Draft LUPAA Development Assessment Panel Bill 2024
Late submission index

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From:
Sent: Tuesday, 12 November 2024 5:01 PM
To: yoursay.planning@dpac.tas.gov.au
Cc:
Subject: Scrap the DAP

I hereby am writing to lodge my objection to DAP taking control over approving projects both large and small. The reasons I oppose this is because firstly our councils and councillors are from our local area and live here as well. They know the impact of a development and basically are more affected about what goes on in a municipality as it affects them as well. Just rubber stamping every proposed development without researching the impact on locals etc is not the way forward for Tasmania.

In the Meander Valley we have had 5 years of a proposed prison from the current government and the consultation was nothing short of insulting and so it would only get worse. I see governments as running the state as a whole but councils should be managing the future of the municipality as it gives more input from the public.

DAP can also be the cause of favours being done for individuals and this is also another reason why it shouldn't go ahead. Currently we can go to monthly council meetings and be involved and voice our opinions and objections to projects and developments in our municipality however this will be taken away from us as communities if DAP make all decisions as it won't be as easy for the public to go to meetings etc.

Now is not the time to take away the publics rights to be involved on a local level.

Carol Firth

- **Research demonstrates DAPs are** pro-development and pro-government, they rarely deeply engage with local communities, and they spend most of their time on smaller applications and take longer than local councils to make decisions.

- **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 and the UTAS Sandy Bay campus re-development.

From: <>
Sent: Tuesday, 12 November 2024 5:03 PM
To: yoursay.planning@dpac.tas.gov.au
Cc:
Subject: #ScrapTheDAP – say no to planning panels/say yes to a healthy democracy

I oppose the creation of Development Assessment Panels (Daps) 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, conducted by the Tasmanian Planning Commission, will decide on development applications not your elected local council representatives. Local concerns will be ignored in favour of 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.

- **The Tasmanian Planning Commission is not independent** – DAPs are hand-picked, without detailed selection criteria and objective processes, are inconsistent with the principles of open justice as they do not hold public hearings, and lack capacity to manage conflicts of interest (as per the 2020 Independent Review). DAPs do not have to provide written reasons for their decision (making it difficult to seek judicial review). Community input will be less effective because it will be delayed until after the DAP has consulted (behind closed doors) with the developer and any relevant government agencies, and adopted its draft decision.

- **Research demonstrates DAPs are** pro-development and pro-government, they rarely deeply engage with local communities, and they spend most of their time on smaller applications and take longer than local councils to make decisions.

- **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.

- **Removes merit-based planning appeal right**s via the planning tribunal on all the issues the community cares about like impacts on biodiversity, height, bulk, scale or appearance of buildings; impacts to streetscapes, and adjoining properties including privacy and overlooking; traffic, noise, smell, light and so much more. TASCAT review of government decisions is an essential part of the rule of law and a democratic system of government based on *'checks and balances'.*

- **Removing merits-based planning appeals removes the opportunity for mediation on development applications in the planning tribunal.**

- **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.**

- **Removing merits-based planning appeals has the potential to increase corruption, reduce good planning outcomes, favour developers and undermine democracy.** The NSW Independent Commission Against Corruption recommended the expansion of merit-based planning appeals as a deterrent to corruption. 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. Mainland research demonstrates removing merits-based planning appeals has the potential to reduce good planning outcomes – including both environmental and social.

- **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 DAP 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 the criteria is on the basis of *'perceived conflict of interest'*, *'a real or perceived bias'*, *'the application relates to a development that may be considered significant'* and the *'development is likely to be controversial'* is fraught. The Planning Minister has political bias and can use this subjective criteria to intervene on any development in favour of developers. NOTE: The scope of the DAPs includes a range of subjective factors that are not guided by any clear criteria:
  - Valuations of $10 million in cities and $5 million in other areas.
  - A determination by Homes Tasmania that an application includes social or affordable housing. There is no requirement for a proportion of the development to be for social or affordable housing. For example, it could be one house out of 200 that is affordable.

- **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 in Australia when it comes to determining development applications. The Government wants to falsely blame the planning system for stopping housing developments to cover its lack of performance in addressing the

affordable housing shortage.

- **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, rather than bypassing it, with opportunities for appeal. Abandon DAPs and instead invest in expertise to improve the local government system and existing planning processes by providing more resources to councils and enhancing community participation and planning outcomes. This will also help protect local jobs and keeping the cost of development applications down.

- 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
CJraig Smith

From: Nick Hume
Sent: Tuesday, 12 November 2024 5:05 PM
To: yoursay.planning@dpac.tas.gov.au
Cc:
Subject: Opposing the creation of a Development Assessment Panel.....

Dear Madams/ Sirs

A Development Assessment Panel under direct ministerial power, to fast track approvals of dubious projects, is a very poor piece of governance in my opinion and shouldn't be allowed to create precedence. This is a slippery slope to some very inappropriate and unsustainable projects being allowed to go ahead. How much taxpayers money will need to be promised to enable such projects to survive. Developments should be approved by people qualified to make assessments referring to building codes and the existing legislation, not left to ad hoc committees of non-experts who can be swayed by vested interests and not be to the benefit of the broader community. Tasmanians are getting sick and tired of being made to feel like tourists in their own State. Having their quality of life diminished by decisions made for the benefit of outside corporations and lobby groups. Let's give the Tasmanian quality of life first priority in future developments. That's why we voted for our politicians, to look after us and not pander to influences.

Get rid of the idea of DAP's and leave assessment of approvals to people who know what they're doing.

Regards

Nicholas Hume

From: Tess Wilkinson <>
Sent: Tuesday, 12 November 2024 5:05 PM
To: yoursay.planning@dpac.tas.gov.au
Subject: #ScrapTheDAP – say no to planning panels/say yes to a healthy democracy

I oppose the creation of Development Assessment Panels (Daps) and increasing ministerial power over the planning system, for the following reasons:

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- **The Tasmanian Planning Commission is not independent** – DAPs are hand-picked, without detailed selection criteria and objective processes, are inconsistent with the principles of open justice as they do not hold public hearings, and lack capacity to manage conflicts of interest (as per the 2020 Independent Review). DAPs do not have to provide written reasons for their decision (making it difficult to seek judicial review). Community input will be less effective because it will be delayed until after the DAP has consulted (behind closed doors) with the developer and any relevant government agencies, and adopted its draft decision.

- **Research demonstrates DAPs are** pro-development and pro-government, they rarely deeply engage with local communities, and they spend most of their time on smaller applications and take longer than local councils to make decisions.

- **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 and the UTAS Sandy Bay campus re-development.

- **Removes merit-based planning appeal rights** via the planning tribunal on all the issues the community cares about like impacts on biodiversity, height, bulk, scale or appearance of buildings; impacts to streetscapes, and adjoining properties including privacy and overlooking; traffic, noise, smell, light and so much more. TASCAT review of government decisions is an essential part of the rule of law and a democratic system of government based on '*checks and balances*'.
- **Removing merits-based planning appeals removes the opportunity for mediation on development applications in the planning tribunal.**
- **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.**

- **Removing merits-based planning appeals has the potential to increase corruption, reduce good planning outcomes, favour developers and undermine democracy**. The NSW Independent Commission Against Corruption recommended the expansion of merit-based planning appeals as a deterrent to corruption. 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. Mainland research demonstrates removing merits-based planning appeals has the potential to reduce good planning outcomes – including both environmental and social.

- **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 DAP 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 the criteria is on the basis of '*perceived conflict of interest*', '*a real or perceived bias*', '*the application relates to a development that may be considered significant*' and the '*development is likely to be controversial*' is fraught. The Planning Minister has political bias and can use this subjective criteria to intervene on any development in favour of developers. NOTE: The scope of the DAPs includes a range of subjective factors that are not guided by any clear criteria:
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- **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 in Australia when it comes to determining development applications. The Government wants to falsely blame the planning system for stopping housing developments to cover its lack of performance in addressing the affordable housing shortage.

- **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.

Yours sincerely,

Tess Wilkinson

Tess

From: Erika Heiden
Sent: Tuesday, 12 November 2024 5:20 PM
To: yoursay.planning@dpac.tas.gov.au
Cc:
Subject: #ScrapTheDAP – say no to planning panels/say yes to a healthy democracy

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Yours sincerely,

Erika Heiden

Environmental Defenders Office

12 November 2024

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

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

Draft Land Use Planning and Approvals Amendment (Development Assessment Panels) Bill 2024

Environmental Defenders Office is a community legal centre specialising in public interest environmental law. We welcome the opportunity to provide feedback on the Draft Land Use Planning and Approvals Amendment (Development Assessment Panels) Bill 2024 (**Draft Bill**). EDO has a long history of providing legal advice on environment, planning and development matters in Tasmania, including the planning framework established by the *Land Use Planning and Approvals Act 1993* (**LUPA Act**).

EDO's overarching concern is that the Draft Bill establishes new assessment and approval pathways and decision-making panels, without appropriate environmental and public interest safeguards and transparency and accountability measures. We are concerned that the policy intent of the proposed framework, as explained in the *Report on Consultation - Development Assessment Panel (DAP) Framework Position Paper* (**Report on Consultation**)[1] is not clearly given effect by the Draft Bill.

Specific key concerns are outlined below, and relate to:

- New assessment and determination pathways under new Part 4, Division 2AA;
- Establishment of Development Assessment Panels (DAPs);
- Criteria for applications to be considered by Development Assessment Panels;
- Public exhibition and hearing timeframes; and
- Transparency and accountability.

As drafted, we do not support the Draft Bill.

[1] https://www.stateplanning.tas.gov.au/__data/assets/pdf_file/0030/382935/Report-on-Consultation-DAP-Framework-Position-Paper-October-2024.pdf

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New assessment and determination pathways under new Part 4, Division 2AA - Development Assessment Panels

The Draft Bill proposes a new framework (set out in proposed new Part 4, Division 2AA of the LUPA Act) under which certain applications can be referred to the Tasmanian Planning Commission (**the Commission**) for assessment and determination by a Development Assessment Panel/Assessment Panel.

The proposed new provisions allow for:

- *Proposed section 60AB(1):* **A person to apply to the Commission** for an application for a discretionary permit[2] to be determined by an Assessment Panel if it:
    - relates to social or affordable housing, or
    - exceeds certain development values, or
    - falls within a class of applications prescribed for the purpose of this section.
- *Proposed section 60AC(1):* A party to an application for a discretionary permit to **request that the Minister direct the Commission** to establish an Assessment Panel in respect of the application if:
    - the application relates to a development that may be considered significant, or important, to – (i) the area in which the development is to be located; or (ii) the State; or
    - either party to the application believes that the planning authority does not have the technical expertise to assess the application; or
    - the application relates to a development that is, or is likely to be, controversial; or
    - the relevant planning authority may have, in respect of the proponent or development – (i) a conflict of interest or a perceived conflict of interest; or (ii) a real or perceived bias, whether for or against the proponent or development; or
    - the application falls within a class of applications prescribed for the purpose of this section.
- *Proposed section 60AC(4):* **The Minister may refer an application** for a discretionary permit to the Commission for consideration and determination by an Assessment Panel if, in the opinion of the Minister – (a) the application meets one or more of the requirements specified in subsection (1); and (b) the application is not an application to which section 25 of the *Environmental Management and Pollution Control Act 1994* applies.

EDO is concerned that:

- The introduction of the new framework proposed in Part 4, Division 2AA essentially allows an applicant to 'elect' they pathway it believes to be of 'least resistance'. If an applicant

[2] To be defined as:
discretionary permit means a permit to which – (a) section 57 applies or to which, but for section 40Y(5), section 57 would apply; or (b) Division 2AA of Part 4 applies;

believes the planning authority will provide an unfavourable decision, they can apply to the Commission or the Minister to have the application determined by a Development Assessment Panel. While the types of development that can be referred is limited by the proposed provisions, the criteria are broad and key terms are undefined. This concern is exacerbated by the ability of parties to elect to transfer an application to the Commission mid-way through an assessment process (rather than it being clear and transparent upfront who the decision-maker will be for the application).

- As flagged, key terms in the abovementioned provisions are undefined. For example, what is meant by 'controversial' or 'likely to be controversial' and is this to be determined based on objective criteria and at the discretion of the Minister? Is it appropriate for an applicant to determine that a planning authority does not have suitable technical expertise?
- It is unclear whether proposed section 60AC(4) limits the Minister's referral of applications to the Commission to circumstances where requested by a party under section 60AC(1), or whether the Minister is able to exercise this power on his/her own initiative. The drafting of this section should be clarified to reflect the policy intent. The latter interpretation raises concerns regarding the Minister's broad discretion to intervene. As drafted, these provisions are open to abuse by applicants and are unlikely to lead to 'unpoliticised' decisions as intended. We note in other jurisdictions where development decisions are made by independent, expert decision-makers (such as NSW), there are often mandatory, objective criteria for determining when those decision-making bodies will be responsible for determining applications; and any Ministerial intervention is limited.

Establishment of Development Assessment Panels (DAPs)

As noted above, the Draft Bill proposes a new framework by which certain applications can be referred to the Commission for assessment and determination by a Development Assessment Panel/Assessment Panel.

Notably, the term 'Development Assessment Panel' is used generally when referring to the proposed new framework, but the term 'Assessment Panel' is adopted in the draft legislative provisions.

The term 'Assessment Panel' is to be defined (by section 60AA) as follows:

> ***Assessment Panel***, in relation to an application under this Division, means the Development Assessment Panel that is established, in respect of the application, by the Commission under section 60AD or 60AP;

Proposed sections 60AD and 60AP simply state that the Commission is to establish an Assessment Panel to undertake an assessment of applications made under the new Part 4, Division 2AA, but is otherwise silent as to process for establishing the panel, appointment and expertise of the panel and functions of the panel. On the face of the provisions, it appears the Commission is unrestrained in establishing an Assessment Panel for the purpose of new Part 4, Division 2AA.

This is concerning as it would put assessment and decision-making into the hands of unknown persons at the whim of the Commission, however we believe this is not the policy intent. The Report on Consultation, when considering aligned concerns by stakeholders, draws analogies to

processes for establishing the Commission under the *Tasmanian Planning Commission Act 1997* and the provisions on the LUPA Act for the establishment of Development Assessment Panels for major project applications (see Part 4, Division 2A, Subdivision 6 of the LUPA Act). Based on the Report on Consultation, we understand that the policy intent is for Assessment Panels established under new Part 4, Division 2AA to be established under a similar process. This must be clearly reflected by explicit provisions to this effect in the Draft Bill. It is important that decisions be made by independent experts, if such panels are to be created

Criteria for applications to be considered by Development Assessment Panels

It is unclear on the face of the Draft Bill what matters for consideration are to be applied by an Assessment Panel when determining applications under the new Part 4, Division 2AA. While the provisions set out a process for applications to be provided to or transferred to an Assessment Panel, additional information, and public hearings, it is unclear if the usual matters for consideration in the LUPA Act apply, including those set out in section 51. It is also unclear to what extent the Commission, in establishing the Assessment Panel, can specify how the application is to be determined (see, for example, proposed section 60OA). The Draft Bill must clarify what assessment criteria is to be applied by the Assessment Panels when determining the application. Our view is that the criteria must include matters to be considered by a planning authority when determining an application under the LUPA Act, otherwise the new framework would again be at risk of misuse by applicants seeking to overcome existing planning processes. This necessarily includes compliance with the planning scheme, public representations and the objectives of the resource management and planning system set out in Schedule 1 of the LUPA Act.

Public exhibition and hearing timeframes

We are concerned that the public exhibition process and hearing timeframes do not allow for genuine community engagement on proposed applications. In particular, we are concerned that:

- A draft permit will be exhibited as part of the public consultation process (see section 60AG(1)(d)(v)). This pre-empts the proper identification and consideration of key issues during the public consultation process and undermines the integrity of the process.
- The public exhibition process also occurs after a reviewing entity has considered an application, potentially preventing the reviewing entity an opportunity to consider and respond to any concerns raised by stakeholders. While it may be useful for public stakeholders to consider the views of reviewing entities during the public consultation period, the process must also provide those reviewing entities an opportunity to respond to any additional concerns raised during the public consultation period.
- A 14 day public consultation period is inadequate and will not allow for genuine public participation. There are occasions when the timeframe for public notice has been extended to 28 days, with 14 day for public consultation being very short. This process does not reflect genuine public consultation and hearing of objections. Consultation takes up time and resources and is often done without financial incentive or support. Short time periods do not allow for stakeholders to engage with the key issues, seek feedback from members (e.g. in the case of peak or community organisations), or seek expert advice.

Longer time periods should be implemented to allow for genuine engagement with stakeholders.

- Similarly, short timeframes for public hearings risk undermining identification of key issues, consideration of evidence and procedural fairness. A hearing undertaken by the primary decision maker, here the Assessment Panel), and as part of the assessment and determination process, only 10 days after public notice has closed, does not afford procedural fairness, and does not displace the very genuine need for a separate, independent avenue for review.

Transparency and accountability

As in the case for all environment and planning decisions, transparency and accountability are crucial for maintain integrity in decision-making. To that end, we make the following observations:

- The Draft Bill could be amended to require decision-makers to provide reasons for decisions under the new Part 4, Division 2AA, including, for example, reasons for referring applications to the Commission for assessment by an Assessment Panel.
- The Draft Bill explicitly excludes merit appeals for decisions made under the proposed new provisions (see proposed section 60AR(1)(d)). Merits appeals are an important accountability tool in planning frameworks as they provides scrutiny of decisions, can improve the consistency, quality and accountability of decision-making , enable better outcomes, including through conditions, and foster natural justice and fairness. The proposed hearing process to be undertaken by the Commission in accordance with the new provisions will not provide the same level of scrutiny and oversight as a merit appeal to the Tasmanian Civil & Administrative Tribunal. EDO's view is that **all decisions of an Assessment Panel should be subject to merits review**. In the absence of providing for merits review rights, critical reforms would be needed to strengthen the public hearing processes of the Commission and Assessment Panels, including clear, mandated process for hearing based on procedural fairness and that allow for the proper consideration and interrogation of expert evidence.

For further information, please contact Rachel Walmsley on .

Yours sincerely,
Environmental Defenders Office

Rachel Walmsley
Deputy Director, Policy and Law Reform

From: Renée Melkert
Sent: Tuesday, 12 November 2024 5:41 PM
To: yoursay.planning@dpac.tas.gov.au
Cc:
Subject: No DAP yes healthy democracy

Hi good day,

I'm writing this email as concern resident of Tasmania. I would ask you to move towards, and lean into democratic processes. People across Tasmania care about their surroundings and there are many who want to be part of decision making.

There is a rising concern about the way development projects will be implemented. Opinions are already polarised, and preventing opposing views/ideas/groups from talking through these project enhances that. People want to be part of the process, at least feel represented. I don't think the DAP will do that. Please consider the following points:

- **Removes merit-based planning appeal right**s via the planning tribunal on all the issues the community cares about like impacts on biodiversity, height, bulk, scale or appearance of buildings; impacts to streetscapes, and adjoining properties including privacy and overlooking; traffic, noise, smell, light and so much more. TASCAT review of government decisions is an essential part of the rule of law and a democratic system of government based on *'checks and balances'.*

- **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 DAP 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.

Say yes to a healthy democracy

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Thank you for your consideration.

Kind wishes,

Renee Melkert

From: Kim Barker
Sent: Tuesday, 12 November 2024 6:01 PM
To: yoursay.planning@dpac.tas.gov.au
Subject: Concerns Regarding Draft Legislation on Development Assessment Panels (DAPs)

Good afternoon,

I am writing to express my concerns regarding the recently released draft legislation by the Tasmanian government, which empowers the Planning Minister to remove the assessment and approval of developments from the normal local council process and transfer it to Development Assessment Panels (DAPs). This fast-track process will exclude elected councillors from having a say on the most controversial and potentially destructive developments affecting local communities. Additionally, there will be no right for the community to appeal the final decision to the planning tribunal.

The Tasmanian Planning Commission lacks independence, as DAPs are hand-picked without detailed selection criteria or objective processes. This practice is inconsistent with the principles of open justice, as DAPs do not hold public hearings and are unable to effectively manage conflicts of interest, as highlighted in the 2020 Independent Review. Furthermore, DAPs are not required to provide written reasons for their decisions, making it difficult to seek judicial review.

Community input will be less effective under this system, as it will be delayed until after the DAP has consulted privately with developers and relevant government agencies and adopted its draft decision. This lack of transparency and accountability is concerning and undermines the democratic process.

I urge you to reconsider this draft legislation and ensure that the assessment and approval of developments remain within the normal local council process, where elected councillors and the community can have a meaningful say in decisions that impact their local areas.

Thank you for considering my concerns.

Sincerely,

Kim Barker

From: Chris Beadle
Sent: Tuesday, 12 November 2024 6:17 PM
To: yoursay.planning@dpac.tas.gov.au
Cc:
Subject: #ScrapTheDAP – say no to planning panels/say yes to a healthy democracy

To whom it concerns:

In addition to the points made below:

It is very important that proper democratic processes are adhered to in planning for the future. The proposed DAPs undermine the current system in this respect and are less likely to lead to outcomes which are sympathetic to, and in the best interests of the electors of Tasmania and future generations, and which best protect what makes Tasmania the special place it is on the planet.

We oppose the creation of Development Assessment Panels (Daps) 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, conducted by the Tasmanian Planning Commission, will decide on development applications not your elected local council representatives. Local concerns will be ignored in favour of 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.

- **The Tasmanian Planning Commission is not independent** – DAPs are hand-picked, without detailed selection criteria and objective processes, are inconsistent with the principles of open justice as they do not hold public hearings, and lack capacity to manage conflicts of interest (as per the 2020 Independent Review). DAPs do not have to provide written reasons for their decision (making it difficult to seek judicial review). Community input will be less effective because it will be delayed until after the DAP has consulted (behind closed doors) with the developer and any relevant government agencies, and adopted its draft decision.

- **Research demonstrates DAPs are** pro-development and pro-government, they rarely deeply engage with local communities, and they spend most of their time on smaller applications and take longer than local councils to make decisions.

- **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.

- **Removes merit-based planning appeal right**s via the planning tribunal on all the issues the community cares about like impacts on biodiversity, height, bulk, scale or appearance of buildings; impacts to streetscapes, and adjoining properties including privacy and overlooking; traffic, noise, smell, light and so much more. TASCAT review of government decisions is an essential part of the rule of law and a democratic system of government based on *'checks and balances'*.

- **Removing merits-based planning appeals removes the opportunity for mediation on development applications in the planning tribunal.**

- **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.**

- **Removing merits-based planning appeals has the potential to increase corruption, reduce good planning outcomes, favour developers and undermine democracy.** The NSW Independent Commission Against
Corruption recommended the expansion of merit-based planning appeals as a deterrent to corruption. 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. Mainland research demonstrates removing merits-based planning appeals has the potential to reduce good planning outcomes – including both environmental and social.

- **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 DAP 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 the criteria is on the basis of *'perceived conflict of interest'*, *'a real or perceived bias'*, *'the application relates to a development that may be considered significant'* and the *'development is likely to be controversial'* is fraught. The Planning Minister has political bias and can use this subjective criteria to intervene on any development in favour of developers. NOTE: The scope of the DAPs includes a range of subjective factors that are not guided by any clear criteria:
  - Valuations of $10 million in cities and $5 million in other areas.
  - A determination by Homes Tasmania that an application includes social or affordable housing. There is no requirement for a proportion of the development to be for social or affordable housing. For example, it could be one house out of 200 that is affordable.

- **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 in Australia when it comes to determining development applications. The Government wants to falsely blame the planning system for stopping housing developments to cover its lack of performance in addressing the affordable housing shortage.

- **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, rather than bypassing it, with opportunities for appeal. Abandon DAPs and instead invest in expertise to improve the local government system and existing planning processes by providing more resources to councils and enhancing community participation and planning outcomes. This will also help protect local jobs and keeping the cost of development applications down.

- 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,

Chris and Mary Beadle

From: Clr Kenneth Gregson < Tuesday, 12 November 2024 7:02 PM
Sent: yoursay.planning@dpac.tas.gov.au
To: Proposed DAP Draft Bill
Subject: DAP draft Bill staff submission Nov 2024.docx
Attachments:

Dear DPAC,

Please accept my apologies for the late submission due to technical issues, but I do concur with my Council's staff DAP proposed bill submission.

Please accept the above Council's staff DAP submission (see attachment) as in agreement with my individual views, also to be treated as my individual submission.

Kind regards,
Kenneth

Kenneth Gregson
Councillor

GLAMORGAN SPRING BAY COUNCIL

9 Melbourne Street (PO Box 6)
Triabunna TAS 7190
03 6256 4777
03 6256 4774
admin@freycinet.tas.gov.au
www.gsbc.tas.gov.au

Your ref: DAP Bill submission
Our ref:

28 November 2024

State Planning Office
Development Assessment Panel framework consultation

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

Dear Sir/Madam

Draft Development Assessment Panel Bill
Detailed submission

Thank you for the opportunity to make a submission to the draft *LUPAA Amendment (Development Assessment Panels) Bill 2024* (Bill) to the *Land Use Planning and Approvals Act 1993* (Act). This submission was provided from the officers and was not endorsed by Council.

We have the following significant concerns:

- many of the issues raised in the previous submissions from both staff and our elected members have not been addressed in the draft Bill or supporting documents;
- the premise for the reforms was not established in terms of demonstrated problems within the system or impacts to timeframes, despite repeated statements about removing the politics from planning;
- the proposed bill arguably increases complexity in the planning system in how the proposed DAP's will operate; and
- the public commentary surrounding the reform raises questions about the understanding of the proposed reforms and lack of education that has occurred.

For context, Tasmania arguably has the fastest regulatory approvals and planning appeals systems in the Country, as acknowledged within the supporting documents.

Council will incur additional workloads from the DAP assessment and decision process, without the opportunity to recover costs as is currently possible through the planning appeal process.

Review of decisions to refuse initiating a planning scheme amendment by the Minister (40BA series) does not require any qualified or expert assessment, providing significant opportunity for political intervention without any supporting evidence. This reform creates significant risk of political intervention with no liability for that decision by the Minister. This proposal is clearly contrary to the requirement for coordination and cooperation across the community, Local and State Government and must be revised.

Ministerial initiation of planning scheme amendments is opposed and must be removed from the Bill. If retained, the Minister must assume responsibility and liability for initiation for the duration of the assessment process.

The Bill does not address the inquisitorial basis of operation of the *Tasmanian Planning Commission* (Commission), versus the legal operation of the *Tasmanian Civil and Administrative Appeals Tribunal* (TASCAT). TASCAT has established a significant body of interpretation through decisions under the Tasmanian Planning Scheme, which must inform any DAP decisions by the Commission. This is critical to the operation of any DAP's and must be resolved prior to implementation.

The criteria for nomination remains arbitrary (60AB), despite the previous submissions of Council and others on this issue. The inclusion of social and affordable housing may have merit, but has not overcome the remaining issues around nomination criteria. The financial thresholds (60AB(b)) are arbitrary and do not relate to the claimed basis for the intervention. The Bill appears to duplicate process for projects that are of State Significance, given the Projects of State Significance process under the State Policies and Projects Act, unless that process is removed from legislation.

Per previous submissions, nomination criteria require revision to reflect the claimed circumstances for the intervention and a range of operational measures such as inflation and the ability to test the claimed project value. The Bill introduces the term controversial, which is likely to be a legally unclear term that will be subject to much debate.

Timeframes within the Bill appear to be unrealistic, often referring to 7 days for actions by the Commission or Council (particularly establishment of the DAP and delegates), with no ability for extension. These must be extended to be practicable (14 days), or provide for extensions.

The exhibition period (14 days under 60AG(2)) does not provide for extensions, unlike the normal application process (57(5)), which is inconsistent with some of the nomination arguments and the RMPS objectives to facilitate public involvement in planning processes.

Fee provisions are established at section 60AS. (3) must be revised to allow submissions on fees from parties or risk Councils being significantly disadvantaged by the DAP process.

Suitable provision must also be made for costs applications following determination, similar to the normal appeal process.

The Bill is unclear whether the DAP can issue directions from hearings under section 60AH, which is normal process for both Commission and TASCAT processes.

The Bill will create significant work for the Commission, which will require increased resources to administer the process within the timeframe.

In addition, the significant discourse around this Bill identifies a clear lack of education and understanding on this reform by the Government. If the Bill is progressed, the State must provide ongoing education on the reform and process for both the general public and across the planning and development sector. Education is typically done by Councils, as there are no other options.

The Bill will result in significant changes to the planning system and a significant increase in the complexity of assessment processes.

The lack of supporting evidence for this reform, clear process around the decision for the intervention and lack of responsibility by the Minister for resourcing or supporting these interventions is opposed.

Reforms must improve planning process and delivery of the Schedule 1 objectives of the planning system within the Act. The Bill has not clearly established these outcomes.

We question the commercial reality of the DAP process, when you consider the timeframe (up to 118 days) and the increased and unknown costs of the process.

We also note that this proposal was promoted over other reforms that can improve processes, such as:

- mandatory training or qualifications for members of planning authorities;
- use of a planning directive for social and affordable housing (such as occurred for Visitor Accommodation);
- provision to allow revised applications before Council decision under the Act; or
- revisions to the TASCAT process to allow elevation of a proposal following statutory exhibition, prima-facie testing of appeal grounds.

We welcome the opportunity to work with government to address the many concerns with this draft bill, which the current assessment and wider discourse suggests has not occurred to the required degree.

Please contact the planning department at Council on 6256 4777 to discuss any questions you may have regarding this submission.

Yours sincerely,

Alex Woodward
DIRECTOR PLANNING & DEVELOPMENT

From: Bonnie King
Sent: Tuesday, 12 November 2024 7:12 PM
To: yoursay.planning@dpac.tas.gov.au
Cc:
Subject: !!! #ScrapTheDAP – say no to planning panels/say yes to a healthy democracy

To whom it may concern,

I'm against setting up Development Assessment Panels (DAPs) and giving more power to the Planning Minister, and here's why:

- DAPs would let developers avoid local councils by going through a state-appointed panel instead. This setup would favor developers, potentially ignoring local community voices. Developers could switch from the local process to DAPs whenever they want, pressuring councils to agree to their terms.
- These panels wouldn't be fully independent. DAP members are selected without clear criteria, don't hold public hearings, and don't provide written reasons for decisions, which makes it hard to challenge them legally. Community input would be limited and delayed.
- Evidence shows DAPs tend to favor developers, rarely consult communities in depth, and often take longer to decide on projects than local councils.
- DAPs would make it easier to approve large, controversial projects like the Mount Wellington cable car or high-rises in Hobart, which could impact local areas significantly.
- The community would lose the right to appeal most planning decisions based on their impacts, such as on biodiversity, building appearance, and local traffic. Appeals would be limited to the Supreme Court, which is expensive and only reviews narrow legal points.
- Removing these appeals could increase corruption risks, harm planning outcomes, and weaken democracy. Studies suggest merit-based appeals help ensure fair decisions, and when removed, there's a risk of favoritism toward developers.
- Giving the Planning Minister more power could politicize planning decisions. The Minister would decide if a project qualifies for DAP review, potentially overstepping local council decisions and reducing transparency.
- DAPs would rely on vague criteria like "perceived conflicts of interest" or "likely to be controversial," which could lead to biased interventions. For instance, a project with only one affordable home out of 200 could be considered as "including social housing."
-

There's no need for DAPs. Only about 1% of council decisions go to appeal, and Tasmania already has one of the fastest planning systems in Australia. The government seems to blame planning laws for slowing housing development instead of addressing the real issues around affordable housing.

•

Adding DAPs would make an already complex system even more complicated, without any clear benefit.

To support a healthy democracy, I'm asking for planning decisions to remain transparent, accountable, and inclusive, allowing appeals and keeping decision-making at the local level. Instead of DAPs, we should invest in improving local councils' resources and encourage more community involvement to improve planning. This approach could also help keep costs lower and protect local jobs.

Lastly, I ask that property developers be banned from making political donations, that the Right to Information Act be strengthened, and that Tasmania create a strong anti-corruption body.

Regards,

Bonnie King

From: Stephen Brown <>
Sent: Tuesday, 12 November 2024 9:10 PM
To: yoursay.planning@dpac.tas.gov.au
Cc:
Subject: #ScrapTheDAP – say no to planning panels/say yes to a healthy democracy

I oppose the creation of Development Assessment Panels (Daps) 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, conducted by the Tasmanian Planning Commission, will decide on development applications not your elected local council representatives. Local concerns will be ignored in favour of 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.

- **The Tasmanian Planning Commission is not independent** – DAPs are hand-picked, without detailed selection criteria and objective processes, are inconsistent with the principles of open justice as they do not hold public hearings, and lack capacity to manage conflicts of interest (as per the 2020 Independent Review). DAPs do not have to provide written reasons for their decision (making it difficult to seek judicial review). Community input will

be less effective because it will be delayed until after the DAP has consulted (behind closed doors) with the developer and any relevant government agencies, and adopted its draft decision.

- **Research demonstrates DAPs are** pro-development and pro-government, they rarely deeply engage with local communities, and they spend most of their time on smaller applications and take longer than local councils to make decisions.

- **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 and the UTAS Sandy Bay campus re-development.

- **Removes merit-based planning appeal rights** via the planning tribunal on all the issues the community cares about like impacts on biodiversity, height, bulk, scale or appearance of buildings; impacts to streetscapes, and adjoining properties including privacy and overlooking; traffic, noise, smell, light and so much more. TASCAT review of government decisions is an essential part of the rule of law and a democratic system of government based on '*checks and balances*'.
- **Removing merits-based planning appeals removes the opportunity for mediation on development applications in the planning tribunal.**
- **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.**

- **Removing merits-based planning appeals has the potential to increase corruption, reduce good planning outcomes, favour developers and undermine democracy**. The NSW Independent Commission Against Corruption recommended the expansion of merit-based planning appeals as a deterrent to corruption. 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. Mainland research demonstrates removing merits-based planning appeals has the potential to reduce good planning outcomes – including both environmental and social.

- **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 DAP 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 the criteria is on the basis of '*perceived conflict of interest*', '*a real or perceived bias*', '*the application relates to a development that may be considered significant*' and the '*development is likely to be controversial*' is fraught. The Planning Minister has political bias and can use this subjective criteria to intervene on any development in favour of developers. NOTE: The scope of the DAPs includes a range of subjective factors that are not guided by any clear criteria:
  – Valuations of $10 million in cities and $5 million in other areas.

– A determination by Homes Tasmania that an application includes social or affordable housing. There is no requirement for a proportion of the development to be for social or affordable housing. For example, it could be one house out of 200 that is affordable.

- **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 in Australia when it comes to determining development applications. The Government wants to falsely blame the planning system for stopping housing developments to cover its lack of performance in addressing the affordable housing shortage.

- **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, rather than bypassing it, with opportunities for appeal. Abandon DAPs and instead invest in expertise to improve the local government system and existing planning processes by providing more resources to councils and enhancing community participation and planning outcomes. This will also help protect local jobs and keeping the cost of development applications down.
- 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,

Stephen Brown

From: Rokeby Hills
Sent: Tuesday, 12 November 2024 11:33 PM
To: yoursay.planning@dpac.tas.gov.au
Cc:
Subject: Rokeby Hills Community Landcare Group Inc - Submission

Dear Sir/Madam,

As convenor for our Landcare group, I wish to inform that our group is very much opposed to the creation of this legislation to create Development Assessment Panels. Our group has and continue to act as a group with reprehensive and professional opinion in planning matters that are around and affect the areas our group and adjacent groups areas manage, this has in past been affective both with local council and in TPC and TASCAT hearings.

The importance of this input is vital when assessing planning matters and we believe the creation of a DAP will make our reprehensive bodies professional opinion wasted and unable to provide such critical knowledge needed to properly make assessments of such planning applications.

Yours Sincerely

Bradley Walker
Convenor - Rokeby Hills Community Landcare Group Inc

Andrew Charles Ricketts
Phone:
Email:

12th November 2024

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

Comment and Objection to The DRAFT Land Use Planning and Approvals Amendment (Development Assessment Panels) Bill 2024

About The Author

The writer has been working on local government and land use planning issues, legislation, environmental issues and forestry issues and land use policy since 1990, a period of over 34 years.

In 1990 land use planning occurred within the local government act 1962. In 1993 the suite of legislation known as the Resource Management Planning System of Tasmania was enacted.

Since 2013 the Liberal Tasmanian State Government has been attempting to demolish the land use planning system as it was originally envisaged in 1993. For example, before 2013 Section 40 C did not exist. It was a part of the deliberate repeated serial demolition of LUPAA, that is the LUPAA envisaged by its founding architects.

The writer has been opposing of the destruction of land use planning which occurred from the period when Mary Massina was installed in the Planning Reform Task Force and the former head of what became the State Planning Office, became her sycophant.

The writer is not a member of any political party and is not a member of any community organisation working on these issues. Any similarity with any other submission would be entirely coincidental, but perhaps in the circumstances might be entirely unsurprising.

The Land Use Planning and Approvals Act.

The Land Use Planning and Approvals Act has been in operation since 1993, as a part of the Resource Management and Planning System (RMPS) of Tasmania.

The State Liberal Government actually hates proper ecologically sustainable land use planning, they favour open slather, I wish to assert. Thus high quality legislation such as the State Policies and Projects Act and The Land Use Planning and Approvals Act, represents an obstacle. It is clear that the government has been systematically ransacking the planning legislation of Tasmania.

The Land Use Planning and Approvals Act of 2013 was perfectly satisfactory legislation and it was far more elegant, more concise, and indeed more erudite than the crazed philosophically garbled version we have today. How sad.

Genuinely good legislation has been smashed by incompetence.

The current amendment Bill to The Land Use Planning and Approvals Act seeking to create DAPS does not improve the capacity of The Land Use Planning and Approvals Act to meet the Schedule 1 objectives of the act and the resource Management planning system.

This is a crucial issue which should not be overlooked by the Parliament and is one of the reasons this amendment Bill should be discarded.

Within the review of the DAP consultation made several statements which I wish to draw to your attention: The document is titled: Development Assessment Panel (DAP) Framework Position Paper. Author: State Planning Officer, Publisher: Department of Premier and Cabinet, Date: October 2023. © Crown in Right of the State of Tasmania December 2019

ON page 3 in Section 3.1 it says:

> *"Despite the statistical evidence, there remains a perception that some Councils are less supportive of new development than others and that on occasion the personal views of elected councillors in relation to a proposed development, …"*

My comment: This suggestion underlies all the attempts to neuter Local Governments. But yes it is just a perception.

> *"Currently, only a small proportion of all development applications actually come before the elected members for decision with between 85 and 90 percent being routinely determined under delegation by council officers."*

My comment:

> *"As identified in the Interim Report, where a development is controversial, there can be a tension between councillors' role as community advocates and as members of a statutory planning authority."*

My comment: Councillors as the representatives of the community are there to consider the wellbeing of the community. Thank God they are there to stop the fascists and vested interests seeking to undertake unsustainable development.

> *"Many planning authorities delegate the determination of development applications to senior officers, and to sub committees. While only a small percentage of applications are determined by the full elected council, these applications typically involve a significant number of representations and are therefore subject to higher levels of local political interest. In some circumstances the full elected council will determine*

> *any application that has been recommended by council planners for refusal or where the application is actually proposed by council."*

My comment: I have seen very, very, very, few developments proposed for refusal. How about giving us the full statistics on the massive pro development juggernaut which the Tasmanian Planning Scheme has foisted on the poor people of Tasmania.

> *"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."*

My comment: I am not aware of any such political determinations. In any case there is acknowledgement that the system is not broken and that the legislation does not need amending.

What does LUPAA Section 40C of the Act state? What did it say prior to 2013. Well it did not exist.

State Planning Office and Related Matters

Land use planning in Tasmania could be viewed as a slightly demented lapdog. Reminds me of a border terrier. Not quite all there.

There have been a number of high profile planning decisions which have not gone the way the government and the Minister would prefer. In Tasmania the Minister in the government are unable to establish an arm's length arrangement.

It is the government that wishes to engage in covert influence in the land use planning process and that sort of influence was never envisaged when the RMPS and LUPAA and the State policies and projects act were created in 1993. Indeed State Policies appear to be universally hated.

Since the Liberals came to power circa 2013 the state's planning office has been created within the Department of Justice then shunted from its original home in the Department of Justice to the Department of Premier and Cabinet and now in 2024 on to the Department of State growth. On Friday 1 November 2024, the State Planning Office is joining the Department of State Growth, within a new division called Strategy, Housing, Infrastructure and Planning (SHIP).

It is for this reason and my complete lack of confidence in any long-term stability for the State Planning Office that my submission is being sent to a raft of different email addresses, hoping that one of them might work.

The State Planning Office, presumably under the direction of the government has been attempting for some years to introduce the obnoxious notion of Development Assessment Panels.

The notion of a State Planning Office within the Department of State Growth is ridiculous and should be abandoned. A fully fledged State Planning Department should be created.

That State Planning Department should do learn how to properly describe the Planning System of Tasmania, which requires considerable simplification and which currently is not adequately described.

Tasmania needs a fully-fledged and professionally staffed State Land Use Planning Department. The overhaul of the planning system needs to get rid of all the little sectoral planning entities and the plethora of different systems, enabled by various Acts, including ones established before the RMPS. To have one planning system rather than one planning scheme would make a lot of sense and would save a lot of money and would remove a lot of irrational conflict and unfairness. Those sorts of suggestions of course are beyond the submission process for this draft bill.

Additionally the Tasmanian Planning Commission needs to be reformed and its decisions and processes need to become far more transparent. In essence this organisation is a significant part of the problem.

Instead of trying to get rid of public involvement in land use planning, which actually represents a massive gift to sustainable development by the public of Tasmania, the system should encourage more public involvement.

The Parade of Ministers Responsible For Land Use Planning

Keeping track of the various ministers responsible for land use planning has been very difficult to achieve.

This draft bill increases the power of ministers and it increases the power of the Tasmanian planning commission.

It is difficult to understand the reasons for increasing the political power whilst decreasing the democratic power of Tasmanian citizens and of the 29 local governments across Tasmania.

I understand that currently the plumber Mr Felix Ellis, is the Minister for land use planning. It seems he is also the Minister for Minister for Police, Fire and Emergency Management, the Minister for Housing, Planning and Consumer Affairs and the Minister for Skills and Training.

If I may make the respectful observation, it's hard to see how a plumber is going to manage to make good land use planning decisions whilst dealing with the rest of these obligations, over a portfolio with which he has no meaningful experience. I would call this sort of ridiculous gormless legislation to be basically irresponsible.

It is extremely clear that this is a mechanism which installs and increases ministerial power. At no stage does the legislative amendment test the competence of the Minister. In a state where ministers have multiple portfolios, drafting legislation which increases the power of incompetence is vastly undesirable.

I am suggesting that the Minister should not have involvement in the process such as this.

The Liberals Repeated Attempts to Diminish or Destroy Local Government

It is incredible that the current State Liberal government simply adopted the Property Council's mantra. I suppose it saved them thinking deeply about the issue.

The Property Council's operative Mary Massina, was installed by the Hodgeman Liberal government, almost before all the votes were counted. She expressed a hatred for local government and everything for which it stood. There was limited planning expertise as can be seen by the Macquarie Point debacle. Planning reform proceeded in a piecemeal fashion completely devoid of any strategic integrity.

Only in Tasmania would such corruption be allowed to fester.

Ever since that time the State Liberals have been attempting to do a hatchet job on our 29 local governments. This disgusting antisocial behaviour is a complete and utter waste of public funds.

The latest effort at destroying local government was extremely comprehensive and yet the people of Tasmania and the 29 local governments themselves strongly objected. Get the message!

Tasmania urgently needs a completely reformed integrity commission with much greater powers to investigate corruption at all levels. This would be a far more useful reform to pursue.

The reason I mention this matter of local government being attacked, seemingly unrelated yet 'The draft Land Use Planning and Approvals Amendment (Development Assessment Panels) Bill 2024', simply represents another way of reducing the power of local government.

Yet the material published by the State Planning Office over DAPs strongly suggests that the planning system is working well, that there are very few problem matters and that councils do represent an alternate view to the heavy-handed corruption that comes out of the Tasmanian Planning Commission.

What is needed is a solid independent review of the Tasmanian Planning Commission. I am happy to express the view that I have no confidence in it whatsoever.

For that reason alone this imprudent draft amendment bill should be consigned to the Parliamentary garbage bin.

Local Governments are either sufficiently competent to operate a land use planning Department or they are not. For very small councils there may be a need to improve planning resources. I have repeatedly suggested ways to address this issue.

That is not a reason for shifting the decision-making power from local government and creating an entirely new and separate decision-making process, one which is minus a critical right of appeal for the people of Tasmania. This is a public interest issue.

This removal of the right of appeal is directly against the schedule 1 objectives of the RMPS. Here they are:

> *SCHEDULE 1 - Objectives of the resource management and planning system of Tasmania*
>
> *Sections 4 and 6*

1. The objectives of the resource management and planning system of Tasmania are –

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

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

(c) to encourage public involvement in resource management and planning; and

(d) to facilitate economic development in accordance with the objectives set out in paragraphs (a), (b) and (c); and

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

2. In clause 1(a) –

"sustainable development" means managing the use, development and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic and cultural wellbeing and for their health and safety while –

(a) sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations; and

(b) safeguarding the life-supporting capacity of air, water, soil and ecosystems; and

(c) avoiding, remedying or mitigating any adverse effects of activities on the environment.

The Objectives of LUPAA are:

PART 2 - Objectives of the Planning Process Established by this Act

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; and

(b) to establish a system of planning instruments to be the principal way of setting objectives, policies and controls for the use, development and protection of land; and

(c) to ensure that the effects on the environment are considered and provide for explicit consideration of social and economic effects when decisions are made about the use and development of land; and

(d) to require land use and development planning and policy to be easily integrated with environmental, social, economic, conservation and resource management policies at State, regional and municipal levels; and

(e) to provide for the consolidation of approvals for land use or development and related matters, and to co-ordinate planning approvals with related approvals; and

(f) to secure a pleasant, efficient and safe working, living and recreational environment for all Tasmanians and visitors to Tasmania; and

(g) to conserve those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value; and

(h) to protect public infrastructure and other assets and enable the orderly provision and co-ordination of public utilities and other facilities for the benefit of the community; and

(i) to provide a planning framework which fully considers land capability.

Now I ask does the objective: "*(c) to encourage public involvement in resource management and planning;"* deserve some respect?

Ever since the Liberal State Government came to power it has been feverishly trying to get rid of the public's right to object, reducing the amount of Discretionary Developments, reducing the time allowed in which to appeal, increasing the costs of an appeal and on and on and on and on and on.

It can only be assumed that the Liberal State Government hate and have no respect for the people of Tasmania and it completely fails to understand that they are there to represent the people of this state for the common good. We are not convicts any more. This draft amendment bill is not serving the common good.

I really wish our State Government would start managing the State in a competent manner. Now it is in a minority and deservedly so and hopefully the crossbench will realise that this is poor quality hopeless legislation born out of some rhetorical mantra, the origins of which have been lost in time.

Competent would mean scrapping this crap amendment bill.

Objection to the Draft Land Use Planning and Approvals Amendment (Development Assessment Panels) Bill 2024

It would seem that this draft bill, seeking to install the opportunity to create a separate development approval process via the Tasmanian Planning Commission which would create Development Assessment Panels as required, needs a complex amendment of 54 pages in length.

My submission is that the notion and indeed the reality of Development Assessment Panels would be to simply be another means where the single State Liberal Government is attempting to diminish the power of the 29 local governments in Tasmania.

I consider this to be nothing more than a power play and wish to register my opposition to the proposed Draft Amendment Bill.

Hopefully Labor and the crossbench will combine and have sufficient intelligence to vote this Bill down.

The Draft Land Use Planning and Approvals Amendment (Development Assessment Panels) Bill 2024 significantly complicates an already overcomplicated 'Land Use Planning and Approvals Act'.

Discretionary Permits and Rights of Objection and Appeal

I can only conclude that the notion of Development Assessment Panels is born out of a fundamental hatred for the fact that discretionary permits allow objections and appeals and the decision-making process within the local government, which indeed if truth be known, already substantially, massively favours the proponent.

One can only conclude that Tasmania is desperate for development, almost any development will do.

However, local government contains elected representatives some of whom have the intelligence and integrity to make genuine independent decisions. And that is the problem for the Hobart mandarins.

Conclusion

In writing this brief objection to The DRAFT Land Use Planning and Approvals Amendment (Development Assessment Panels) Bill 2024, I have formed an even stronger disdain and vehemence against it, than at the time of starting my drafting process.

It is an ugly, horrible little piece of proposed amending Bill, which should be quashed.

This draft amendment land use planning bill is not good legislation, rather it is bad legislation. This draft bill increases the complexity of the land use planning system, increases its politicisation, increases the power of a single person being the Minister, and diminishes the power of the 29 local governments and their large number of elected council representatives.

This draft amendment bill diminishes the rights of the people who may wish to object to and appeal a development. Hence it diminishes the already weakened rights of the people of Tasmania to participate in land use decisions and for that reason the DRAFT Land Use Planning and Approvals Amendment (Development Assessment Panels) Bill 2024 should be aborted.

END

From: Anne Francis
Sent: Wednesday, 13 November 2024 6:48 AM
To: yoursay.planning@dpac.tas.gov.au
Subject: Submission - Development Assessment Panel - Draft Bill

This bill is the end of democracy in Tasmania. Many Tasmanians are even unaware of its proposal and even more are unable to write a submission in response. The opportunity to have a say on this vital restructuring of Democracy in Tasmania has been given a very short time limit and most definitely has not been widely publicised.
Had it not been for a few up to date councillors, no Tasmanian would even be aware of the so called opportunity to " have a say". What a disgrace!
I most strongly object to this attempt to take democratic government in Tasmania and hand complete government of such vital planning decisions to an arbitrary band of dictators!

Anje Francis
Sent from my iPad

_____

KING ISLAND COUNCIL

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

13 November 2024

Dear Sir/Madam

DRAFT LUPA AMENDMENT (DEVELOPMENT ASSESSMENT PANELS) BILL 2024

King Island Council has considered the above and does not support the amendment as it would result in the removal of local input and knowledge into the assessment of projects that may impact the local community.

Council is concerned that a Panel may not fully understand the nuances of development and its potential impact on a small, isolated community.

Yours sincerely

Dr Catherine Dale
Acting General Manager

Our Ref: ME | MP

13 November 2024

Mr Sean McPhail
Acting Director – State Planning Office
Department of Premier and Cabinet

Via email:

Dear Sean,

Submission – Initial Feedback
Land Use Planning and Approvals Amendment (Development Assessment Panels) Bill 2024

Thank you for the opportunity to provide a submission on the *Land Use Planning and Approvals Amendment (Development Assessment Panels) Bill 2024* (the Bill). This submission has been prepared by the Local Government Association of Tasmania (LGAT) on behalf of Tasmanian local government in collaboration with our members; all 29 councils.

LGAT is incorporated under the *Local Government Act 1993* and is the representative body and advocate for local government in Tasmania. Where a council has made a direct submission to this process, any omission of specific comments made by that council in this submission should not be viewed as lack of support by the LGAT for that specific issue.

Please note that this submission provides initial feedback on the Bill only. A formal policy position for the local government sector will be established at our General Meeting, on the 21 of November 2024.

Overwhelming, our sector questions the need for this controversial legislation now.

The Government's own Development Assessment Panels Framework Position Paper in 2023 said, '*Despite the statistical evidence there remains a perception that some Councils are less supportive of new development than others…*'.

The Position Paper goes on to acknowledge that Tasmania's existing development assessment process is working well, '*being one of, if not the fastest in the country*' when it comes to applications. I would further point out that the Future of Local Government Review Board reported that only about one per cent of discretionary applications across the state go to appeal and importantly the determinations made by elected representatives '*were no more likely to be appealed than those by council officers*'.

The diverting of precious planning resources to this reform comes at critical time in the development of our planning system, with either incomplete or outdated foundation pieces of our planning system such as the Tasmanian Planning Policies, Regional Land Use Strategies and review of the State Planning Provisions.

Please contact Dion Lester if you have any questions or would like further information.

Yours sincerely,

Dion Lester
Chief Executive Officer

LGAT Submission: Land Use Planning and Approvals Amendment (Development Assessment Panels) Bill 2024

Introduction

LGAT has consulted its members, seeking input from across local government roles, including elected officials, executives, and technical experts, particularly planners. LGAT held a workshop to assess the draft Bill, gather views, and develop submissions.

No intent to listen

LGAT and the local government sector condemn the State Government's approach to consulting on this Bill. It has provided bare minimum timeframes that are inflexible and unresponsive to the voice of local government (and others). It has completely ignored ours and councils' previous submissions on the DAPs Position Paper in late 2023, many of which presented opportunities to work collaboratively with Government on a constructive proposal. This opportunity now goes begging because the Government has chosen a path of conflict and assigning blame.

Councils engaged in that consultation genuinely, giving rational thought and presenting fair minded views based on their technical expertise. In reviewing councils' 2023 submissions, we found the majority of councils were open to a well-designed DAPs process but could see the case had not yet been properly made and could not support the proposal presented to them, at that time. This openness and genuine engagement have not been reciprocated by the State Government. No attempt to listen to local government and understand their needs appears to have been made.

This brings the sentiment within planning in Tasmania close to crisis levels. Development professionals feel disenfranchised and alienated by the Government's choice to attack, rather than support.

Planning foundations in disarray – a state responsibility

The State Government has chosen to blame councils for a very small number of planning decisions. But it fails to comprehend that these are the results of the planning system that the Government is responsible for administering and it has failed in its role to maintain our planning system. An investigation of our planning framework finds the following.

State planning legislation – OUTDATED

Our planning legislation, the *Land Use Planning and Approvals Act 1993* is now over three decades old, was literally made for a different century, and is a Frankenstein's monster of amendments. Its processes are antiquated, complicated, and at times even conflicting and irrational. Councils rely on this every day for proposal assessment and decision making. This is foundational and a state responsibility.

State planning policy – MISSING

The Tasmanian Planning Policies (TPPs), which should express the State Government's policy approach and expectations of development and its regulation, are still not made after over seven years. What is the current government's position on a range of development matters? We don't know, because over the past seven years the government has failed to express its land use policies properly to support development decision making.

Regional planning strategies – OUTDATED

The three Regional Land Use Strategies (RLUSs) are nearing 15 years old and critical to guiding local development and increasing certainty for proponents. Both local government[1] and the Planning Institute of Australia[2] have been asking for these to be updated for years. These are ministerial declarations and a state responsibility. Their outdated nature creates development uncertainty, conflict and hinders local decision making.

> ***Case Study: Stony Rise, Devonport***
>
> *Recently, the impact of Tasmania's broken planning foundations attracted repeated media attention[3] and the ire of industry. A proposal for a supermarket and shopping centre at Stony Rise, Devonport, was rejected by the Tasmanian Planning Commission (TPC), in part on the basis of the Cradle Coast RLUS[4]. This is despite being supported by council and community.*
>
> *The case is also generating public calls for action from prominent industry and PIA representatives[5].*
>
> *This has now put the Minister's role in maintaining our planning foundations in the spotlight[6], creating pressure for action and change. This is not the first time that the outdated RLUSs have contributed to such a situation, and it can be expected it will not be the last.*
>
> *This case shows that in the absence of properly maintained planning foundations, the TPC will also reject development proposals. This case brings into question the merit of this Bill if the planning foundations are not urgently updated and then maintained.*

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[1] See LGAT submissions from: 2014, 2015, 2017, 2018, 2019, 2020, 2023, 2024

[2] See PIA Policies & Campaigns: 2016, 2017, 2018, 2019, 2021, 2022, 2023, 2024

[3] See The Advocate: 1, 2, 3

[4] See TPC decision AP-DEV-AM2022.02

[5] See post by PIA National Board Director, Emma Riley (31/8/24)

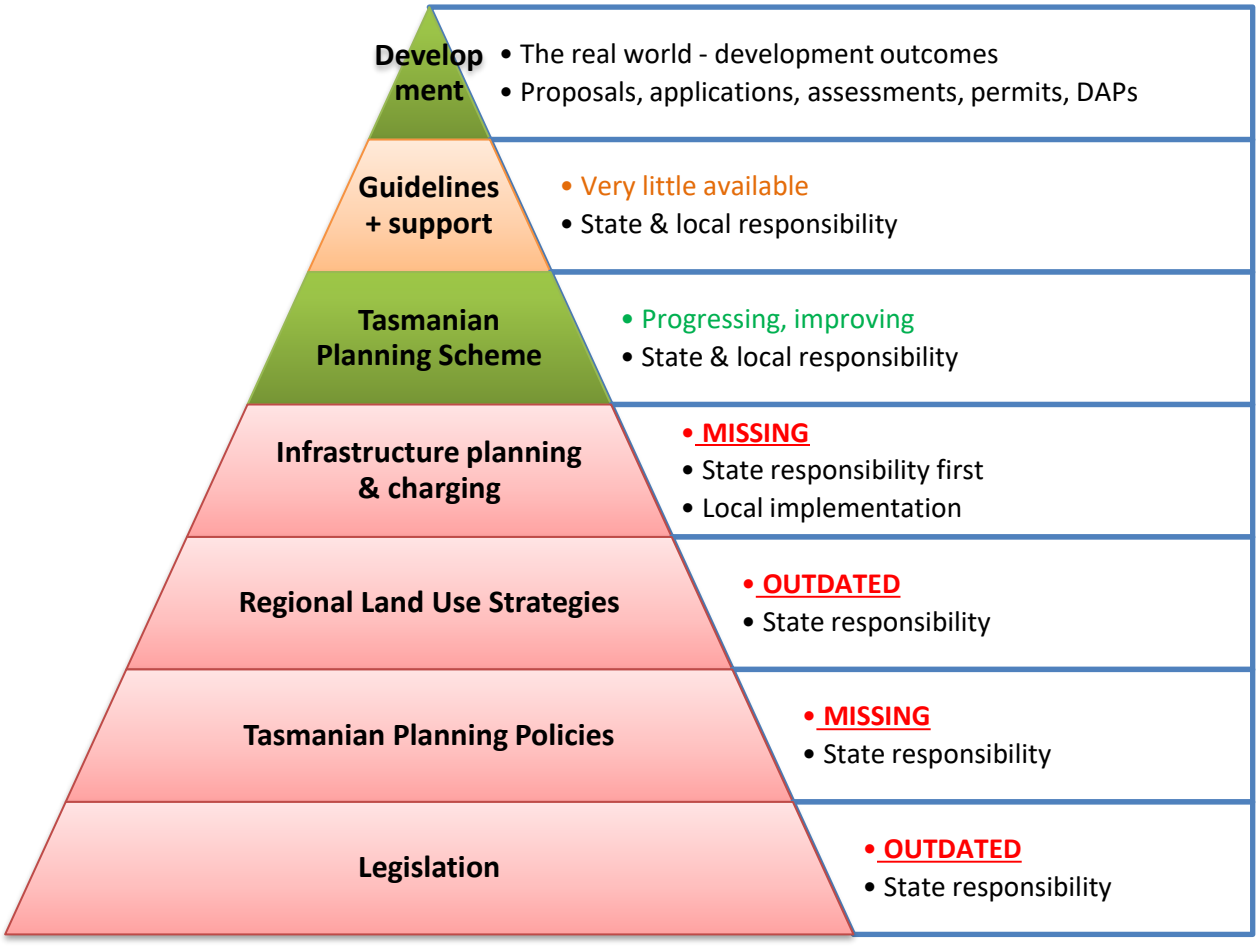
[6] See The Advocate, 29 Aug 2024, *Stony Rise Village decision shows change is required to relax 'handbrake'*

State infrastructure delivery system – MISSING

Other Australian states have developed and implemented best practice infrastructure planning and contributions systems that their state governments have supported in planning legislation. These systems help overcome everyday development problems by equitably sharing the costs of infrastructure, enabling and accelerating development, especially housing supply. Where is Tasmania's? Our councils have a broken and fragmented collection of weak and indecisive provisions to navigate that present as many problems as they attempt to solve. Local government has been asking for this for years. The State Government is behind in supporting development.

Planning foundations support good decision making

What the State Government demonstrates in its development of this Bill is that it fails to understand how its own planning system works and has failed to maintain the system in a state that supports the decisions it wants. It sees the planning framework in a top-down hierarchy, but this wrong, not how development decisions are made, and not how to create a healthy planning system.



In fact, it is the opposite. Each layer of our framework supports the component above. Development assessment and decisions are the result of all the layers beneath it. But when you interrogate those layers, the foundations of our planning system are either outdated, or missing entirely. These are all state responsibilities. The state is failing our system, not councils.

The DAPs proposal presented by this Bill applies only to the outer surface of our planning system, the development assessment process (top) and it only applies to a very small number of proposals. It does nothing to fill the serious gaps at the very foundations of our planning system, nothing for development strategy and policy, nothing to build the competent technical basis of decision making that affects every development application. The Bill is a superficial response to development issues. Councils want meaningful action on planning.

Despite broken foundations, councils are performing

It does not take long to reasonably investigate development assessment data and see that councils are actually doing a remarkable planning job, despite the broken foundations. In fact, the State Government's own Development Assessment Panels Framework Position Paper delivers exactly this evidence, explaining that:

- Discretionary applications are being determined in a median timeframe of 38 days (40 average) and permitted in 21 days (21 average). Compared to other states, Tasmanian councils are, on average:
    - 6 days faster than SA
    - 15 days faster than NT
    - 21 days faster than ACT
    - 43 days faster than NSW
    - 45 days faster than Qld
    - Data is lacking for WA, but we are perhaps around 40-50 days faster
    - 89 days faster than Vic
- Tasmanian councils are also determining more applications than ever before, with annual totals *nearly doubling* from around 6,500 in 2016-17 to over 12,000 in 2021-22. This shows the pressure councils are under.
- Between 85 and 90 percent of development applications are being determined under delegation by council officers and not coming before elected representatives

The State Government's own Development Assessment Panels Framework Position Paper notes:

> *'the evidence is that the inappropriate political determination of applications is limited to isolated, but well publicised, cases'*
> And so, the response of any DAPs proposal *'should be proportional, so it does not undermine the integrity and success of the existing reforms, or the planning system itself'.*

We also know that councils approve the overwhelming majority of development applications, over 95%. Rejections are in the minority.

By the government's own words, we can see that councils are performing admirably within an incomplete system that the State Government has failed to maintain. The evidence weighs against the Government.

This data also shows that councils are actively using their technical planning expertise to create timely, positive development decisions.

Inappropriate prioritisation of State planning resources

All of this raises serious questions about the standard of leadership that the government is demonstrating by this proposal. We know that the foundations of our system are broken, and that this is a state responsibility. We know that these foundations are what support good decision making, but despite the lack of foundations, councils are doing an excellent job, one they can take pride in. We know that the Bill does not help our foundational gap and merely shifts decision making, and that it only applies to very, very few development applications (DAs), when proper planning work would help every single DA lodged, anywhere in the state.

The right way forward

If the State Government wants to show it is serious about supporting development in Tasmania, then it needs to:

1. **Resource State planning competence**

   Make the state a credible organisation in development. Properly resource the State Planning Office to give it both the capacity and capability to deliver on the future development needs of Tasmania.

   Focus these resources on building the planning foundations outlined above.

2. **Work constructively with the development regulation experts – your councils**

   Show, through respectful consultation and engagement practices, that the government properly appreciates both its councils and its own development planning system. Recognise that local government has a special assessment and community representation role when it comes to development. Councils' stand at the convergence point in the planning system of all the planning legislation and statutory instruments, of state and development industry players, and of communities. This makes them the primary managers and mediators of growth and change in the state and central to our policies around development.

3. **Help build communities democratically – change readiness**

   Development is essential to meet the basic, everyday needs of our communities, especially for housing. Development is necessary to improve our basic living standards and give everyone a chance at economic self-sufficiency and security. But development brings change, and change is confronting to some people. These people are not ready for change and do not understand the importance of development in underpinning their own living standards.

   The right and democratic way to deal with this, is not to ignore and override their concerns with imposing powers, as this Bill threatens. It is to engage in a constructive conversation about growth and development and how we meet the needs of current and future Tasmanians. It is to help generate public acceptance of planning for broader community needs.

   Councils know this, and we have pointed this out to the government repeatedly, most clearly in our LGAT Submission - State Budget Priority Statement 2024-25.

   This Bill does nothing to help communities deal with change and plan constructively for the future, and for others. As if to demonstrate this perfectly, the draft Bill has failed to even achieve endorsement from anti-NIMBY groups such as YIMBY Hobart[7]. That is a remarkable failure for a Bill intended to address the core reason for that group to exist.

[7] See YIMBY Hobart submission here: https://www.yimbyhobart.org/post/yimby-hobart-submission-development-assessment-panels

Specific issues

Referral triggers

Councils have concerns around the referral triggers and are in the process of determining a sector position on them. LGAT is assessing the sector's position through two motions to our next General Meeting. This position will be clarified following our General Meeting on the 21 November 2024.

At the very least, we question the need for both referral triggers (2) and (3), which are both variations of choosing a DAP. Our initial view is that value level triggers are simply unnecessary, it is the nature of the proposal and the public response to it which is the key issue to resolve. The '*criteria'* outlined in trigger (3) are little more than broad motherhood statements and provide any proponent that is dissatisfied with the council process the opportunity to have the Minister establish a DAP. To say this is taking the '*politics out of planning'* couldn't be further from the truth.

Furthermore, we see no value at all in a planning authority needing the consent of the applicant. A planning authority should be able to request a DAP wherever it assesses the need. Some criteria around this may be helpful.

DAP applications must be assessed against the planning scheme

The draft Bill does not specify what the assessment criteria for a DAP-assessed DA. This leaves the assessment criteria in question and indicates substandard drafting. A proponent should not be able to choose a DAP to avoid assessment against the planning scheme. The Bill must be explicit in the assessment criteria required and this should be the same as a regular discretionary assessment.

A new level of assessment – afford planning authorities the same assessment allowances as the DAP process

The DAP process presented by the Bill is effectively a new level of assessment in our planning processes. This is implicit recognition by the government that the processes of LUPAA are insufficient – again, something councils have been raising with government, had it been listening, and another indication that our 31-year-old legislation needs to be brought into the 21st century. This is clear recognition that some proposals are more complex than our aging LUPAA processes can properly support.

The DAPs process also provides a suite of allowances and generous time for panels, when councils are not afforded the same generosity. This is absurd and inconsistent. How can councils be criticised for a constrained process on one hand and then provide alternate decision makers more generous allowances?

This DAPs proposal should signal that LUPAA and its processes need reviewing to rationalise its processes and bring our planning framework to a contemporary standard.

One process or the other – no mix and match

Councils do not support the ability for a development application to switch process's part way. This unnecessarily adds complexity and uncertainty and will undoubtedly raise suspicion for a project in the community, damaging public acceptance of the DAPs process. It should be removed.

Council as the applicant

Councils do support consideration of alternative assessment models for applications where a council currently acts as both the planning authority and is also the applicant however, the establishment of DAPs to fulfill this role, appears overly complex and is not the only option that should be considered.

Incentivise the DAP process

Have proponents undertake public consultation to help demonstrate the need for DAPs. If public consultation reveals a problematic level of public contestation, and a sufficient likelihood of tension between technical and political decision making, which can be prescribed, then a DAP may be merited. This will incentivise best practice planning among proponents, motivating them to engage their communities early and build support for their proposals. This will also demonstrate the value a DAP assessment to the community and increase their acceptance.

PIA Planning Institute Australia

12 November 2024

State Planning Office
Department of Premier and Cabinet
GPO Box 123
Hobart Tasmania 7000

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

Submission – Draft LUPAA Amendment (Development Assessments Panels) Bill 2024

Thank you for the opportunity to make a submission on the draft *Land Use Planning and Approvals Amendment (Development Assessment Panels) Bill* (Bill). The Bill results in some of the most extensive changes to the *Land Use Planning and Approvals Act 1993* (LUPAA) since reforms to facilitate the Statewide Planning Provisions. As this is the legislation that our Tasmanian divisional membership of planning professionals work with every day, the changes are of great interest, and we welcome dialogue to ensure a good outcome.

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[1].

Summary statement

The Bill and the Report on Consultation provide some clarity on the proposed changes to LUPAA for Development Assessment Panels to replace Council's decision-making function.

PIA Tasmania reiterates its position of providing qualified support for the establishment of Development Assessment Panels (DAP) and acknowledges their successful implementation in other states of Australia. However, we have concerns with the Bill as currently drafted, particularly in terms of increased complexity in our regulatory planning processes and have provided several recommendations in response to our concerns.

If this Bill is passed, it is critical that it is consistent with the Objectives of LUPAA, particularly ensuring that planning is coordinated between State and Local Governments. The introduction of DAPs emphasis even more than is currently the case, that Tasmania needs a mature and well-resourced strategic planning system that supports effective community and stakeholder engagement on planning for our future.

[1] https://www.planning.org.au/ourcampaigns

In implementing the changes support must be provided for public education and ongoing professional development across planning and related professions.
At PIA's 2024 Abercrombie Lecture, by keynote speaker Professor Nicole Gurran,2 noted that Development Assessment Panels (DAP) in other states have been successful. Gurran noted that some of the key factors of success were the use of professional experts on the panels and good social license behind the controls and processes to remove politics from planning decisions good decision-making for major projects.

The NSW system, while not always perfect, has demonstrated how effectively DAPs can work. The strengths rely on operating independently from political pressure, and decision making that is based on planning mechanisms with foundations in extensive community and stakeholder engagement.

KEY CONCERNS

As stated in our previous submission, PIA Tas Division supports the intention of the Bill to establish DAPs. The following commentary includes further discussion on matters from our original *Submission – Development Assessment Panel Position Paper* (Nov 2023), referred to as 'PIA's Submission', in relation to the Bill and the *Report on Consultation; Development Assessment Panel (DAP) Framework Position Paper* (Oct 2024), referred to as the 'Report on Consultation'.

Complexity

- The proposed amendments do not appear to simplify the approval process. The DAP provides an alternative pathway that adds further choice and complexity in obtaining planning decisions, and potential confusion for planning processes and review of decisions.
- The provisions in LUPAA have become increasingly complex due to the changes to the Act over the past 30 years. Further changes are likely to contribute to the challenge of implementing the RMPS for both planning and legal professionals.
- A significant body of consistent interpretation of planning scheme provisions has been established by the Tasmanian Civil and Administrative Appeal Tribunal (TasCAT). This provides range benefits to the system, developers, the community and profession through greater certainty in assessment. It would be unfortunate if this consistency in interpretation was lost due to differences of view between the Tasmanian Planning Commission (Commission) and TasCAT, particularly since the greatest benefits are to contentious applications. Consistency in decisions across the two authorities was not adequately addressed in the response paper.

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[2] Professor of Urban and Regional Planning at the University of Sydney, where she directs the University's Henry Halloran Research Trust

PIA Planning Institute Australia

The need for change

- As stated in PIA's previous submission, the reasons for changes to LUPAA are not clear. Some justification has been provided in 4.1 of the Consultation Report for social housing and council led applications. However, the rationale and the selected threshold test for inclusion of development applications exceeding $10M, or $5M in non-metropolitan regions appears to have no rational justification. These numbers seem arbitrary, do not allow for inflationary pressures over time, or an effective means of testing their accuracy or relevance to a particular proposal, other than the information included on an application form.
- The Report on Consultation does not make clear in what capacity Tasmania's regulatory planning system is not operating effectively.
- DAPs have the potential to benefit not only developers but also councils, particularly assisting them in decision-making where they do not have the resources or capacity or are conflicted when implementing the planning system.
- The Bill includes the removal of 'Frivolous or Vexatious representations'. These are not defined within LUPAA (despite requests from Local Government and the private sector) and the potential legal justification has not been provided or discussed. This has the potential to discourage public involvement in the planning system and could be contrary to the objectives of the Act, ref PART 1 1. (c).

  The objectives of the resource management and planning system of Tasmania are –
  (c) to encourage public involvement in resource management and planning; ...

Demonstrating effective delivery

- PIA's previous submission on the Position Paper noted there had been limited rigour in the assessment of comparative DAP models. It is appreciated that some further consideration has been given to appeal processes in other states in section 4.4; however, these refer specifically to housing projects. The thresholds included in the Bill apply to any applications exceeding $10M, or $5M in non-metropolitan regions. There is limited comparative assessment of the application of Assessment Panels with existing precedence, where PIA understands it has been effective interstate.
- The exclusion of applications to be assessed in accordance with the *Environmental Management and Pollution Control Act 1994 (*EMPCA) is supported as we believe it would reduce the complexity of the process for assessment of a Level 2 activity. However, this may contribute to inconsistency in approvals, for instance if a small council relies on a DAP for an application exceeding $10M, they would still be required to assess the planning permit if it were a Level 2 Activity.
- In addition to preparation of all permit application documentation, applicants will now need to do further work to undertake a comparative assessment of the timeframe, costs, and risks of

refusal for a project between the existing approval pathway, the DAP pathway and a Major Project pathway. The provision of guidelines on the selection of assessment pathways from Government could simplify decision-making for applicants.

- The statutory timeframes for the DAP as described in the Report on Consultation can be between 98-118 days and the anticipated assessment fees are unknown. The existing approval pathway timeframes are 42 days, and the fees are determined by the Council, with decisions being undertaken by local Councillors as part of their usual activities. The timeframes and cost are potentially a deterrent from proceeding with a DAP assessment.
- PIA previously advocated for increased clarity on the nomination criteria to avoid undermining the Major Project pathway. The distinction between the two pathways needs to be clearly distinguished to avoid unnecessary complexity of LUPAA and potential confusion.
- 'Frivolous and Vexatious representations' should be removed from the Bill. The advice from our members is that the current assessment processes administered by the Commission already provides for identification and resolution of these matters in a way that is fair, equitable, engaging, and efficient, through operation of the *Tasmanian Planning Commission Act 1997*.

Who will be responsible and how is it resourced?

- Further to our previous submission, the Bill will add significantly more functions to the responsibilities of the Tasmanian Planning Commission's current operations. This will require additional resourcing, capacity, and capabilities. In addition, resourcing will need to ensure consistent interpretation and decisions across both the Commission and TasCAT.
- The Bill adds significantly to the processes that are included in LUPAA and the knowledge required by planning professionals to effectively deliver good planning outcomes. It is recommended that if the Bill is approved resources are provided for public education and ongoing professional development across planning and related professions to inform and assist the practical implementation of the changes and the DAP process. Furthermore, PIA recommends that there is ongoing resourcing to support planning graduates educated in local Tasmanian planning requirements.
- 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 shortcut in process. The submissions received to the Position Paper demonstrate that there is still significant community concern that this is the case and that the public will be excluded from the process for contentious projects. Using, established and accepted processes as much as possible helps the legitimacy and transparency of decision-making in the community.

The scale of changes to the Act and its operation within the planning system are challenging for our members to comprehensively assess, particularly in relation to their practical application to project work. As such, we have not provided a detailed assessment of the specific drafting of the Bill. However, we note there are some inconsistencies in the wording of the Bill that must be addressed. For example, applicant and proponent are not used in a clear way.

Ministerial role to direct draft amendment to LPS.
Clarity has been provided on the role of the Minister to intervene in draft amendments to the LPS in Section 5 of the Report on Consultation. However, this change has no bearing on the purpose and description of the Bill, which was to introduce Development Assessment Panels for permit applications.

We appreciated that there is a priority to ensure sufficient legislative head power to provide for housing land supply at the State level, particularly in light of the National Housing Accord. However as discussed in our previous submission, additional delegation of decision-making to the State Minister for scheme amendments has the potential to conflict with the Objectives of the Act unless it is clear how coordination at the local level will occur. This may be in part achieved through an effective strategic planning system.

> *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 coordinated action by State and local government;*

RECOMMENDATIONS
The following recommendations are put forward to improve operation of the Bill:

- Ensure consistency with the Objectives of the Act.
- Ministerial controls should have clear decision criteria and be based on professional advice to ensure that politics are removed from decision-making.
- Providing statutory consideration of relevant TasCAT decisions and case law through consideration under the Tasmanian Planning Commission Act 1997.
- Improved, clear nomination criteria for proposals for social housing or Council led applications.
- Removal of the 'Frivolous and Vexatious representations' provisions, and reliance on assessment of these matters through the *Tasmanian Planning Commission Act 1997*. The current process is considered efficient, effective and fair.
- An operational review of timeframes for assessment to ensure functionality and clearly definition of approval timeframes.
- A transparent and well-funded program for public education and ongoing professional development across planning and related professions, to improve understanding of planning process and the DAP process.

- State published guidelines that provide clear recommendations for project types and approval pathways to simplify process selection.

Separately we note that at present there is an over emphasis on the regulatory process in the planning system. Supporting and enabling effective strategic planning and education to enable better outcomes that meet community expectations at the state, regional and local level are critical to ensuring clear and more certain pathways through the regulatory process. In other words, we strongly advocate for increased strategic planning efforts in order to ensure that local government and the community are appropriately involved in setting the policy framework under which DAP decisions will be made.

Thank you for the opportunity to make a submission on the important Bill. We reiterate our in-principle support for the introduction of DAPs in Tasmania. On behalf of our membership of planning professionals we encourage full consideration of the concerns and recommendations expressed in this submission. We welcome any opportunity to further assist Government in the progression to a successful model.

Yours sincerely,

Mick Purves MPIA
President
Planning Institute Australia (Tas.)

THE JAC GROUP

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12Th November 2024

Dear Sir or Madam,

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

Thank you for the opportunity to comment on the draft Bill.

The JAC Group of Companies welcomes the inclusion of a ministerial review process for scheme amendments refused by planning authorities.

Section 40BA is a sensible inclusion that would allow an application to be reviewed on merits. If the Minister did direct a Planning Authority to prepare an amendment, the application would still ultimately be determined by the Tasmanian Planning Commission.

Kind Regards

Claire Gregg
Town Planner

Department of Natural Resources and Environment Tasmania
OFFICE OF THE SECRETARY

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Tasmanian Government

Sean McPhail
Acting Director
State Planning Office
Email: spo@stateplanning.tas.gov.au

Input on proposed Land Use Planning and Approvals Amendment (Development Assessment Panels) Bill 2024

Thank you for your correspondence of 7 October 2024 advising that the Land Use Planning and Approvals Amendment (Development Assessment Panels) Bill 2024 (the draft Bill) is open for submissions.

The Department of Natural Resources and Environment Tasmania (NRE Tas) supports the intention of the draft Bill in providing an alternative assessment pathway for development applications (DAs) under the *Land Use Planning and Approvals Act 1993* (LUPAA) to be considered by an independent Development Assessment Panel (DAP) established by the Tasmanian Planning Commission.

NRE Tas would like to meet with your Office to discuss the practical application of the Bill, and to confirm our understand that:

- State Polices, such as the Protection of Agricultural Land Policy, will be considered by the DAP through the assessment process; and
- the *Nature Conservation Act 2002*, the *Threatened Species Protection Act 1995,* and the *Aboriginal Heritage Act 1975* will continue to apply where specific approvals are required, and how this can be communicated to proponents.

I would also consider it beneficial for NRE Tas to meet with your Office to discuss how the non-statutory Reserve Activity Assessment (RAA) process would best interact with the DAP, to ensure a streamlined process for developments on reserves where landowner consent has been received for a permit under section 52 of LUPAA.

Finally, NRE Tas would like to understand the drafting intent of the definition of 'reviewing entities' rather than 'regulatory authority' as defined in section 60 of LUPPAA. It may be appropriate for the Director General of Lands and/or the Director of National Parks and Wildlife to be a 'reviewing entity' for specified assessments (for example on reserved land or where the development may impact on the marine environment).

Should your officers have any further questions in relation to this matter, NRE Tas's contact officer is Ms Deidre Wilson, Associate Secretary at .

Jason Jacobi
Secretary

13 November 2024