being able to make the decision.

The position paper also raises the prospect of a conflict between the two roles for planning scheme amendments and that the planning authority has a right of veto over amendments to prevent them from progressing, with no effective avenue for appeal or challenge to that decision on merits (noting that the TPC process requiring review of Council's decision, cannot compel a Council to make a different decision).

The position paper fundamentally misunderstands that the elected role of the Council and the obligations of the planning authority converge in the consideration of amendments under the broad objectives of the LUPAA. This is why the LUPAA includes explicit consideration of the Council's Strategic Plan under the Local Government Act in the assessment of planning scheme amendments. The position paper refers to a process of 'initiation' as the 'commencement' of a scheme amendment process, which perpetuates a language that has been removed from the legislation for the implementation of the Tasmanian Planning Scheme and replaced with 'agree to prepare'. This was a deliberate change of emphasis in the LUPAA to signify that the Council/planning authority 'owned' the amendment and committed to its strategic value, following an assessment of its merits against strategic documents and legislative criteria. It is not a 'testing of the water' as inferred in the paper.

The Councils submit that there could be a benefit to Councils in enabling them to 'opt out' of a planning authority role and participate as elected advocates, but this would require a restructuring of the framework to eliminate all obligations for planning authority assessment (including requests for further information) by the Council in order to lawfully operate. A DAP assessment process would need to be administered by the TPC from the beginning and could potentially make the Council a referral body, similar to the Major Projects or MIDAA process, to ensure that the Council's considerations and views are embedded in the process. The only way that the DAP process provides any benefit to the Council to 'de-conflict' the roles, is if the roles are made completely separate from the beginning.

Other potential benefits in enabling Council to act as an elected body are:

- being able to 'hand over' an assessment if an application becomes complicated with many representations. Further to comments above, it is noted that the legislation would need to stipulate that at the point the process becomes assessable by a DAP, the Council ceases to act as a planning authority and allow for the Council to submit an opinion/recommendation to the DAP (refer to comments below regarding assessment criteria limitations);
- having a separate agency that assesses and determines Council's own applications for development, so that the Council can focus solely on the value of the development they are seeking to progress without legal complication. At the moment, most Councils have a process for independent assessment and recommendation.

The following are the Council's comments relating to the specific consultation issues. However, it is noted that the questions are posed on the presumption that the framework proposed is appropriate. The Council's submit that the proposed framework has fundamental flaws as discussed above, however these can be rectified through modifications to its structure.

1a) Type of development applications?

The Councils submit that this process does not provide sufficient time to properly interrogate the detail of the types of applications that would benefit from being determined by a DAP (as opposed to a benefit to a Council of being determined by a DAP). A proper analysis of the scenarios that have given rise to this framework should be undertaken to determine if in fact:

- they are an anomaly or a very minor component of the overall development context;
- are the result of planning scheme standards that are deficient in providing for a community's strategic objectives, potentially indicating that it is not a failure of statutory process, but perhaps the subject of a strategic process yet to be undertaken;
- are prolonged in appeal by deficient planning scheme standards or issues with points of law that could be the subject of a simple rectification'

Complex applications and associated resourcing are very difficult to define as every scenario is different. There would need to be a reasonable period of time for a Council (inclusive of staff and elected members) to properly appreciate the issues and determine if it should be referred to a DAP. Certainly, seven days is not nearly enough time and shows a distinct lack of comprehension of the realities of statutory assessment.

Financial values of development are not always a reflection of their complexity or contentiousness.

Very high-density and social housing can be contentious issues in the community. By way of example, if assessed by a DAP, there should be scope to include considerations additional to the planning scheme criteria that would assist in reconciling public and council concerns. This is within the scope of the current combined amendment and permit process and could be incorporated into a DAP process to provide for improved planning outcomes. This could relate to the degree of discretion being sought or expressed public concern and could readily reconcile issues where the planning scheme criteria have very limited scope and may unnecessarily preclude development that can be made acceptable. The proposed structure needs to be reconsidered however, to include the ability to extend the remit of DAP.

The Councils note that simply transferring the application decision from a planning authority to a DAP will do nothing to alleviate the effect of deficient planning scheme provisions in rectifying the current housing shortage.

1b) Who should refer?

- The planning authority should be a singular referral body.
- Requiring planning authority consent for an applicant to refer, or requiring applicant consent for a planning authority to refer, does nothing to alleviate the conflict. In fact, it promotes greater conflict than exists now.
- Where there is conflict, the Minister should decide.

1c) Referral points

As stated above, the process should preferably be separated at the beginning. An applicant or Council should choose one pathway or the other.

There could be benefit in being able to switch decision maker after public notification, however all planning authority responsibilities would need be dissolved at that point with the Council able to act as an elected body as discussed above.

2. Circumstances for Ministerial direction to initiate a planning scheme amendment.

Refer to comments above regarding strategic role of Council as an elected body and planning authority.

There should not be any circumstances where the Minister initiates against the wishes of a Council, or at the very least, the Minister should be required to give reasons why he/she does not agree with the Council's position and is acting against the Council's advice.

If the Minister initiates, from the very beginning of the process a Council must be able to act with the full force of its elected role, as the objectives are broad and compliance with the local Strategic Plan is fundamentally about local values.

3. Local Input.

The paper refers to the TPC as being 'the final decision maker'. This misrepresents the Council's current right of veto in all amendment circumstances if it considers that it does

not meet strategic objectives. Local authority is actually diminished by a forced amendment process.

3a) Incorporating local knowledge and complementing existing processes

Refer to comments above. The process as proposed confuses the nature of local involvement with local administration. They are not the same, are not complementary and should not be conflated. The process should provide for one pathway or the other, with administrative functions completely separate so that a Council can act as elected advocate without procedural constraint.

3b) Are current combined amendment and DA processes through the TPC suitable for adaptation to a DAP process?

No, not as proposed. The proposed framework implies a discretionary assessment process can simply transfer to another body for decision at the end point of the process without a proper appreciation of the legal nuances of planning authority/Council obligations and rights in considering the appropriateness of a combined permit and amendment application.

As discussed above, the process could however, be modified to enable broader considerations for those developments that are referred, consistent with the way the combined process functions.

4. Requests for further information - a) & b) Process of issuing and review of RFI's.

This assumes agreement with the proposed administrative structure, which is not supported. The decision body should be responsible for RFI's through separate pathways (noting comments above regarding a potential exception for mid-process change to a DAP assessment).

5. Appeals and assessment timeframes.

a) DAP decisions not subject to TASCAT appeals.

The paper assumes that the TPC consistently makes legally robust decisions, which is not always the case. The position paper states that the process of TPC consideration is the same as that of the TASCAT, which is highly inaccurate. TPC processes have a broader remit under the legislation which has withstood legal challenge through the courts. If the TPC are to be the decision maker on a purely discretionary planning scheme assessment, the decision should be subject to review by the TASCAT as per the review of a planning authority decision.

However, if the remit of a DAP assessment is broadened to account for additional factors as discussed above, the combined process could be effective in reconciling issues of contention. If the complexity of applications is such that it should involve considerations additional to the planning scheme criteria (depending on the DAP thresholds), it may be beneficial to avoid the TASCAT's limited remit and adversarial legal nature.

b) Timeframes

The questions assume acceptance of the proposed administrative approach, which is not supported.

Timeframes need to provide reasonable ability for a Council to determine its representative position on issues of relevance to be assessed in the first instance, and in some cases, sufficient time to gauge public opinion in order to submit a formal position to the process of assessment and determination. This would need to allow for sufficient timeframes for matters to be assessed by technical staff, consideration at a Council workshop and a determined position at an ordinary Council meeting.

The suggested total of 105 days (noting that it is expressed as an 'option') falls significantly short of any ability for a Council to appropriately consider and determine its position on a DAP application. Reasonable timeframes are directly relevant to the intent, nature and structure of a DAP process which needs to be properly reconciled as discussed above, before any reasonable timeframes can be determined.

6. Post determination role.

There are significant resourcing implications for Councils in the enforcement of permits that are not properly appreciated by the TPC or TASCAT, as neither body has ever held responsibility for the processes or actions associated with pursuing compliance. There should always be a formal part of the process that takes advice from a Council about the practical ability to enforce conditions before a decision is made.

In conclusion, the Councils emphasise the following points:

- that they do not support the DAP framework as proposed as the Councils generally consider it has an important role in acting as a planning authority and the proposed framework does not alleviate the perceived conflict between the Council's roles as a planning authority and an elected body.
- Councils should remain the ultimate authority in regard to strategic planning and progressing planning scheme amendments. Amendments should not proceed unless the Council agrees.
- The timeframes suggested do not allow sufficient time for the elected Council's involvement in the DAP referral and assessment process. It should not be assumed that delegation will suffice or is appropriate for a DAP process.
- The proposed framework with a hybrid TPC/planning authority process adds yet another layer of complexity, administration and cost to the development system (for both applicants and Council). Applications should follow either a DAP pathway, administered in full by the TPC, or a planning authority pathway, administered and determined by the planning authority.
- The DAP process should be limited to circumstances relating to applications by a Council or where referred by a Council because of the size or potentially disruptive influence within the community.
- Applications assessed through by DAP should be subject to a broader remit in assessment considerations that are focussed on a 'best response' to local development objectives and outcomes.
- Modifications should be made to the framework through a proper appreciation of the process and the Council's role in it, to provide a fit-for-purpose regulatory process, not additional regulatory complication.

The Councils thank you for the opportunity to provide comment.

Yours faithfully,

Gerald Monson
GENERAL MANAGER
LATROBE & KENTISH COUNCILS

Please quote our ref:
Your ref:

Enquiries to: Name 6452 4800 |ploone@circularhead.tas.gov.au

30 November 2023

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

DEVELOPMENT ASSESSMENT PANEL FEEDBACK

We thank the State Planning Office for the opportunity to comment on Development Assessment Panel (DAP) Framework Position Paper. DAPS would assist Council with preplanning and assessment of planning scheme amendments and projects of regional significance within the current planning provisions pursuant to LUPPA with minimal change to existing assessment processes. It is commendable that State Planning Office are seeking to fast-track important projects like social housing development that tend to get slowed down by local political sensitivities. The extra bureaucratic steps involved in the proposed DAP process, coupled with the TPC's characteristic focus on detail and requests for a great deal of information make it unlikely that important projects can be fast-tracked. We further feel this may slow down the determination of these proposals.

Rather than introducing an additional assessment pathway, Council feels that existing options should be further utilised. More developments could be declared as projects of state significance under the *State Policies and Projects Act 1993* and major projects under *Land Use Planning and Approvals Act 1993.* We believe that there is an opportunity for more projects to be declared Major Projects under LUPAA by amending the requirement for referrals to the Minister to include projects that are only in one municipality, rather than the requirement for the project to be over multiple municipalities.

As has been identified in the Future of Local Government Review, Council's have limited resources in terms of qualified planners and often assessment of large scale developments requires the assistance of consultants. A pool of skilled planners in a resource sharing model would better suit Council as the availability of experienced planners to undertake technical and time consuming assessments is preferrable.

Councils in Tasmania have a track record of leading the nation in terms of achieving development approval timeframes being able to deal with a rise in applications from around 6500 in 2016 -17 to over 12,000 in 2021-22 within a medium timeframe of 38 days and 46 days when the clock is stopped respectively. Clearly the system works for local minor

development and non-contentious development applications which local government in Tasmania have led the Nation in approval times however clearly local government is not resourced to handle the rigour and complexity of projects of regional significance. The problem is that local government do not have the capacity to assesses major development applications worth more than 5 – 10 million dollars due to the complexity and information requirements associated with such applications. DAPs equipped with planning and urban design expertise should be able to be appointed to assist local government to navigate these applications through all stages of the planning process.

The scale and complexity of any major development applications may require the assistance of a DAP, where one or more members to work with Council to assist with major amendments to planning schemes (typically when it receives submissions opposing or is otherwise contentious), combined planning scheme amendment and planning permit process planning permit applications called-in by the Minister for Planning. DAPs would assist in reconciling complex technical matters that require resources that are not always available in all Councils. The appointment of a DAP would provide Council with the necessary capacity and technical expertise to do the heavy lifting throughout the planning and statutory assessment process. DAPs working in concert with Councils should be set up in a way that gives submitters the opportunity to be heard in an informal, non-judicial manner, and be provided expert advice on all aspects of amendments and submissions throughout the process, a one stop shop consistent with established planning processes.

We agree that DAPs should make assessments against the planning rules and that local communities should maintain existing rights to make submissions on matters that affect local communities. Council does not support providing the Tasmanian Planning Commission with any new power in this regard, or any other diminishment or override of, our existing role. Under the current system, individuals and businesses wishing to change the local planning scheme, must obtain the support of the council concerned. In deciding whether or not to provide that support, the council weighs up whether or not the proposal is in the best interests of the community. Council is far better placed than the Minister or any other stakeholder, to make this decision.

It is not appropriate for communities, through their Council, to bear the administrative burden of State Government led planning processes without being appropriately represented in decision making. We feel the Development Assessment Panels as formulated in the discussion paper would not achieve the other laudable objectives they hope to meet. We fear the practical challenges of a two-tiered process administered by Council may in fact slow down the assessment process by introducing additional red tape, placing additional strains on Council resources whilst stifling the Council's voice and potentially leading to perverse outcomes. We are of the view that this distribution of responsibilities would duplicate effort and waste resources. We suggest if a proposal for a development or amendment is to be considered by a DAP it should be considered by a DAP/TPC from the start and all the administration for the assessment of that development or amendment is undertaken by the TPC.

Finally, the scope of DAPs should be extended to strategic planning and urban design on projects of regional significance. For example, it may help resolve the 'green on green' conflict (habitat conservation v renewable energy roll out) that is recognized as an increasingly pressing challenge if we are to meet future challenges or maybe a regional approach to the planning and design of social housing. Many initiatives filtering down from SPO to local government for implementation or assessment require rigorous front-end development and resolution before these proposals land on local government for implementation. The development of more detailed regional plans that reflect the short-, medium- and long-term plans of the State government are necessary to align resources to implement local and regional priorities in a seamless way.

Should you require any clarification on the matters discussed in this submission, please contact me on or at

Yours sincerely

Phil Loone
DIRECTOR INFRASTRUCTURE & DEVELOPMENT SERVICES

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Neil Atkins

1. All areas of each municipality to be classified for future use.
2. Decision Makers
    1. State Government input
    2. Local Government input
    3. Input from members from the community

I would like to have a face to face discussion with the committee appointed to set the process up.

Past Experience of the writer:

- Produced evidence to halt an industrial development at Bower Bank near Deloraine in the Late 1990's. Right at the entrance to the Deloraine Township.

- 3.5 years successful effort to have the Exton bypass relocated from south to north of Exton

- 20 year gap (Feb 1983 to approx. 2003) both start the process to build the Meander Dam and meet Premier Lennon with a local group to suggest a process which was adopted to fund and run the scheme. All other state-wide schemes are now run the same.

- Have seen the failure of the current planning scheme with has allowed a residence to be built on a 50 acre block which our farm surrounds.

The Planning Minister
Parliament House
HOBART TAS 7000

Dear Minister

Proposed New Development Assessment Panels

I do not believe the government should proceed with the proposed new development assessment panels for the following reasons:

- The proposal appears to be based on anecdotal evidence, which is not tangible. I have no knowledge of any of the quoted issues with the current planning system. This proposal gives the public the impression that the Government is in the pockets of property developers. This has been compounded by the Government's failure to pass donations law reform which is in accord with community standards (and applicable to Upper House and Local Government).
- The issue of perceived conflicts of interest is of the Government's own making. I believe that local government elected members should be able to publicly express their views on planning proposals. I do not believe this causes a conflict of interest. It is why ratepayers and residents elect them.
- It is difficult to understand the Government's approach to local government elected members supposed conflicts of interest when it has expressed strong views on contentious projects such as the kunanyi/Mount Wellington Cable Car proposed development and would have the power to appoint handpicked panels to ensure that such development applications are successful.
- If there are any other issues with the current system, they are also of the Government's own making. I believe that there has been a marked drop in building design standards since the introduction of the State Planning Policies.
- I cannot understand why strata title developments are not subject to the same rules as all other developments. This is a major oversight which needs to be remedied. Priority should be given to this rather than changing the laws to fix a non-existent problem.
- There are also lots of issues with the State Planning Policies which need to be fixed. This includes protection from over-shadowing with loss of solar access, including to solar panels.
- Rather than removing the politics from planning issues, the proposal brings politics right into the planning process, with you, the Planning Minister, having far too much say. Also, panels will be handpicked by the Minister. We know the Tasmanian Liberal Government has political bias, but we do not want this bias to be transferred to the planning system, which currently has a high degree of integrity.
- The failure to provide for merit-based appeal rights. This is an essential part of the current planning system, which will be disregarded.
- Doubts about the composition of the planning panels. Where will the members come from? Will they be people with the necessary qualifications to carry out assessments? Will there be enough properly qualified people to enable panels to have the required expertise?
- Mainland experience has demonstrated that planning panels favour developers and undermine democratic accountability. Perhaps this is what the Government wants but it is certainly not what the electorate wants.

- It has been reported that the Premier has stated that local councils would no longer assess proposals for urban projects of more than $10 million or rural projects over $5 million. If it is correct, residents of Mount Stuart will see this as an insult to the highly qualified credentials of the City of Hobart Planning Department.
- I am concerned that the new Development Assessment Panel process will be used to make it easier for large-scale contentious developments, such as the kunanyi – Mount Wellington Cable Car, to be approved, even though it has already been refused by the Tasmanian Planning Commission.

In summary, I hope you will abandon this flawed process.

Regards

Eric Pinkard

From: Rohan Grant <>
Sent: Thursday, 30 November 2023 4:39 PM
To: State Planning Office Your Say
Cc:
Subject: Protect our local democracy - say No to the Liberals new planning panels

I implore you to reject the Liberals new planning panels - say No!

I am strongly opposed to the creation of planning panels and of increasing ministerial power over Tasmanian planning system, for the following reasons:

- **Further encouragement of the theft of pubic land**, such as the kunyani Cable Car Proposal, the Rosny Hill hotel "development", and private huts in National Parks, amongst all too many other examples;
- **Undermining local democracy and removal of 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.

- **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.
- **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?
- **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.

Please, in the interests of local democracy and sound political governance, say no to this unwanted and unnecessary "reform".

Your sincerely,

Rohan Grant

From: Paul Johnston < >
Sent: Thursday, 30 November 2023 4:39 PM
To: State Planning Office Your Say
Subject: Draft Land Use Planning and Approvals (Development Assessment Panel) Amendment Bill 2024.

I want to express my concern at the proposed amendment to LUPA.
The proposed amendment will reduce the opportunity for members of the public to voice there concerns regarding changes to the places where they live.
It is essential in a Parliamentary Democracy that such opportunities are protected and enhanced.
The Planning System is essentially a democratic process because it allows the community to consider a shared future and embody shared values that are vital to the development of a community.
Local issues are the issues that concern the daily lives of Tasmanians and their involvement in decision making should be enhanced and protected. The removal of merit based appeals in the planning process should be of concern for those interested in promoting participation in community decision making. Political bias should be restricted from planning processes as it runs counter to community decision making interests.
Planning systems should bring the community together to achieve common goals for the built environment.
Any amendment to LUPA should enhance public participation.

paul johnston **architects** and heritage consultants

From: Kim Anderson <k>
Sent: Thursday, 30 November 2023 4:40 PM
To: State Planning Office Your Say
Subject: Protect our local democracy - 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**.

Feel free to also write why this is important to you….

Yours sincerely,

Kim Anderson

-

Launceston Cataract Gorge Protection Association Inc.
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TREVALLYN TAS 7250
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handsoffourgorge@gmail.com
https://handsoffourgorge.org.au

Submission: The proposed Draft Land Use Planning and Approvals (Development Assessment Panel) Amendment Bill 2024.

State Planning Office
Hobart
Tasmania

29 November 2023

Thank you for the opportunity to comment on this proposed Draft Bill

For many reasons Hands Off Our Gorge community group opposes the creation of planning panels and increased ministerial power over the planning system. Some of those reasons include:

- ***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, rather than elected local council representatives. This risks local concerns being ignored in favour of the developers – who also may not be from Tasmania. If an assessment isn't favouring the developer then standard local council processes can be abandoned* ***at any time*** *and have a project assessed by a planning panel. This shows disregard for local communities, and could intimidate councils into conceding to developers' demands.*

- ***Makes it easier to approve large scale contentious developments*** *such as the kunanyi/Mount Wellington cable car, high-rise in Hobart, Cambria Green and high-density subdivision like Skylands at Droughty Point, as well as hotel developments, and cable cars in Launceston's iconic Cataract Gorge.*

- ***Remove merit-based planning appeal rights*** *via the planning tribunal on issues that include 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. This threatens both transparency and strategic planning. It is also contemptuous of local communities and shows a total disregard for local knowledge and concern for unique environments with which the Planning Minister may not be familiar with, or appreciate their significance and heritage values for local communities.*

- ***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 clearly has political bias and can use this subjective criteria to intervene on any development in favour of developers. This cannot be considered fair or truly democratic.*

- ***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. This is a flawed model and is NOT an example Tasmania should be following*

- ***Poor justification – there is no problem to fix.*** *Only about one per cent 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 when it is already making decisions faster than any other jurisdiction in Australia?*

Thank you for the opportunity to make this submission.

Anne Layton-Bennett
Committee member,
Hands Off Our Gorge
On behalf of Anna Povey,
President

From: Jillian Johnson
Sent: Thursday, 30 November 2023 4:31 PM
To: State Planning Office Your Say
Subject: New Liberal Planning Panels

Dear Sir/ Madam,

I absolutely object to the new planning panels proposed by the Liberal government.

These panels will take power away from local councils and representation away from citizens. They will allow government to enable and favour developers and will give the planning minister total control over development.

This is an undemocratic and unconsciable attack on the rights of the citizens and these panels should be rejected outright.

Yours,
Jillian Johnson

30 November 2023

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SUBMISSION – DEVELOPMENT ASSESSMENT PANEL POSITION PAPER

Thank you for the opportunity to make a submission on the DAP Framework Position Paper, referred to in this response as the 'Position Paper'.

The Planning Institute of Australia (PIA) is the peak body representing planning professionals and supports reform that improves planning processes and outcomes, especially through well-resourced strategic planning based on a strong evidence base consistent with PIA Australia's positions on liveability, health, national and local settlement strategies, climate conscious planning systems and management of risk in a changing environment.

Summary statement

The Position Paper addresses two distinct issues that will result in amendments to the *Land Use Planning and Approvals Act 1993* (LUPAA):

1. Independent Development Assessment Panels (DAPs) to replace Councils' decision-making functions on certain development applications; and
2. A new role for the Minister to direct a council to initiate a planning scheme amendment under certain circumstances.

For the first issue, PIA reiterates its position of providing qualified support for the establishment of Development Assessment Panels (DAP)[1]. However, the approval pathway processes outlined in the position paper may result in an overly complex process and other unintended consequences and needs to be thoroughly considered in moving forward into legislative amendments.

The econdd issue is not clearly recognisable from the title and Position Paper introduction. The delegation of decision-making to a State Minister has potential implications to the involvement of qualified planners, the community and Local Government participation in decision-making.

[1] *https://www.planning.org.au/documents/item/12537*

Key issues

1 Complexity

- Amendments to LUPAA must ensure that they do not overcomplicate approval processes. Changes to legislation should avoid making assessment pathways more complex and longer. They should ensure that the outcomes are consistent with achieving the objectives of Resource Management and Planning System.
- The provisions in LUPAA are becoming increasingly complex, due to the extent of changes to the Act over the past 30 years as well as the nature of legislative drafting. It is no longer plain English and is challenging to implement, including for planning and legal professionals. When communicating the planning system to the community it is necessary to consider the complexity of this system, including:
    - Removing decision making from Councils removes an important interface to the land use planning system at a local level.
    - Changes to LUPAA need to be drafted so that they can be understood.
- There is now a significant body of consistent interpretation and application of planning scheme provisions being established by the Tasmanian Civil and Administrative Appeal Tribunal (TasCAT) in relation to assessment of development applications. This is of significant benefit to the system, developers, the community and profession as it provides greater certainty in assessment. It would be unfortunate if this consistency in application was lost due to differences of view between the Tasmanian Planning Commission (Commission) and TasCAT, particularly since the greatest benefits are to contentious applications.

2 The need for change

- The reasons why changes to LUPAA are being made should be clear, particularly where they impact on local involvement in planning. Anecdotal evidence, as stated in the Position Paper (page 12), is insufficient rationale for substantial change, especially as the paper at page 6 states that Tasmania's regulatory planning system is operating faster than any other state or territory in Australia.
- It is noted, however, that DAPs have potential to benefit not only developers but also Councils, particularly assisting them in decision-making where they do not have the resources, capacity or are conflicted to implement the planning system.

3 Demonstrating effective delivery

- The Position Paper does not consider any alternative or comparative models for the delivery of DAPs, which would demonstrate a greater degree of rigor in the selection of the preferred option.
- The Position Paper does not adequately describe how DAPs will align with other approvals and/or referrals. Of concern are where applications are to be assessed under the *Environmental Management and Pollution Control Act 1994* (EMPCA) and other legislation and the potential contribution to the time and complexity of the approval process.
- DAPs have potential to contribute substantially to the time and cost of development approvals, including through application fees. DAPs also create significant risk of undermining the only recently introduced major project approval process and increasing investment risk due to the breadth of available assessment pathways open to major projects.
- PIA strongly advocates for increased clarity in nomination criteria to avoid projects seeking to enter a DAP pathway when they are best assessed through the major project pathway.

4 Who will be responsible and how is it resourced?

- The DAP framework potentially adds significantly more functions to the responsibilities of the Tasmanian Planning Commission's current operations requiring additional resourcing, capacity, and capabilities. Any additional responsibilities will need to be capable of being appropriately resourced with suitable skills and experience.
- Delivery of planning approvals through established local government processes and resources demonstrates a consistency of process. Any new process, such as a DAP, can be perceived as a short cut in process (for example major projects is still referred to as a fast-track process in community and public discussions).Using established and accepted processes as much as possible helps the legitimacy and transparency of decision-making to the community.

Thank you again for the opportunity to make a submission. We reiterate our in principle support for the introduction of DAPs and would welcome any opportunity to further assist Government in progression a successful model.

Yours sincerely

Michael Purves

President

Planning Institute of Australia, Tasmanian Division

Attachments:

Attachment 1 – Specific responses to position paper consultation issues

Attachment: Specific responses to position paper consultation issues

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;*

ii. *Critical infrastructure;*

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

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

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;*

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

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

viii. *Application over a certain value;*

ix. *Other?*

PIA RESPONSE

i. Social and Affordable housing

It is recognised that the *Housing Land Supply Act 2018* has not always been effective in facilitating decision making for housing, and in some instances has resulted in additional consultation requirements than existing approval pathways under LUPAA. Furthermore, some Councils have not been facilitating housing choices. However, further clarification is needed on the policy position for the definition or qualification of 'social and affordable housing'.

There is no generally understood definition of 'affordable' housing in the planning system, which is required to make the referral function.

ii Critical Infrastructure

In many cases infrastructure is already permitted or exempt in the planning system or managed through other legislation such as the *Electricity Supply Industry Act 1995* or

Water and Sewerage Industry Act 2008. It is unclear what additional types of infrastructure are being considered for referral to a DAP, as 'critical' infrastructure is not defined.

It is difficult to support this category without further detail of the intention as infrastructure is a broad term that could apply to virtually any type of use or development.

iii Where the council is the applicant and decision maker

Referral to a DAP is an appropriate decision-making process in this instance.

iv Where the Councillors express a conflict of interest and there is not a quorum

Referral to a DAP is an appropriate decision-making process in this instance.

v Contentious Applications

Referral to a DAP for contentious applications is supported.

A primary method of determining whether an application is contentious is through the number of representations received during the exhibition period, but further clarification is needed on the how a contentious application is determined. It should not involve a qualitative judgement.

viii Over a certain value

PIA considers that this may be a blunt tool in determining whether and application be referred to a DAP. Project value is not always demonstrative of contentiousness. Permitted applications, those where there are no representations, or those that are eligible for a delegated decision would not benefit from an automatic referral to DAP as it would actually extend the timeframes, complexity and expense of the assessment process unnecessarily.

Other matters

PIA is concerned that introduction of the DAP process may undermine the major project process and will encourage proponents to try a DAP process for projects that are best assessed through the major project pathway. This is a particular risk considering applications over a certain value, given perceptions that the DAP pathway may be seen as 'quicker' than major projects.

The current number of potential approval pathways available to proponents of major projects is already a significant investment risk in Tasmania. It can be difficult for proponents to identify the most appropriate pathway. In comparison other jurisdictions in Australia provide much greater clarity of required pathways for major projects and mandate when projects should be required to enter into that process to ensure proper assessment.

PIA strongly encourages that legislative amendments to facilitate a DAP process provide sufficient clarity to avoid undermining the major project approval pathway. Proposals that involve assessment under the *Environmental Management and Pollution Control Act 1995* (EMCPA) should not be allowed to enter a DAP pathway. Additionally, projects which give rise to impacts beyond an LGA should also not be facilitated.

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

PIA RESPONSE:

If the provisions of LUPAA provide a clear pathway and criteria, PIA supports all options with the exception of a Ministerial call-in power. A Ministerial power would tend to unnecessarily politicise the process and potentially lead to perceptions of undue influence, particularly where parties may have strong political connection or provided election donations. The current robustness of Ministerial powers in the Tasmanian planning system allowed Tasmania, to date, to avoid planning related matters being raised in integrity and corruption related investigations as has been the case in recent years in New South Wales, Queensland and Victoria.

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;

PIA RESPONSE:

It is recommended that referral occur either at the beginning of a process for a prescribed type of application or at the end of consultation, the latter being consistent with existing established approval processes.

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?

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?

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?

PIA RESPONSE

This consultation issue does not refer to the DAP and the Position Paper is not clear on the role in relation to Commission assessment panels for amendments. It is preferable that assessment of a combined scheme amendment and permit application does not result in a dual process involving assessment by a DAP and the Commission.

The *DAP Framework* title of the Position Paper is misleading if it includes facilitating Ministerial power to initiate amendments. Further data or evidence is needed to demonstrate in what circumstances it would not be appropriate that the Minister direct the Council on how to undertake their strategic role in planning, and there are already provisions for Ministerial direction (or involvement in a direction) at s 34(2) for older planning schemes and s 40C (for draft LPS amendments) of LUPAA.

A review of an amendment may be appropriate where it is to initiate an amendment for Social and Affordable Housing, where the *Housing Land Supply Act 2018* is otherwise used. However, if applied to amendment applications more broadly it may result in more applications being assessed by the Commission, potentially undermining local level strategic planning and resulting in more and unnecessary work being carried out by the Commission.

An applicant already has the right to ask the Commission to review the planning authority's decision under 40B of LUPAA. This is currently confined to a process review. The legislation could be revised to enable the Commission to broaden the scope of the review to one that is a merits review against the LPS Criteria. If the Commission determines that the LPS criteria are satisfied (and there were no other unresolved matters) then the Council could be directed to advertise the application and the process could continue. This would result in an independent review by qualified professionals

within the Commission rather than Ministerial direction and potentially a political decision.

Ministerial directions for planning scheme amendments potentially conflicts with Objectives of the Act Part 2, as follows:

> *The objectives of the planning process established by this Act are, in support of the objectives set out in Part 1 of this Schedule –*
>
> *(a) to require sound strategic planning and co-ordinated action by State and local government;*

In directing Council to make amendments without involvement in decision making there is the potential for the removal, or the perceived removal, of responsibility from the local planning authority and their role in the planning system.

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.

PIA RESPONSE

Council planners should continue to provide the primary interface between the community and applicants for the development assessment processes, including applications referred to DAP, as this is a well-established process and the resources and mechanisms are already available. Council planners have an important role in providing local, accessible means to disseminate information about land use planning matters.

Critical to the process is public exhibition and the rights of the community to lodge representations to applications.

Council planners administer and process the application as per the existing system is preferable, with the exception of a DAP making the final decision in place of the current Council decision in the prescribed circumstances.

This should be easy to administer, as the criteria for triggering a DAP assessment must be clearly stated in the Act or subordinate legislation.

It should also be made clear whether the DAP is required to provide the reasons for their decision. As an expert body, this may take a different form to that of the current system that has Councillors voting on recommendations prepared by Council staff, without detail of their specific decision making.

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?

PIA RESPONSE

The position paper does not explore other options such as those used in other Australian jurisdictions for DAPs. PIA is aware that some States are currently updating their DAP process based on recent learnings including in NSW and WA. It is important that we take advantage of these learnings to ensure the most effective approach to introducing DAPs into the Tasmanian planning system.

There is a risk that the process proposed will not result in more timely decision making than the existing process, especially where hearings are held by the Commission when they would not have been held in the process conducted by the Council (noting this process must be balanced with procedural fairness requirements and the review of decisions).

PIA is concerned that any modification of the existing process does not overly further complicate the process of decision making.

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?

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

PIA RESPONSE

Overall, it is preferable that the authority reviewing requests for additional information (RFIs) is the authority to make the final decisions on the application. The current arbitration of RFIs by the Tasmanian Civil and Administrative Appeals Tribunal (TasCAT) is appropriate as they are the final decision maker in the event of an appeal.

If the DAP is the final decision maker on permit applications, it should also be the decision-maker on RFIs.

Very clear direction is needed on whether a decision by a DAP will replace third party appeal rights through TasCAT. Where a DAP deals with appeals and additional information requests, the process must be carefully considered to ensure it is not over-complicated with very little practical benefit over the existing approval process.

Additional information is an administrative issue that can be addressed by independent review (as previously noted).

Information requests should be resolved prior to exhibition of the proposal and preparation of the technical assessment reports.

The process should consider integration of the DAP with the powers provided to the Commission under Part 3 of the *Tasmanian Planning Commission Act 1997*, particularly where the DAP requires additional information to determine an application as part of their assessment or in response to the hearing process.

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

PIA RESPONSE

This is a complex issue and there are several considerations in whether the DAP or the TasCAT process is preferable. Ultimately, the type of applications being considered by the DAP will be a factor.

PIA notes that the vast majority of TasCAT decisions are decided by mediation making it a relatively efficient process. This is not a mechanism that is currently used by the Commission and there is no legislative process to support it. However, PIA also acknowledges that potentially the most contentious applications that are being targeted for the DAP process are less likely to be resolved through mediation than other appeals.

It is critically important that the decision-making process is not duplicated or complicated to avoid inefficiencies in the process.

Understanding the outcomes of the DAP is necessary and has not been made clear in the position paper. Whether DAPs determine the application from the Council planner's recommendation, or whether they provide a detailed assessment, determination and justification for decisions are important considerations that impact the required timeframes.

Additional information is required to inform the consideration of timeframes under a DAP process, including application fees and the potential for the consideration of costs.

Timeframes for referral, statutory notification and determination are triggered by lodgement of a *valid application*. Clarification of what a valid application is would improve operation of the DAP reforms, in addition to the normal planning application processes.

The indicative timeframes in the position paper do not appear to include sufficient consideration for Council administrative processes including various referrals, or for other parties to attend hearings and provide supporting information (as is currently possible through the TasCAT process).

The DAP process must be aligned with relevant legislative approval processes, including applications requiring assessment under EMPCA and HCHA which will need to take a slightly different form that currently applying to the s. 43A or 40T processes. PIA considers it highly desirable to avoid projects requiring assessment under EMPCA being assessed through DAPs.

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?

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

PIA RESPONSE

It is appropriate for the Council, as planning authority, to issue and enforce the permits. This is an established process and would be very difficult, inefficient, and inappropriate for the Commission to regulate. The Commission currently does not do this under the s 43A or s 40T processes.

For controversial decisions, the Commission may need to be involved in minor amendments under s. 56 LUPAA, however it would be preferable that these processes do not become over-complicated given that they will be 'minor' in nature.

Consideration should be given to the authority deciding on extension to permits, especially for complicated projects that rarely reach substantial commencement within a two-year time frame.

From: Joss Thomas < >
Sent: Thursday, 30 November 2023 4:25 PM
To: State Planning Office Your Say
Cc:
Subject: Please Protect our local Council democracy

Jocelyn Thomas

To whom it may concern,

I would like it to be noted that I, as a local property owner, rate payer, and constituent of this beautiful state, strongly 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 for your time spent reading this submission.

Regards,

Jocelyn

From:

From: Rosanna Cameron <>
Sent: Thursday, 30 November 2023 2:44 PM
To: Rosanna Cameron **Subject:** Protect Democracy

I am sorry that I am joining in sending a Copied email regarding the proposed Planning Panels and changes to the Planning system. The following e-mail has but written with care and expertise. I could try and write my own submission- but this email says it all for me.

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 recommendedthe 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?

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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**.

I firmly believe that planning decisions should remain with Councils so that the people in the areas concerned are able to voice their opinions. I feel, particularly strongly that in the case of the Kunanyi Mount Wellington cable Car - this should not be allowed to become a development of State Significance. The Development has already failed to pass through a rigorous planning process run by the Hobart City Council.

Yours sincerely,
Rosanna Cameron

From:	Steve Saunders <>
Sent:	Thursday, 30 November 2023 4:11 PM
To:	State Planning Office Your Say
Cc:	
Subject:	Protect our local democracy - 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.

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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,
Steve Saunders

Tasmanian Ratepayers' Association Inc.
P.O. Box 1035,
LAUNCESTON TAS 7250
Tel. 03 6331 6144

30 November 2023

Hon. Michael Ferguson
Deputy Premier, Treasurer, Minister for Infrastructure & Transport and,
Minister for Planning,
Parliament House
Tasmania

Dear Minister,

By email to :

Copied by email to :

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

yoursay.planning@dpac.tas.gov.au

Copied by email to :

Members of the House of Assembly and Legislative Council:

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

We wish to argue to protect our local democracy – and call upon parliament to say no to your Liberal Government's proposed new planning panels.

We 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 their local communities.** Handpicked state appointed and unelected planning panels will decide on development applications not your elected local council representatives. We believe local concerns will be ignored in favour of the developers. Also, if an assessment isn't going its way, the developer can abandon the open and transparent standard local council process at any time and have their development application assessed by a planning panel. This could also intimidate councils into conceding to developer's demands.

- **Makes it easier to approve large scale contentious developments** like the kunanyi/Mount Wellington cable car, high-rise developments in Hobart, the notorious Cambria Green mega developments at Swansea, high-density subdivisions like Skylands at Droughty Point, Rokeby, and the controversial, ill-sited high rise Gorge Hotel near Cataract Gorge in the heart of Launceston.

- **It will remove merit-based planning appeal rights** via the TASCAT planning tribunal on issues like height, bulk, scale or appearance of buildings; damaging impacts to streetscapes, and adjoining properties including over-shadowing, 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.** Not only will this be out-of-reach and expensive for an ordinary citizen, but it could potentially 'bog down' a development's progression because of long Court delays in an already-overburdened Supreme Court worklist.

- **Removing merits-based planning appeals has the potential to increase corruption and reduce good planning outcomes.** Experience elsewhere, such as 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. This Minister will be able to

force the initiation of planning scheme changes, but perversely, only when a local council has already 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.

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- **Poor justification – there is no problem to fix.** Presently 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.

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Say yes to a healthy democracy

- **We 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 and

review. 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.

- We 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 understand a Position Paper to inform the government's draft Bill * will be released for public comment most likely in January 2024, for a minimum of only five weeks, before being tabled in Parliament in early 2024. This programme, commencing during the hiatus of a popular holiday period, will again not give the community the time to properly understand and assess the impacts of any proposed legislative change.

Planning controls are essential to protecting community interests, and the full and unobstructed participation by the community is essential to maintaining community harmony and hard-fought standards.

In conclusion, we repeat out plea for parliament to say no to your Liberal Government's proposed new planning panels.

Yours faithfully,
President

And on behalf of
TASMANIAN RATEPAYERS ASSOCIATION INCORPORATED

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

#PlanningMatters
www.planningmatterstas.org.au

30 November 2023

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

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

Dear State Planning Office,

RE: PMAT Submission - Position Paper on a proposed Development Assessment Panel Framework

The Planning Matters Alliance Tasmania (PMAT) thanks the State Planning Office for the opportunity to comment on the *Position Paper on a proposed Development Assessment Panel (DAP) Framework* (the Position Paper). Public comment was invited between the 19 October and 30 November 2023.

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 State Planning Office also delivered an online presentation and question and answer session that provided more information on the DAP Framework here:

- State Planning Office DAP Presentation - 13 November 2023
- DAP online presentation questions and answers - 13 November 2023

What is being proposed by the Tasmanian Government?

The Tasmanian Liberal Government proposes legislation to empower the Minister for Planning to remove assessment and approval of developments from the normal local council process and have it done by Development Assessment Panels (DAPs) i.e. planning assessment panels.

This fast-track process will remove elected councillors from having a say on the most controversial and destructive developments affecting local communities.

There will be no right for the community to appeal the final decision to the planning tribunal (that is there will be no opportunity for merits based appeal to the Tasmanian Civil and Administrative Tribunal). The criteria being considered would enable virtually any development to be taken out of the normal local council assessment process and instead be assessed by planning panels, including developments already refused such as the kunanyi/Mt Wellington cable car, high-rise buildings in Hobart and new developments such as large-scale high-density subdivisions like Skylands

development at Droughty Point, the UTAS Sandy Bay campus re-development and developments in our National Parks and Reserves.

The Minister for Planning can take a development assessment from councils mid-way through the development assessment process if the developer does not like the way it is heading.

The Minister for Planning would also have new powers to instruct councils to commence planning scheme changes, but perversely, only when a local council has rejected such an application.

PMAT's submission

PMAT's submission covers:

1. What is PMAT;
2. Planning/legislative changes - background and process;
3. PMAT's Key concerns; and
4. PMAT's Key recommendations.

PMAT's key concerns

PMAT's key concerns with the proposed framework are explained in more detail in Section 3 below.

Broadly, our key concerns relate to:

1. The framework will create an alternate planning approval pathway allowing property developers to bypass local councils and communities;
2. Makes it easier to approve large scale contentious developments;
3. Removes merit-based planning appeal rights (i.e. appeals based on planning related grounds of objection such as height, bulk, scale or appearance of buildings, impacts to streetscapes, and adjoining properties including privacy and overlooking and much more);
4. Developments will only be appealable to the Supreme Court based on a point of law or process which have a narrow focus and are prohibitively expensive;
5. Removing merits-based planning appeals has the potential to increase corruption;
6. Removing merits-based planning appeals removes the opportunity for mediation;
7. Mainland experience demonstrates removing merits-based planning appeals has the potential to reduce good planning outcomes – including both environmental and social;
8. Increased ministerial power over the planning system decreases transparency and increases the politicisation of planning and risk of corrupt decisions;
9. Flawed planning panel criteria;
10. Undermines local democracy and removes local decision making;
11. Mainland experience demonstrates planning panels favour developers and undermine democratic accountability;

12. Poor justification for planning changes; and
13. Increasing complexity increases risk of corruption.

PMAT's key recommendations

PMAT does not support the proposed changes and instead wants councils to continue their important role of representing the interests of their communities.

Transparency, independence and public participation in decision-making are critical for a healthy democracy.

We should 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.

The Tasmanian Government should also 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.

PMAT's key recommendations are outlined in more detail in Section 4 below.

PMAT also concurs with the opinion piece attached in Appendix 1 below, that was published in The Mercury on the 29 November 2023 entitled '*New planning proposal removes independent review of decisions and risks, undermining confidence*', by Anja Hilkemeijer and Cleo Hansen-Lohrey lecturers in law at the University of Tasmania who teach constitutional law and administrative law respectively.

Yours sincerely,

Sophie

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1. WHAT IS PMAT

The Planning Matters Alliance Tasmania (PMAT) is a growing network of almost 70 community groups from across *lutruwita* /Tasmania which is committed to a vision for Tasmania to be a global leader in planning excellence. Our Alliance is united in common concern over the new Tasmanian state planning laws and what they mean for Tasmania's future. The level of collaboration and solidarity emerging within the advocacy campaign of PMAT, as well as the number of groups involved is unprecedented in Tasmania and crosses community group genres: recreation, environment, urban/local community associations, historic built heritage, ratepayers and 'Friends of ' groups.

Land use planning impacts every inch of Tasmania. We hold that good planning is fundamental to our way of life and democracy. PMAT works hard to raise community awareness about planning and Local Government and encourages community engagement in the relevant processes.

PMAT is an independent, apolitical, not-for-profit incorporated association, governed by a skills-based Board. PMAT is funded entirely by donations.

In 2020 PMAT was named Australia's Planning Champion, a prestigious honour awarded by the Planning Institute of Australia that recognises non-planners for their advocacy and for making a significant contribution and lasting presence to the urban and regional environment. PMAT was awarded the Tasmanian Planning Champion title in 2019.

PMAT's purpose is to achieve a values-based, fair and equitable planning scheme implemented across Tasmania, informed by PMAT's Platform Principles and delivering the objectives of the *Land Use Planning and Approvals Act 1993.*

As outlined in PMAT's Strategic Plan 2021–2023, '*PMAT's vision is for Tasmania to be a global leader in planning excellence. We believe best practice planning must embrace and respect all Tasmanians, enhance community well-being, health and prosperity, nourish and care for Tasmania's outstanding natural values, recognise and enrich our cultural heritage and, through democratic and transparent processes, deliver sustainable, integrated development in harmony with the surrounding environment.*'

Land use planning must offer a balance between development, individual rights and community amenity, and not just make it easier for development and growth at the cost of community well-being and natural and cultural values. PMAT aims to ensure that Tasmanians have a say in a planning system that prioritises the health and well-being of the whole community, the liveability of our cities, towns and rural areas, and the protection of the natural environment and cultural heritage. PMAT considers that the incoming *Tasmanian Planning Scheme* and the 'planning reform' in general will weaken the protections for places where we live and places we love around Tasmania.

2. PLANNING/LEGISLATIVE CHANGES - BACKGROUND AND PROCESS

July 2023

On the 21 July 2023, and only two days after the Premier announced the State Government would not force council amalgamations, the Premier announced, the State Government would introduce new legislation to remove planning decisions from local councils.

Instead, development applications would be determined by an 'independent' Development Assessment Panel appointed by the Tasmanian Planning Commission.

This announcement was made without public consultation and with poor justification.

PMAT voiced concerns saying the changes would give more power to property developers, weaken planning rules, sideline democratic processes, and bypass local councils and the community. PMAT called on elected members in the Tasmanian Parliament to oppose any proposed legislation.

The Local Government Association of Tasmania also voiced concerns, stating they were extremely disappointed the Premier announced the proposed changes with no prior consultation with the Local Government sector and questioned the State Government's justification.

The Greater Hobart Mayors (Brendan Blomeley is the Mayor of Clarence City Council, Bec Thomas is the Mayor of Glenorchy City Council, Helen Burnet is the Acting Lord Mayor of the City of Hobart and Paula Wriedt is the Mayor of Kingborough Council) **also voiced concerns** saying '*We have also been disappointed with the unilateral approach taken by the state government regarding its proposed planning reforms announced earlier this week*' and '*The timing and approach to announcing Development Assessment Panels has lacked transparency and appropriate and meaningful engagement. We are therefore calling on the government to work closely with our Councils on this proposal given the direct impact on our sector, not to mention our intimate experience with the state's planning system. While we will always support reform that delivers better services and outcomes for our communities, the state government's engagement with Councils must improve to avoid eroding the trust and confidence of the local government sector*."

October 2023

On the 19 October 2023, the State Government announced the draft legislative framework with the release by the State Planning Office of the *Position Paper on a proposed Development Assessment Panel Framework*.

The proposed planning changes were worse than we expected.

Far from removing the politics out of planning, the Minister for Planning announced the creation of a new role for his Ministry to initiate planning scheme amendments (i.e. the rezoning of land from for

example agricultural to residential land or a Specific Area Plan to facilitate a new high-rise building). This places the Minister in the middle of land use planning decision-making.

As raised in PMAT's media release, '*Giving the Minister the power to initiate planning scheme amendments, property developers the power to choose to bypass local councils and communities, and removing third party rights of appeal, is a blow for democracy and a backward step for transparency in Tasmania*'.

This is also especially concerning given the Tasmanian Government allows political donations from property developers, unlike NSW, ACT and QLD.

December 2023

Submissions on the Position Paper will apparently be published online during the first week of December 2023.

2024

Public comment on Draft Bill

Submissions received on the Position Paper will inform amendments to the *Land Use Planning and Approvals Act 1993* in the form of the *Draft Land Use Planning and Approvals (Development Assessment Panel) Amendment Bill 2024*.

It is understood that the *Draft Land Use Planning and Approvals (Development Assessment Panel) Amendment Bill 2024* 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.

Tabled in Parliament

The Sitting Schedules are available on the Tasmanian Parliament Website here.

The Tasmanian Parliament will reconvene on Tuesday March 5, 2024.

The Bill could be tabled anytime from March 2024.

Possible Implementation

On the 13 November 2023, the State Planning Office held an online presentation, which was published on their website on the 22 November 2023.

As per the DAP online presentation questions and answers - 13 November 2023 the State Planning Office stated that the Tasmanian Liberal Government want their proposed framework possibly implemented by mid-2024.

3. PMAT'S KEY CONCERNS

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

3.1 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.

3.2 Makes it easier to approve large scale contentious developments

It will make it easier to approve large scale contentious developments like the kunanyi/Mount Wellington cable car, high-rise in Hobart, Cambria Green on Tasmania's east coast, large high-density subdivision like Skylands at Droughty Point, the UTAS Sandy Bay campus re-development and developments in our National Parks and Reserves.

3.3 Remove merit-based planning appeal rights – removing what matters to the community

Developments in Tasmania are currently appealable to the Tasmanian Civil and Administrative Tribunal based on planning merit.

Under the Tasmanian Liberal Government proposed changes, the opportunity for merit-based planning appeals will be removed. Thus planning related issues will not be able to be the basis for lodging an appeal. **This is especially concerning given that it is merit-based planning related issues that are often what is most important for local communities or adjoining property owners/users.**

Merit based planning appeals grounds for objection or support are generally 'planning related'. The following examples highlight why planning related considerations are important for community well-being and cultural and natural heritage outcomes:

- the height, bulk, scale or appearance of buildings impacts to streetscapes, and adjoining properties including privacy and overlooking;
- impacts on local amenity;
- the suitability of landscaping provided;
- traffic, noise, smell, light and other potential amenity impacts;
- the appropriateness of access;

- arrangements to the site of a proposal;
- impacts on built and cultural heritage values;
- the suitability of the land to the type of development proposed;
- compatibility of the proposal with other use/development in the locality;
- environmental impacts such as air or water pollution or land degradation;
- health and safety concerns including bushfire risk; and
- access to and the adequacy of public infrastructure and services.

3.4 Developments will only be appealable to the Supreme Court based on a point of law or process which have a narrow focus and are prohibitively expensive

Developments will only be appealable to the Supreme Court, via Judicial review, based on a point of law or process which have a narrower focus than merit-based planning appeals and are generally prohibitively expensive.

Judicial reviews are heard by a Judge in Tasmania's Supreme Court and are a review of the legality of the decisions under challenge, not a review of the planning merits of a development.

This process has a much narrower focus than a planning appeals, in that the question that the Court is concerned with is about the process and manner in which the decision was made, as opposed to was the decision the correct or best outcome.

Judicial review hearings are also prohibitively expensive and are focused on the decision-making process, rather than the outcome.

3.5 Removing merits-based planning appeals has the potential to increase corruption

The NSW Independent Commission Against Corruption (ICAC) recommended the expansion of merit-based planning appeals as a deterrent to corruption.

As per ICAC, merit-based appeals are:

- ✓ an important check on executive government,
- ✓ third party appeal rights have the potential to deter corrupt approaches by minimising the chance that any favouritism sought will succeed; and
- ✓ The absence of third party appeals creates an opportunity for corrupt conduct to occur, as an important disincentive for corrupt decision-making is absent from the planning system.

The ICAC has had a long history of involvement with exposing likely and actual corrupt conduct in the NSW planning system and making recommendations to eliminate or minimise those risks.

Since ICAC commenced its operations in 1989, ICAC has produced over approximately 37 reports *'exposing likely and actual corrupt conduct involving the NSW planning system, along with numerous*

reports concerning the potential for corruption within the system and recommendations to eliminate or minimise those risks.'

In 2012, ICAC released a report entitled '*Anti-corruption safeguards and the NSW planning system*'.

The report recommended that the NSW Government adopts safeguards to ensure greater transparency, accountability and openness to minimise corruption risks in the NSW planning system.

Specifically, ICAC made 16 recommendations and **identified six key anti-corruption safeguards to help minimise corruption in the NSW planning system including expanding the scope of third-party merit appeals**.

Chapter 7 of the *Anti-corruption safeguards and the NSW planning system* report, '*Expanding the scope of third party merit appeals*' is outline below.

Note that EP&A is NSW's *Environmental Planning and Assessment Act 1979* which institutes their system of environmental planning and assessment for the State of New South Wales. It is essentially the equivalent of Tasmania's *Land Use Planning and Approvals Act 1993*. Also note that NSW's Land and Environment Court is essentially equivalent to Tasmania's *Tasmanian Civil and Administrative Tribunal*.

The Land and Environment Court was established in 1980 as the first specialist superior environmental court in the world. The court hears environmental, development, building and planning disputes.

Chapter 7: Expanding the scope of third party merit appeals Issue

In general, the scope for third party appeals is limited under the EP&A Act.

The limited availability of third party appeal rights under the EP&A Act means that an important check on executive government is absent. Third party appeal rights have the potential to deter corrupt approaches by minimising the chance that any favouritism sought will succeed. The absence of third party appeals creates an opportunity for corrupt conduct to occur, as an important disincentive for corrupt decision-making is absent from the planning system.

Discussion

Part 4 of the EP&A Act provides an example of the limited availability of third party appeals. Under Part 4, a third party objector to a development can bring a merit appeal in the Land and Environment Court against a decision to grant development consent only if the development is designated development. For all non-designated development, third party objectors cannot make merit-based appeals to the Land and Environment Court and must rely on the decision having breached the EP&A Act or the law. This includes most development in urbanised areas, such as residential flat

developments and townhouses. On the other hand, merit-based appeals for applicants are available for both designated and non-designated development.

The absence of an appeal right for objectors means that if an approval can be secured by corrupt means that are not detected, it can be acted on. Conversely, the availability of appeal rights increases the possibility that a development approval may be overturned by an independent body. In past Commission investigations involving corrupt conduct and planning decisions, there has not been any prospect of the corruptly influenced decisions facing merit appeals.

The Commission has recommended that the right of third parties to a merit appeal should be extended on numerous occasions.

The Commission continues to support enlarging the categories of development subject to third party appeals. In order to balance the need to curb the potential for real corruption with the need to avoid unnecessary delays in the planning system, the Commission believes that third party appeals should be limited to "high corruption risk" situations. This could include limiting third party appeals to significant and controversial private sector developments and developments relying on SEPP 1 objections or their equivalent. This would also help ensure a degree of consistency with the national approach to third party appeals.

This approach would also be consistent with the concept of providing additional safeguards for Part 4 applications that are reliant on significant SEPP 1 objections, which was adopted in the yet to commence provisions of the Environmental Planning and Assessment Amendment Act 2008. These provisions, once they commence, will provide for a review of determinations for certain applications that exceed existing development standards by more than 25%. The provision has not yet been proclaimed.

The Commission further recognises that consideration would need to be given to appropriately defining development that should be regarded as "significant". A definition should include developments relying on SEPP 1 objections under Part 4 of the EP&A Act and other major controversial developments, such as large residential flat buildings.

Consideration could also be given to allowing third party appeals in the case of developments associated with VPAs. The introduction of an appeal mechanism is justified in this case, given the current loose framework surrounding the use of VPAs and the pursuant corruption risks. This issue is discussed in more detail in chapter 2.

The current practice of the Land and Environment Court allows for the awarding of costs in appropriate cases, and this capacity should be a disincentive to objectors who may be inclined to lodge frivolous or vexatious appeals or appeals that otherwise lack merit. Additional ways in which the impact of third party appeals can be minimised include reducing the time for appeals and

introducing special procedures to ensure that, in urgent cases, speedy hearings are held. Appeals can also be restricted to original objectors and those objectors with leave.

Recommendation 16

That the NSW Government considers expanding the categories of development subject to third party merit appeals to include private sector development that:

- ***is significant and controversial***
- ***represents a significant departure from existing development standards***
- ***is the subject of a voluntary planning agreement***

3.6 Removing merits-based planning appeals removes the opportunity for mediation

Under the Liberal Government's proposed changes, the opportunity for mediation will be removed.

Tasmania's Tasmanian Civil and Administrative Tribunal, currently hears merit-based planning appeals and provides expert and experienced mediators to help the parties resolve the differences between them as far as possible.

Mediation is a very useful alternative dispute resolution procedure. Virtually all disputes before the Tribunal will be referred to mediation or other appropriate dispute resolution processes before proceeding to a full hearing.

It is understood that many planning appeals are resolved by consent agreement following a mediation conference.

Even if the mediation conference does not fully resolve the appeal, it can help to narrow the issues in dispute.

Mediation can also achieve timely and cost effective resolution of matters.

3.7 Mainland experience demonstrates removing merits-based planning appeals has the potential to reduce good planning outcomes – including both environmental and social

In July 2016, EDO NSW, published a report entitled *Merits Review in Planning in NSW*.

After a careful analysis by EDO NSW, the report concluded '*that the consistency, quality, fairness and accountability of merits review decision-making by the Land and Environment Court results in better environmental and social outcomes and contrasts with poorer outcomes and inferior processes in Planning Assessment Commission (PAC) public hearings*'.

NSW's Land and Environment Court is the most equivalent body to the Tasmanian Civil and Administrative Tribunal (TASCAT) as both hear merits planning appeals.

NSW's Planning Assessment Commission is the most equivalent body to the Tasmanian Planning Commission where planning appeals are not available to any party.

In NSW, merits review is not available to any party if the decision was made after the Planning Assessment Commission held a public hearing (this being done at the request of the Minister or the Secretary of the Department of Planning on a case by case basis). Following a public hearing, the Planning Assessment Commission provides a report with recommendations but there is no need for the decision-maker to follow its recommendations. **Put another way, merits review is extinguished by the holding of a public hearing that has no decision-making power over the determination outcome**.

As identified in the *Merits Review in Planning in NSW*, merits based planning appeals:

- Improve the consistency of decision-making;
- improve the quality of decision-making; and
- Improve the accountability of decision-making.

The report concludes:

'*Merits review is an essential part of the planning system and it is crucial that it continues to be recognised and facilitated in NSW. In addition, there are clear benefits to allowing third party merits review in relation to major projects in NSW. These benefits relate to improving the consistency, quality and accountability of decision-making in environmental matters. The net result of this is better environmental and social outcomes and decisions based on ecologically sustainable development.*

Recent moves to further limit third party merits review – particularly for resource projects – deprive the broader public of these benefits and serve to undermine the integrity of the planning system. Communities are disempowered and alienated by the extinguishment of their merits review rights while, somewhat ironically, the PAC and decision-makers are no better informed (as public hearings and public meetings are essentially the same process in practice).'

3.8 Increased ministerial power over the planning system decreases transparency and increases the politicisation of planning and risk of corrupt decisions

The Minister for Planning 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 2012, ICAC released a report entitled 'Anti-corruption safeguards and the NSW planning system'.

The report recommended that the NSW Government adopts safeguards to ensure greater transparency, accountability and openness to minimise corruption risks in the NSW planning system.

Specifically, ICAC made 16 recommendations and **identified six key anti-corruption safeguards to help minimise corruption in the NSW planning system including 'ensuring transparency', including:**

'*Transparency is an important tool in combating corruption and providing public accountability for planning decisions. A transparent planning system ensures the public has meaningful information about decision-making processes as well as being informed about the basis for decisions*.'

'*A lack of transparency in the planning system fuels adverse perceptions. Notwithstanding the absence of corruption, failure to explain processes and provide reasons for decisions can create perceptions of corruption. A lack of transparency can also conceal actual corrupt conduct. In the Commission's experience, failure to provide transparency in any process involving government decision-making is conducive to corruption as it creates a low threat of detection. The corruption risk is exacerbated when secrecy surrounding process is allied with secrecy surrounding the basis on which a decision has been made*.'

3.9 Flawed planning panel criteria

Page 17 to 27 of the Position Paper outlines the proposed Development Assessment Panel framework. The planning panel criteria have also been outlined in Appendix 2 below.

The criteria are not only flawed but highlights that most property development proposals could be approved by this alternate approval pathway, bypassing local councils and communities.

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.

3.10 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.

3.11 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.

The above 2021 Sydney Morning Herald article highlights that Liberal mayors, joined Labor and Greens councillors in criticising the NSW local planning panels.

Planning laws in Western Australia have also replaced councils with planning panels. In WA the changes prompted widespread political controversy involving the Western Australian Local Government Association and community based 'scrap the DAPs' campaigns.

The DAP affected communities of WA had to resort to petition their politicians to seek their support to '*end a long and ever-growing list of bad development approvals being made by the government's system of unelected, unrepresentative, and unaccountable Development Assessment Panels (DAPs). These five-person panels are completely biased in favour of the development industry. They consist of three government-appointed development industry "experts", and two "local government members" who are explicitly directed by the DAP regulations not to represent the views of their own councils, and thereby their constituents.*

How incredible is that?! Our elected members are stripped of the right to represent their electorates.

Yet even if the two councillors ignore that regulation and vote with the people, they are still outnumbered 3-2 by development industry representatives.

It's important to realise that this is not an anti-development petition. We, the organisers, absolutely support development. We also understand and accept that more homes need to be built to cater for a growing population. But that development needs to happen in a way that respects proper town-planning rules and the rights of the current tax-payers and rate-payers. And that is simply not happening.

These panels have shown again and again - from Stirling to Subiaco, from Broome to Mandurah, from South Perth to Applecross - a complete disdain for the opinions of local residents and rate-payers, approving instead developments that are grossly inconsistent with their surroundings, regularly bypassing all the normal rules councils abide by, disregarding the long-term social impact of placing liquor stores and fast-food outlets close to schools, bringing massive traffic and parking issues to quiet areas, destroying the amenity of suburb after suburb after suburb. And yet this system is not only set to continue; it's going to be expanded!

The system also gives developers the right of appeal, whereas residents and communities get none. So, if the developers don't get their own way the first time, they appeal, and appeal, and appeal until they do get what they want, where they want it, regardless of the rules that govern the rest of us. And there is no limit to the number of times developers can appeal. For residents and communities, however, the limit is precisely "zero". Which means that wherever you choose to buy, set up home, bring up your family, retire to – you'll have no chance of stopping this happening to your community.

Here are just three of the many examples:

The DAP recently approved a 29-storey building in South Perth, in a maximum 8-storey zoned area – that's nearly 4 times the height limit! And they approved that building with zero road setback, thus

destroying the amenity of the openness of the area with its 100-year-old trees. The DAP called this building "consistent with the existing built form of the locality."

In Maylands, in a designated "protected" heritage precinct, consisting of homes all more than 100 years old, restored by their owners at great expense and effort, preserving the recent history of our State, the DAP approved the demolition of a 100+ year heritage home and the construction of a 10-unit apartment block in its place, with flat white roof, flat black walls and bright yellow balconies. The DAP calls this "consistent with the existing built form of the locality."

In Alfred Cove, in a designated low-density suburb, an R40 block, which could have a maximum of 24 dwellings put on it, was given approval by the DAP to have 84 dwellings built on it, bypassing the regulations of five levels of zoning codes. At more than 23% above maximum height allowable, and three times the number of dwellings, the approved building is nowhere near the R40 requirements, but weighs in at over R100. Yet, once again, the unelected, unrepresentative and unaccountable DAP called it "consistent with the existing built form of the locality."

What an astonishing insult that is to our collective intelligence!

"Consistency with the existing built environment" is one of the key requirements of the R-Codes that these DAPs are supposed to be observing, yet time and again, they treat it with disdain.

And when we, the residents and rate-payers, question these outrageous decisions, we are stonewalled. The panels themselves refuse to explain, and their meeting minutes leave you none the wiser.

To date, the Planning Minister has stuck avidly to the line that "due process was followed". Well, we say, if that is "due process", then we have no choice but to seek to have this "due process" completely scrapped.

But the Minister wants to expand it.

We say that approvals for new developments must be orderly, rule-abiding, and accountable, based on decisions made by people who are answerable to the people. These DAPs have proven themselves clearly answerable to no one.

So, on 29 July this year, the DAP-Affected Communities group held a public meeting at the Como Bowling Club, to hear from more than a dozen different communities about how this system had treated them – all of them badly. Approximately 120 people attended from Alfred Cove, Como, Cottesloe, South Perth, Subiaco, Mt Hawthorn, Vincent, Maylands, Mandurah, Karawara, Karrinyup, Point Peron, Claremont, Mt Lawley, Swanbourne, Wembley, West Leederville, Dalkeith, Mosman Park, Willagee and Serpentine-Jarrahdale.

We voted unanimously to work to have this system scrapped, and to have decision-making returned to those whom we, the people, can hold responsible for the planning decisions they make: our elected local government representatives, as is befitting of a modern democracy.

With this petition, therefore, our growing coalition of communities is saying to both State Labor and Liberal parties (they both currently support the DAPs) that we have had enough of a system that delivers poor and improper planning decisions that favour no one but the developers concerned.

We have had enough of having our rights ripped away from our democratically elected local representatives and trampled on.

We have had enough of "behind-closed-doors" mediation sessions that the people are not allowed to attend, let alone participate in.

We have had enough of "so-called" experts using their discretionary powers to run roughshod over the rules that everyone else has to comply with.

In short, we have had enough of this system's utter disdain and dismissiveness of the people of this State.

Australia is a modern liberal democracy, and, as we all know, democracy is based on "government of the people, by the people, for the people", not "government of the people, by an unelected few, for the benefit of a chosen few."

As the NSW Independent Commission Against Corruption (ICAC) said of the same system there in 2013, it's "an easy target for those prepared to use corrupt means to obtain a favourable result."

Having seen it in action now for four years, we see no reason to think WA's version is any different.

We therefore ask you to join us in signing this petition demanding both the Planning Minister and the Shadow Planning Minister move to immediately "Scrap the DAP" and restore proper order and accountability to our planning system.'

3.12 Poor justification for planning changes

As per the Minister for Planning's media release, he justifies the significant planning changes based on three issues:

Issue 1 - To take the politics out of planning 'ensure that politics is taken out of planning decisions and much needed projects are properly assessed and approved where appropriate in a timely way;

Issue 2 - Claims that councillors are 'conflicted' when deciding on developments (The Position Paper also states that the conflicted role of Councillors has been identified in the Future of Local Government Review Stage 2 Interim Report (the Interim Report) (released in May 2023); and

Issue 3 - social housing projects are apparently being '*held up for many months if not years*'

Issue 1

- **Politicises Planning -** The Tasmanian Government justifies, the proposed planning changes by saying it will *''take the politics out of planning'' for more complex or contentious development applications*'. Far from removing the politics out of planning, the Minister for Planning wants to create a new role for his Ministry to initiate planning scheme amendments. This places the Minister for Planning in the middle of land use planning decision-making. The draft legislative proposal would enable the Minister for Planning to decide if a planning scheme amendment should be initiated - like the highly contentious Cambria Green amendment - and not be the responsibility of local councils as is currently the case.
- **Only about 1% of planning applications are appealed and that the decisions made by elected representatives were no more likely to be appealed than those by council officers.** As highlighted by the Local Government Association of Tasmania, the Government's own Future of Local Government Review has noted that the proportion of council planning decisions that go to appeal is about one per cent state-wide and that the decisions made by elected representatives were no more likely to be appealed than those by council officers.
- **Tasmania's planning system is already among the fastest in Australia.** According to the State Planning office's own Position Paper, Tasmania's planning system is already among the fastest, if not the fastest, in the country when it comes to determining development applications.

Issue 2

- **There is no evidence of conflict of interest -** The Position Paper states that the conflicted role of Councillors has been identified in the Future of Local Government Review Stage 2 Interim Report (the Interim Report (released in May 2023). However, that report contains no evidence that a conflict exists, is causing problems or isn't being properly managed.

  As highlighted by the Tasmanian Conservation Trust opinion piece '*The Minister and State Planning Office fail to state that a code of conduct applies to all elected councillors that is intended to address conduct including real and perceived conflicts of interest when voting on developments. This has been applied by councils in recent times to ensure that some councillors do not vote on some developments because they had previously expressed clear views for or against a development.*

  If the minister believes that the code of conduct is not effective and needs to be changed or is not being properly applied why does he not mention it?

The mere fact that councillors may have to consider what their communities think of a development and what the planning scheme requires is not intrinsically a problem.

The claim about conflicting roles seems to be a whispering campaign and when you trace it back to its origins there is no substance to it. In an earlier report the Local Government Board recommended to the government to 'de-conflict the role of councillors and the role of planning authorities' based on very flimsy reasons. The December 2022 Options Paper: Appendix found: 'The Board has heard that the role of councillors "to represent the community" often conflicts with the role of planning authorities to objectively apply the provisions of a planning scheme regardless of the views of the community.'

There is no documentation of who the board heard this claim from, how many people held these concerns, and whether decisions were affected in inappropriate ways. The Board did not attempt any targeted research on the conflict issue. Instead, this flimsy claim led the Minister for Local Government to recommend to the Minister for Planning that he investigate the apparent conflict of interest problem.

Although no problem could be identified the government wanted to fix it with planning panels.'

This is especially perplexing considering that that Councils are also currently being asked to comment on the Councillors Interests discussion paper. On the 9 November 2023, Nic Street, Minister for Local Government, announced comment on proposed reforms for councillors. Submissions are open until 22 December 2023.

See details here: Managing conflicts of interest of councillors: Consultation – proposed conflict of interest reforms for councillors in Local Government.

Issue 3

- **No evidence provided** - The Planning Minister states that social housing projects are being '*held up for many months if not years'* but provides no evidence.

6.13 Increasing complexity increases risk of corruption

Implementation of the proposed changes would further increase an already complex planning system.

The NSW Independent Commission Against Corruption (ICAC) recommended in its 2012 report entitled: 'Anti-corruption safeguards and the NSW planning system' reducing complexity in the planning system as a as a deterrent to corruption.

The ICAC report stated *'A straightforward regulatory structure assists in the detection of corrupt conduct and acts as a disincentive for individuals to undermine the system. The risk of error, which*

can provide a convenient cloak for corrupt conduct, is also reduced when established processes are clearly defined and understood.'

Chapter 4 of the Anti-corruption safeguards and the NSW planning system report, highlights that:

'*In the past, the Commission has commented on the complexity of the NSW planning system.*

Complexity creates opportunities for manipulating the system by encouraging "workarounds" and the establishment of alternative systems. Consequently, it is difficult to detect corrupt activities in a complex system, as any lack of clarity in a system provides an opportunity for corrupt actions to succeed. The inconsistent decision making that results from a complex system also makes it difficult to establish that correct processes are being followed.

Delays are also a by-product of complex systems and a recognised trigger for corruption. Individuals needing to access a service in which delays are common may be tempted to bribe the official involved in order to move up the queue or short cut the process.'

4. PMAT RECOMMENDATIONS

- 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.
- 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.

APPENDIX 1 - New planning proposal removes independent review of decisions and risks, undermining confidence

PMAT concurs with the opinion piece below, that was published in The Mercury on the 29 November 2023 entitled '*New planning proposal removes independent review of decisions and risks, undermining confidence*', by Anja Hilkemeijer and Cleo Hansen-Lohrey lecturers in law at the University of Tasmania who teach constitutional law and administrative law respectively.

New planning proposal removes independent review

The proposed reforms will remove oversight of development decisions, writes Anja Hilkemeijer and Cleo Hansen-Lohrey

The Tasmanian government is proposing to alter how proposals for large developments will be assessed. This could affect the evaluation of projects such as a kunanyi/Mt Wellington cable car, high-rise buildings in the Hobart CBD, the UTAS Sandy Bay campus re-development, and planning assessments for tourism developments in national parks.

The Premier Jeremy Rockliff has already announced that, under the new process, local councils would no longer assess proposals for urban projects of more than $10m or rural projects over $5m. Instead, the Tasmanian Planning Commission would establish special assessment panels for each proposal. Currently in Tasmania, Development Assessment Panels ('DAPs') are only used in relation to a tiny number of extremely large and complex development proposals – such as for the proposed Hobart stadium – and, in those cases, there is some parliamentary oversight. The proposed reforms will make the use of DAPs much more commonplace, while simultaneously removing oversight of those decisions.

Under this plan, outlined in the government's new Development Assessment Panel Framework Position Paper, decisions of Development Assessment Panels will be final. Neither the project developer nor those who object to a development would be able to exercise traditional rights of merits review through the Tasmanian Civil and Administrative Tribunal (TasCAT).

The Tasmanian government's reform proposal appears to be modelled on existing Western Australian planning laws, which have replaced councils with development assessment panels. In WA, these changes prompted widespread and intense political controversy, involving both the Western Australian Local Government Association (WALGA) and community-based 'Scrap the DAP' campaigns.

Allowing development applications to be decided by a single body (the DAP) appointed by the Tasmanian Planning Commission will diminish the democratic and community-based foundations of local council decisions. Mr Rockliff and the Minister for Planning Michael Ferguson have said that there is a problem with councils improperly rejecting development proposals based on political or ideological motivations. However, the government's own data, set out in the Development Assessment Panel Framework Position Paper, does not support this claim.

Furthermore, removing access to TasCAT for review of planning decisions could undermine public confidence in the fairness and validity of the planning approval process. As we explain to law students at UTAS, merits review by tribunals such as TasCAT improves the quality and consistency of public decision making. In this way, merits review plays an important role in improving public administration on a systemic level, while ensuring both due process and government accountability.

The government argues that there is no need for review by TasCAT

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# of decisions and risks, undermining confidence

because hearings by DAPs are similar to TasCAT proceedings. This is inaccurate. For one, if access to TasCAT is cut off, there will be no review process. A DAP cannot independently review its own decisions.

Furthermore, unlike TasCAT, DAPs are not designed to ensure independent, expert decision making. In their structure and design, both the Tasmanian Planning Commission and the panels established by it have been criticised as being insufficiently arm's length from government. Commissioners are appointed by ministerial 'nomination' on the basis of 'experience' in building, construction, and other planning related areas. Most of the commissioners, and all panel members, lack security of tenure. Despite being required to apply complex legislative and planning rules to large-scale development proposals, none of the commissioners or panellists are required to have legal training. By contrast, TasCAT legislation ensures that the tribunal has a relatively high level of independence from government. The TasCAT president and deputy presidents must have the same qualifications as magistrates. Senior and ordinary members are appointed after a publicly advertised and merits-based selection process and all members of TasCAT have considerable security of tenure.

The Tasmanian Planning Commission's principal function is to advise and support the Minister for Planning on land use and planning, as well as the provision of transport, infrastructure, and land development. The report of the Independent Review of the Tasmanian Planning Commission, published in 2020, contains a compelling warning about the challenges of combining this advisory role with an independent project assessment function. The report says:

"The TPC's model of using ... a small pool of experts, many of whom are TPC staff and technically employees of the Tasmanian government, means decision making is not at sufficient arms' length from government. There are inadequate safeguards in place to reduce the potential for avoidance of conflicts of interest ..."

The reason most Australian states rely on local council planning processes, backed by merits review conducted by an independent tribunal, is to ensure that people impacted by planning decisions can have confidence in the integrity of the system. Even if people are disappointed by the outcomes, they can accept that their views have been fairly taken into account and that any legal discretions have been correctly applied.

Providing developers with an alternative pathway through a Tasmanian Planning Commission panel, without the possibility of merits review by TasCAT, is likely to undermine public confidence in the planning system and reduce administrative accountability.

It is strongly in the public interest for the community to engage with these proposed legislative changes. Details of the proposed reforms are set out in the government's Development Assessment Panel Framework Position Paper available at www.planningreform.tas.gov.au/planning-reforms-and-reviews/planning-legislation-reviews/draft-land-use-planning-and-approvals-amendment-bill-2024. Submissions on the position paper are open until 30 November 30. The government plans to release draft legislation in January 2024.

Anja Hilkemeijer and Cleo Hansen-Lohrey are lecturers in law at UTAS who teach constitutional law and administrative law respectively.

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APPENDIX 2 – Development Assessment Panel Criteria

Page 17 to 27 of the Position Paper outlines the proposed Development Assessment Panel framework.

Page 18 and 19, outline the specific Development Assessment Panel criteria.

Five Development Assessment Panel criteria are proposed. With a development application only needing to satisfy one or more of the five criteria.

The five criteria highlight that most property development proposals could be approved by this alternate approval pathway, bypassing local councils and communities.

Development Assessment Panel Criteria

An application may be suitable for referring to a Development Assessment Panel if it is a 1) discretionary application and the referral is endorsed by both the Planning Authority and the applicant, 2) mandatory referral and 3) Ministerial referral provided one or more of the following criteria for DAP referral is satisfied:

1. where the council is the proponent and the planning authority;
2. the application is for a development over $10 million in value, or $5 million in value and proposed in a non-metropolitan municipality;
3. the application is of a complex nature and council supports the application being determined by a Development Assessment Panel;
4. the application is potentially contentious, where Councillors may wish to act politically, representing the views of their constituents, rather than as a planning authority; or
5. Where there is a case of bias, or perceived bias, established on the part of the Planning Authority.

From: Berry Dunston <>
Sent: Thursday, 30 November 2023 3:18 PM
To: State Planning Office Your Say
Subject: Draft Land Use Planning and Approvals (Development Assessment Panel) Amendment Bill 2024

Dear Sir/Madam
I am concerned that the proposed Draft Land Use Planning and Approvals (Development Assessment Panel) Amendment Bill 2024 will reduce the ability for people who will be affected by planning decisions to have a say in relation to those decisions. It may also impact on their having the opportunity to object if they feel there will be negative impacts of those planning decisions.

The right to have this opportunity to be heard should be built into the process as a fundamental principal of a functioning democracy. While it may slow the decision making process and will possibly frustrate developers, this right should not be disregarded.

Consultation issue 1: The discussion paper proposes the introduction of Independent Development Assessment Panels to take over some local government decision-making functions. Although these panels may function independently of government, my concern is that the proposed panels be appointed by the current government. There is a long history of governments setting up 'independent' panels with members who support the particular government's ideology and agenda and are therefore, not truely 'independent'. If the proposed panels are to take over some of the decision-making powers of local government then they should be appointed by local government collectively, not by the State government. The panels would then be better informed and have a greater understand of the range of local planning issues as well as being more independent than a panel appointed by the State government.

Also, it should be the planning authority that decides if a development application is referred to a DAP, not the Minister. This decision should occur following community consultation by Council where Council determines that a DAP is best able to make an independent assessment.

Consultation issue 2: The Minister should not have the power to direct a Council to initiate a planning scheme amendment as that would undermine the independence of local government. They may choose to request this but should not be in a position to "direct".

Consultation issue 3: it is important that the wishes of the community and particularly local residents should be incorporated into a DAP decision making process, not just those who may be assumed to have "local knowledge".

Consultation issue 4: Development proponents are notorious for providing inadequate, incomplete and sometimes misleading information and then complaining about delays when asked for further information. Sometimes this is due to unclear advice from a planning authority about what is required. It is also obvious that many development proponents will only submit information that supports their development. For a truely independent assessment the various studies required for a development assessment should be determined and carried out by the DAP, while being paid for by the proponent of the development.

Consultation issue 5: If the basic democratic rights I noted in the first paragraph are important, then merit appeals should be allowed for all DAP decisions. Appeals will be rare if the DAP has done its job properly, allowed all interested parties to have their say and demonstrated in their decisions that all views have been taken into account.

Consultation issue 5: Councils would seem the best placed to remain the custodian of planning permits and to enforce any conditions, as they already have the staff and experience of doing this. The alternative would be to set up a duplicate system under the DAP which seems unadvisable and unnecessary.

Thank you, Berenice Dunston

ABN 68 300 116 092

Date 30/11/2023

Enquiries: Planning Department
Phone: (03) 6382 8800

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

Dear Sir/Madam,

RE: George Town Council Submission – Development Assessment Panel Framework

Thankyou for the opportunity to make a submission to the Position Paper regarding the use of Development Assessment Panels (DAPs) to determine certain development applications.

While Council welcomes the opportunity to make a submission and has provided technical responses to the questions raised in the Position Paper, it is noted that Council has not been consulted on the general merits and suitability of DAPs as a mechanism to resolve the perceived issues with decision making identified by the State Government. Council has not had sufficient time to form a position on this matter and would welcome further, broader consultation on the issue and the range of potential solutions that may have been considered.

Council can certainly see the merits of DAPs in certain circumstances. It is clear that there is potential for bias and inappropriate influences in the planning decision making process. However, it is unclear that this is happening across the sector at such a scale that it is significantly impacting development and investment.

- Data has not been provided that indicates the number of Council decisions that are being challenged.
- There are no statistics that show the number of Council decisions overturned at TasCAT.
- Independent processes have been put in place for Major Projects, Major Infrastructure Projects and Projects of State Significance, however, very few proponents have opted to use these processes, due to the process being more expensive, timely and rigorous than the normal DA process.
- Statistical information provided demonstrates that the planning system in Tasmania is one of the fastest (if not the fastest) in the Country.

There are also a number issues that appear to be able to be resolved by other means, without creating additional processes, assessment bodies and significant additional resource requirements.

There is a general consensus that the role of Council as the Planning Authority is better understood by Councillors than it has been in the past and this can only improve with minor tweaks to education and training.

Council would welcome further information regarding why this system has been selected and further consultation on its merits.

The following technical feedback is provided with respect to the questions raised in the Position Paper.

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;

ii. Critical infrastructure;

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

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

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;

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

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

viii. Application over a certain 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

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 Councilors are conflicted.

Planner Comments:

a)

- A number of applications that have come before Council for unit developments have attracted questions and comments relating to minimising social housing. However, these concerns are generally fleeting and Council has not refused an application for social housing on this basis (or any basis). George Town is in a somewhat unique position in this respect, due to past experiences with significant volumes of social housing and ongoing impacts of past decisions.

- There are a number of exemptions in the planning scheme for infrastructure undertaken by the relevant authorities. Has expanding the exemptions for public authorities been considered as a mechanism to overcome this? The existing Major Projects and Major Infrastructure and Major Infrastructure Development Approvals processes also have this covered. If these are not working it is questionable if expanding DAPs to other applications will work. These processes should be reviewed if they are not achieving their intended purpose and potentially adapted to reduce the complexity of multiple approval options.

- There is merit in an alternative pathway, potentially a DAP being available to assess proposals where Council is the applicant, to avoid the clear conflict of interest associated with these applications. However, it is also noted there are existing options available to manage these conflicts. The general practice currently is for Council to obtain planning advice from independent planners, rather than Council staff. Similar options are available where Council cannot form a quorum. Council could also delegate such decisions to expert officers or the General Manager. This can be resolved through delegation. Formalising an acceptable process would be welcome.

- There is potential for greater bias to be introduced if Council is acting as an advocate. Council's have resources and expertise to create a significant hurdle to development. This situation could also put planning staff in a difficult position if they are assisting Council to advocate as well as assessing the development. There may need to be an avenue for the DAP to conduct the entirety of the assessment without the assistance of council staff.

- A DAP would certainly assist in situations where there is a bias on the part of Council or Councillors, however, it should be up to the applicant to demonstrate that bias exists and confirm that Councilors will not declare an interest before it should be granted on this basis.

- It is unclear how having the DAP determine complex applications, would be a more convenient process than just providing those resources to the planning authority via a referral process. There is potential that a risk-averse Council will simply refer all applications where they lack the expertise; very few Council's would have staff qualified in landslip assessments, flooding and bushfire risks. Who bears the liability, or defends decisions made by the DAP?

b)

The applicant, planning authority and the minister are appropriate people to nominate a referral. However, the power to accept or reject an application from following this process should sit with the DAP, not with the Planning Authority.

It is unclear how the need to have consent from other parties will achieve the intent of the proposal.

c) A range of referral points is acceptable, however, how this impacts on timeframes will need to be considered. If a range of referral points are supported, it would be better to make the process as consistent as possible with the current section 57 process to maximise transferability at any point.

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?

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?

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?

Planner Comments:

In all cases the amendment should be directed to the Planning Authority in the first instance for a formal decision. The Minister should only have the power to direct initiation of a planning scheme amendment where it is consistent with a clearly documented strategy previously endorsed by Council, and a review by the Commission has resulted in a direction to reconsider. The circumstances in which the Minister can direct initiation must have clear parameters.

Informal advice from Council officers regarding the likely outcome of an amendment application should not be sufficient justification for Ministerial intervention. It should only occur following a decision of Council.

Any amendments initiated by the minister must align with existing strategic documents at all levels. Amendments undertaken contrary to strategies endorsed by the Council, undermine the Council and community vision for development, and undermine Council's investment in such strategic documents. If a development does not align with existing strategies endorsed by Council, only Council should have the discretion to deviate from those strategies.

The absence of strategic plans should not be sufficient justification for the Minister to determine the strategic direction of a community.

It is also unclear why the Minister would need to direct the Planning Authority to initiate the amendment, instead of just having the power to initiate the amendment themselves.

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.

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?

Planner Comments:

a)

There is significant potential for conflict where Council is the primary contact and engages in pre-lodgment discussions, which often include discussions regarding the merits of an application and interpretation of individual clauses. Often Council's position is backed by experience and legal advice. This has potential to create confusion if the Commission has a different approach to that generally taken by Council and Council officers. As such, there is merit in the DAP being responsible for the administration of the entire process.

A tribunal hearing is de novo, allowing the introduction of missing information prior to being determined. The DAP may be faced with circumstances where they do not believe they have all the information necessary to determine an application, but there is no real opportunity to identify that prior to the DAP needing to make a decision. As such, there is potential that an application will be refused as a result of Council staff not requesting sufficient information to meet the expectations of the DAP.

This issue could largely be overcome if the DAPs role was clearly to deal only with issues in contention, rather than an in depth review of the entire application. Professional Council staff determine the bulk of development applications. Is there a reason the Commission cannot rely on the advice of Council staff regarding general compliance with the planning scheme, and only more thoroughly

interrogate matters that are in contention, raised through representations, or following a review of the recommendation by the applicant? The scope of the DAPs assessment role needs to be clearly and unambiguously defined.

Should the DAP use Council resources for administration, engagement and additional information, the development of legally robust practice notes should be used so that the approach of the Commission is widely known to staff across different Council's.

b)

The current s43A (former provisions of the Act) and s40T processes may be suitable with some tweaking. These processes usually include amendments, designed to mold the scheme to the development. Without the amendment element, an assessment is purely to determine compliance with the existing planning scheme. Applying the same rigor and attention to detail on straight compliance assessments, may result in greater rigidity and potentially a higher rate of refusals.

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?

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

Planner Comments:

a)

A simple mechanism to have Section 54 requests reviewed would be welcome across all applications, not just DAPs specific applications.

A proponent who has opted to have a DAP complete the assessment because of a perceived bias on behalf of Council, is unlikely to readily accept a request for information from the Council. If there is a chance they don't have to spend money on an additional expert report or assessment, and can have the request reviewed, they are likely to take advantage of that. It is likely requests for a review of further information requests will be more frequent than not. Consideration should be given to creating thresholds or a fee for reviews to minimise frivolous requests.

b)

Changes to the planning scheme could certainly make requests for information less frequent. Some Council's require the applicant to submit a planners report that addresses all of the applicable standards in a planning scheme. A simple requirement for the planning authority to link a request for information to a particular clause in the planning scheme may deter some requests that cannot link to the planning scheme.

A standard template for requests for information could also assist this.

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?

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

Planner Comments:

a)

Clarity must be provided regarding the ability to appeal decisions made by DAPs. Removing the appeal process on day to day planning applications has the potential to result in inconsistent decisions, creating confusion for Council planners and developers. If appeal rights are removed, it is essential that measures are put in place to ensure consistency of decision making coming out of the two bodies.

The approaches taken by the Commission and TasCAT Tribunals are very different. Whereas tribunal decisions are based on legal precedents and principles and are essentially a judicial investigation, the Commission and the DAP will be inquiry based and lacks the same legal rigor. The two bodies may be faced with fundamentally the same applications but make drastically different decisions that are unchallengeable. The risk is that the DAP will effectively either evolve into a quasi-tribunal and become equally as litigious over time, or, there will be drastically different approaches and decisions coming out of the two bodies. Council planners rely on tribunal decisions to interpret the planning scheme and to provide sound advice to applicants and to Councils. With decisions effectively being made by two different bodies, this approach confounds the ability of planners to provide confident guidance.

The importance of a third party review is recognised, however the form proposed is disproportionate to the applications being considered. Essentially the independent review process (via tribunal appeal) for a garden shed or dwelling extension, would be far more litigious, costly and lengthy, than the review process for some of the most controversial and high risk developments (via the DAPs). If it is necessary for minor developments to go through the appeal process then it is definitely a necessary process for large scale, important and controversial projects. If the tribunal process is not necessary for the big development, the cost and time is certainly not justifiable for minor developments. It is unreasonable for small scale developments to be exposed to a process that is more difficult than that faced by significant developments. This is directly contrary to the Draft Tasmanian Planning Policy 7.0 Planning Process, specifically 7.3 Regulation Objective "To avoid over regulation by aligning the level of regulation to the

scale of the potential impact associated with use and development".

The scoping-paper has recognized the speed at which applications are processed. It also recognizes that it is the appeal process that is causing unreasonable cost and delay. Why does the reform not target the appeal process itself? Or consider amending LUPAA so that the circumstances in which third party appeals can be lodged is reduced? The appeal process could be left intact, but might have a higher cost to discourage frivolous or vexatious appeals.

If appeal rights are to be removed, they should be removed on a thoroughly consistent basis to ensure consistency in decision making and to establish clear precedents. Is there a reason why DAPs could not be used for all merits based appeals?

The approach of the TPC is enquiry based. It is possible that in reviewing an entire application, the likelihood of finding components that are non compliant and refusal of the application is potentially higher. The State Planning Provisions include a range of poorly worded standards that could be interpreted as prohibitionary. The DAP will be assessing the entire application to make a planning decision. The tribunal is confined in its assessments and generally only tests those issues specifically identified by the appellant as being in contention. It is possible, given the track record of the TPC and rigid approach often taken, that an assessment by them will likely be less flexible and more likely to result in refusal of the application.

b)

With respect to timeframes:
It is unclear why a draft assessment would need to be completed prior to the application being advertised. Recommending conditions and restrictions without taking into account the representations is contrary to the intent of Clause 6.10 of the Scheme. Advertising should occur as soon as any request for additional information is satisfied and the documents advertised should be limited to those that make up the application. Council's assessment and recommendation can then be undertaken concurrently with advertising and reduce the overall timeframe. The planners assessment does not make up part of the application and is likely to create confusion for a member of the public trying to understand the application as proposed.

If the Commission will utilize qualified experts in its decision making outside those accessible to Council's it is unclear why the Council would prepare a planning assessment prior to those experts being involved.

From experience, the likelihood that advertising the recommendation will reduce representations is low. There is greater potential for the draft assessment to distract interested parties, becoming the object of their representations, and prompting them to expand their submissions beyond their actual private concerns with the proposal. It also has the potential to cause interested parties not to make

a submission at all due to the perception that “the decision has already been made”.

Other timeframes appear to be reasonable.

If the DAP is making a planning decision at a hearing, is there an expectation that Council officers will attend such a hearing?

If the intent is to subject the application to even greater rigor than a Planning Authority would impose, over a longer period of time, it is unclear if this will further the objective of reducing timeframes and providing greater certainty.

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?

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

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

Planner Comments:

a)

This depends on the extent to which the DAP assesses the application and imposes its own conditions over those recommended by Council. As the DAP is charged with assessing the entirety of the application for compliance, are they going to develop their own interpretations and conventions for conditioning planning permits? If the DAP completely assesses the application, rewrites permits and applies their own interpretations and conditions in a wholistic fashion, then the DAP should be responsible for enforcement of that permit.

If the DAP reviews the recommendation of Council, largely adopts the recommended permit conditions and only applies changes related to matters that are in contention, similar to the Tribunal, then it is reasonable for Council to be responsible for enforcement of the permit. When the Tribunal overturns a planning decision, they direct the Planning Authority to put forward draft permit conditions. This ensures the permit generally is consistent with other permits issued by the Council.

b)

Depending on the degree to which the DAP interferes with the recommendation of Council, DAP permits should be enforced by Council, just as Tribunal permits are enforced by Council. Serious consideration should be given by the DAP to the enforceability of the permit, ensuring that additional conditions imposed are reasonable.

c)

Amendments to DAP determined permits should be treated in a similar manner to those which have been subject to an appeal. Council has previously put forward a recommendation to the DAP, presumably including recommended conditions. It is assumed that most permits will resemble the recommendation put forward by Council. It should be possible for Council to amend a permit, unless it involves a condition that was added or amended at the direction of the DAP. The DAP could potentially be the avenue for interested parties to appeal a minor amendment.

Draft DAP Framework -Feedback

Draft Development Assessment Panel (DAP) Framework

Ref	Stage of assessment process	Responsible person/ authority	Proposed Framework	Comments and additional Questions for consultation
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.
2	Lodge Development Application	Applicant lodges with Planning Authority	No change to current process	Existing process for the lodgement of development applications.
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 with the existing provisions of the Act. Refers application to TasWater, Tasmanian Heritage Council or EPA as required.	Existing process for determining that a development application is valid[2]. See section 24 and 25 of this section for information regarding application fees.

[2] 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.

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. **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;	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?* *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.

			• 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 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.	

Planners Comments:

- 7 days is insufficient time for individual Councilors to be made aware of all applications coming in and advise if they have a conflict of interest, if a development is unusually complex or contentious or if Council wishes to advocate for an outcome. While this may be clear in specific circumstances, experience and the narrative of the Position Paper indicates that this is often not clear until advertising has occurred, the community voices their concerns and the conflict arises between the roles of Council as planning authority vs community representative. Councilors are trained not to pre-determine an application until all of the information is on the table, including representations and assessment. This seems to suggest Councilors should be making determinations before they have all of the information required to make a decision.
- 7 day timeframe requires delegation at least to the General Manager – not realistic for Council to make formal decisions in 7 days on every application that comes across the counter.
- It is not appropriate for Council to determine those applications which will be referred. A request (from either the proponent or Council) should be forwarded to the Commission or Minister. The Planning Authority should then be directed to proceed in accordance with their decision. What if Council chooses not to do the referral? Referral criteria should be unambiguous so that there is minimal discretion involved when referral is requested by the applicant.
- Value of works should not be the only determinate of whether an application meets the criteria for referral. Value of works is difficult to verify and consideration should be given to disincentivizing overinflation of development values (maybe link value to fees payable?). No statistics have been provided regarding how many projects statewide would have a value of $5 million. In non-urban areas $5 million is a large development and would only be seen on an occasional basis.
- While it is appreciated that larger scale development has a greater impact on the economy, it is likely that the cumulative benefits of

	smaller scale developments would be greater and a consistent approach to simplifying the process for smaller developments would be beneficial from this perspective.			
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; • Other(?)	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'?*

Planners Comments:

- 7 day timeframe requires delegation at least to the General Manager – not realistic for Council to make formal decisions in 7 days on every application that comes across the counter. Perhaps a Notice of Intent process could be incorporated, similar to level 2 activities, so that there is ample time for these aspects to be determined before the fully formed application is submitted and timeframes commence. As above, it is more appropriate that the DAPs determine eligibility for referral or that the criteria for referral are so unambiguous that there is minimal discretion exercised by the planning authority.
- Considering value for Council developments is reasonable. A value of $1million is appropriate and would capture significant Council proposals.
- Critical Infrastructure should be infrastructure that has been strategically planned by public authorities, not ad-hoc to facilitate individual proposals.

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. 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.	*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?*
Planners Comments: It is reasonable for Council to continue progressing the application while the DAP makes a decision regarding the eligibility of the application. It would be better that the entire process mirror the S57 process so that transitions can be made with minimal interruption to the application process.				

6	Review of DA to determine if further information is required to	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	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

	undertake the assessment		required and, if so, must make a request within 21 days of receiving a valid application. Clock stops while waiting for the applicant to provide additional information to the satisfaction of the Planning Authority.	necessary information it needs to undertake the assessment. The 21 day timeframe and 'stopping the clock' is consistent with section 54 of the Act.
It is unclear how the Planning Authority can be certain that it has all the information required for the DAPs to determine the application. From staff experience, Council's refusals to issue permits more frequently occur because they feel like they have insufficient information to have confidence in their decision rather than because they philosophically object to it. Consideration should be given to confining hearings to issues in contention and allowing additional technical information to be introduced to address those contentions prior to a hearing occurring.				
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.

Planners Comments: Clarity needs to be provided regarding the impact on timeframes if the challenge is upheld, and the ability to revise the request if necessary.				
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	This part of the framework is similar to existing processes.

			the DAP, the Planning Authority advises the applicant of the outstanding matters and the clock remains stopped.	
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).
Planners Comments: The insights provided by public consultation can assist to determine compliance with the planning scheme and are important for completing an assessment against the planning scheme. They are also essential to formulating conditions. It is unclear why the planner's assessment would be placed on exhibition? It does not form part of the application. This process is more similar to the standard Section 57 process and should mirror that process as closely as possible. Advertising conventions should be no different to the advertising of a normal planning application. It is also unnecessary to delay advertising until the planning assessment is completed. This can be undertaken concurrently with advertising and reduce the overall length of the process. Items 9 and 10 in the process should be swapped.				
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.	

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.
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; • a copy of the recommendation report and any draft permit;	This part of the proposed framework is similar to existing processes for a section 40T(1) application

			• 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.	
Planners Comment: Clarify what happens if the fee is not paid. A stop clock should be inserted to ensure the fee is paid before the final referral. Council should not be expected to deal with the unnecessary administrative burden of needing to chase the applicant for fees and potentially be out of pocket to ensure the fees are paid to the DAP. Standard DA fees should be charged by Council and any further fees, invoicing and management of payments should be completed by the DAP. Considering the scale and cost of the developments proposed, all fees should be paid upfront rather than assessments commencing without payment.				
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. 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.	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.

			The DAP must notify the Planning Authority, applicant and representors of their determination to hold, or dispense with holding, a hearing.	
Planners Comment: It is appropriate to dispense with a hearing where there are no representations and no request for a hearing. However, if the applicant disagrees with the recommendation of Council Officers a hearing should be conducted. There should also be an opportunity for the assessing officers to be heard if the DAP intends to change the recommendation or permit conditions. It is strongly supported that the information provided by the planning authority, including the assessment and recommendation are provided to all parties prior to a hearing occurring as parties may be satisfied with the recommendation. However, if a hearing is not requested, the scope of the DAP's to change the recommendation, decision and conditions, should have clear parameters, so that the decision reflects that published information.				
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.	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.

			Natural justice and procedural fairness for conduct of hearings consistent with *Tasmanian Planning Commission Act 1997*. DAP hearings are encouraged to be held locally.	
Planners Comment: Clarification is required regarding whether the DAP will contemplate and potentially change the draft permit conditions where a hearing is not required.				
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.
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*.
Planners Comment: Clarification should be provided regarding the power of the DAP to negotiate outcomes. Planning is an assessment of compliance with the planning scheme. An applicant with a compliant development should not be required to compromise a compliant development to satiate all parties. As such, a determination of compliance will often result in one party or the other being unhappy. Just because they have engaged in the process and been heard, does not clearly justify the removal of appeal rights. There is also the risk of inconsistent decision making between the DAPs and TasCAT regarding merits based decisions that could have ramifications for precedent, resulting in uncertainty about how assessments should be undertaken.				
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.

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?*
Planners Comment: It is appropriate, provided there is adequate justification. It is unclear why the planning authority would need to agree to the request, but there must be clear and evidenced justification. As above, the process should mirror S57 applications with respect to requests for information and advertising so that a referral can occur at any time in the process and seamlessly transition.				
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	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

			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 its assessment to the DAP within a timeframe.	elements that need to be undertaken by the Planning Authority. The Planning Authority is required to provide all relevant documents to the DAP
Planners Comment: As above, if S57 is mirrored as closely as possible, the DAPs process could commence at Stage 12 of the Draft Framework, with minimal interruption or change in process.				

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	Additional fee is to cover some of the costs incurred by the Commission.

			notifies the Planning Authority that they have accepted the Planning Authority's 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.	The additional application fee is going to be cheaper than the cost of going to a full tribunal hearing.
Planners Comment: It should be ensured that the process requires the DAP fees to be paid prior to section 12 of the Draft Framework occurring. Council should not need to cover this fee and then need to recover it from the applicant. If the DAP cannot invoice this fee itself, then a mechanism for Council to stop the clock for payment should be included.				

Thankyou for the opportunity to provide the above technical feedback on the Position Paper and the potential use of DAPs to determine some development applications. As above, Council has not had sufficient time or information to formulate a cohesive position on the merits of this particular proposal and its appropriateness as a mechanism to reduce the extent of decisions currently being made by Council. Council would welcome further consultation in this regard along with an opportunity to consider different alternatives that may have been considered by the Tasmanian Government. It remains unclear that the issues identified in the Position Paper are occurring to such an extent that an additional process and increasing the complexity of the planning system is warranted. It is also unclear if the scope of applications that will follow this process will make a material difference to the issues that are trying to be resolved. Council would welcome consultation regarding the issues that have been raised and a broader discussion on how these matters may be resolved in the interests of the entire planning system, applicants and other interested parties.

Kind regards,

Justin Simons
Town Planner

From: David Ridley <>
Sent: Thursday, 30 November 2023 3:02 PM
To: State Planning Office Your Say
Cc:

Subject: Concern about the proposed (draft) Land Use Planning and Approvals (Development Assessment Panel) Amendment Bill 2024

The Manager
Planning

Cc Members of Tasmanian Parliament

I write about planned changes to Tasmania's planning laws and to indicate major concerns that need to be addressed before the Bill is tabled in Parliament in early 2024 by the Liberal minority government.

Thank you for the opportunity to comment on the position paper (*Position Paper on a proposed Development Assessment Panel (DAP) Framework*). It spills the beans on what is intended and what needs to be fixed before an exposure Bill is produced.

This submission is made by Keep Tasmania's Highlands Unique (NTAG) which has 270 members and supporters from a diverse range of skills and locations. The Group includes landholders, Central Highland residents and shack-owners, business operators, tourism operators, local and mainland tourists, researchers, natural resource experts, shooters, fishers, retirees and workers to name a few. They come from all areas of the State.

The proposal for creation of planning panels and increasing ministerial power over the planning system needs to be outrightly rejected for a number of reasons; viz

- **There is no problem with the planning or appeals process that needs fixing as proposed.** Parliament has recently passed alternative planning processes which are available to address major projects via Major Projects legislation; and the current Tasmanian planning system is responsive. Only a small number of council decisions are appealed (less than 1%) and Tasmania's planning system is amongst the quickest in Australia in determining development applications. If there is a problem, it usually stems from the ineptitude of state government by pre-empting the planning process or by picking winners and losers.

- **The proposal undermines local ownership, accountability and transparency, as well as established democratic processes by removing local decision making from Councils**. The proposal to appointed hand-picked planning panels and by-pass councils means they are not democratically or locally accountable, are not subject to elections, and have no 'skin in the game'. Such panels will result in removal of local decision making, and a reduction in transparency and robust decision making. Councils will be left to fix the mess / enforce the mess / or wear the problems that are created by panels.

- **The planning changes make it easier to approve large scale contentious developments** - **when Major Projects legislation already exists and can be used.** Under the proposals, the developer can abandon the standard local council process at any time and have the development assessed by a planning panel. It will complicate planning and mean virtually any development to be taken out of the normal local council assessment process and instead be assessed by planning panels, including developments already refused. The Planning Minister can also take a development assessment from council mid-way through the development assessment process if the developer (or government) doesn't like the way it is travelling.

- **It removes merit-based planning appeal rights** via the planning tribunal on issues like height or appearance of buildings, adverse impacts on adjoining properties, and other amenity impacts such as noise. Developments will only be appealable to the Supreme Court based on a point of law or process. There will be an increase in post-development litigation.

- **In practice it will politicise planning (not reduce it) because of an increase in ministerial influence over the planning system:**
    - The Planning Minister will have the power to decide if a development application meets the planning panel criteria.
    - The Planning Minister carries political bias and can use subjective criteria to intervene on any development in favour of developers.
    - The Planning Minister will be able to force a changed planning approval pathway when a local council has rejected such an application; and
    - The Planning Minister would also have new powers to instruct councils to commence planning scheme changes when a local council has rejected such an application.

- **Mainland experience demonstrates planning panels favour developers and reduces accountability** e.g. in NSW where council experience has been it favours while reducing local accountability. Panels can be dominated by well-resourced members of the development sector.

It is our view that transparency, independence, public participation with local community involvement and ownership are critical for healthy planning outcomes. The proposed changes work against these core values and the proposed changes need to be rejected.

Yours sincerely

David Ridley
David Ridley
Chair NTAG
Keep Tasmania's Highlands Unique

From:
Sent: Thursday, 30 November 2023 2:40 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:	Christopher Merridew
Your email:	
My additional comments::	A Government un encumbered by legislation c1960 proposed to demolish the " rat infested sandstone warehouses along Salamanca Place and replace them with Modern 4 Storey apricot *brick office blocks."* as onTMAG. It was local public outcry which forced that Government to provide two essential protective ,which are still current , Planning Schemes, (1) Battery Point (2) Sullivan's Cove through which we are , able to protect our diamonds of Tourism . A local issue won on local merit and ideology is why Tasmania has such a point of difference due to the stewardship of a qualified protective administration. The make up of DAP can never understand the minutiae that does local government . It is worrisome that DAP and it's staff report to the Minister not the electors nor the Councils ,nor those who are parties jointly affected ,including the developer who will have no say on anything above $10M(15 appartments). There are inadequate safeguards to reduce the potential for avoidance of conflicts of interest . DAPs are another layer of remote time and money consuming unelected decision making that gives no security of decision or consequences . What ever planning decision , it has a100 year effect - sadly look at the buildings in our CBD of the 1970s , Salamanca Place a win , Empress Towers, the out come of which is Battery Points own Planning Scheme but both are examples that gave us the protective legislation which has put and will keep Tasmania's point of difference. WA has replaced Councils with DAPs prompting wide political controversy which is one more that the Rockliff Government does not need .

From: Patrick Synge <>
Sent: Thursday, 30 November 2023 2:14 PM
To: State Planning Office Your Say
Cc:
Subject: Re Liberals proposed planning panels

The proposed creation of planning panels is problematic and is fundamentally undemocratic in that it potentially takes decision making away from locally elected representatives. Councillors may not be experts in planning but they are answerable to their local community and generally have local knowledge whereas independently appointed planning experts may have no 'on the ground' knowledge and would often be remote from the affected community.

Currently councilors take their advice from their own planning staff and it is rare that they will even question this advice and even rarer that they will risk ratepayers money by making a decision that is not consistent with the advice given as this involves engaging external legal representation in case of an appeal.

It is important that elected local representatives are involved in decision making in the planning area and these proposed changes put much of the initial decision making in the hands of the Planning Minister. This increases the potential for the system to be corrupted since important decisions are then made by one person who may or may not be in some way beholden to a developer. With the current lack of transparency in the sphere of political donations this is a distinct possibility.

Patrick Synge

Development Assessment Panel (DAP) Framework: Position Paper

Homes Tasmania Submission

Homes Tasmania

Building homes, creating communities.

Table of Contents

Introduction

Homes Tasmania welcomes the opportunity to comment on the Position Paper for the Development Assessment Panel (DAP) Framework. We support action by the Tasmanian Government to reduce red-tape, improve efficiencies and avoid conflicts of interest in all Government policies and processes. In relation to the DAP Framework, we note that the stated intention is to address a conflict of interest issue by taking the 'politics out of planning' and provide an alternate approval pathway for more 'complex or contentious' development applications.

In addition to this conflict of interest issue, we note that an unintended consequence of current approval processes for medium density developments, which are often drawn out due to their contentious nature, has seen Community Housing Providers choosing developments that are the antithesis of the Tasmanian Government's policy to encourage medium density in-fill housing. A slow-track approval process for medium density housing appears to be driving less desirable urban outcomes.

This submission focuses on the likely impacts of the proposed DAP Framework on development approval timeframes for social and affordable housing (SAH) projects in Tasmania. We note that one of the key objectives of the DAP Framework is to help 'deliver appropriate and timely assessments of housing projects undertaken by Homes Tasmania'. The timeliness of development approvals for SAH projects is crucial to Homes Tasmania fulfilling its mandate to deliver 10 000 additional social and affordable homes by 2032 and provide homes for people on the Housing Register as quickly as possible.

Homes Tasmania acknowledges the Tasmanian Government's commitment to making the regulatory changes needed to enable Homes Tasmania to meet the 10 000 homes target and recognises the benefits of an independent planning assessment process that applies to SAH projects. However, our primary concern is that the DAP Framework, as outlined in the Position Paper, involves a two-phased process where Council first considers and assesses an application after which the DAP itself conducts an assessment.

This duplicates assessment processes and considerably increases, rather than decreases, the overall development approval timeframe for SAH projects in Tasmania to 105 days compared to the 42-day processing period for discretionary approvals under the *Land Use Planning and Approvals Act 1993* (LUPA Act). Noting that only a small proportion of the overall number of SAH applications end up in the TASCAT appeal process, the 'time saving' benefits associated with this aspect of the proposed DAP Framework are therefore of little consequence for SAH projects.

This submission recommends a revised version of the DAP Framework that avoids a two-phased assessment, eliminates unnecessary duplication, fast-tracks critical SAH developments and helps address resourcing issues within local councils. Understanding the importance of local knowledge and input into development decisions, our revised approach ensures that community consultation remains a key element of the DAP Framework.

Timeframes under the proposed DAP Framework

Homes Tasmania is concerned that the proposed DAP Framework involves a 150 per cent increase to the assessment timeframe for SAH projects by introducing a two-phased approach where Council conducts one assessment at the front end, after which the DAP conducts its own assessment.

This introduces an extra phase for potentially contentious projects like SAH developments and works against the Tasmanian Government's commitment to streamline SAH approvals and its obligations under national agreements, including the National Planning Reform Blueprint and the National Housing Accord.[1]

Phase One – Council assessment

Under the current discretionary approvals process in the LUPA Act, where no Requests for Further Information (RFIs) are issued, the timeframe for approving SAH projects is 42 days. However, under the proposed DAP Framework, before Council even provides documents to the DAP for assessment, there is a process which lasts almost 50 days, as shown in Figure 1.

Figure 1. DAP Phase One – Council assessment of SAH applications

Council Process	Time Allowed	Total Running Time
Council determines if it is a Mandatory Referral	7 days	7 days
The DAP confirms the referral	7 days	14 days
Request for Further Information (RFI) period running from the date of lodgement	21 days	21 days
Council conducts an assessment of the application and makes a recommendation on whether to grant a permit	14 days	35 days
Council exhibits and consults on the application, draft assessment report and recommendation	14 days	49 days

As is currently the case under the LUPA Act's discretionary approval process, the DAP Framework allows Council to stop-the-clock on the processing timeframe while waiting for information requested under an RFI. As such, the above 49-day process could potentially take much longer.

The current stop-the-clock requirement relevant to discretionary permits is a major cause of delays in obtaining approval for SAH projects. The information requested can be complex and often relates to specialised issues, such as technical engineering or infrastructure servicing matters. This requires Homes Tasmania or the relevant Community Housing Provider to obtain a level of fully detailed design information, commentary on policy matters or reports that would usually only be required in the documentation phase of a project.

[1] Under the National Planning Reform Blueprint, the Tasmanian Government has an obligation to undertake planning reforms to support the delivery of SAH. Under the National Housing Accord, the Tasmanian Government has an obligation to undertake expedited zoning, planning and land release to deliver the joint commitment to deliver SAH in well-located areas.

As noted in the Position Paper, there is some evidence that in the case of contentious proposals (particularly SAH proposals), the RFI process is being used to delay or frustrate the assessment. This is particularly the case where multiple and successive RFIs are made, one after the other. Successive requests, where the clock is stopped multiple times, not only have a significant impact on development approval timeframes but also the overall costs associated with delivering SAH projects, potentially rendering a project financially unviable. Successive requests might also reflect workforce capacity and workflow issues within the Council, particularly during peak periods, such as holidays. We note that the Position Paper highlights the increasing burden on Tasmanian councils contributing to capacity issues as councils are 'determining more applications than ever before, with annual totals rising from around 6,500 in 2016-17 to over 12,000 in 2021-22.'

The table at Figure 2 provides examples of where the 42-day processing period for social housing projects has been significantly delayed, mostly due to RFIs, and demonstrates the need for reform in this area. As noted above, it also discourages social housing developers from developing anything other than standalone housing.

Figure 2. Discretionary approval processing timeframes for social housing projects

Project	**DA lodged**	**DA approved**	**Units in the DA**	**Total days**
Y2I Hobart	23/07/2021	20/12/2021	26	150
Bethlehem House	09/06/2021	20/12/2021	50	194
Thyne House	26/05/2020	30/09/2020	20	127
Magnolia Place	21/07/2020	19/05/2021	15	302
North Fenton Street	27/05/2021	20/12/2021	9 (lots of land)	207
Burnie Youth Crisis & Transitional	20/11/2020	18/03/2021	15	118
Y2I Burnie	11/01/2022	22/02/2022	25	42
Launceston Youth at Risk	25/08/2021	04/11/2021	8	71
Total # units affected			**244**	
Average # of assessment days				**151**

Note: Y2I Burnie was determined as a Permitted use and therefore did not need to be advertised. The Launceston Youth at Risk project was the redevelopment of an already existing larger residential dwelling.

Given that the proposed DAP Framework still allows councils to stop-the-clock through issuing RFIs, the biggest challenge to receiving timely SAH development approvals has not been addressed. While the proposed Framework does allow an applicant who has received an RFI to ask the DAP to review the request, this only adds to the overall processing time in Phase One, before the application even gets to the DAP.

Homes Tasmania recognises that there are mechanisms within the LUPA Act that allow RFIs to be appealed if they are considered unnecessary or unreasonable. However, the time associated with going through this process further compounds the issue of protracted assessment timeframes.

Homes Tasmania suggests that using planning permit conditions to require a more detailed level of information would be a more streamlined and cost-effective way of approaching an assessment. These conditions would still need to be satisfied before construction commences. A conditioned permit provides enough surety for a developer to then expend the significant cost associated with the detailed documentation phase of a project.

Phase Two – DAP assessment

Once Phase One is complete, under the proposed Framework a development application for SAH would go to the DAP. This second phase of the process appears to be reasonably streamlined, taking 56 days overall, as shown in Figure 3. However, in total, the process can last 105 days, without accounting for delays associated with RFIs.

Figure 3. DAP Phase Two – DAP assessment of SAH applications

DAP Process	Time Allowed	Phase Two Running Time	Total Running Time
Council provides 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 days	14 days	63 days
DAP hold hearing, determine application and give notice to Council of decision	35 days	49 days	98 days
If directed by the DAP, Council to issue a permit to the applicant	7 days	**56 days**	**105 days**

As previously noted, the overall timeframe for approving SAH development applications is significantly increased under the proposed DAP Framework, which goes against Government's stated intention. The proposed Framework also fails to address resourcing issues within councils and places further strain on the limited and valuable pool of planning professionals in Tasmania by requiring planning experts to be employed to conduct assessments during both phases of the process.

No separate appeal process

Under the LUPA Act's discretionary approvals process, appeals to TASCAT are permitted, providing for an independent review of the approval process which, as noted in the Position Paper, is free from political interference. Homes Tasmania notes that under the proposed DAP Framework, there is no separate appeals process because using the Tasmanian Planning Commission to establish the DAP means that the independent review function will be built into the DAP Framework. The Position Paper notes that '[t]his removes uncertainty, delays and costs associated with determining contested applications through TASCAT.'

Homes Tasmania agrees that appeals can cause significant delays for complex and contentious projects. While these are infrequent for Homes Tasmania projects, we support

not including third party appeal rights in the DAP Framework. However, similar to the DAP process in Western Australia, we would recommend that applicants have the right to seek a review by TASCAT where the DAP has refused an application or in relation to conditions that the DAP has placed on an approved application.[2]

Recommended changes to the DAP Framework

Homes Tasmania notes that the option of referring complex planning development applications to independent assessment panels was raised by the Local Government Board during its Future of Local Government Review and that the Productivity Commission, following its review of the National Housing and Homelessness Agreement, suggested states and territories should consider transferring responsibility for assessing development applications to independent panels where local governments fail to meet set supply targets.

We note that mechanisms for independent assessment of SAH development applications exist in other jurisdictions and that the model in Queensland has been quite successful.[3] In Queensland, the Ministerial Infrastructure Designation (MID) process is a fast-track development approval mechanism for 'designated infrastructure', including social and affordable housing.

The MID process is an alternative development application process where the relevant Council is consulted but does not conduct the assessment or issue the development approval. The process is managed by the Department of State Development, Infrastructure, Local Government and Planning (Queensland Planning Department) with input from other government agencies. The Planning Minister is responsible for making MIDs and also has authority under the *Planning Act 2016* (Qld) to amend, extend, or repeal MIDs.

Before lodging their MID application, the applicant must undertake preliminary engagement with key stakeholders, including the relevant Council and local community. This provides stakeholders with an early awareness of the proposal. Once the application is lodged, the applicant undertakes further public consultation to give community members a say.

Assessment of MIDs is undertaken by the Queensland Planning Department which considers land use planning matters related to a proposal and considers advice from other state agencies and technical experts. The assessment focuses on the proposed land use and its associated impacts. After considering the assessment and submissions received during consultation, the Planning Minister makes a decision regarding the MID.

Homes Tasmania recommends adopting a similar approach to Queensland, where the community is consulted and councils provide input and local knowledge at the front-end, but where councils are not involved in conducting assessments. Unlike the Queensland model, we propose that the final decision sits with the DAP, rather than the Minister.

[2] Planning and Development (Development Assessment Panels) Regulations 2011, rule 18(2).
[3] The Queensland Government's *Interim Progress Analysis for the Evaluation of the Queensland Housing Strategy 2017–2027* notes that 1 949 social housing dwellings had been commenced by 30 June 2020, exceeding the three-year target by 249 dwellings. The MID process is likely to have contributed to this outcome.

This streamlined approach is not unique to Queensland, but operates in other jurisdictions, including Western Australia (WA). Under the current DAP process in WA,[4] when a local government receives a DAP application for assessment it must notify the DAP, review the application and develop a report for the DAP. The report must contain sufficient information to allow the DAP to make a determination. Local governments may request further information from the applicant but must notify the DAP of this request and must provide any additional information received to the DAP. After receiving the local government's report, the DAP will hold a meeting and determine the application. Following the DAP's decision, the applicant may apply to WA's State Administrative Tribunal to review either a deemed refusal of their application, a DAP decision to refuse their application or any condition imposed by the DAP in determining their application.

Following extensive community and industry consultation on planning reform, WA is progressing changes to the DAP process to expedite the delivery of housing and infrastructure. Proposed reforms to WA's DAP process include, among other things:[5]

- removing the current capital expenditure requirements[6] to make the DAP system an opt-in pathway for any development proposal over $2 million (including grouped or multi-dwellings but excluding single houses and ancillary structures)
- providing all community housing projects with the ability to opt into the DAP pathway regardless of the size or value of the proposal.

Homes Tasmania considers that a similar opt-in provision for SAH projects may be suitable in the Tasmanian context. That is, an applicant could choose to send an application for an SAH development directly to Council to be assessed under the ordinary process (which may be preferable for smaller SAH developments) or they could seek a declaration from the Homes Tasmania Board that their project is an SAH project, after which it would be subject to the DAP process outlined below in Figure 4.

Figure 4 outlines Homes Tasmania's preferred approach, which reduces the process outlined in the DAP Framework from 105 days to 60 days. While this is longer than the current 42-day processing period for discretionary applications, we anticipate that this process will ultimately result in faster approval timeframes for SAH proposals, provided councils only issue RFIs where the basic information requirements of an application have not been met.

Homes Tasmania suggests that this approach should apply to any SAH application that the Homes Tasmania Board has determined to be a 'Declared SAH Project', not just SAH applications submitted by Homes Tasmania.[7] A letter confirming this declaration can be provided by the Homes Tasmania Board and submitted to Council as accompanying information to a DAP development application for SAH.

[4] See Planning and Development (Development Assessment Panels) Regulations 2011 (WA).
[5] https://www.wa.gov.au/government/media-statements/Cook-Labor-Government/Major-planning-reforms-to-accelerate-housing-delivery-20231018
[6] The current expenditure threshold for the City of Perth is $20 million and the threshold for the rest of the State is $10 million.
[7] We note that Step 4B of the DAP Framework in the Position Paper seems to limit referral of SAH applications to Homes Tasmania.

The Position Paper states that the proposed DAP Framework allows more time than the current 42-day timeframe for discretionary applications because the DAP will be assessing more complex and potentially contentious development applications. Homes Tasmania recognises that complex critical infrastructure projects that span multiple local government areas are likely to require a longer assessment timeframe but does not think this applies to most SAH applications. Although SAH development applications generally require assessment of multi-dwelling proposals, we do not consider such proposals to be sufficiently complex to warrant a 150 per cent increase in the assessment timeframe. The complexity of multiple dwelling applications can also be streamlined through approaches to pre-approved designs as recommended in the Tasmanian Housing Strategy.

Finally, as noted above, since the DAP will conduct an independent assessment, free from political interference, we consider that no third-party appeals of DAP decisions is necessary but recommend that applicants have the right to seek a review by TASCAT where the DAP has refused an application or in relation to conditions that the DAP has placed on an approved application.

Figure 4. Homes Tasmania's recommended DAP process for SAH development applications

DAP Process	Time Allowed	Total Running Time
Applicant submits SAH application to Council, accompanied by a statement from the Homes Tasmania Board that it is a 'Declared SAH Project'. Council has 14 days to issue any RFI – which must only be based on missing information from prescribed information requirements.	14 days	14 days
Council exhibits the application for 14 days (which includes notification of infrastructure bodies, like TasWater) and then develops a position statement (including but not limited to any recommended conditions and a summary of representations received) for the applicant to submit to the DAP.	21 days	35 days
The SAH application and Council's position statement is then referred by Council to the DAP.	2 days	37 days
The DAP holds a hearing, determines the application and gives notice to the applicant and Council of the decision. If there are no representations or no parties that wish to attend a hearing, the DAP may dispense with the hearing. In limited circumstances, the DAP may request an extension of time from the Minister.	21 days	58 days
If approved, the DAP issues a permit to the applicant.	2 days	**60 days**

Homes Tasmania considers that the approach proposed in Figure 4 will not only assist with the timely delivery of SAH in Tasmania but will also reduce the above-mentioned regulatory burden on councils.

In addition to the recommended changes to the proposed DAP process, Homes Tasmania suggests that SAH applications should be exempt from the DAP processing fee (though the prescribed fee should still go to Council) and that it would be appropriate for councils to make minor amendments to DAP-determined permits (in accordance with section 56 of the LUPA Act) and for councils to enforce permits issued by the DAP.

Conclusion

Homes Tasmania appreciates the opportunity to provide feedback on the Position Paper and welcomes further discussion on the approach proposed in this submission. To ensure that much-needed SAH projects are delivered as quickly as possible, it is crucial that in applying the approach in Figure 4 councils' power to issue RFIs is limited to missing information from prescribed requirements and does not extend to requesting fully detailed design information or commentary on policy matters. As noted above, Homes Tasmania suggests that using planning permit conditions to require a more detailed level of information would provide a more streamlined and cost-effective way of approaching development assessments.

Homes Tasmania

Building homes, creating communities.

Reference: D23/8650

Email: exec.services@homes.tas.gov.au

www.homestasmania.com.au

From: Karen Spinks <>
Sent: Thursday, 30 November 2023 2:03 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**.

Yours sincerely,
Karen Spinks

From:	bert lawatsch <>
Sent:	Thursday, 30 November 2023 1:46 PM
To:	State Planning Office Your Say
Cc:	
Subject:	Protect our local democracy - say no to the Liberals new planning panels

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Yours sincerely,
Bert Lawatsch

From: Kate O'Shannessey
Sent: Thursday, 30 November 2023 12:46 PM
To:
Subject: Protect our local democracy

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Kind regards,
Kate O'Shannessey

From: Kath McGinty <>
Sent: Thursday, 30 November 2023 1:37 PM
To: State Planning Office Your Say
Subject: Draft LUPAA (DAP) Amendment Bill 2024 - submission

To Whom It May Concern,

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

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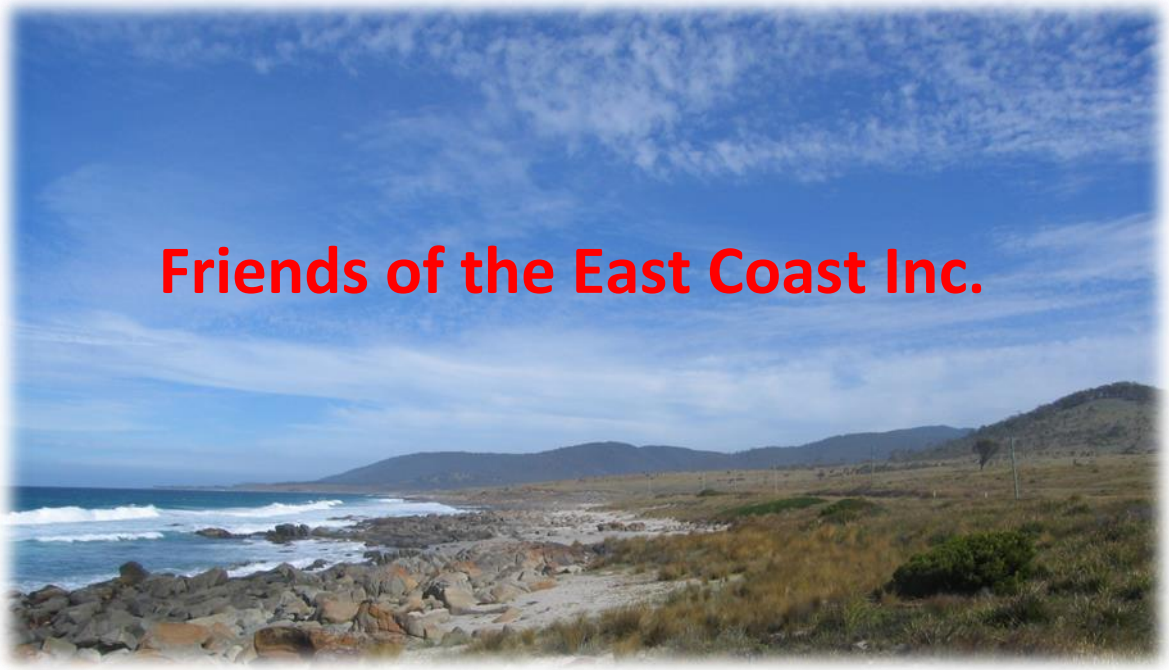
Respectfully,

Kathleen McGinty



Protecting the unique environment of the East Coast from inappropriate development

www.friendsoftheeastcoast.org

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

30 November 2023

Comment on: Development Assessment Panel(DAP) Framework Position Paper

Friends of the East Coast Inc opposes the proposal to amend LUPAA to have certain development applications decided by Government appointed Development Assessment Panels.

Friends of the East Coast Inc also opposes any associated increase in ministerial powers over the current planning system.

Our arguments for this opposition are provided below.

The Liberal Government policy background

The DAP proposal is another component of the Liberal Governments planning policy taken to the 2014 state election and endorsed in September 2014 as published:

> **PLANNING REFORMS FACT SHEET 1 (Department of Justice)**
>
> **Land Use Planning and Approvals Amendment Bill 2014**
>
> "The Government intends to introduce further legislation in 2015 to provide a framework for a single statewide planning scheme approach and to implement its remaining planning reforms.

> These include commitments relating to major projects, **ministerial call-in powers, in-principal approval and further measures relating to third-party appeals**." (*emphasis added*)

The DAP is thus a component of a long-term policy to centralise decision making on planning matters while at the same time reducing the influence of democratic processes, specifically the role of local Councils and the local community via the third party appeal process.

Politically this is likely to be the thin edge of the wedge which seeks to further centralise power away from local communities. In essence the proposal is anti-democratic.

Reasons given for the proposal

In the Position Paper much is made of the argument that there is a conflict between rational decision making of local Councillors and their role as community representatives.

> "…that on occasion the personal views of elected councillors in relation to a proposed development ….may influence their decision-making…" (3.1)

While this may occur in some cases, no evidence is provided of the extent of this issue, nor it is argued the consequences are more significant than other decision-making made in the planning process. Planning decisions are inherently subjective to a greater or lesser extent.

Take the matter of Performance Criteria in the Planning Scheme. Almost every set of Performance Criteria includes wordings such as:

- "not cause an unreasonable loss of amenity"
- "having regard to …"
- "must be consistent with …"
- "must be compatible with …"
- "must have sufficient .."
- "must be provided with reasonable …"
- "must provide an appropriate level of …"

All these phrases require exercising judgement values by the decision-maker. These are not precise, quantifiable terms. So whether they are interpreted by a councillor acting in a planning authority role or by a government appointed planning expert, planning decisions, particularly for Discretionary proposals and Performance Criteria, are always subjective judgements.

The great benefit of democratic decision-making is that the decision makers are accountable to their constituents and the majority view is the result. With expert panels the decision makers are not accountable and that is a problem.

Social housing, a red herring?

The DAP Framework Position Paper claims that it is essential that proposals for social and affordable housing projects be determined by the DAP process rather than by local Councils. This is because, it is argued, there is a need for considerable numbers of social and affordable houses and that "there have been a few, but 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 …"

It is obvious we need more social and affordable houses to be built. But that does not mean that sensible planning should be abolished to achieve that end. One would think the Government would have learnt the lessons of mass public housing undertaken by the Housing Division in past decades and the consequential social problems that emerged.

A far more enlightened approach is required for social and affordable housing. In many constituencies social and affordable housing is required to be a component of all new housing developments, whether it be for small scale unit developments or broad scale developments.

To require all future residential sub-divisions and housing development proposals to have mix of housing types would be a better policy. Such a mix could specify minimum and maximum percentages of social and affordable houses. Social stigmas and NIMBYism are real issues that require creative solutions rather than top down centralism.

Applications to be referred to a DAP

The Position Paper outlines a range of potential candidates for submission to a DAP for determination. The range is so broad it is likely to give a wide scope for the proposed Draft Bill to emerge early in 2024. Some of the more contentious options are discussed below.

Where an applicant considers there is bias, or perceived bias, on the part of a Council or Councillors. **(Ref 4A)** This opens the prospect of an applicant by-passing the Council based on the applicant's perception of a potential bias by the Council. It would increase the power of developers who have interests in conflict with local communities or who wish to downplay local interests.

Application over a certain value. **(Ref 4A)** This criterion elevates value of a proposed development above the merits of sensible planning. How can value be comparatively determined? How could potential corruption be controlled? The message it projects is that local Councillors are incapable of making decisions except for low value developments.

An application from Homes Tas for subdivision for social or affordable housing or development of dwellings for social and affordable (homes). (Ref 4B) This criterion is discussed above. However, as written it is broad enough to cover almost all dwellings except for individual private residences. The applicant could merely claim the development is for "affordable" houses and thereby by-pass the local Council.

Expanding the role of the Minister

The proposed expansion of the role of the Minister is alarming, viz:

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. (Ref 21)

Effectively this proposal downgrades the role and effectiveness of local Councils in the planning process when the DAP criteria are so broad. One might ask: is there a role for local Councils in the planning process anymore?

Appeal rights

It is proposed that the DAP makes a decision and issues a draft permit before it is advertised to seek public input. This is significantly different from the process for local Council assessment of proposals where the proposal is advertised before the Council makes any assessment. **(Refs 9 & 10)**

The DAP process is cumbersome. The local Council then reviews the representations received on the draft permit and forwards its views to the DAP who then determines to hold a public hearing, after which the DAP makes its determination.

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. **(Ref 19)**

The Framework argues because a DAP is an expert panel appointed by the Tasmanian Planning Commission and a public hearing has been held, the normal appeal rights are exhausted, except by appeal to the Supreme Court.

But will "all parties" be able to participate effectively in the DAP process? This is potentially a process to eliminate third party appeals because of the costs associated with the increasing need to engage lawyers and expert witnesses.

The Framework merely states "DAP hearings are encouraged to be held locally." **(Ref 14)** That is, not necessarily required. And "at least one week's notice" before a hearing seems hardly sufficient, particularly if the hearing is not held locally.

Conclusions

The Proposed DAP process as outlined in the Framework documents is not supported by ***Friends of the East Coast Inc***.

We see the proposal as a further attempt by the State Government to centralise the planning process by significantly reducing the role of local Councils, effectively eliminating appeal rights while increasing the power of the Planning Minister. It is essentially undemocratic.

We submit the reasoning given for the proposed change to the planning process are not convincing. We strongly request that the proposal be revised and further public consultation be undertaken before any preparation of a Draft Amendment Bill.

Yours sincerely

Graeme Wathen
Secretary

Kris McQuade
President

From: avkem <>
Sent: Thursday, 30 November 2023 1:22 PM
To: State Planning Office Your Say
Subject: Draft Land Use Planning and Approvals (Development Assessment Panel) Amendment Bill 2024

Dear Sir/Madam
I am concerned that the proposed Draft Land Use Planning and Approvals (Development Assessment Panel) Amendment Bill 2024 will reduce the opportunity for people who will be directly or indirectly affected by planning decisions to have a say in those decisions and to object if they feel there will be negative impacts of those planning decisions. This should be a fundamental principal of a functioning democracy even if it slows the decision making process and may frustrate developers.

Consultation issue 1: The discussion paper proposes the introduction of Independent Development Assessment Panels to take over some local government decision-making functions. Although these panels may function independently of government, I am concerned that it is proposed that the panels be appointed by the government of the day. I'm afraid there is a long history of governments setting up 'independent' panels with members who support the particular government's ideology and agenda and are therefore hardly 'independent'. If the proposed panels are to take over some of the decision-making powers of local government then surely they should be appointed by local government collectively, rather than the State government. The panels would then better understand the range of local planning issues and be more independent than a panel appointed by the State government.

Following from this it should be the planning authority that decides if a development application is referred to a DAP, not the Minister. This should occur following community consultation by Council where Council determines that a DAP is best able to make an independent assessment.

Consultation issue 2: I do not believe the Minister should have the power to direct a Council to initiate a planning scheme amendment as that undermines the independence of local government (request but not direct).

Consultation issue 3: it is important that the wishes of the community and particularly local residents should be incorporated into a DAP decision making process, not just local knowledge.

Consultation issue 4: Development proponents are notorious for providing inadequate, incomplete and sometimes misleading information and then complaining about delays when asked for further information. Sometimes this is due to unclear advice from a planning authority about what is required. It is also obvious that many development proponents will only submit information that supports their development. For a truely independent assessment the various studies required for a development assessment should be determined and carried out by the DAP but paid for by the proponent of the development.

Consultation issue 5: If the basic democratic rights I noted in the first paragraph are important, then merit appeals should be allowed for all DAP decisions. Appeals will be rare if the DAP has done its job properly, allowed all interested parties to have their say and demonstrated in their decisions that all views have been taken into account.

Consultation issue 5: Councils would seem the best placed to remain the custodian of planning permits and to enforce any conditions as they already have the staff and experience to do this. The alternative would be to set up a duplicate system under the DAP which seems unnecessary.

Regards
Axel von Krusenstierna

From: Dannielle <>
Sent: Thursday, 30 November 2023 1:17 PM
To: State Planning Office Your Say
Subject: Submission - Draft LUPAA Development Assessment Panel Amendment Bill 2024

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 and state-owned enterprises 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, high-density subdivision like Skylands at Droughty Point, the stadium and the spider network of transmission lines that are poorly planned and communicated with those impacted.

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. My experience working in local Councils only highlights the existing level of political interference.

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. I already have concerns for the current membership of the development panels.

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 watch dog.

Kind regards

From: Jonathan Metcalfe <>
Sent: Thursday, 30 November 2023 1:17 PM
To: State Planning Office Your Say
Subject: Re creation of "Planing Panels" to override local decision-making

30/11/23

Jonathan Metcalfe

Planning Minister
Tasmanian Government

Dear Sir,

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

[1] This proposal is an attack on democracy. It goes against all traditions in Australia that people should be free to have a say in their future.

[2] **The proposal 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

[3] **The proposal 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.

[4] **The proposal removes 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.**

[5] As the proposal removes merits-based planning appeals it 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.

[6] The proposal increases ministerial power over the planning system and increases the politicisation of planning and therefore the risk of defective and even 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.

[7] The proposal will lead to flawed planning panel outcomes. 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.

[8] The proposal undermines local democracy and removes the local decision making power of local councils. State appointed and hand-picked planning panels are not democratically accountable, they remove local decision making and reduce transparency and robust decision making.

[9] Experience of such foolish planning experiments on the mainland demonstrate that the 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.

[10] The proposal is weak on any justification – there just 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.

[11] The proposal 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?

Please say yes to a healthy democracy and drop this unmerited proposal.

- **I call on you as elected representatives to ensure transparency, independence, accountability and public participation in decision-making within the planning system.** These attributes are critical for a healthy democracy. I call on you to 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,

Jonathan Metcalfe
Youngtown

WARATAH WYNYARD COUNCIL

29 November 2023

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

EMAIL:- yoursay.planning@dpac.tas.gov.au

WARATAH-WYNYARD COUNCIL Draft DAP Framework and Position Paper Submission

Waratah-Wynyard Council appreciates the opportunity to provide a submission to the State Planning Office as part of the community consultation period

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;

Regarding Option i., opposition to social and affordable housing based on social stigma is not a relevant consideration under the Tasmanian Planning Scheme.

There is limited risk for Councils acting as planning authority, provided that decisions made are in accordance with the Planning Scheme. Council's making decisions against the professional advice of planners (particularly refusals) need to detail the reasons for going against recommendations of qualified persons.

Going against advice provided in the planning report, without seeking alternate qualified advice, creates unnecessary risk for Councils when exercising their statutory functions as a planning authority.

Decisions by Planning Authorities which are contrary to professional advice provided and are appealed to TasCAT require Councils to obtain separate professional advice to represent them through the appeal process.

Further, LUPAA already provides for penalties against a planning authority that fails to enforce its planning scheme (ss. 63a and 64).

As noted in the Position Paper [on Page 8]:

"Because the evidence is that the inappropriate political determination of applications is limited to isolated, but well publicised, cases, the response should be proportional, so it does not undermine

the integrity and success of the existing reforms, or the planning system itself. Changes should only be proposed where an issue has been identified".

There is not a sufficient evidentiary basis to support referral of social housing applications to a DAP simply because there is a 'perception' that Councils are less supportive of these developments. As noted above, there are appropriate mechanisms in place to deal with Councils not making decisions in accordance with the relevant Planning Scheme.

Balancing the 'hats' of being both community representatives and members of a planning authority is a well established part of being an elected member and unless the determination of planning applications is completely removed from elected members it will continue to be so. Absent statistical evidence, referral of social housing projects to a DAP regardless of scale/value is not a proportional response to perceived risks of continuing with the current assessment framework.

ii. Critical infrastructure;

Depending on the definition of 'critical infrastructure', option ii is supported for large scale developments which fall short of the requirement of being a project of state significance, for example transmission lines crossing multiple municipalities. Creating a definition which clearly identifies what is and is not considered to be 'critical infrastructure' for the purposes of referral to a DAP will remove uncertainty and allow for referral to a DAP at the earliest opportunity. Without a clear definition there is potential for time to be wasted referring something to a DAP which is not accepted for assessment and unnecessarily compromising the ability for Council to meet statutory deadlines.

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

Option iii is supported for discretionary applications due to real concerns for conflict of interest when Council is both the applicant and assessor. Many Councils already mitigate these risks by outsourcing the preparation of a report and recommendation to either an adjoining Council or external consultant to ensure the recommendation is made 'at arm's length'. Referral to a DAP for all discretionary applications where Council is required to serve as both applicant and assessor will simply formalise this process. Permitted applications could also be referred to a DAP however this may increase the workload for DAPs unnecessarily as there is no option under LUPAA for a planning authority to refuse to issue a permit for a permitted application.

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

There is already an appropriate process for dealing with the situation described in option iv. Where Councillors express a conflict of interest resulting in inadequate numbers to pass a motion or alternatively, a motion to grant approval for a use/development is put and that motion is lost, and the follow up motion to refuse approval is also put and lost then no decision has been made, then s59 LUPAA provides that TasCAT is able to grant a permit on conditions to be determined by the Tribunal. The situation in option iv. can only arise once the application has gone before Council for determination as whilst Councillors may give an indication of their feelings about a proposal, these feelings may change up until the motion is put. Referring applications to a DAP after this process has occurred would seek to circumvent/supersede s59 LUPAA, which provides the options for TasCAT to determine both judicial and merits issues at the same time.

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;**

The role and responsibility of a planning authority can be delegated to Council staff through a formal process. Councillors would need to grant delegation for officers to refer applications to a DAP based on officers' belief that Councillors are acting at odds with their role as a planning authority. This option is not supported due to the potential division it would create between elected members and staff, particularly as this type of referral requires subjective judgement on the motivations behind a Councillors decision.

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

Similarly, referral to a DAP due to perceived bias has the potential to undermine confidence in Council as a Planning Authority. The appropriate avenue for dealing with decisions that the applicant views to have been politically motivated rather based on the Planning Scheme is a TasCAT appeal. Option vi is not supported for the same reasons as those discussed under options i & v above.

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

Option vii is supported where the application involves issues of a technical nature or other special skills in which Council staff do not have experience, for example complex flood reports or landslip reports where it is not clear if the report have been prepared according to industry standards or by an appropriately qualified person and consequently whether a planning authority is required to accept it under s51(2)(d)(i) LUPAA. Whilst it is a simple process to check whether the author of a bushfire hazard report is accredited by the TFS, checking that the author of a landslip hazard risk assessment is more complex due to the definition of a 'practitioner' under the *Practice Note Guidelines for Landslide Risk Management 2007*. This option is not supported in instances where the relevant Council simply lacks enough planning staff. Resourcing is not considered sufficient reason for DAP referral of matters which appropriately fall under the jurisdiction of Council as a planning authority.

viii. **Application over a certain value;**

Option viii is supported for large scale projects provided different caps are proposed for urban and rural/regional areas to acknowledge the difference between what is a large project for Hobart/Launceston compared to the North West and other regional areas.

ix. **Other?**

Provided they are appropriately defined, Ministerial call in powers similar to those employed by the EPA for Level 1 activities would be supported.

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

By provided clear guidelines for DAP referrals based on set criteria rather than subjective decisions (e.g. concerns of 'perceived bias') there is no need to require consensus between an applicant and Planning Authority for DAP referral. Referral with a consent requirement has the potential to add unnecessary time to the assessment process and provides opportunity for conflict between these two parties where there is disagreement on whether an application should be referred. Allowing the applicant and planning authority to refer proposal to a DAP only where measurable criteria are met removes this potential source of conflict and maintains the relationship between the public and Council as a planning authority. It also places the TPC as the decision maker for whether a proposal ultimately proceeds to a DAP. Ministerial referral in the form of call in powers similar to those employed by the EPA for Level 1 activities would be supported.

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.

Limiting DAP referrals to Options ii, iii, vii and viii for the reasons outlined under a) above permits applications to be referred at the beginning of the assessment process. Once an application is determined to be valid application under LUPAA, it could then be assessed for DAP eligibility based on measurable criteria such as value of work, whether Council is the applicant and assessor or whether matters which Council does not have the expertise to review are raised. Any applications eligible for DAP referral would be referred to the TPC as soon as possible to minimise timeframes and avoid unnecessary back and forth between Council and the TPC.

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?

Council does not support providing the Minister with additional powers in this regard but does support broadening the powers of the TPC as an independent statutory authority in circumstances outlined below.

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?

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?**

In answer to both b) and c) would be more suitable to amend s40B(4)(a) to permit the TPC to initiate the planning scheme amendment and determine whether the amendment should be made, provided Council is granted the opportunity to make representations against the amendment and is provided with a right of merits appeal of the decision should the amendment be granted.

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.**

Applications referred to a DAP should be treated similar to Level 2 applications referred to the EPA up until the report/recommendation stage. For Level 2 applications, Council serves as both the initial point of contact for proponents as well as serving as the go-between for the EPA. Any requests for additional information on EPA matters are sent to Council who then notifies the applicant. As the DAP will be making the decision, they are the appropriate body to decide what, if any, additional information is required to be provided and whether the applicant's response is sufficient. Requiring Council staff to assess applications going before a DAP and provide recommendations would be particularly problematic in instances where Council staff would be required to provide a recommendation where Council does not believe sufficient information has been provided in response to an additional information request, but the DAP does. The aim of DAPs is to have an alternate pathway to local councils for determining certain developments. Council staff should not be expected to be the assessor where Council is not the decision maker. DAPs should be placing themselves completely in the position of a planning authority as both assessor and decision maker.

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?

These sections have been designed for the strategic planning process which is inherently different to the statutory assessment process. Whilst some parts of these provisions may be suitable for adaptation, a process specifically designed for DAP referrals is likely to yield better outcomes.

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?

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

Consistent with the approach recommendation in the discussion under issue 3 above, If a DAP will be making the decision, they are the appropriate body to decide what, if any, additional information is required to be provided and whether the applicant's response is sufficient. Allowing for appeal of Council initiated additional request to a DAP undermines the process already in place under s54 LUPAA for TasCAT appeals. Whether Council as a planning authority ought to have been satisfied by the response to an additional information request, or whether such a request was within the purview of the planning authority to request is often a matter of statutory interpretation and should be dealt with by persons with appropriate qualifications in this space.

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?

This would depend on whether the assessment and decision on a proposal has been made entirely by a DAP. If reliance is placed on recommendations from Council staff then the same rights of appeal should be preserved. Merits appeals provide the opportunity for an appellant to engage their own planning expert should there be a disagreement with the expert planner relied upon by Council acting as a planning authority. As it is not a requirement under the TPS to use a planning consultant to prepare applications, removing the option for merits appeals where reliance or consideration is still given to the recommendation of a Council planner is not considered to be consistent with the objectives of the Resource Management and Planning System of Tasmania. Although a DAP may hold hearings these would not be of the same standard as those held by TasCAT and would not provide the same rigour of assessment and review.

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

Given the extent of duplication of work by Council staff and a DAP under the currently proposed framework and amount of back and forth correspondence (for example checking additional information requests) the above timeframes are considered ambitious. The option to extend timeframes with consent of parties involved similar to s57(6)(b) LUPAA is likely to form a necessary part of any DAP legislation to make it feasible and avoid timeframes expiring. It is considered that this option is likely to be exercised frequently given the extent of staffing issues in the public service and administrative burdens involved in the DAP process as proposed.

Adopting the suggestions outlined under issues 1, 2 & 3 above would result in a streamlined process with DAPs assessing applications as soon as they are determined to be eligible for the DAP process and also undertaking the assessment process as opposed to Council staff. Timelines where DAP undertakes the assessment and determines the outcome under such a model could feasibly be kept closer to a 60 day timeframe rather than the 3 month timeframe currently proposed.

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?

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

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

In response to the questions above, it is Council's view that DAP issued permits can be treated the same way as permit issued via TasCAT. Council is responsible for issuing and enforcing permits for applications which have been through the appeals process. For minor amendments not invoking s56(2)(aa)-(a), TasCAT is sent notification of the minor amendment. A similar process could be followed for DAP issued permits.

Yours sincerely,

Rebecca Plapp
ACTING MANAGER DEVELOPMENT AND REGULATORY SERVICES

Waratah Wynyard Council
21 Saunders Street (PO Box 168) Wynyard Tasmania 7325
P: (03) 6443 8333 | F: (03) 6443 8383 | E: council@warwyn.tas.gov.au

From: Sandra Downing <>
Sent: Thursday, 30 November 2023 12:36 PM
To: State Planning Office Your Say
Cc:
Subject: Protect our local democracy - 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
Sandra Downing

From: Petra Wilden <>
Sent: Thursday, 30 November 2023 12:26 PM
To: State Planning Office Your Say
Cc:
Subject: Protect our local democracy, - no Liberals new planning panels

I'm against setting up planning panels and increasing ministerial power over the planning system, as it will create a planning approval pathway allowing property developers to bypass local councils and communities. Local concerns will be ignored in favour of the developers who may not be from Tasmania.

Handpicked planning panels are not the way to go, it will be even less democratic. A developer can even 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.

This will totally undermine local democracy and remove 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.

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 all 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,

Petra Wilden
Lab Technician

From: Thursday, 30 November 2023 12:21 PM
Sent: State Planning Office Your Say
To:
Cc:
Subject: Protect our local democracy - 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
Craig Smith
Tasmanian Resident

From: sally Rackham <>
Sent: Thursday, 30 November 2023 12:20 PM
To: State Planning Office Your Say
Cc:
Subject: Opposition 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**
- **Makes it easier to approve large scale contentious developments**
- **Remove merit-based planning appeal rights**
- **Removing merits-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**
- **Undermines local democracy and removes and local decision making**
- **Mainland experience demonstrates planning panels favour developers and undermine democratic accountability**
- **Poor justification – there is no problem to fix**
- **Increases complexity in an already complex planning system**

I call on you to ensure transparency, independence, accountability and public participation in decision-making within the planning system

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 believe that local councils are the appropriate people to oversee planning processes.

Yours sincerely
Sally Rackham

GLEBE RESIDENTS' ASSOCIATION INC.

(Including Glebe Neighbourhood Watch Group)
C/- 3 Scott Street, GLEBE, Tas 7000
e-mail: glebesecretary1@outlook.com

DEVELOPMENT ASSESSMENT PANEL (DAP) FRAMEWORK POSITION PAPER

GLEBE RESIDENTS' ASSOCIATION SUBMISSION

Introduction

The Glebe Residents' Association (GRA) exists to protect and promote the welfare and interests of the Glebe community. Our suburb is small (about 250 households) but clearly defined, located on the edge of the Hobart CBD, bordered by the *Brooker Avenue* in the west and the *Queens Domain* in the east and north. It overlooks the city, the river, docklands, the *Regatta Grounds* to the south and *kunanyi*/*Mt Wellington* to the west. The suburb possesses a distinctive historical and cultural heritage and diverse social mix of owner-occupied and tenanted accommodation which the GRA has worked hard to protect.

GRA was formed about thirty years ago (as the Glebe Progress Association) largely in response to planned developments in our area. It has been instrumental in forging close working relationships with key stakeholders like the Hobart City Council, UTAS (Domain Campus) and Macquarie Point Development Corporation, achieving notable agreements to protect community values. As well, it has a strong affinity with the adjoining Queen's Domain and the protection of its natural values.

Early in 2022 The GRA conducted a community survey seeking views on what residents valued about their neighbourhood – and how they would like to see it evolve in the future. Issues of liveability and preserving heritage streetscapes featured strongly in the responses, as did the importance many residents attached to having access to green space. A properly functioning planning system can play a central role in enabling residents' aspirations for Glebe and other communities around the State to be realised. The results of this survey underscore a number of the points made in the remainder of this submission.

Why do we need Development Assessment Panels?

The proposals in the Position Paper appear to present a solution for a problem that doesn't really exist. The Paper fails to demonstrate any real need for the changes.

In trying to put a case, the Paper logic is confused and unconvincing. On the one hand it talks about Tasmania having the shortest Development Application (DA) approval times in Australia, yet then seeks to adopt a DAP model from one of the poorest performing jurisdictions.

Although arguing that actual or perceived Councillor conflicts of interest are having an adverse effect on the timing or outcome of planning decisions the paper provides no evidence that this is a problem. There is tension for elected officials at all levels of government between their personal/community views and statutory roles (eg State Government Ministers). People in these positions have long had to manage this tension –

helped by appropriate codes of conduct and legislated guidelines. Shifting the statutory decision-making role elsewhere is not a solution.

There are also claims that third party merit-based appeals lead to long delays in getting projects underway. However, only a very small percentage of DAs go to appeal and these are usually the complex or contentious projects where community involvement is essential if developers are to have a social licence to proceed.

GRA concerns with the DAP Proposals

The DAP proposal must be seen as part of the overall Tasmanian Planning System (TPS). *The Land Use Planning and Approvals Act* 1993 (LUPAA) contains objectives for both the resource management and planning systems as a whole and for the planning process itself. It is hard to see how the DAPs would further these objectives - and indeed have the potential to work against some of them – in particular objectives 1(c) and 1(e) under Part 1, which seek to further public involvement in and community responsibility for management of the resource management and planning system.

The TPS was launched amid claims it would be faster, cheaper and simpler, yet there is little evidence that the new System has delivered on any of this. The increased complexity of the planning framework (some 600+ pages) and ambiguity in many of the provisions means that planning decisions are often challenged, leading to delays and increased costs for developers and communities. The additional complexity of providing another avenue for dealing with DAs (through the DAP process) can only lead to further confusion and uncertainty.

The DAP process will allow property developers to bypass local councils and communities.

Planning panels will decide on development applications not your elected local council representatives. It is difficult to see how these Panels can be seen as truly independent. Local concerns will be ignored in favour of the developers who, in many cases will not have Tasmanian community interests as a priority. 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 for how the DA is handled through the local government assessment.

Removal of merit-based appeal rights

Third party merit-based appeals to the *Tasmanian Civil and Administrative Tribunal* (TasCAT) would not be allowed under the DAP proposals. There would be no right to challenge DAP decisions on issues such as height, bulk, scale or appearance of buildings; impacts on heritage, streetscapes and adjoining properties (including privacy and overlooking); traffic, noise, smell, light and other potential amenity issues. Developments would only be appealable to the Supreme Court based on a point of law or process**.**

Merit-based appeals are an important part of due process in government and improve the quality and consistency of decision-making. Removing appeal rights can only undermine public confidence in the fairness and integrity of the planning system.

Apart from denying communities the right to challenge poor planning decisions, the removal of merit-based appeals has the potential to increase corruption and reduce the

likelihood of good planning outcomes. The NSW Independent Commission Against Corruption recommended the expansion of merit-based planning appeals as a deterrent to corruption in that State.

Only a very small percentage of developments go to appeal (around 1% of planning applications) – and these are often high impact proposals where greater public scrutiny and community input is required for proper decision-making.

It is doubtful whether the DAP process will allow more public access or be more independent than the Council system. So there must still be scope for poor decisions being made. Removal of TasCAT appeals on the basis of time saving – or that the TPC process is not appealable on other matters - is not justified.

Taking the politics out of planning

Despite depoliticisation being a stated aim of the DAPs it is hard to see how this will happen. There will always be a level of politicisation where major decisions are being made about the shape of people's communities and lives. The Tasmanian Planning Commission (TPC) appointed panel members are also likely to be 'conflicted' in a small place like Tasmania. Furthermore, the proposals shift greater powers to the Minister, thereby increasing politicisation of the planning process – in the State sphere where transparency and accountability is arguably less than at the Council level.

DAPs undermine democratic accountability

Mainland experience demonstrates planning panels favour developers and undermine democratic accountability. There are increasing concerns being expressed in other States about the operation of local planning panels, which are often dominated by members of the development sector. They were created in NSW to stamp out corruption, but councillors from across the political spectrum say they favour developers and undermine democratic accountability.

Request for Information (RFI)

While requests by Council planners for additional information can cause delays, it is not clear that this is a real problem. There is little to suggest RFIs are routinely being used to 'delay or frustrate' the timely assessment of proposals, as suggested by the Position paper. Only anecdotal evidence is offered for this assertion. In general, it appears that RFIs are seeking information genuinely required by Councils to properly fulfil their statutory function – sometimes in situations where proponents put forward poorly supported and documented DAs.

To the extent that there is a need to take action on this issue, consideration might be given to:

- Encouraging developers to apply greater rigor to preparing DAs so that the need for RFIs is minimised;
- Looking at the time taken by proponents in responding to RFIs; and
- Possibly tightening of procedures within Councils where this can be shown to help.

Because of the issues raised above about the core proposals in the Paper the GRA is not making more detailed comment about the specific consultation questions 1-6.

Summary of GRA Position

The GRA does not support the proposals in the position paper to:

- Establish Development Assessment Panels to bypass the local government land use planning role;
- Remove third-party merit appeals; and
- Increase the powers of the Minister – including to direct Councils to initiate planning scheme amendments.

The arguments for the proposed changes are weak and do not justify the significant loss of community input to planning decisions and process transparency and the added system complexity involved. Furthermore, the experience of other states is that planning panels have only served to shut communities out of the planning process and increase the likelihood of corruption.

From: Jenna Tomlin <>
Sent: Thursday, 30 November 2023 12:08 PM
To: State Planning Office Your Say
Cc:
Subject: Protect our local democracy

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 could allow 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 are usually just trying to make money.

The proposed ability for the developer can abandon the standard local council process at anytime and have a development assessed by a planning panel could intimidate councils into conceding to developers demands.

The proposed plans 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.

It could 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,
Jenna Tomlin

From: Marie Pensabene <>
Sent: Thursday, 30 November 2023 11:55 AM
To: State Planning Office Your Say
Cc: rob.valentine@parliament.tas.gov.au
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.

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- **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

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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**.

To the powers that be, the people are what make this state great. Tasmania is a jewel, it's grandeur forests and coastlines, it's wildness is what people all across the world need and search for. Management must start in the communities, these places are important for our mental health now and for the future of our children.

Yours Sincerely,

Maria Pensabene

ROSNY HILL FRIENDS NETWORK INC

Rosnyhillfriends210@gmail.com

29 November 2023

Dear Minister

Please find attached a submission from the Rosny Hill Friends Network Inc in response to the consultation on a new Development Assessment Panel Framework for Tasmania.

Yours sincerely

Jenny Rayner (Secretary)

DEVELOPMENT ASSESSMENT PANELS : SUBMISSION FROM ROSNY HILL FRIENDS NETWORK

We object to the proposed creation of Development Application Panels (DAPs) and increasing Ministerial powers over the planning system for the following reasons:

1. Poor justification

The Position Paper acknowledges that the proposal is based on 'a perception' that exists, '**despite statistical evidence**…that some Councils are less supportive of new development than others'.
It has also been made clear through a number of statements from the Liberal government, that the purpose of creating DAPs is to remove blockages in the current system and somehow that this will 'depoliticise' the planning permit process.

We do not accept that there is a reasonable justification for making the proposed changes.

- We note that the 'perception' of bias is not supported by statistical evidence.
- We observe that many Councillors are elected as independents and therefore have no particular political agenda to adhere to.
- Councillors are required to represent their community and make decisions where there are conflicting points of view all the time (as are all elected representatives, including government Ministers). We do not see that assessing development permits is any different in principle from other controversial issues that come before Council. In practice, we acknowledge that developers need to recoup the large costs incurred in preparing plans, and that delays in decision-making, or the costs incurred in responding to an Appeal are unwelcome.
- We note that only about 1% of Council planning decisions are taken to Appeal.

2. Easier pathway for developers
The overt intention behind the proposed changes is to remove blockages for the benefit of developers, and it is also clear that the DAPs could be used by developers to sidestep other assessment processes.

We do not accept that this is a desirable outcome that will lead to long-term benefit for the community, which should surely be the purpose of the Tasmanian planning system.

- We understand and accept that large development proposals are costly to prepare and that developers need to recover those costs in a timely manner. However, we maintain that all developers should be prepared to explain, justify, and withstand challenges to their proposals in the community where they propose to develop, and where the long-term impacts of their work will live on, long after they have moved to another project.
- We understand that developers behind proposals such as the kunanyi-Mt Wellington cable car, Cambria Green, Kangaroo Bay, or Skylands, feel frustration at what they label as negativity in the community. However, in all cases their proposals have been challenged on planning compliance issues, not political bias. Allowing an alternative

'easier pathway' for assessment, on the other hand, seems to create every opportunity for political interference and bias.

- We believe that the enthusiasm already shown by some developers for these changes is ample evidence that easing the pathway for them will be at the expense of community concerns.
- In our Appeal against the proponents for the Tourist development on Rosny Hill our evidence showed that the developer's surveys were incomplete and inaccurate to some degree. As a result of our Appeal, changes were made to the plans to offer better protection to endangered plant species that would otherwise have suffered major impact. This demonstrates that there is a legitimate purpose behind the existing Appeal process when local knowledge and commitment can usefully challenge the preparatory survey work undertaken by developers.

3. Undermines democratic processes

We strongly believe our current system of democratic elections and representative and accountable decision-making should be upheld.

- Easing the path for developers as proposed will lead to a situation in which local communities will have little information, little opportunity to raise concerns or ask questions, and no opportunity to Appeal.
- DAPs appointed by the Tasmanian government will not be accountable to their electors in the same way that Councillors are.
- We believe that Councillors can have an important role in acting as a conduit for information between developer and the community by asking questions and reviewing responses on behalf of community members, who even under the present system are rarely able to have direct access to the developer or their team members.
- We believe that the concept of 'independent planners' is flawed. We wish to note that in our experience of the Appeal against the tourist development on Rosny Hill, it was extremely difficult to find a planner in Tasmania who could honestly claim to be independent. Nearly all have worked for, or hope to work in the future, for government bodies or major developers and therefore could be compromised if giving an opinion that might be considered unfavourable to the proponent/s.
- We understand that interstate experience in NSW has shown convincingly that DAPs are often subject to intense lobbying from developers, leading to some instances of corruption and political interference.

We want to ensure that Tasmanians can rely on transparency, accountability, independence, and public participation in all aspects of the planning assessment and decision-making system.

We maintain that DAPs will not deliver this outcome. If reform is undertaken it should more properly be to strengthen the resources available to local Councils to enable them to undertake their role as a Planning Authority with confidence and responsibility.

From:
Sent: Thursday, 30 November 2023 11:36 AM
To: State Planning Office Your Say
Subject: Support for Proposed Legislation of Development assessment panels 2024

Confidentially Requested

Hello

Support for Development Assessment Panels

Over recent times, we have experienced blatant corruption and conflicts of interest within our local council. There are biases throughout the entire council, leading to a lack of ethical and professional decision-making around planning.

One alarming issue we have observed is the ability of councillors to vote against the recommendations of their senior planners. This raises significant questions about the integrity of the decision-making process, as it seems that councils are not only disregarding the expertise of experienced planners but also making decisions that may not be in the community's best interest.

Furthermore, we have observed a concerning pattern where council decisions are unduly influenced by personal connections and favouritism. This 'mates looking after mates' culture is prevalent in my local council.

As concerned citizens, we have resorted to costly appeals to Tascat to rectify decisions that we believe stem from the council's incompetent decision-making. These appeals strain our resources and impact ratepayers, creating an additional financial burden that could have been avoided with more unbiased planning process.

In light of these issues, we call on you to support the proposed legislation for planning panels, which we believe will address these systemic challenges and ensure a fair and transparent planning process for our community. We strongly support the new proposed planning panels. We firmly believe that individuals who demonstrate biases, conflicts of interest, and a lack of commitment and experience to ethical decision-making should not hold key roles in planning within our community.

Thank you for your time and consideration.

Kind Regards