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No	Name
431	Marianne Robertson
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444	John Heck
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446	Rob Howie
447	Rosemary Costin
448	Rob Frew
449	Georgina Ferguson
450	Donnalee Young

From: Helen Hutchinson <> Tuesday, 12 November 2024
Sent: 3:03 PM
To: State Planning Office Your Say
Subject: Development Assessment Panel (DAP) legislation

Thank you for the opportunity to provide input on this legislation. However, **this fast-track process will remove elected councillors from having a say on the most controversial and destructive developments affecting local communities.**

The proposed DAP legislation will duplicate a system which although slower, is already working, and allowing more appeals and community input at more stages. And, t**here is no problem to fix. Only about 1% of council planning decisions go to appeal** and Tasmania's planning system is already among the fastest, if not the fastest, in Australia when it comes to determining development applications.

The DAP legislation will not contribute anything to the present process.

- **There is already a robust process for considering housing subdivisions and developments within the present scheme.** This proposed DAP legislation allows the opportunity for developers to completely bypass local councils, or to submit to council and then withdraw it to submit to DAP with consequent waste of council time and effort.

- **The main source of community protest at present is because the State Planning Scheme is not fit for purpose.** There is no way for councillors to consider real concerns over, e.g. local or environmental issues, in their assessments without going to a Tribunal and incurring big expenses. Councils are already feeling intimidated by this prospect which can lead to more protests rather than fewer.
- **Bypassing local councils will create more unrest and community problems than the present system**. Issues such as height, bulk, scale or appearance of buildings; impacts to streetscapes, and adjoining properties must always be taken into account with any project including privacy and overlooking; traffic, noise, smell, light and other potential amenity impacts.
- **State appointed hand-picked planning panels are not democratically accountable**, they remove local decision making and reduce transparency and robust decision making. Elected councillors will represent concerns more faithfully than appointees given that there are fewer of the latter.
- **Councils must represent their communities. So should State Governments.**

Further:

- **These proposals give far too much authority and responsibility to the 'Minister'.** The Planning Minister alone will decide if a development application meets the planning panel criteria. In fact the probability is that responsibility will go to the ministerial staff in most cases.
- **These proposals will incur very large expenditure on more bureaucracy at a time when the State Government is already under severe financial pressures.**
- **The NSW Independent Commission Against Corruption recommended the expansion of merit-based planning appeals as a deterrent to corruption.** Increased ministerial power over the planning system increases the politicisation of planning and risk of corrupt decisions.
- The 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.

It is really important for trust in government to ensure transparency, independence, accountability and public participation in decision-making is continued within the planning system as they are critical for a healthy democracy and keep decision making local with opportunities for appeal.

I urge you to abandon the planning panels and instead take action to improve governance and the existing Council planning process by **providing more resources to councils a**nd enhancing community participation and planning outcomes.

Please also strengthen democratic processes by

- prohibiting property developers from making donations to political parties,
- enhancing transparency and efficiency in the administration of the Right to Information Act
- 2009, and
- creating a stronger anti-corruption watchdog.

Yours sincerely,

Dr Helen Hutchinson

From: Paul Ibbott
Sent: Tuesday, 12 November 2024 2:59 PM
To: yoursay.planning@dpac.tas.gov.au
Cc:
Subject: Proposal to introduce DAP Legislation

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

In the first instance I am 100% opposed to any concept of Authoritarianism of which this is a classic example. I very much value the principals of Democracy and my right to discussion and debate freely on all matters within the constraints of the Law, a right enshrined in our Constitution.

Please remember when considering this Draft Legislation that mechanisms of the Draft deny us , the citizens of Australia the right which **you** currently enjoy when you are considering, debating and voting upon this Legislation.

In my view this is afront to our collective abilities to manage the world around us in an orderly nondictatorial way to obtain outcomes consistent with majority view.

I endorse totally the following views drafted by PMAT of which I am a Member.

- **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,

Paul Ibbott
Past President of Master Builders Tasmania
Past President of Master Builders Australia
Life Member of Master Builders Tasmania

From: Scott Coleman <>
Sent: Tuesday, 12 November 2024 3:00 PM
To: yoursay.planning@dpac.tas.gov.au
Cc:

Subject: SCRAP THE ANTI DEMOCRATIC D.A.P. LEGISLATION----- A RECIPE FOR CORRUPTION

I am writing to express my strong objections to the draft legislation contained in the
LAND USE PLANNING AND APPROVALS AMENDMENT
(DEVELOPMENT ASSESSMENT PANELS) BILL 2024.

This document seems written to discourage attempts to read it,
although it is purportedly in english.
Another sad indictment on our education system.

The current minority government, and in particular the minister,
have the gaul to suggest that said minister, and any future minister,
or an unelected body,(namely The Tasmanian Planning Commission
and their proposed appointed panels)
are somehow less subject to bias than a council,
which consists of a number of elected councillors,
with diverse views and values.

It would be laughable, if it were not so serious.

I am particularly indignant that, since I have been required to vote
in local elections, it seems as if our state government

has done everything in its power to make that vote worthless,
and effectively remove local voices from the future directions of their communities.
It makes local government elections a complete farce,
as is the usual community consultation process.

The legislation effectively makes our beautiful island open slather for the wealthy
and any corrupt ministers, who may from time to time serve in our government.
The idea that a controversial project should be completely removed from public scrutiny,
UNTIL TOO LATE,
by this legislation, emphasises the non democratic nature of this amendment.
That our cultural and historic heritage will be available for trashing is also made clear in Part 3.

My final objection is that the draft legislation removes any rights of appeal.
What an appalling inclusion!

I urge you to reject this crass and appallingly written legislation.
Clearly the plain language movement hasn't reached Tasmania yet.

I also wholeheartedly endorse the following submission from the Tasmanian Planning Alliance:

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:
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  - 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,

Scott Coleman

From: Carolyn Hall-Jones
Sent: Tuesday, 12 November 2024 2:51 PM
To: yoursay.planning@dpac.tas.gov.au
Subject: Please at least read my personal note as I encourage you to ScrapTheDAP – say no to planning panels/say yes to a healthy democracy

I am writing to you because I am so very deeply concerned about the creation of the Development Assessment Panels.

I really do not know what disturbs me more, the undermining of our transparent democratic processes for approving new developments thus opening up avenues for corruption.

Or, the environmental impacts - endangering our native species when they have never been more vulnerable, and the lack of due process regarding other environmental problems - harms such as pollutants which may affect our waterways and air and ultimately endanger people's health.

I note too, that primary reason that our parklands were established was to protect our native species and to protect our environment. These, and the rights of private landowners must be protected under sound democratic legislation where there is wide consultation and due consideration given to the pros and cons of the development being considered.

We must do all we can to protect our State and people from the harms that have occurred elsewhere when similar legislation has been enacted.

I include the more detailed form letter below.

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 includessocial 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,
Carolyn Hall-Jones

From: NEIL TUBB <t Tuesday, 12 November
Sent: 2024 4:59 PM
To: yoursay.planning@dpac.tas.gov.au
Cc: Ellis, Felix (DPaC)

TO WHOM IT MAY CONCERN

I wish to object to the proposal to introduce the DPAP Framework for the following reasons.

Issues

- The DAP framework removes the appeal opportunity altogether.
- It creates an alternate planning approval pathway allowing property developers to bypass local councils and communities.
- Handpicked state appointed planning panels will decide on development applications not your elected local council representatives.
- Local concerns will be ignored in favour of the developers who may not be from Tasmania.
- This scheme proposes that the developer can abandon the standard local council process at any time and have a development assessed by a planning panel. This could intimidate councils into conceding to developers demands if an assessment isn't going their way.
- The developer can abandon the standard local council process at any time and have a development assessed by a planning panel.
- Removing merits-based planning appeals has the potential for corruption and reduce good planning outcomes.
- Developments will only be appealable to the Supreme Court based on a point of law or process.
- Increased ministerial power over the planning system increases the politicisation of planning and risk of corrupt decisions as the Planning Minister will decide if a development application meets the planning panel criteria.
- The Planning 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.
- Changing an approval process where one of the criteria is based on perceived conflict of interest ' is fraught where the Planning Minister can have political bias and can use these subjective criteria to intervene on any development in favour of developers.
- Undermines local democracy and removes local decision making because

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

Benefits

- Not introducing the Development Access Panel framework will ensure transparency, independence, accountability and public participation in decision-making within the planning system which is critical for a healthy democracy. Keep decision making local with opportunities for appeal.

- The existing system provides a more democratic outcome for all Tasmanians.

Kindest regards,

Neil Tubb

Submission to the State Planning Office on the *Land Use Planning and Approvals Amendment (Development Assessment Panels) Bill 2024* (the Bill)

Adam Beeson - 12 November 2024

I am a lawyer who has acted for developers, Councils, public authorities and representors in planning applications and appeals in Tasmania. Respectfully, this is one of the worst pieces of legislation I have come across. It will cause uncertainty and delay and increase the cost to Tasmanians of the planning application system.

SUMMARY

1. The Bill should be withdrawn. The stated intent - to improve the stock of social and affordable housing - should be addressed via discrete, precisely drafted legislation or changes to the Tasmanian Planning Scheme (**TPS**).

2. The stated intent of the Bill is not reflected in the text. The text gives the Minister the power to remove planning decisions from elected local governments. This is an extraordinary step. This change should not be hidden in legislation purporting to assist with social and affordable housing.

3. The drafting is unclear as to whether all applications can be approved by a Development Assessment Panel (**DAP**) or only those considered "discretionary" under the *Land Use Planning and Approvals Act 1993* (the **LUPA Act**) or TPS. The interpretation that all applications are captured is open. This gives rise to the possibility prohibited use and development could be approved by a DAP.

4. Contrary to public statements that the Bill is about "taking the politics out of planning"[1], the Bill would result in greater politicisation. That is because the Minister is given broad discretionary powers whilst still requiring Council to make a judgment on the merit of an application (to contribute to the DAP process).

5. The Bill creates a system that encourages forum shopping. It will also be prone to corruption. The corruption risk arises from the unfettered power of the Minister to refer applications to a DAP. An applicant who does not want to comply with the TPS or *Historic Cultural Heritage Act 1995* will lobby the Minister to send an application to the DAP.

6. The Bill creates a regime whereby the DAP is **not required to apply the TPS** when deciding applications. Hence applications contrary to the planning scheme could be approved. It is remarkable that, after Tasmania has spent a decade developing and

[1] https://www.felixellis.com.au/news/taking-the-politics-out-of-planning

implementing the TPS, that a Bill is being introduced to allow a Minister to decide it does not apply to a particular development.

7. The Bill removes appeal rights for all parties in relation to planning decisions. DAP decisions could not be appealed to TASCAT the way Council decisions can currently. Appeal rights are a key accountability measure. There has been no evidence provided that appeal rights are causing undue delay and expense. A small number of poorly explained anecdotes should not be the basis to design a planning system.

DETAIL

8. The *Report on Consultation Development Assessment Panel (DAP) Framework Position Paper* dated October 2024 (**Consultation Report**) states there "*was an overall sense of opposition to the introduction of a DAP framework*". That opposition included numerous Councils. This is not surprising given the framework is misconceived.

9. The Consultation Report refers to problems with approval of social and affordable housing and of "projects being refused by elected members against the advice of their planning experts." It is not uncommon for Councillors to vote against planning advice. That, in part, is the point of the current regime where Parliament has decided elected representatives should be the planning authority, not Council staff.

10. Assuming the issue with planning approvals for social and affordable housing is true, then a specific legislative response to this issue may be warranted, alternatively amendments could be made to the TPS. The Bill goes far beyond what is required.

11. Giving the Minister referral power is unnecessary to address the housing issue. That power will be open to politicisation. The Minister is appointed the gatekeeper to refer applications to the TPC and then a DAP - where Homes Tasmania won't give an endorsement or the development is below the monetary threshold. This additional Ministerial power is not relevant to social and affordable housing.

12. At Page 9 of the Consultation Report is the statement:

> *Expression of local democracy, or a vote of popularity, at the time of development Appraisal does not provide certainty to the planning system and invites decisions to be made that are politically motivated which is the very issue that the dap framework Is seeking to address.*

13. This is a self-serving statement which suggests the report author does not understand the planning system. It is also contradictory to what is proposed. Were this true then

the legislation would entirely remove planning decisions from the elected representatives. Self-evidently it does not do this. This statement is incorrect in its terms and implications because:

a. It implies planning decisions are black and white and there is always a "right" answer. This is disingenuous or naïve. There are weekly TASCAT hearings on planning appeals because there is sometimes genuine dispute about whether application of the planning scheme and legislative framework means a development application should be approved. That dispute arises due to ambiguity in the scheme (which is unavoidable in planning schemes by their nature) and differing opinions of planners and other experts.

b. It assumes "certainty" is the only measure of success for a planning system. Further to the above – this is naïve. Certainty in the Tasmanian planning system is available for developers that don't want to push the envelope on what the TPS allows. The use table and accompanying standards provide for no permit required, permitted and prohibited uses. The very word "discretionary" indicates a level of uncertainty. The well-being and prosperity of the community are also key measures of the success of a planning system.

c. It fails to acknowledge that Councillors can undertake their own consultation and then encourage Council to negotiate for better outcomes or impose conditions to ameliorate concerns. Planners are not always best placed to do this.

14. The balance of the submission addresses specific clauses of the Bill.

Clause 40BA – Minister may review certain decision - LPS

15. This clause gives the Minister power to overrule a planning authority's decision not to prepare an amendment to a Local Provision Schedule (**LPS**). This power is not limited to housing, contrary to the way the need for the legislation has been presented.

16. This is effectively an intervention power and is likely to result in a waste of Council and TPC resources. It is hard to understand how the Minister is better placed to determine whether an amendment is worthy of TPC consideration that a planning authority which has actual planning experience and is advised by qualified planners and other experts.

17. The likely outcome of this provision is that poorly conceived amendments will be presented to the TPC and get rejected, wasting everyone's time.

Division 2AA – Development Assessment Panels

Section 60AB – new permit applications may be made to Commission

18. This section enables a person to apply to the TPC for a DAP to determine a "discretionary permit".

19. The definition of "discretionary permit" is altered by the Bill to include "a permit" to which "Division 2AA of Part 4 applies." The author is unaware of any explanation as to why this needs to be added to the definition. However, the effect of this amended definition could be profound.

20. The new definition could well mean that all applications can be determined by DAPs. That is, applications for permitted, discretionary and prohibited use and development. To allow prohibited use and development via this system would be disastrous for a coherent planning regime in Tasmania.

21. Clause 60AB provides criteria for applications which can be made directly to a DAP. The first criteria relate to housing and the second to value. The criteria are flawed in the drafting and are contrary to the expressed intent of the Bill.

22. The use of "including" in cl 60AB(1)(a) means that an apartment block of luxury units could fall within this criterion if just one unit of social or affordable housing is included. The Bill also doesn't contemplate a variation to a permit after it is issued (for example to remove a component of social and affordable housing). Variations are common.

23. A similar issue arises when the application of cl 60AB(1)(a)(ii) in relation to subdivision is considered.

24. Clause 60AB(1)(b) provides that developments "valued" over certain amounts can be the subject of applications directly to the DAP.

25. The Bill does not explain how the valuation is done and by whom. The TPC will need to conduct a valuation exercise pursuant to cl 60AB(5)(ii). This could be a complex and lengthy process given it is dealing with use and development at an unknown time in the future. Is the valuation based on the capital improvement alone? Is it based on the value of the established use? This approach will result in applications being drafted to reach the valuation threshold.

26. The arbitrary thresholds of $10,000,00 and $5,000,000 in cl 60AB(1)(b) and $1,000,000 in cl 60AB(1)(c) are unexplained. The thresholds can be prescribed meaning they could be lowered by regulations.

27. These thresholds are unrelated to social and affordable housing. The consultation report does not explain the figures.

28. The effect of the threshold is discriminatory, in that those proposing developments of this value can access the DAP process. Less "valuable" development applications cannot. Value is not analogous to complexity of assessment. This pathway to DAPs should be removed even if the social and affordable housing pathway is retained.

29. Clause 60AB(1)(d) provides for regulations to prescribe a "class" of permit applications that can be the subject of DAP assessment. What does this mean? The concept of a "class of application" is not in the LUPA Act. Could this include prohibited use and development? This clause is too imprecise. The clause is repeated at cl 60AC(1)(e).

Section 60AC – Minister may refer certain new permit applications to Commission

30. This clause empowers the Minister to direct the TPC to establish a DAP to decide a planning application.

31. The criteria that the Minister must apply (cl 60AC(1)(a)) are so broad as to be meaningless. Almost anything could fit the subjective descriptor that it "may be considered significant, or important to the area in which the development is to be located". The drafting also begs the question – what about "use", why is this confined to "development"?

32. Similarly, cl 60AC(1)(b) could apply to any application given all that is required is a *belief* (whether sound or not) that a planning authority does not have the technical expertise. It is common for planning authorities to contract experts to assist in planning assessments. This clause ignores this fact.

33. This is also true of cl 60AC(1)(c) and the phrase "likely to be controversial". This is subjective and almost anything could meet this description.

34. Clause 60AC(1)(d) is equally problematic, the expression "may have a perceived bias" is so vague as to be both meaningless and so broad as to not be a genuine criteria.

35. With respect, clauses 60AC(1)(a) – (d) are very poorly drafted. They require a radical rethink if this structure is to remain.

36. Clause 60AD(2) removes from operation the *Historic Cultural Heritage Act 1995*. The consultation paper does not explain this. This provision removes the heritage

protection afforded to hundreds of properties in Tasmania. Combined with the fact that the TPS is not required to be considered by the DAP, this presents a real risk to protecting the heritage of Tasmania.

37. The Bill is silent on the composition and expertise of the DAP.

Clause 60AE – Applications for permits to be provided to reviewing entities

38. This clause requires Councils to assess and advise on applications. It imposes the same burden on Council's currently have, in terms of assessment, and also requires assessment by the DAP. To require a Council to provide "advice" on "issues and concerns that the planning authority has" is vague and unhelpful. This entire process is duplicative and inefficient.

39. The lengthy provisions around further information are problematic due to the lack of clarity on the assessment criteria.

40. The provisions around exhibition and hearings represent a parallel system to that which exists. To date there has been no coherent explanation as to why this required.

41. Clause 60AH(3) provides for the DAP to approve or refuse the application. It contains no criteria for this decision. It does not refer to the TPS. This means the criteria for assessment are at large and the decision could be entirely at odds with the requirements of the TPS.

42. There are also no specifications around conditioning or a power to impose conditions.

CONCLUSION

43. The Bill is not addressing the problem of social and affordable housing effectively. This requires targeted amendments to legislation or (probably better) the TPS.

44. Reviewing the Bill, one is left with the impression that it is not about social and affordable housing. It is rather a poorly structured process to get proposals that do not comply with the TPS approved. This is very concerning giving the importance of systematic planning and the investment that has been made in the TPS.

45. The Bill should be withdrawn and focussed effort directed to facilitating the construction of social and affordable housing.

END

From: Lee Douglas
Sent: Tuesday, 12 November 2024 4:55 PM
To: yoursay.planning@dpac.tas.gov.au
Cc:
Subject: No changes to the DAP

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

- I want elected council members to make decisions about developments without government interference or pressure.
- This government tricks the public by saying it is for affordable housing. I believe the DAP is a smokescreen for what the developers and government really want, which is to fast track inappropriate developments for their own financial benefit.
- The Planning Commision is not independent and there is no transparency to their decisions. Communities will not have a say on development projects that may have major impacts on their properties, house values, health, life.
- I don't trust the DAP or the Minister to make good decisions for communities if a pro-development government has influence over the planning panel. If an overseas or interstate developer wants to proceed with a project they will not be living here to deal with the consequences if it fails or disrupts livelihoods.

- Large scale developments that affect whole cities will be able to be fast tracked through if the DAP's are introduced. Elected council members will not be able to represent the people's best interests. E.g. the proposed cable car on Mt Wellington/kunanyi, the proposed AFL Stadium, new salmon farms, highrise/high density developments in inappropriate suburbs etc.
- Councils are an important part of any planning process because they know their communities, know the areas where developments are proposed, can listen to community concerns and can come to fair and reasonable decisions. If developers are serious about their projects benefiting communities, they will make suitable changes by negotiating with developers and the community. If the changes are detrimental to communities they have the ability to say no which the panel may override if they put profits before people. I don't believe the panel has the ability or interest to work with the communities who may be adversely impacted by proposed developments.
- I believe the processes for deciding developments are working well at the moment as projects that are not suitable are not given approval to proceed or developers are asked to negotiate with the council to benefit the community. This is surely a sign of good democratic system.

For these reasons, I think the DAP is unnecessary and will destroy our say on where we live. If it ain't broke why change it?

Yours sincerely,
Lee Douglas

HERITAGE PROTECTION SOCIETY (TASMANIA) INC.
P.O. Box 109 Kings Meadows Tasmania 7249
email

12 November 2024

State Planning Office
Department of Premier and Cabinet
Executive Building
Level 7
15 Murray Street
HOBART TAS 7000

Via email to HaveYourSay@stateplanning.tas.gov.au

Re : Submission concerning the draft Land Use Planning and Approvals Amendment (Development Assessment Panels) Bill 2024

Heritage Protection Society (Tasmania) Inc. (HPST) is a community-based organization that is formed to recognize the cultural heritage significance of what the Tasmanian community has inherited from the past and what we value enough today to preserve for future generations.
Cultural heritage is about people, society and the environment, and is represented by natural, indigenous and historic places with cultural heritage values; related objects and artifacts; and the records and stories of social history.
The aesthetic, historic, scientific and social values comprising the cultural heritage significance of Tasmania, for its past, present and future generations, as established in the Australia ICOMOS *Burra Charter,* is a concept to which we aspire to further, promote and enhance.
We aim to communicate, educate and advocate for the protection of cultural heritage in Tasmania, and to participate positively in the planning system to seek to minimize the level of physical intervention in relation to cultural heritage fabric and practices, whilst sustaining dynamic continued adaptive uses.

It is essential to achieving a productive and healthy Tasmanian society, that all activities and undertakings by government is based on pursuing a healthy democracy.

However, the Tasmanian government has released this draft legislation to empower the Planning Minister to remove assessment and approval of developments from the normal local council process and have it done by Development Assessment Panels (DAPs). **This fast-track process will remove elected councillors from having a say on the most controversial and destructive developments affecting local communities. There will be no right for the community to appeal the final decision to the planning tribunal.** The criteria being considered would enable virtually any development, except for industrial and mining developments regulated by the EPA, to be taken out of the normal local council assessment process and instead be assessed by DAPs, including developments already refused.

It is proposed that the Planning Minister can take a development assessment from councils mid-way through the development assessment process if the developer doesn't like the way it is heading.

This bill will provide a new fast tracked DAP process to provide a permit for developments **on both private and public land including World Heritage Areas, National Parks and Reserves**. We understand that the government also intends to introduce new legislation that will provide fast tracked approvals under the National Parks and Reserves Management Act for developments in reserved land.

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

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

Democratic governments across the world are presently under extreme pressure to act in an undemocratic way. Communities are accordingly rising up against these governments and this is causing huge divisions in previously calm and contented communities.

This global unrest is the root base of global insecurity, and if more conflicts break out, human existence could readily be threatened, yes even in our State of Tasmania.

We oppose the creation of Development Assessment Panels (DAPs) and increasingly autocratic 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 and the essential local concerns and sympathies will be lost to any rational assessment and approval. 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 easily intimidate councils into conceding to developer's demands.

- **The Tasmanian Planning Commission is not independent** – DAPs are un-elected and 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 already 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, a cable car in Launceston's Cataract Gorge Reserve, an above-ground cable shuttle for Cradle Mountain Reserve, inappropriate high-rise structures in Hobart and Launceston, out-of-character unrealistic and unaffordable sporting stadiums in the pursuance of ideological sporting code dreams, high-density subdivisions in sensitive greenspace reserves ostensibly to satisfy the housing shortage, and the UTAS campus re-developments in Burnie, Launceston and Hobart unjustified on any educational platform.

- **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.** TASCAT boasts that less than 10 percent of appeals lodged need to be heard because of their prior managed settlement via mediation.

- **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.** TASCAT can sometimes get it wrong, but the present checks and balances provide for administrative review of TASCAT decisions, and democratic justice is not lost.

- **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.** We understand 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 based on '*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. Undoubtedly the Planning Minister has clear and obvious 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?

In summary, we call on you to ensure transparency, independence, accountability and public participation in decision-making within the planning system, as they are critical factors 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 keep the cost of development applications down.

Yours sincerely,

Lionel J. Morrell

President

Heritage Protection Society (Tasmania) Inc.

FOOTNOTES :

Listen/watch here to key issues of DAPs from: **John Dowson** – President, Fremantle Society, former Deputy Mayor and Councillor, City of Fremantle, WA.

Why DAPs have failed in WA. **Dr Phillipa McCormack** – Adjunct Lecturer in Law, University of Tasmania & researcher with the University of Adelaide with expertise in environmental regulation & administrative law.

Alice Hardinge – Tasmanian Campaigns Manager, Wilderness Society Tasmania.

Anja Hilkemeijer – Lecturer in law at the University of Tasmania, with a focus on foundations of public law, constitutional law and human rights law.

Mayor Reynolds – Lord Mayor & Councillor, Hobart City Council.

DAPs failing on mainland Australia

NSW: Local planning panels were created to stamp out corruption, but councillors from across the political spectrum (including Philip Ruddock) say they favour developers and undermine democratic accountability: How 'unelected faceless men and women' keep approving NSW developments, Sydney Morning Herald, August 15, 2021.

WA: JDAP Ignores 220 Submissions, *Fremantle Herald*, October 2023.

From: Gill Gravell <
Sent: Tuesday, 12 November 2024 4:54 PM
To: yoursay.planning@dpac.tas.gov.au
Subject: #ScrapTheDAP – say no to planning panels/say yes to a healthy democracy

Thank you for the opportunity to have a say on the DAP. I am a concerned Tassmanian living in Hobart.

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 <u>includes</u> 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 keep 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,

Gillian Gravell

From: Kate Shield
Sent: Tuesday, 12 November 2024 4:54 PM
To: yoursay.planning@dpac.tas.gov.au
Cc:
Subject: DAPs are not good for our democracy

Good day to you,
Firstly I would like to declare I am NOT a NIMBY! I support development in Tasmania that is consistent with our democratic processes, our indigenous and colonial heritage, and our natural environment. There are many locations where considered development can take place without trampling on the rights of local residents or riding roughshod over already tried and true planning instruments.
What I would like to see is more engagement by communities in their local environment, be they rural or urban, coastal or hinterland, rather than less engagement prompted by opacity on the part of governments and their regulations. That just disenfranchises communities, leaving them feeling powerless to take control of their lives.

I support increased transparency at all levels of government - clear guidelines that are succinct and easy to interpret.

I oppose the creation of Development Assessment Panels (Daps) and increasing ministerial power over the planning system, because what I don't want to see are:

- **alternate planning approval pathways that allow property developers to bypass local councils and communities.** Handpicked state appointed planning panels, conducted by the TPC, that will decide on development applications instead of our elected local council representatives would result in local concerns being ignored in favour of developers who may not even be from Tasmania. The prospect that, if an assessment isn't going their way the developer can simply abandon the standard local council process at anytime and have a development assessed by a planning panel, could intimidate councils into conceding to developers' demands.

- **a Tasmanian Planning Commission that has its independence compromised.** If DAPs are hand-picked, without detailed selection criteria and objective processes, they would be inconsistent with the principles of open justice as they would not be required to hold public hearings, and would lack capacity to manage conflicts of interest (as per the 2020 Independent Review). Under the proposed model, 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.

- **a planning mechanism that is pro-development and pro-government by default.** DAPs that rarely deeply engage with local communities, and spend most of their time on smaller applications, taking longer than local councils to make decisions are inefficient. **Research into DAPs trialled in other jurisdictions supports these concerns.**

- **large scale contentious developments just sailing through the planning process without adequate community oversight -** like the kunanyi/Mount Wellington cable car, high-rise in Hobart, Cambria Green and high-density subdivisions like Skylands at Droughty Point.

- **the removal of 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'.*

- **the opportunity for mediation on development applications in the planning tribunal removed.**

- **appeals to the Supreme Court based solely on a point of law or process which have a narrow focus and are prohibitively expensive.**

- **the potential increase in corruption, reduction in good planning outcomes, favouring developers and undermining democracy that will result from the**

removal of merits-based planning appeals. 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.

- **the increased politicisation of planning and risk of corrupt decisions that can come when unfettered ministerial power over the planning system is increased.** 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 includessocial 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.

- **the waste of taxpayers money fixing a problem that doesn't exist.** 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.

- **the increased complexity in an already complex planning system, that creating another layer of 'middlemen' siphoning money from the public purse will inevitably entail.** Despite an already complex planning system, it's still making decisions more quickly than any other jurisdiction in Australia.

I support 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,

Kate Shield

Janiece Bryan
12 November 2024

Tasmanian Government

'yoursay.planning@dpac.tas.gov.au'

RE: The Development Approval Panels (DAPs) Legislation Submission

This submission does not support this Legislation being presented to the Parliament of Tasmania. It seriously undermines our democracy and prevents the functioning of our government in the best interests of Tasmanians. It will deny Tasmanians from having a say about important decisions that will affect our quality of life and prevent the critical protection of our National Parks and environment both now and into the future. This eliminates all transparent and established controls over planning assessment, decision-making and approvals.

1. **This is plea to Parliamentarians to act and govern in the best interests of Tasmania and all Tasmanians by 'Scrapping the DAPs Legislation.'**
2. **For the welfare of our State, dictatorial governance must not be allowed to replace our democracy.**
3. **The statistics for approvals show that Tasmania has one of the fastest planning approval systems of all states.**
4. **The DAPs Bill is about circumventing local government planning approvals and overriding assessments by using the specifically designed and weakened State Planning Laws in conjunction with the installation of a biased, anti-democratic, Ministerial controlled Development Approval Panels. Add to this the influence of Political Donations and without oversight and appeal rights we have the perfect environment for corruption to flourish.**
5. **Most concerningly the government also intends to introduce a new legislation that will provide fast-tracked approvals under the *National Parks and Reserves Management Act* for developments in reserved land such as National Parks.**
6. **"Development panels are costly and ineffective" states experienced planner Catherine Nicholson. "It will be more expensive to source specific planners and slower than the existing system."**
7. **The people of Tasmania are having their rights stripped away and they do not even know.**
8. This anti-democratic legislation gives the Minister massive and unchecked power to decide if developments are taken out of the normal council planning system. The draft legislation allows the minister to intervene for a range of subjective and undefined reasons. This appears to be a process set up to facilitate corruption. It appears Local

Planning Provisions applying to Local Government Areas will therefore be overridden by the specifically amended State Planning Provisions that will facilitate these approvals.

9. Development Applications will be approved by a non-independent authority which is not accountable to voters or the ratepayers and will not be subject to the normal checks and balances of appeal rights. It will turbo charge planning decisions made behind closed doors, increasing the risk of corruption. This is the complete opposite of open and transparent democracy.
10. The Tasmanian Conservation Trust says the process is deceptive as power will be centralised in one person, the minister, who cannot be challenged in the planning appeals tribunal.
11. Every state has housing supply issues and constantly blaming this on planning system is far too simplistic with other forces causing it.
12. The Infill Apartment complexes planned by the Government on CBD public car parks for example in Glenorchy could be approved without the requirement to provide off-street parking for residents and the DAPs process will prevent ratepayers from having their say about their loss of access to services and businesses. Our streets are already littered with parked cars making access on narrow streets difficult and dangerous. Streets have not been designed for this change in planning laws which clearly favours developers.
13. This anti-democratic legislation appears to just want to give property developers a leg up without right of appeal.
14. Whilst the planning system has encouraged public participation the introduction of anti-democratic DAPs will prevent appeal rights.
15. Input at the Local Government level for residents is an important part of the democratic process and important to the future well-being of residents.
16. The DAP process would remove elected councillors from decision making as well as Tasmanians from having a proper democratic say on controversial developments affecting local communities by removing appeal rights.

To maintain the critically imperative, democratic functioning of our Tasmanian Government, for the absolute benefit of all Tasmanians, this DAPs legislation must be scrapped by all thinking and caring parliamentarians.

Yours sincerely

Janiece Bryan

From:	on behalf of Hands Off Our Gorge
Sent:	Tuesday, 12 November 2024 4:53 PM
To:	yoursay.planning@dpac.tas.gov.au
Cc:	Hands Off Our Gorge urges #ScrapTheDAP
Subject:	
Attachments:	2024_11_12_Submission_Planning_Development_Assessment_Panels_HOOG.pdf

Dear State Planning Office,

Please find attached our submission regarding the proposed Land Use Planning and Approvals Amendment (Development Assessment Panels) Bill 2024.

Hands Off Our Gorge is a group of locals (we have over 180 members and supporters) who love the Cataract Gorge as it is. We aim to protect this natural space from development that degrades its social, cultural or environmental character.

Four years ago, we were involved in saving the Cataract Gorge from a completely inappropriate cable car proposal, outsized for this intimate and natural space. City of Launceston councillors listened to the community and have their own experience of the Gorge and could appreciate that the character of the Gorge would be fundamentally degraded by such a cable car. Councillors voted not to grant landholder consent for the development.

This year, the cablecar proponents requested landholder consent from council to put in a “chairlift upgrade” that would involve completely new infrastructure and a new route. While Hands Off Our Gorge is not inherently opposed to upgrading the existing chairlift, details of what is essentially a new and significant development are important and were requested by Council (over 6 months ago). The proponents have so far refrained from providing any details about their proposal. The council is awaiting details before any further decision can be made.

Is this the kind of “controversial” development that could lead the proponents to seek to bypass council and utilise a Development Assessment Panel? Would that panel, being a handful of state-appointed individuals, have any appreciation for the huge social and environmental values of Cataract Gorge? With limited community consultation, would the panel favour the developer, who will always present a supposedly impressive business case and be unlikely to present the negative impacts of the proposal on the aesthetics, environment and community feeling of the Gorge? Our group has no ability to use the Supreme Court, so, with no appeal rights, any faulty decision of this small group of panellists could not be appealed.

This example highlights Cataract Gorge but our submission relates to all developments in Tasmania, which should continue to be assessed by elected councillors according to the planning scheme.

Yours sincerely,

Anna Povey

President,
Launceston Cataract Gorge Protection Society Inc
(aka Hands Off Our Gorge)

Launceston Cataract Gorge Protection Association Inc.

https://handsoffourgorge.org.au

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

State Planning Office
Hobart
Tasmania
yoursay.planning@dpac.tas.gov.au

12th November 2024

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

Hands Off Our Gorge is a group of locals (we have over 180 members and supporters) who love the Cataract Gorge as it is. We aim to protect this natural space from development that degrades its social, cultural or environmental character.

Four years ago, we were involved in saving the Cataract Gorge from a completely inappropriate cable car proposal, outsized for this intimate and natural space. City of Launceston councillors listened to the community and have their own experience of the Gorge and could appreciate that the character of the Gorge would be fundamentally degraded by such a cable car. Councillors voted not to grant landholder consent for the development.

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Is this the kind of "controversial" development that could lead the proponents to seek to bypass council and utilise a Development Assessment Panel? Would that panel, being a handful of state-appointed individuals, have any appreciation for the huge social and environmental values of Cataract Gorge? With limited community consultation, would the panel favour the developer, who will always present a supposedly impressive business case and be unlikely to present the negative impacts of the proposal on the aesthetics, environment and community feeling of the Gorge?

As little time has been allowed for community consultation in this new draft of the proposed bill, and as the bill seems to be little altered in response to the consultation round last year, we do not have time to provide a detailed new submission here. We still oppose the creation of development assessment panels and increased ministerial power over the planning system.

For that reason, we reproduce our submission points from last time:

- **It will create an alternate planning approval pathway allowing property developers to bypass local councils and communities.** Handpicked state appointed panels will decide on development applications, rather than elected local council representatives. This risks local concerns being ignored in favour of the developers – who also may not be from Tasmania. If an assessment isn't favouring the developer then standard local council processes can be abandoned **at any time** and have a project assessed by a planning panel. This shows disregard for local communities and could intimidate councils into conceding to developers' demands.

- **Makes it easier to approve large scale contentious developments** such as cable cars in Launceston's beloved Cataract Gorge.

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

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

- **Increased ministerial power over the planning system increases the politicisation of planning and risk of corrupt decisions.** The Planning Minister will decide if a development application meets the planning panel criteria. The Minister will be able to force the initiation of planning scheme changes, but perversely, only when a local council has rejected such an application. This threatens both transparency and strategic planning. It is also contemptuous of local communities and shows a total disregard for local knowledge and concern for unique environments with which the Planning Minister may not be familiar.

- **Flawed planning panel criteria**. Changing an approval process where one of the criteria is on the basis of 'perceived conflict of interest' is fraught. The Planning Minister clearly has political bias and can use this subjective criteria to intervene on any development in favour of developers. This cannot be considered fair or truly democratic.

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

- **Mainland experience demonstrates planning panels favour developers and undermine democratic accountability.** Local planning panels, which are often dominated by members of the development sector, were created in NSW to stamp out corruption, but councillors from across the political spectrum say they favour developers and undermine democratic accountability. This is a flawed model and is NOT an example Tasmania should be following

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

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

To add to our previous submission, we note that major councils, including City of Launceston, Hobart and Clarence, are opposed to the bill as it stands. In fact, Clarence Council says (agenda 11/11/24), "Fundamentally, the draft DAP Bill has not addressed any concerns previously raised by Council and, in some cases, has made things worse" and "In addition, the drafting of the draft DAP Bill, in its current state, is severely flawed, both from a good planning perspective as well as a functional perspective" and "the draft DAP Bill has been described as "incompetent" within this report and the attached submission". They say, "The proposed draft DAP Bill provides an alternative application process that will fundamentally undermine the integrity of the planning process in Tasmania." These are extraordinarily harsh assessments.

Hands Off Our Gorge urges you to listen to the informed opinion of these councils and condemn this bill.

Yours sincerely,

Anna Povey
President
Launceston Cataract Gorge Protection Association Inc.
(aka Hands Off Our Gorge)

From: Gail Ridley
Sent: Tuesday, 12 November 2024 4:52 PM
To: yoursay.planning@dpac.tas.gov.au
Subject: Fw: Strong objection to proposed DAP legislation

Dear dpac planning

We most strongly object to the proposed DAP planning legislation. Why would you believe you can take control of decisions that rightly belong with Tasmanian councils and the Tasmanian people?

We do not want the legislation to be put in place, for the many reasons that are well known.

Regards

Dr Gail Ridley
Jeff Ridley

Get Outlook for Android

From: K.Hans Schwarz
Sent: Tuesday, 12 November 2024 4:52 PM
To: yoursay.planning@dpac.tas.gov.au
Subject: The proposed creation of the Development Assessment Panel (DAPS)

[You don't often get email from Learn why this is important at https://aka.ms/LearnAboutSenderIdentification]

The proposed creation of the Development Assessment Panel (DAPS) led by Minister Felix Ellis is extremely concerning and we oppose it strongly.

It is a further step in the relentless process of attempts to govern without openness.
DAPS, as proposed by the Liberal Government would undermine the democratic processes and as experienced in NSW decreases social and environmental standards.

The loss of merit based planning appeals would be a great loss to our community.
The knowledge base of the proposed panel will not necessarily be based on expertise The influence of big business will be increased.

For decades it has been acknowledged that the quality of town planning plays a vital role in the health and wellbeing of citizens. For big Business this is sadly not often a priority.
Housing Estates in Sydney are an example.

Promices of helping low cost housing supply is a red herring.
No quotas are being out in place to to address this.

Kind Regards Kay and Hans Schwarz

_____

State Planning Office
Department of Premier and Cabinet
HOBART. TAS. 7000

9 November 2024

Dear Madam/Sir

The Taroona Community Association (TCA) wishes to lodge a submission regarding the Government's proposed draft *Land Use Planning and Approvals (Development Assessment Panels) Bill 2024*.

Taroona is a southern suburb of Hobart located in the Kingborough local government area. It has a population of just over 3000. The Taroona Community Association (TCA) seeks to:

- enrich the lives of Taroona residents by helping them connect with each other, utilise the services within our community, and enjoy and care for our foreshore and other parks and reserves
- promote Taroona's community services and groups
- effectively represent Taroona residents on matters of community interest
- liaise with Kingborough Council on general maintenance of our public areas and on development proposals within our community.

It is noted that the Government received 544 submissions on the previously released Position Paper with the majority stating a lack of support for these reforms. The TCA lodged a submission conveying our strong concerns about Development Assessment Panels proposal when the position paper was released.

The main overall concerns conveyed in these submissions regarding the Position Paper were:

- Tasmania's planning system is actually performing well and there is no demonstrated need to introduce a new development assessment pathway
- The DAP framework does not achieve its stated intent of deconflicting local governments roles
- There are valid fears that the Government will select panel members, thereby introducing bias and political interference in the planning process
- Taking planning decisions away from elected members undermines local democracy and reduces community participation in planning processes
- The removal of merit appeal rights is very unjust
- It will further complicate an already complicated system.

However the Tasmanian Government has pushed on with the introduction of these planning reforms without addressing community and local government concerns.

The TCA is opposed to the DAP proposed framework and bill. Our reasons are the same as those provided in our earlier comments on the Position Paper. They are outlined below:

- *The proposed DAPs create another development approval pathway which is unnecessary*. The current system works well. Only about 1% of council planning decisions go to appeal and Tasmanians planning system is already amongst the fastest in Australia.
- *There are many conflicting and contradicting issues with the DAP framework that will actually lead to greater time frames.*
  The proposed framework where a DAP undertakes the assessment of a referred applications appears to increase 'red tape' and assessment timeframes.
- *There is a strong risk of losing the local knowledge in the development approvals process.*
  Handpicked state appointed planning panels will decide on development applications not our elected local council representatives from their respective local governments areas.
- *The ability for applicants to 'opt in' or 'opt out' in a referral to DAP body is not appropriate*
  Ministerial determination of requests for the transfer of an application from Local Government to a DAP contradicts the intent of the draft Bill which is 'to take the politics out of planning'.
- *The criteria to determine eligible applications for referral are far too broad and require further refinement to have transparency and rigour so cannot be applied objectively.*
  Objectivity and consistency cannot possibility be applied using such broad criteria.
- *The DAP model does not consider and account for the practical implications of ongoing permit enforcement in the assessment process*, which post approval will be Local Government's responsibility to manage and enforce.
- *The Tasmanian Planning Commission (TPC) is not independent.* DAP members will be handpicked without selection criteria and objective processes. The TPC also does not have the resources or expertise to assess planning applications. Sourcing experts in development planning assessment (such as traffic and transport engineers, development engineers, hydraulic engineers, cultural heritage officers, etc) is difficult, even for local government as it is hard to fill positions from such a small pool of experienced professionals.
- *The draft bill provides for Ministerial power over the planning system.* It allows for the Minister to direct a planning authority to prepare a draft amendment to its Local Provisions Schedule (LPS) under certain circumstances where a review under Section 40B of LUPA 1993 has been exhausted. This is inherently political and is in conflict with the intent of the draft bill.
- *The draft bill removes merit-based planning appeal rights via TASCAT which is unjust and undemocratic.* 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.

Overall the proposed DAP framework will make it easier to approve large scale contentious developments. The framework has the potential to increase corruption, reduce good planning outcomes, favour developers and undermine democracy.

A truly transparent and open State Government should listen to the people who elected it and to local government which acts as the democratically elected Planning Authority. The TCA calls on the government to respond to our concerns as these are critical issues that will impact the Tasmania we know and its inherent values and character; it will also impact on our health, well-being and social values.

Yours sincerely

Jill Hickie
TAROONA COMMUNITY ASSOCIATION

I question the purpose and am inclined to oppose the creation of Development Assessment Panels (DAPS) and increasing ministerial power over the planning system, for the following reasons:

Introduction:

I love our National Parks, World Heritage Areas, Reserves, and coastal areas. With government highlighting, "community and individual health and wellbeing goals", we can ask ourselves what are the vital ingredients? How do communities achieve health and wellbeing? In Tasmania, the Palawa people advise us about the wisdom of the elders. From time immemorial, people have told stories about where they live, and how they feel connected via a deep sense of belonging to place and country. Could "sustainable development and community health" therefore be more about putting community leadership and community decision making at the top of the decision -making tree help to achieve more balanced and better-informed planning decisions? It is therefore vital that the Minister listens well to local government, and provide resources to local government with expertise-environmental, social, climate, health and science; as well as maintaining ethical transparent processes where individuals, community and regional groups and non- government organisations can contribute to local planning decisions.

I share concerns about the proposed changes to planning processes via the draft Land Use Planning and Approvals Amendment (Development Assessment Panels) Bill 2024

- **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 any time 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,

Ms Annie Costin

12/11/2024

From: Jim Mansbridge
Sent: Tuesday, 12 November 2024 4:47 PM
To: State Planning Office Your Say
Cc:

Subject: Objection to the planned Development Assessment Panels (Daps)

[You don't often get email from jLearn why this is important at https://aka.ms/LearnAboutSenderIdentification]

Dear Sir/Madam,

I wish to register my objection to the planned Development Assessment Panels (Daps).

These are clearly designed to allow developers to avoid meaningful public involvement in planning decisions. Instead of a relatively open decision-making procedure through local councils a DAP will consult with developers and Government before making make a "draft" decision. Only then can members of the public make objections - and these can be easily ignored.

The whole business is secretive. The members of the DAP can be chosen to suit the Government of the day and are not required to explain the reasons for their decisions. Government in Tasmania already has a very bad reputation for secretiveness and corruption - this will only make it worse.

Your sincerely,
James Mansbridge,

Australian Institute of Architects TAS

ABN 72 000 023 012
The Royal Australian Institute of Architects
trading as Australian Institute of Architects

1/19a Hunter Street
nipaluna/Hobart, Tasmania 7000

P: (03) 6214 1500

architecture.com.au

12 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

Re: LUPA Amendment (Development Assessment Panels) Bill 2024

To whom this may concern,

The Tasmanian Chapter of the Australian Institute of Architects (the Institute) would like to thank the State Planning Office for the opportunity to provide feedback on the draft *LUPA Amendment (Development Assessment Panels) Bill 2024* (the Bill). The Institute's policy team and members of the Tasmanian Chapter have reviewed the material and provides the following response.

COMPOSITION OF DEVELOPMENT ASSESSMENT PANELS

The Institute notes that the Bill does not specify the composition, skills and expertise of the Development Assessment Panel/s.

In response to the Development Assessment Panel Framework Position Paper in November 2023, the Institute stated:

Australian Institute of Architects TAS

ABN 72 000 023 012
The Royal Australian Institute of Architects
trading as Australian Institute of Architects

1/19a Hunter Street
Hobart, Tasmania 7000

P: (03) 6214 1500
tas@architecture.com.au
architecture.com.au

Again, we note that more information and consultation about the composition of is required. This also needs to include parameters such:

- *selection and nomination process of applicants,*
- *the size of the panels,*
- *duration of a term on a panel.*

In addition, the framework needs a terms of reference and a charter for Development Assessment Panels. In the interest of robust probity, all decisions, minutes and reports should ultimately be made public on similar terms to minutes of Council meetings where planning applications have been determined. This would remove the perception or fact of panellists favouring projects, or any political interference. Any panellists should be required to declare conflicts of interest.

If the composition of Development Assessment Panels is not codified into legislation, then there should there be a provision in the Act for this to be prescribed in the regulations such as in WA in their Planning and Development (Development Assessment Panels) Regulations 2011[1]. A further down the line approach would be a published manual and resources for DAPs such as WA's Standing Orders for DAPs2. These panels should include people qualified to assess the particulars of any application across disciplines including architecture, engineering, landscape, archaeology, ecology, planning and design with Country, and such.

SUSPENSION OF HISTORIC CULTURAL HERITAGE ACT 1995

The Institute notes that under proposed new Subsection 60AD (2):

If an Assessment Panel is established under this section in respect of an application, the Historic Cultural Heritage Act 1995 does not apply in respect of the assessment of the application under this Division.

[1] https://www.planning.wa.gov.au/docs/default-source/daps-docs-other/planning-and-development-(development-assessment-panels)-regulations-2011.pdf?sfvrsn=67228bbe_8
[2] https://www.planning.wa.gov.au/docs/default-source/daps-docs-other/standing-orders.pdf?sfvrsn=f903323e_14

The Institute is not supportive of the suspension of the Historic Cultural Heritage Act 1995 even if a Development Assessment Panel is established in respect of an application. Development Assessment Panels should still heed the need for heritage assessment using the procedure set out under Part 6 of the Historic Cultural Heritage Act 1995. The Institute believes that the community acceptability of the Development Application Panel process would be improved if the Historic Cultural Heritage Act 1995 is retained as part of this process.

Thank you for the opportunity to provide feedback on the proposed Bill. Please contact us if you would like to discuss any of the points raised further.

Kind regards,

Daniel Lane
President, Tasmanian Chapter
Australian Institute of Architects

Jennifer Nichols
Executive Director, Tasmanian Chapter
Australian Institute of Architects

From: Pam Sharpe
Sent: Tuesday, 12 November 2024 4:44 PM
To: yoursay.planning@dpac.tas.gov.au
Subject: DAP proposal submission

I completely object to the planned changes to create Development Assessment Panels to replace the current planning process involving local councils. It places too much power in ministerial hands and favours developers over the rest of the community. It will remove any independence in the planning process.

Even members of the Liberal Party don't necessarily support this change.

Yours sincerely,

Professor Pam Sharpe FAHA

Helen Burnet MP

Greens Member for Clark

Tuesday, 12 November 2024

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

To whom it may concern,

Thank you for the opportunity to provide comment to the draft *LUPA Amendment (Development Assessment Panels) Bill 2024*.

The Greens' submission reflects concerns from many community members, elected local government representatives, planners, community organisations, academics and others from the local government sector.

Environmental and heritage values, height,streetscape, landscape, residential amenity are all elements that will be under threat with this system that does not mean planning must adhere to the rigour in place through the already established development approval process.

Despite the earlier consultation receiving 542 submissions, there seems to be little regard of the concerns raised in these representations.

This submission broadly addresses concerns about themes of the proposed legislation, and specific components of the draft Bill.

The Government's Justification for Development Assessment Panels (DAPs)

There is flimsy reason for these amendments and the proposed DAPs. The framework and bill in discussion continues to perpetuate a myth that there is a blockage in the planning system, particularly to approve social (and affordable) housing development applications.

In truth, there are few examples of refusals occurring across Tasmania's existing planning system. Only 1% of planning applications are refused. Of those that are appealed through the TasCAT merits-based process, 80% are resolved through mediation as the first step, with 20% going on to full appeal.

It is rare for applications to be refused, and the Framework does not provide evidence to support the assumption.

For the most part, social housing is approved through the existing planning process, despite what the Minister suggests in the media (ABC Radio, Mornings, 12/11/2024). There is often representation from concerned individuals or parties on the merits or otherwise of the application that must be considered by the planning authority when any non-conforming development is first advertised.

The proposed DAPs process through this amendment will see the only public input much later in the process, once the DAPs have considered the planning authority's report, and the application is on exhibition. This is a lost opportunity for better planning outcomes, and pays lip service to community knowledge.

It is only fit and proper that there is scrutiny about applications when density, design and other factors compromise development standards. This is often what underlies the concerns of community representations. It is something that should be taken up as part of strategic planning changes, by the local planning authority, through that process of review. It is not something that should be compromised by a drop in standards which could well occur with this change to planning and the introduction of this second choice for developers.

Under the existing process, any reasons for approval and refusal of development applications must be in accordance with the Planning Scheme. This is an acknowledged responsibility of those acting as part of a planning authority. This is arguably well understood by local government elected representatives, with very few examples of formal challenge. The Greens are concerned that this won't be the case with the proposed legislation.

Currently, non-conforming multi-residential development applications go through the rigour of consideration by elected representatives as the planning authority. The statutory process has strict timelines, and in Tasmania is one of the shortest in the country.

However, there can be delays may occur between approval and building for other reasons. It may not be because of a slow approvals process but because of things such as further tests, information, finance, project management, supply chain and skilled labour play their role in slowing development. Current planning should not take the blame for these other reasons delay on building.

The categories for referral to DAPs

The draft Bill and DAP Framework provides a number of categories that would trigger a DAP assessment –

- social or "affordable" housing (which is not defined in the bill or Principal Act)
- categories relating to city $10m, versus non-metropolitan areas $5m

- Council applications of $1m, where the council is both parties to an application.

These financial values could be easily manipulated by developers when applying for assessment (they could over-state the value, in order to bypass council as planning authority).

The value of $1m for Councils would mean virtually all developments by Councils would be considered by DAPs, and as with other DAP decisions, remove planning input at a critical time in the process.

Ministerial overreach

This proposed Bill provides greater control by the Minister to interfere with planning both at the statutory and strategic levels. The Minister would have the power to refer decisions to DAPs without cause. There is also provision to add further reasons to refer to DAPs.

The bill also allows the Minister to have a council's decision to not accept a request to amend an LPS reassessed.

Summary

The Greens believe these DAPs are part of a continued and systematic assault on planning in Tasmania by the Liberal government. It is an assault on the rights of members of the community to shape their place through input on planning in the area they love and know well. It also has environmental implications and will increase the likelihood of inappropriate developments on public lands including reserves covered by the Land Use Planning Approvals Act (LUPAA, 1993).

The DAPs are an unnecessary alternative pathway, taking away local knowledge and community concern from the Tasmanian planning system, and favouring developers in choosing how they want their applications considered.

The proposed legislation also provides a significant and unprecedented overreach for political interference by the Minister on a number of fronts.

The government's interference in considerations of planning authorities – usually local councils – will be through both the statutory development (individual developments) and the strategic planning level with ministerial interference in the assessment of proposed Local Provisions Schedule amendments.

There is a departure in what planning schemes are there to do: allow development, but in consideration of matters such as impact on neighbours, on the public amenity, streetscape, height, land use, and importantly, heritage.

Planning departments will be decimated and local councils will undoubtedly find it much more difficult to recruit and retain planners.

This is very similar to the flawed Major Projects legislation that the Greens opposed in 2020. This proposed extension of the power of non-elected members making decisions through DAPs has an even greater erosion on both administrative law processes with taking away merits-based appeal rights through the TasCAT.

Members of the community, developers, planners, local government elected representatives across Tasmania and various organisations and administrative law experts have raised their concerns both publicly and with the Greens. Their fear is that this legislation is going to cause considerable departure form Tasmania's current robust planning system.

We urge the government to abandon this draft bill.

Yours sincerely,

Helen Burnet MP
Greens Planning spokesperson
Member for Clark

From: R Madge
Sent: Tuesday, 12 November 2024 4:38 PM
To: yoursay.planning@dpac.tas.gov.au
Cc:

Subject: #ScrapTheDAP – the DAP is poor legislation that will not address the need for affordable and social housing

I oppose the creation of Development Assessment Panels (Daps) for the following reasons:

Affordable and social housing needs are not addressed in the legislation in any meaningful way. A determination by Homes Tasmania is that an application needs to include social or affordable housing. There is no requirement in the DAP proposal for a proportion of the development to be for social or affordable housing. For example, it could be one house out of 300 that is affordable, with none being social housing. Any adjustment to the current Planning Scheme needs to include significant quotas (percentages) of affordable housing and social housing as part of each and every application for housing developments.

- **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.
-

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.

Are there problems with the current system of planning applications and delays to the appeals process? Yes. What is the solution?

1) I suggest that the organisations tasked with mediating appeals be staffed adequately in order to expedite all planning applications. Merit-based planning appeals are an important part of the democratic process. For example, a large apartment building that overlooks a school may satisfy current Planning requirements, but there is merit to the complaint that safety and wellbeing of children are jeopardised by the initial proposal. The safety and wellbeing of children can and should take precedence in a planning proposal; and it should be reasonably quick to find a solution (eg, windows that are high up on the wall, planting boxes that obscure the view of the school, setbacks, etc). The solution should be achieved in a timely manner-- it should not take years. This is clearly an issue of staff resourcing. There is no need for staffing a DAP when the money could instead be used to adequately staff already-existing organisations.

2) There needs to be a TAS Government Architect, just as other states have state government architects. This office can guide good -- and excellent -- architectural design that meets the needs of Tasmanians. The office can help to expedite much-needed medium and even high density housing with significant numbers of affordable and social housing units. The office can help to guide developers in meeting the needs of those left out of the current housing market: young people without much savings, older singles and couples looking to downsize in a way that enhances their lives (by vacating their larger houses, they thus provide housing stock for new families who need more space), and those facing housing cost distress.

3) There need to be incentives for developers to submit proposals that include large quotas of affordable and social housing within the proposal. Building material costs are high. Tradespeople salary costs are high. Developers face high risk when proposing housing. Government needs to step in and put money where it can reduce risk and encourage apartment developments.

Thank you for considering the points I make in this email submission to #ScrapTheDap.

I hope that you will all read the proposed DAP proposal with a grain of scepticism. Although the government is marketing the DAP as a way to address affordable and social housing shortages, the DAP does nothing of the sort.

With kind regards,

Rebecca Madge

Member of:
Yes In My BackYard (YIMBY) and
South Hobart Sustainable Community group (SHSC)

KENTISH & LATROBE COUNCILS

Our Ref:
Your Ref:

12 November 2024

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

yoursay.planning@dpac.tas.gov.au

Dear Sir,

SUBMISSION ON THE LAND USE PLANNING AND APPROVALS (DEVELOPMENT ASSESSMENT PANELS) BILL 2024

Thank you for the opportunity to comment on the above draft bill.

Our Council's reiterate their comments made in our submission to the State DAP Framework position paper made in November 2023 (copy attached) and disappointingly it appears that little regard has been given to the matters raised.

Our Council's are of the opinion that the current development application assessment process is already more efficient than that in any other state and they take exception to the inference that they fail to separate their statutory role from their elected role to such an extent that the introduction of a DAP is required. They also believe that the integrity of council planning authorities has been politicized.

The current system, with the opportunity to appeal indicates that there are in fact a low percentage of applications that are subject to a full appeal process. The proposed DAP removes appeal rights for anyone that has concerns based on legitimate planning grounds. If the Tasmanian Planning Commission are to be the decision maker on a discretionary planning assessment, the decision should be subject to review as per the review of a planning authority decision.

The proposed referral thresholds lack logic, and the financial value of a development does not always reflect the complexity or contentiousness of an application.

Council does acknowledge that there is benefit for a DAP limited to circumstances relating to applications where Council is the developer or where referred by a council because of the size or potentially disruptive influence within the community.

We urge the Government to reconsider the draft bill and to engage in beneficial consultation with local government to ensure that a DAP model is soundly constructed and is a fit for purpose regulatory process, not additional regulatory complication.

Yours faithfully,

Jason Browne
GENERAL MANAGER

KENTISH & LATROBE COUNCILS

Our Ref:
Your Ref:

30 November 2023

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

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

Dear Sir/Madam,

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

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

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

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

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

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

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

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

as well as including recommendations regarding delegation.

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

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

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

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

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

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

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

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

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

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

1a) Type of development applications?

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

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

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

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

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

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

1b) Who should refer?

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

1c) Referral points

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

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

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

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

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

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

3. Local Input.

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

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

3a) Incorporating local knowledge and complementing existing processes

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

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

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

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

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

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

5. Appeals and assessment timeframes.

a) DAP decisions not subject to TASCAT appeals.

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

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

b) Timeframes

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

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

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

6. Post determination role.

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

In conclusion, the Councils emphasise the following points:

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

The Councils thank you for the opportunity to provide comment.

Yours faithfully,

Gerald Monson
GENERAL MANAGER
LATROBE & KENTISH COUNCILS

From: Annie Ball
Sent: Tuesday, 12 November 2024 4:35 PM
To: yoursay.planning@dpac.tas.gov.au
Cc:
Subject: #ScrapTheDAP – say no to planning panels/say yes to a healthy democracy

Dear Parliamentarians,

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 saythey 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,
Annie Ball

From: Ross Coward >
Sent: Tuesday, 12 November 2024 4:31 PM
To: yoursay.planning@dpac.tas.gov.au
Cc: c
Subject: #ScrapTheDAP – say NO to planning panels/say YES to a healthy democracy

DRAFT LUPA Amendment (Development Assessment Panels) Bill 2024

To whom it may concern,

It is my view that this proposed bill puts more power into the hands of the Minister and hand-picked members of the DAP panel & takes away the rightful function of Council to act as the Planning Authority and of citizens to appeal/support developments, contentious or otherwise.

The proposed DAP Bill will be an "alternate approval pathway outside of Councils' decision-making functions and help 'take the politics out of planning' for more complex or contentious development applications.

I suggest the above statement is ironic in that it will actually "put politics into planning" for contentious development applications. Council decision-making functions are inherently democratic as all parties affected by any development application can have their say.

"One of the issues that was discussed at length was how controversial planning applications were dealt with. This is because of potential conflicts of interest between Councillors having to act as a Planning Authority, while also having been elected to represent their constitutents."

This statement, above, could, equally, be applied to the Minister in their deliberations of what projects are to be considered to be assessed by the DAP process. I suggest Councillors act in good faith and deliberate/debate on the merits or otherwise of any proposed development that comes before Council. They, also, rely on advice from Council Planning Officers. And the general public can have their say on proposed developments. This is democracy at work. Citizens who may be affected by developments are entitled to have a say for or against any such development.

So, 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 includessocial 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,

Ross Coward

From: Clinton P Garratt
Sent: Tuesday, 12 November 2024 4:34 PM
To: yoursay.planning@dpac.tas.gov.au
Cc:

Subject: Development Assessment Panels (Daps) Proposal

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Dear Planning @ DPAC,

I strongly oppose the creation of DAPs and fully support the points raised by Planning Matters Tasmania in their #ScraptheDAP campaign.

An additional point I would like to raise is the recent change to compulsory voting in local government elections. This has made councils even more democratic than they already were.

For example, to put it colloquially, Hobart City Council had a strong 'green tinge' prior to introducing compulsory voting. Once everyone was forced to vote, the council moved even further towards progressive, green, left-wing ideals. Introducing DAPs appears to be a way to allow a planning minister to bypass the will of locals.

Please note that, despite its green tinge, Hobart City Council has been massively pro- development. Many appropriate developments have been approved under the current Lord Mayor and councillorsin recent times. Any development not approved has been disallowed for good reason.

While planning reform is important, undemocratic DAPs are not the answer.

Kind regards,
Clinton Garratt

From: Ralph W
Sent: Tuesday, 12 November 2024 4:34 PM
To: yoursay.planning@dpac.tas.gov.au
Cc:
Subject: Scrap the DAP

With great respect to the Government I wish to express why I oppose the creation of Development Assessment Panels (DAPs) and increasing ministerial power over the planning system. I oppose the structural change for the following reasons:

- **The DAP proposal takes power away from our local Council.** In our case the Meander Valley Council is assessing a proposal to allow the creation of several types of mines in the Meander Valley starting with a bauxite mine in Reedy Marsh. Reedy Marsh is a large semi-rural area and is home to a range of endangered animals (like the Wedge-tailed Eagle, Platypus and Tasmanian Devil) and large number of residents, farmers, artists and people who simply love the semi-rural lifestyle. It is also a destination for a vibrant tourism industry which is crucial to the economy of Deloraine. The proposed mines will almost certainly have a seriously negative impact on our wildlife, economy, lifestyle and possibly our health. The advantage of Local Councils having the power to make planning decisions is that they know the local conditions and have a long term strategy for the development of the Meander Valley that these mining operations would trash. State Government might well not understand local

perspectives, issues or the economy. Therefore we believe that decisions affecting locals should primarily be made locally by our Council.

- **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 any time and have a development assessed by a planning panel. This could intimidate councils into conceding to developer's 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, Ralph Wayment

- - -
Ralph Wayment

From: Scott Bell
Sent: Tuesday, 12 November 2024 4:31 PM
To: yoursay.planning@dpac.tas.gov.au
Cc: Mike Gaffney; Cassy O'Connor MP; Rosemary Armitage
Subject: Objection to DAP proposal

[You don't often get email from Learn why this is important at https://aka.ms/LearnAboutSenderIdentification]

Hullo,

I'm opposed to Minister F . Ellis's proposed DAP Bill, for the following reasons:

Local Councils are, by virtue of their name, are Local. They consist of elected representatives(councillors)from their local community, they understand local issues, they can be easily accessed when community members have concerns to be discussed , and they are directly responsible to their local community.

in contract, state politicians are frequently difficult to contact or access , and many do not fit the above criteria.

community members are welcome to attend Local Council meetings, to forward questions in advance, and to therefore partake in the local , democratic, decision making process.

if community members wish to partake in real-time parliamentary processes, then they need to travel significant distances. A disincentive to partake in the democratic process, which our country prides itself in.

by removing the rights of Local Councils to participate in local decision making, the DAP proposal will help to disenfranchise local communities, will create further distrust between our society and those who wish to centralise power , control and decision making, and won't build bridges, but rather will create barriers .

currently between 1% and 2% of planning decisions require further arbitration . The remaining 98%, the vast majority, proceed unhindered. So " if it ain't broke, then don't fix it"

personal experience with the TPC, involving my covenanted conservation property , and a threat by MRT to seek sand mining rights , reveals how unaware and insensitive commercial development can be to the global issue of the climate crisis, and associated habitat loss, environmental destruction and species extinction. The DAP process will facilitate these losses .

currently, under existing legislation, people have the right to appeal. The DAP proposal, as stated, will remove such rights. Hardly a way forward , to build cohesive and cooperative communities, and a resilient society.

So, for the above reasons, I strongly oppose the plan to erode local communities, undermine Local Councils, and create further divisions in our society by implementing DAP's. Thankyou

Sincerely, Scott Bell

Dr. Scott Bell , FRACGP; FACRRM; ROF.
Director,
Esmerelda Enterprises Environmental,
Saltwood Trees for Life,

From: David Halse Rogers <
Sent: Tuesday, 12 November 2024 4:33 PM
To: yoursay.planning@dpac.tas.gov.au
Subject: #ScrapTheDAP – say no to planning panels/say yes to a healthy democracy

Dear Members of Parliament,

Apart from my more extensive submission below, I also include this less temperate addendum to my submission:-

I have become increasingly frustrated, over a number of years, by this MINORITY government acting as though it is representative of the people of Tasmania, and has *carte blanche* to enact any legislation it sees fit. A feeling of disenfranchisement creeps over the Island. We all know that the Liberal Party is in the pocket of big business: it's backers. It is also true that the Labour Party is spineless and beholden to 'dark forces' behind the scene. Those members of Parliament with a moral compass please stand up and be counted.

One issue after another is perverted and not for the Common Good.

I oppose the creation of **D**evelopment **A**ssessment **P**anels (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.** Hand-picked 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 any time, 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! [this is not what governments should do; they should represent the will of the People], 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 appeaopen to appeal 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. This is an attempt to cower local government to comply with possible unwanted consequences of an DA

- **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. **Also, reinstate the position of Government Architect.**

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

Yours faithfully,
David Halse Rogers

From: Malcolm Roslyn Saltmarsh
Sent: Tuesday, 12 November 2024 4:29 PM
To: yoursay.planning@dpac.tas.gov.au
Cc:

Subject: Development Assessment Panel draft legislation

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

We have in existence a decision making pathway with an elected local council and access to the community's right to merits planning reviews of decisions by TASCAT. Neither TPC panels nor courts provide an adequate substitute for TASCAT merits review. This risks diminishing public confidence in the exercise of government power and undermining the rule of law in Tasmania. Only about 1 per cent of council planning decisions go to appeal and Tasmania's planning system is already among the fastest in Australia in determining development applications.

Institutional checks and balances lie at the heart of our system of government. This proposal gives the minister massive and unchecked power to remove developments from the normal planning process when it suits him. There is a distinct danger that developers will be provided with an assured pathway to get big controversial projects approved that cuts out councillors, removes appeal rights and ignores local community concerns. We in the community deserve a pathway to expressing our concern. We are not "nimbies": we are concerned citizens.

Yours truly,

Malcolm & Ros

Malcolm & Ros Saltmarsh

From: Marianne Robertson
Sent: Tuesday, 12 November 2024 4:29 PM
To: yoursay.planning@dpac.tas.gov.au; Planning and assessment panels

Subject:

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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 recommendedthe 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 saythey 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,
Marianne Robertson

From: Antoinette Ellis <>
Sent: Tuesday, 12 November 2024 4:27 PM
To: yoursay.planning@dpac.tas.gov.au
Cc:

Subject: #ScrapTheDAP – NO to planning panels and 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:

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.

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.

Approving large scale contentious developments will be extremely easy for developers to take advantage of a Government who is inclined to over-development and who are beholden to the Tourism industry.

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.

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).

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.

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.

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

I also 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.

Yours sincerely,

Antoinette Ellis

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From: Sally Mollison
Sent: Tuesday, 12 November 2024 4:26 PM
To: Sally Mollison;
Subject: #ScrapTheDAP – say no to planning panels/say yes to a healthy democracy

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

Thank you for taking the time to read my email in the 'busy-ness' of your day.
The work you are doing for this beautiful and unique island, *lutruwita*/Tasmania, is important and I am grateful for that.
I regularly experience the coasts of the north west, east and south and care for my land on the east and south.
I am alarmed at the speedy rate in which I've observed that introduced species are thriving and the local plants and animals are decreasing.
For example the rate at which starlings, blackbirds, sparrows, cats and rabbits are encroaching closer and in great numbers to the foreshores of the Derwent River and on the edges of the Freycinet National Park.

So as I have some concerns about directions around coastal planning and development:

- 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.

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**.
- **The Tasmanian Planning Commission will not be independent.**
- **Large scale developments that take time for community to be consulted with properly will be easier to fast-track.**
- **Merit-based planning appeal rights will be compromised.**
- **Opportunity for mediation on development applications in the planning tribunal is democratic and vital. Removing merits-based planning appeals is undemocratic. We need to avoid what other countries do and how they undermine democracy : pork barrelling corruption, bad planning outcomes and favoured developers.**

I believe the directions of development in *lutruwita*/Tasmania are leading towards a different island, a more commercial greedy, 'same as everywhere else' island, that is not respecting the uniqueness and treasure of what is here, cannot be replicated and can be lost forever, as we already know and have learned with many of our species.

Thank you for this opportunity to have a voice
Sal Mollison

From: Jenny Seed:
Sent: Tuesday, 12 November 2024 4:24 PM
To: yoursay.planning@dpac.tas.gov.au
Cc:

Subject: #SCRAP_TheDAP -say NO to planning panels/saying YES to a healthy DEMOCRACY

Dear To Whom it Concerns,

We, vehemently and absolutely, oppose the creation of Development Assessment Panels (Daps) and increasing ministerial power over the flawed 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:
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  – 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?
- There **will, inevitably,** be increasing costing blowouts with such an undemocratic, underhanded scheming.

Say yes to a healthy democracy

- We call on you to ensure transparency, independence, accountability and public participation in decision-making within the planning system, as they are critical for a healthy democracy. Keep decision making local, 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.
- We also call on you to prohibit property developers from making donations to political parties, enhance transparency and efficiency in the administration of the *Right to Information Act 2009*, and create a strong anti-corruption watchdog.
- We also suggest that the incumbent minority Government refrain from pretending they own Tasmania.

Yours sincerely,

Jenny Seed

DAP Draft Bill Submission

On behalf of the Mount Wellington Cableway Co. (MWCC) Board, investors, supporters, stakeholders and community at large, we wish to thank you for this opportunity to comment on the LUPA Amendment (Development Assessments Panels) Bill 2024. As a proponent of a significant development in Tasmania funded by 100% private investment, and a party that has recently spent millions of dollars going through the standard LUPA process, we are pleased this much needed reform is occurring for the benefit of Tasmania's future.

To understand how this Bill could improve Tasmania, we draw your attention to the Arthurs Seat Eagle project on the Mornington Peninsula in Victoria. In 2015, this cableway proposal was subjected to local anti-development 'noise' and was stuck on subjective and discretionary issues in the local council planning process for over a year. The relevant Minister stepped in before the DA assessment process was complete, and referred the project to a DAP. Within the year the project was not only approved, but construction almost complete. Much like when Skyrail Rainforest Cableway opened in Far North Queensland in the 1990s, the anti-development 'noise' at Arthurs Seat disappeared virtually overnight once it opened in December 2016. The project has since welcomed over 2 million visitors, generating jobs, regional demand and hundreds of millions of dollars in economic benefit for the region. The operator is currently reinvesting in the site with a proposal for a luge track and zip line.

In Tasmania, the MWCC proposal was required to satisfy 100% of the 76 criteria across the Hobart Interim Planning Scheme as well as the Wellington Park Management Plan. Ultimately, it passed 58 criteria, or 76%. The remaining 18 grounds - 4 within Hobart Interim Planning Scheme (HIPS), 14 within Wellington Park Management Plan (WPMP) – which distil to just 7 issues, could have been approved (and should have, according to Australasia's most renowned environmental planner lawyer) with conditions if 11 of the 18 clauses were not so poorly worded. It is clear many issues could have been avoided entirely if the application had been assessed reasonably, and without vexation, by a DAP early.

However, the journey to reach that outcome consumed three and a half years of planning assessment, in addition to over a year of pre-lodgement consultation with the Council, as well as an additional 18 months of zone boundary amendments prior. This six year duration exposed the proposal and its investors to unwarranted campaigns of misinformation, vexatious claims, aggression and threats. It would be difficult to disagree that those six years could not have been better spent delivering significant economic benefit for Tasmania. We are pleased the Bill seeks to address when and how future proposals can be referred for assessment.

In Victoria, the MWCC proposal could have been deemed '**Generally in Accordance**', a policy adopted by the Victorian Planning Authority and other states of Australia. Generally in Accordance is "*… part of a flexible and responsive assessment framework that reduces red tape and streamlines planning applications that align with the intention of the Precinct Structure Plan* [planning scheme]". We believe this approach is appropriate for highly unique or complex projects that may not have been anticipated when standard planning scheme criteria were written.

MWCC is largely in agreement with most parts of the Bill, with the addition of the flexibility of discretion offered by the above 'Generally in Accordance' policy and consideration of below.

Our submission focusses on the clauses that we believe could be improved based on balanced outcomes achieved interstate and overseas (i.e 'Fast-track Approvals Bill', New Zealand). This focus is written retrospectively in a bid to assist Members of Parliament to understand what impact this Bill could have made if it had already been in place when MWCC submitted our Development Application to the City of Hobart in June 2019.

The clauses we draw your attention to are as follows:

40BA(4)a, & 40C(1)d – These clauses could have enabled the Minister to direct:

- The City of Hobart to make a minor amendment to the HIPS to:
  - Include or allow assessment of ***positive*** impacts by development. Several examples arise within the MWCC proposal whereby the outcome would actually improve visual, noise, safety and environmental outcomes through the consolidation of existing transport modes and visitor infrastructure. However, these were not assessed as the planning scheme exclusively assumes impacts can only be negative, and so is narrowly written to only assess components of the application that were deemed potential negative impacts.
  - Amend the Biodiversity overlay so that the 'contentious' half of the proposed access road to connect McRobies Road to Wellington Park matches the other non-contentious half. This would reflect the scientific reality of the on ground biodiversity values associated with the site adjacent to the Municipal landfill site, McRobies Gully.

- The Wellington Park Management Trust to make the following minor amendments to the WPMP:
  - to include or allow assessment of ***positive*** impacts by development. A specific example is where MWCC proposed to increase existing levels of nesting habitat through scientifically supported solutions, to not just offset the necessary vegetation clearing required for bushfire compliance, but improve environmental outcomes. Only the vegetation clearance required by TFS was assessed, whilst the positive initiative for birdlife outcomes was ignored.
  - to amend the pinnacle zone boundary as part of the MWCC development application, instead of the separate 18 month process initiated in 2014.
  - to revise ambiguous and contradictory clauses, such as the unrealistic finding that any development within the pinnacle zone must defy gravity to avoid any geoheritage impact, but simultaneously not visually intrude in the landscape.

60AC(1)(a)i, ii – These clauses would have enabled the MWCC project to be assessed by a DAP before the City of Hobart's involvement. This clause could be expanded to encapsulate projects that are relevant, i.e potentially visible, to neighbouring municipalities and their local planning authorities.

60AC(1)(b) – These clauses would have enabled the MWCC project to be assessed by a DAP early on in the design consultation process with City of Hobart.

60AC(1)(c), (d)i & ii – These clauses would have enabled the MWCC project to be assessed by a DAP prior to the City of Hobart involvement or impasse, supported by evidence from elected councillors and their opinions shared in the media. It would not be appropriate for these clauses to require both parties to be in agreeance (as was originally suggested in the Position Paper last year).

60AC(1)(e) – This clause would enable the MWCC project to be assessed by a DAP if the project is deemed critical infrastructure as an outcome of the current Mountain Review.

60AE(2)(a), 60AF(2) and 60AF(6)(b) – To avoid the issues associated with 60AC(1)(c), (d)i & ii, and (e), this clause could be strengthened to ensure the local planning authority as a reviewing entity, is limited to officer level and does not refer their advice to any elected representatives, formally or informally, prior to submitting their advice to the DAP.

60AJ – This clause would not only save considerable time at hearings but ensure 'non-issues' aren't used as deliberate weapons of misinformation to cause doubt and confusion in the media and broader community. This could have dismissed both traffic and noise as issues from the MWCC assessment.

60AL(1)a(i) – This clause would have enabled the MWCC project to be transferred to the DAP.

60AL(1)c – This clause would enable the MWCC solution to be assessed by a DAP if the project is deemed 'critical infrastructure' as an outcome of the 'Mountain Review' currently being conducted by the Department of State Growth.

60AM – Refer above to 60AC.

60AR(1)(b)(d) – These two clauses are strongly supported and will give applicants, investors and the community certainty and confidence in Tasmania's planning process. This should also considerably reduce load on the Supreme Court.

Section 33 of the Historic Cultural Heritage Act – The draft substitution is supported.

Kind regards,

The MWCC team

REFERENCES

https://vpa.vic.gov.au/strategy-guidelines/strategy-guidelines-2/generally-in-accordance-guidelines/

https://www.planning.nsw.gov.au/assess-and-regulate/development-assessment/planning-approval-pathways/state-significant-development

https://www.legislation.govt.nz/bill/government/2024/0031/6.0/whole.html

From: claire grubb
Sent: Tuesday, 12 November 2024 4:22 PM
To: yoursay.planning@dpac.tas.gov.au
Cc:

Subject: #ScrapTheDAP – say no to planning panels/say yes to a healthy democracy

I have recently moved back to Tasmania as an outdoor recreator and climber - leaving Victoria who is destroying access to their parks for all. Tasmania is a landscape that should be preserved and not one that needs shortcuts for developments on private and public land, including World Heritage Areas, National Parks and Reserves.

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,

Claire Grubb

Submission by Kerin Booth

To the State Planning Office
Department of Premier and Cabinet

CC to all Tasmanian MPs

Please accept my submission Re: the **LUPA Amendment (Development Assessment Panels) Bill 2024**

I am opposed to this draft legislation, for the following reasons.

Short timeframe for consultation on this radical change to legislation. The **5**-week consultation process at the final stage of this attempted radical change to planning legislation, to Local Government and to life as we know it, is way too short and should be extended.

Speed and expense of decision making. Where is the independent analysis of the efficiency and **cost to taxpayers** of decision making by DAPs compared to Local Government decision-making? Decision making about development applications is quicker by Tasmanian Local Government in many cases than decision making by DAPs in other states.

Control by the Minister. The Minister for Planning will have control over the appointment of the panel members. While the proposed legislation would have the Governor appoint the panel members, they will be nominated by the Minister. This will be publicly perceived as biased or even corrupt. Other Ministerial interventions may occur, such as resolving conflict between the Planning Authority and the applicant regarding the referral of application to the DAP, and forcing a Council to amend the Planning Scheme to suit a development.

Risk. The current planning system is not failing or broken. Radically changing it involves risk, especially as there are some unknown aspects to the proposed DAP framework, including the additional DAP criteria value thresholds that may be added later. (e.g the criteria for a development application to go to a DAP could be reduced from $10m or $5m in regional areas).

Conflict of interest or bias by Minister or DAP members. What is the process in this legislation that can assure the public that DAP members or the Minister does not have a bias or conflict of interest regarding a development application?

Social & affordable housing appears to be one of the reasons the Government is giving in proposing this DAP legislation, and yet there is no stated percentage for a development to provide for social or affordable housing and no requirement for this to be maintained for a specified number of years. **This is a gaping hole in the legislation and creates a risk.** If the Government is genuinely wanting to increase social and affordable housing they would work with Councils and communities in seeking appropriate locations where both residents in the surrounding community and in the housing development would be compatible. At the very least, this draft legislation should be amended to include minimum percentages of social and affordable housing (say 40 or 50 %) and be required by law to be held for that purpose for a minimum number of years (say 15 or 20 years).

Community input and hearings by the DAP. 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.
DAP engagement with communities will mostly be via a website and hearings are likely to be only 'encouraged' to be held locally. It will be very expensive to get the DAP to travel to regional areas and have accommodation provided. This means they may not be held in regional areas which is unfair to local stakeholders in the regional communities.

Merit-based planning appeal rights via the planning tribunal will be lost. Issues that communities care about will be overlooked, such as impacts on biodiversity, height, bulk, scale or appearance of buildings; impacts to streetscapes, and adjoining properties including privacy and overlooking; traffic, noise, smell, light etc may not be taken into consideration by the DAP process. 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.

Supreme Court Appeals. DAPs do not have to provide written reasons for their decisions, making it difficult to seek judicial review. 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. This will be a backwards step for democracy.

Fees for DAP assessments, while they will be prescribed in regulations, may be waived under this legislation, presumably leaving taxpayers to pay for a developer's assessment.

Property developers to bypass local councils and communities. A developer will have a range of criteria to apply for their application to bypass Local Government and go to a DAP, bypassing local council and communities, thereby reducing risk of *"those interfering Nimbys"* to have input about the development. Even if the developer thinks the application may become controversial, they may be eligible to bypass the Local Government. If they do

go through the Council, the developer will then be able to request that the Minister review the local planning authority's decision if they are not satisfied with it.

Communities care, Government doesn't seem to. May I take the opportunity to remind the Government members supporting this bill, that so-called "Nimbys" make up the largest proportion of volunteers in their communities, such as Rotary, Apex, Landcare Groups, Conservation Groups, Historical groups, Rural Show Societies, Arts Groups, Fire Brigades and Emergency Services, to name a few. Community volunteers are often businesspeople, ratepayers, taxpayers and are vital to Tasmanian life, especially in regional areas. They all care about what happens to the people and places in their communities and will not be happy when this DAP legislation overrides current Local Government planning processes.

Creating legislation with the main purpose of overriding input by these hard-working caring community members and their Local Government elected representatives and staff shows the type of Government we currently have. Non-Government Members of Parliament should use their own thoughtful care and concern for the communities they represent to **Vote No to this Bill.**

Sincerely,

Kerin Booth

#PlanningMatters
www.planningmatterstas.org.au

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

Dear State Planning Office,

RE: PMAT Submission - *Draft LUPA Amendment (Development Assessment Panels) Bill 2024*

The Planning Matters Alliance Tasmania (PMAT) thanks the State Planning Office for the opportunity to comment on the *Draft LUPA Amendment (Development Assessment Panels) Bill 2024*.

Public comment was invited between the 7 October and 12 November 2024.

The State Planning Office consulted on the draft Framework Development Assessment Panel Framework Position Paper for 6 weeks in 2023, which closed on the 30 November 2023.

All the issues raised in PMAT's 2023 submission on the *Position Paper on a proposed Development Assessment Panel (DAP) Framework* still stand. The Tasmanian Government has failed to take into account any of the concerns raised by PMAT:

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

10. Undermines local democracy and removes local decision making;
11. Mainland experience demonstrates planning panels favour developers and undermine democratic accountability;
12. Poor justification for planning changes; and
13. Increasing complexity increases risk of corruption.

The *Draft LUPA Amendment (Development Assessment Panels) Bill 2024* is equally concerning and PMAT recommends the Bill be scrapped in its entirety. PMAT's key concerns are outlined below.

Fundamentality, the Bill is inconsistent with Schedule 1 of the *Land Use Planning and Approvals Act 1993* where the objectives of the resource management and planning system of Tasmania state to encourage public involvement in resource management and planning.

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

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

We should be investing 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.

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

Yours sincerely,

Sophie

Sophie Underwood
State Director – Planning Matters Alliance Tasmania

www.planningmatterstas.org.au

KEY CONCERNS

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 and Cataract Gorge cable cars, high-rise in Hobart (like the 200 m high-rise Fragrance proposal), Cambria Green planning scheme amendment, high-density subdivision like Skylands at Droughty Point and the UTAS Sandy Bay campus re-development. Highrise apartment blocks like Empress Towers in Battery Pont will be able to built anywhere.

- **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**.
    - A critically important check and balance within the planning system will be removed – DAPs remove a layer of oversight.
    - **In Tasmania, only about 1% of planning applications go to appeal** and the decisions made by elected representatives were no more likely to be appealed than those by council officers.
    - **Almost half of appeals in the last three years resulted in mediated outcomes**.
    - **Only about 20% went to full appeal in the last three years**.
    - These statistics demonstrate that Tasmania's appeals system is working.
- **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 DAP approval process**:
    - **No rules for panel composition**. Total discretion for TPC (Tasmanian Planning Commission) on panel composition, qualifications and decision-making process.
    - **Panels don't have to adhere to the statewide scheme** – that is panels do not need to apply planning rules.

- **Panels don't apply planning rules:** Only Schedule 1 objectives of LUPAA apply, potentially conflicting and broadly framed. No mandates for environmental or hazard plans, or adherence to the state planning scheme. No requirement for assessment frameworks or impact assessments
- **The assessment process is so fast that the public won't be able to engage properly**. 42 days from advertising to approval.
- **Tight Timelines and Limited Public Input**: Short timeframes for public response and hearings, with strict deadlines likely impacting decision quality.
- **Closed hearings** - no public hearings. Hearings are held ten days after public comment closes and hearings are not public. The hearings are held behind closed doors.
- **Limited Advising Entities:** Only local councils, heritage councils, and infrastructure licensees (gas pipelines and water and sewerage provide input).
- **Restricted Fact-Finding for Local Councils:** Councils can only request information on specific infrastructure impacts. DAP controls all information requests, with limited ability for councils to follow up.
- **Exclusion of Key Environmental Bodies:** EPA and Parks and Reserves have no advisory role in the panel process.
- **Lack of written decisions** - DAP not required to provide written reasons - limiting possibility to appeal decision to Supreme Court.

- **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?

From: Pamille Berg
Sent: Tuesday, 12 November 2024 4:20 PM
To: yoursay.planning@dpac.tas.gov.au
Cc:
Subject: Opposition to draft legislation: Development Assessment Panels Bill 2024

I am writing to express my extreme concern with and opposition to the proposals within the draft Development Assessment Panels Bill 2024.

As a former Partner in one of Australia's largest architectural and urban design firms which completed scores of large and small public, private, and commercial projects in Australia, Asia, Europe, and the USA, I understand first-hand the implications of the government's proposed move to the use of Development Assessment Panels (DAPs).

I **do not agree with increasing the ministerial power** over the planning system in Tasmania via the provisions of this Bill, as the planning system needs to be as a-political as possible.

By their very nature, DAPs are pro-government, appointed by the Tasmanian Planning Commission (which is not independent from the government), and such panels have little or no close understanding of local communities and councils and their essential capacity to have a strong role in determining what is approved and built in their communities and the surrounding areas.

I have worked in major projects for a number of property developers in Australia and overseas. We in Tasmania **will not benefit** by allowing property developers, even those which are highly professional and principled, to bypass our local councils and communities by not being subject to the standard local council planning approval processes.

As Tasmanians we **should not make it easier** for large-scale contentious developments to be approved via alternative planning pathways in the face of opposition by both the populace at large and by local councils made up of elected representatives.

I'm astonished that the government via this draft Bill and the use of DAPs is proposing to remove existing merit-based planning appeal rights based upon a proposed project's impacts on such critical aspects as biodiversity, height, bulk, scale or appearance of buildings; impacts on streetscapes and adjoining properties, and other such factors. The planning appeals process for any development **is an essential and precious part of the checks and balances** within democratic government.

My understanding is that under the provisions proposed in this Bill, decisions on developments will only be appealable to the Supreme Court, based on a point of law or process. Councils, individuals, and coalitions of citizens would generally not be able to afford the extreme expense of a Supreme Court appeal. This would have the effect of restricting appeals in a way which denies a just appeals process to all of us as citizens and providing that right only to those with access to considerable financial means.

If the government wishes to improve planning processes and approval paths for proposed developer projects in Tasmania, then the best ways to do so are not by increasing ministerial power over the planning system, but rather by providing more resources to Councils to work effectively and professionally within the existing planning system and by enhancing community participation in planning processes. I know from my own years of experience in conducting intensive community consultation within planning and urban design projects, that when properly briefed and intelligently consulted, communities routinely demonstrate considerable knowledge, good sense, and far-sightedness about whether significant projects should proceed or not.

I urge that this Bill is not passed.

Yours sincerely,

M. Pamlle Berg AO Hon. LFRAIA

From: Caroline Bell
Sent: Tuesday, 12 November 2024 4:17 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?
- 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,

Caroline Bell

From: Liam Oakwood
Sent: Tuesday, 12 November 2024 4:15 PM
To: yoursay.planning@dpac.tas.gov.au
Cc:
Subject: Opposition to the introduction of Development Assessment Panels (DAPS)

I would like to formally submit my opposition to the creation of Development Assessment Panels.

It is vital that planning and development remains open to the democratic participation of local communities, with avenues for merits-based appeals and community input at all stages.

regards,
Liam Oakwood
BSc, BEnvSc, MSc

From: Louise Skabo
Sent: Tuesday, 12 November 2024 4:12 PM
To: yoursay.planning@dpac.tas.gov.au
Cc:

Subject: ScrapTheDAP –NO to planning panels-YES to a healthy democracy

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12 November 2024

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

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

Dear State Planning Office,

RE: A Submission concerning "The Draft Land Use Planning and Approvals Amendment (Development Assessment Panels) Bill 2024.

I welcome the opportunity to make a submission on this draft legislation empowering the Planning Minister to remove assessment and approval of developments from the normal local government council process and have it done by Development Assessment Panels (DAPs). This fast tracking process will remove elected councillors from having a say on the most controversial and destructive developments affecting local communities.

Of even greater concern is that the bill will provide a new fast-tracked DAP process to provide a permit for developments on not only private land but on public land including World Heritage Areas, National Parks and Reserves which are owned by the Tasmanian people.

The criteria being considered would enable virtually any development except for industrial and mining which are regulated by the EPA, to be taken out of the normal local council assessment process and public appeals system and instead be assessed by DAPs and the Planning Minister including developments already refused.
Inappropriate commercial developments in our precious National Parks and TWWHA , with this new legislation, could be assessed and fast-tracked leading to the whittling away of their primitiveness and undeveloped quality which are the envy of the world and what the majority of Tasmanians want to keep (Tasmanian Conservation Trust Survey 2022). The Lake Malbena luxury, helicopter tourist development and the proposed Lake Rodway massive tourist accommodation lodge were two such commercial enterprises incompatible with conserving these pristine ecologies and natural values. There should never be any planning processes that allow a government appointed authority (DAPs) nor political ministers to **alone** decide these vital environmental matters.

It is very concerning that this government intends to introduce new legislation that will provide speeded-up approvals under the National Parks and Reserves Management Act for developments in reserved land with appeal rights for the community delayed till after draft legislation is in place and already approved by developers and government. It weakens democracy in our State and would lead to undue pressure and influence from self-interested bodies, corruption and lack of transparency. The community's right to merit-based appeals, particularly with major developments in National Parks and Reserves, is paramount and should not be taken away.
Little notice seems to have been taken on the many previous submissions in March 2024 on the Proposed 'Statutory Environmental Impact Assessment Process' for reserved land: 'The proposed DAPs for National Parks and Reserves.' Also on 2022 State Planning Provisions. It is hoped the voice of the people is given thoughtful consideration this last chance.

I oppose the proposed 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 Development Application Panels are not independent : DAPs are hand-picked without 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. DAPs do not have to provide written reasons for their decisions making it difficult to seek judicial review. Community input will be less effective because it is delayed until after the DAP has consulted (behind closed doors - no transparency) with the developer and any relevant government agencies and already 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 commercial developments in TWWHA and National Parks.

- **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 with 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 the merit-based planning appeals as a deterrent to corruption. Mainland experience demonstrates planning panels often dominated by the development sector, favour developers and undermine democratic accountability.Mainland research demonstrates removing merit-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 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 subjuective 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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  housing.
  There is no requirement for a proportion of the development to be for this. 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?
- **To ensure a healthy democracy** there is a need for transparency, independence, accountability and public participation in decision-making within the planning system. 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.
  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.

Let theTasmanian community have a voice in planning into the future.

Yours truly,
Louise Skabo

Compiled by Louise Skabo
I acknowledges the information provided towards this submission by:
Planning Matters Alliance
Tasmania Ta
smanian National Parks Association
Tasmanian Conservation Trust.

CULTURAL HERITAGE PRACTITIONERS
TASMANIA
Website: http://www.chptas.org.au

11th November 2024

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

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

SUBMISSION ON THE DRAFT LAND USE PLANNING AND APPROVALS AMENDMENT (DEVELOPMENT ASSESSMENT PANELS) BILL 2024

Dear Madam/Sir,

Thank you for the opportunity for Cultural Heritage Practitioners Tasmania to make comment on the *Draft Land Use Planning and Approvals Amendment (Development Assessment Panels) Bill 2024*.

Introduction

Cultural Heritage Practitioners Tasmania (CHPT) is a non-profit group comprising heritage practitioners from a range of disciplines. Formed in 1995, CHPT has an expert and long term perspective on historic heritage management in Tasmania, and an interest in the long term protection of significant cultural heritage in Tasmania.

CHPT also has had a long term interest in planning in Tasmania at a range of levels, including land use planning as it relates to cultural heritage at both a local government level and in relation to protected area management. We have previously made submissions in relation to the proposed *Tasmanian State Planning Provisions* in 2016, the *Tasmanian State Planning Provisions Review Scoping Paper* in 2022, the *Draft Land Use and Planning Approvals Amendment (Major Project) Bill* in 2020 and the *RAA Reform Consultation Paper* in early 2024. It should be noted that these last two matters involved planning and approvals reform, and both involved creation of Development Assessment Panels. CHPT did not support Development Assessment Panels per se in either case for a range of reasons, including the arguable necessity for such and a lack of clarity around their composition.

In making comment on the *Draft Land Use Planning and Approvals Amendment (Development Assessment Panels) Bill 2024* we have used as key bases:

- The objectives of the *Land Use and Planning Approvals Act 1993*, in particular the objectives of Schedule 1, part 2 (g) which indicates the objective and intent of planning schemes in Tasmania in relation to cultural heritage. [1]

[1] The objective of the *Land Use and Planning Approvals Act 1993* in relation to historic heritage is "to conserve those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value" (Schedule 1, part 2 (g)).

- *The Australia ICOMOS Charter for the Conservation of Places of Cultural Significance (The Burra Charter)* (Australia ICOMOS 2013), widely regarded as the standard for heritage practice in Australia.

We have also reviewed the *Draft Land Use Planning and Approvals Amendment (Development Assessment Panels) Bill 2024*, the Tasmanian Government *Development Assessment Panels (DAP) Fact Sheet* and the October 2024 *Report on Consultation Development Assessment Panel (DAP) Framework Position Paper*.

Comment

CHPT does not support the *Draft Land Use Planning and Approvals Amendment (Development Assessment Panels) Bill 2024*. This is primarily because we question the necessity of the Bill.

We also have concerns about :

- how the *Historical Cultural Heritage Act 1995* and the *Aboriginal Heritage Act 1975* will work in relation to the Development Assessment Panel process,
- the likely application of the Bill to protected area developments (something CHPT does not support),
- how Development Assessment Panels are constituted,
- when applications for a Development Assessment Panel process can be made,
- the provision for planning schemes to be amended outside the standard statutory process when the Development Assessment Panel process is being used, and
- the lack of third party appeal rights under this Amendment Bill.

Our concerns are expanded upon below.

As many of our concerns are similar to those that CHPT has had in relation to the *Draft Land Use and Planning Approvals Amendment (Major Project) Bill 2020*, we have appended a copy of CHPT's submission on that Bill as background.

1. Necessity of the Bill

CHPT questions why – when there is already a *Land Use Planning and Approvals Amendment (Major Projects) Act 2020*, which is ostensibly to help major projects with complex assessment requirements, projects of importance to the State, and projects which may be controversial – another similar, but separate, process and piece of legislation is needed.

We do not believe that yet more amendments to LUPAA are needed given there is already a pathway for development projects that have special needs. We also argue that new legislation for development projects that have special needs is not required given that the new Statewide Planning Scheme, which is only now coming fully into operation statewide, was in fact introduced to improve the Tasmanian resource management system, including in relation to planning and approvals. Time is needed to see how the new Statewide Planning Scheme works once it is fully operational, before considering new amending legislation.

Further, the *Draft Land Use Planning and Approvals Amendment (Development Assessment Panels) Bill 2024* adds yet more complexity to an already complex planning system. It is our view that the present system (including the Major Projects Act) is overly complex and new legislative changes that will make the system more complex are not

desirable. Further, the proposed process itself is resource consumptive above and beyond the current processes.

2. Scope of Bill

Both the *Draft Land Use Planning and Approvals Amendment (Development Assessment Panels) Bill 2024* and the *Development Assessment Panels (DAP) Fact Sheet* are very short on detail, including in relation to the scope of the Bill. It is unclear to CHPT as to what land is subject to this Bill, and this is not made explicit in the Bill.

Our key concern in this respect is that the Bill may apply to developments in Tasmania's protected areas (which house and protect a considerable amount of the State's cultural heritage). This concern is reinforced given a number of similar elements in both the proposed approvals reforms for Tasmanian protected areas and the 2024 Development Assessment Panels Bill.

As indicated in our submission to the *RAA Reform Consultation Paper* in early 2024 (see appended), CHPT is strongly opposed to the use of a Development Assessment Panels process in Tasmania's protected areas and also to the amendment of management plans outside the existing statutory process.

3. Role of Existing Cultural Heritage Legislation

CHPT has previously expressed concerns about the potential loss of protections for cultural heritage as provided currently under the *Aboriginal Heritage Act 1975* and the *Historic Cultural Heritage Act 1995* through new assessment and approvals processes. The lack of detail in the Development Assessment Panels Bill 2024 about how such legislation will be treated also fails to provide a clear guarantee that existing protections for Tasmanian cultural heritage will be maintained.

This is particularly the case in relation to the application of the *Historic Cultural Heritage Act 1995*. Our reading of Section 60AD(2) of the Bill and Part 3 (which amends Section 33 of the *Historic Cultural Heritage Act 1995*) suggests the combined effect of these sections is to remove the application of the *Historic Cultural Heritage Act 1995* from the Development Assessment Panel process. This would remove the only protections for historic cultural heritage that is of, or potentially of, state level significance. This is not acceptable.

We are also not reassured by the conflicting information in the October 2024 *Report on Consultation*. This states (page 66) that "The revised framework excludes applications that are subject to Environmental Protection Authority referral under the *Environmental Management and Pollution Control Act 1994* or subject to the [*Historic*] *Cultural Heritage Act 1995*." Although it is explicit in the Bill that applications that are subject to the *Environmental Management and Pollution Control Act 1994* are excluded from a Development Assessment Panel process, this is not the case for applications that are subject to the *Historic Cultural Heritage Act* 1995. The same document also states (page 22) that "Applications that are subject to the *Historic Cultural Heritage Act 1995* <u>are</u> eligible for determination by a DAP" (CHPT emphasis).

CHPT is further concerned about what protections would still be offered to heritage of local significance (i.e., offered protection under the *Land Use and Planning Approvals Act* 1993 through the planning schemes) under a Development Assessment Panel process given that local planning authority knowledge will be bypassed and given the limited

expertise of the Development Assessment Panels (we note here that cultural heritage is not mentionned as a required area of expertise – see item below). Planning schemes are important as they have particular protections that are not contained in the State heritage legislation, in particular they protect a broader suite of places (specifically they protect landscape, precincts, and archaeology, as well as places) and have a more open and transparent (although not perfect) process of assessment and review.

4. Nature of Development Assessment Panels

The Development Assessment Panels Bill 2024 is also extremely lacking (i.e., there is no information in the Bill) in relation to the make up of Development Assessment Panels. This, in CHPT's view is a critical omission, leading to a further loss of confidence in the Bill.

If Development Assessment Panels are to work effectively, the Panels need to be comprised of experts in relevant fields. This should include expertise in all natural and cultural values that are known or likely to occur in the area that is the subject of an application. Without this expertise, the Development Assessment Panels are not able to properly assess impacts to values, leading potentially to reduced protections via the Development Assessment Panel process compared to a planning authority assessment.

If Development Assessment Panels are to be used, then it is our view that the nature of Development Assessment Panels must be established in the amending legislation to ensure there is relevant expertise for each application under a Development Assessment Panel process. We also suggest, to improve confidence, that the panel membership be publicly reviewed, and revised where necessary, to ensure it contains the appropriate expertise.

5. Planning Scheme Amendment Provisions

CHPT is strongly opposed to any amending of planning schemes (and reserve management plans) other than through the present statutory review and amendment process. This process has been put in place to ensure all changes are carefully thought through, appropriate, and mesh with existing requirements and provisions of planning schemes, and to guard against changes to accommodate vested interests. We note in this context that even adding new heritage places to a planning scheme Heritage Code requires this same process, even though assessed, but unlisted, places may be at risk until listed.

We can see therefore no justification for allowing amendments to planning schemes at the Minister's discretion via an alternate process that is less stringent than at present.

6. When a Development Assessment Panel Process Can be Requested

Although not directly a cultural heritage protection matter, CHPT is highly concerned about the proposed timings for when a Development Assessment Panel process can be requested. CHPT does not support applications part way through an assessment. In our view this provides a recipe for 'approval shopping' – if you don't like one answer, then you can try another; and is wasteful of Tasmania's planning resources.

The criteria for when the Development Assessment Panel process might be requested are all able to be known or assessed prior to an application being made. There is simply no

justification we can see, therefore, for starting with a planning authority assessment and then deciding to change to a Development Assessment Panel process.

7. Third Party Appeal Rights

CHPT is extremely concerned that the Development Assessment Panel process excludes third party appeal rights, and we argue that the proposed Development Assessment Panel public hearings, while useful, do not replicate third party appeal rights. Third party appeal rights are part of the democratic process, and recognise, by allowing broader public participation, that developments and changed land use can fundamentally affect neighbours and the public generally, including through loss of local character and sense of place (often contributed by cultural heritage), and consequently may lead to a loss of community wellbeing. It is also the case in Tasmania that planning appeals have assisted on occasion in providing significantly better protections for cultural heritage than achieved through the original planning assessment. Planning scheme appeals are also a highly prescribed process, while the proposed Development Assessment Panel public hearings are not, leading to less confidence in the proposed Development Assessment Panel public hearings process.

CHPT can see no valid justification for removing third party appeal rights, therefore does not support their omission in the Development Assessment Panels Bill 2024.

Recommendation

In conclusion CHPT does not believe that the *Draft Land Use Planning and Approvals Amendment (Development Assessment Panels) Bill 2024* is needed given the existing suite of state planning legislation, much of which is new and was designed to improve the planning assessment and approvals process; and we believe that a number of provisions remove existing, important processes, rights and/or protections. The Bill also, in our view, fails to meet the general requirements of openness, transparency and equity.

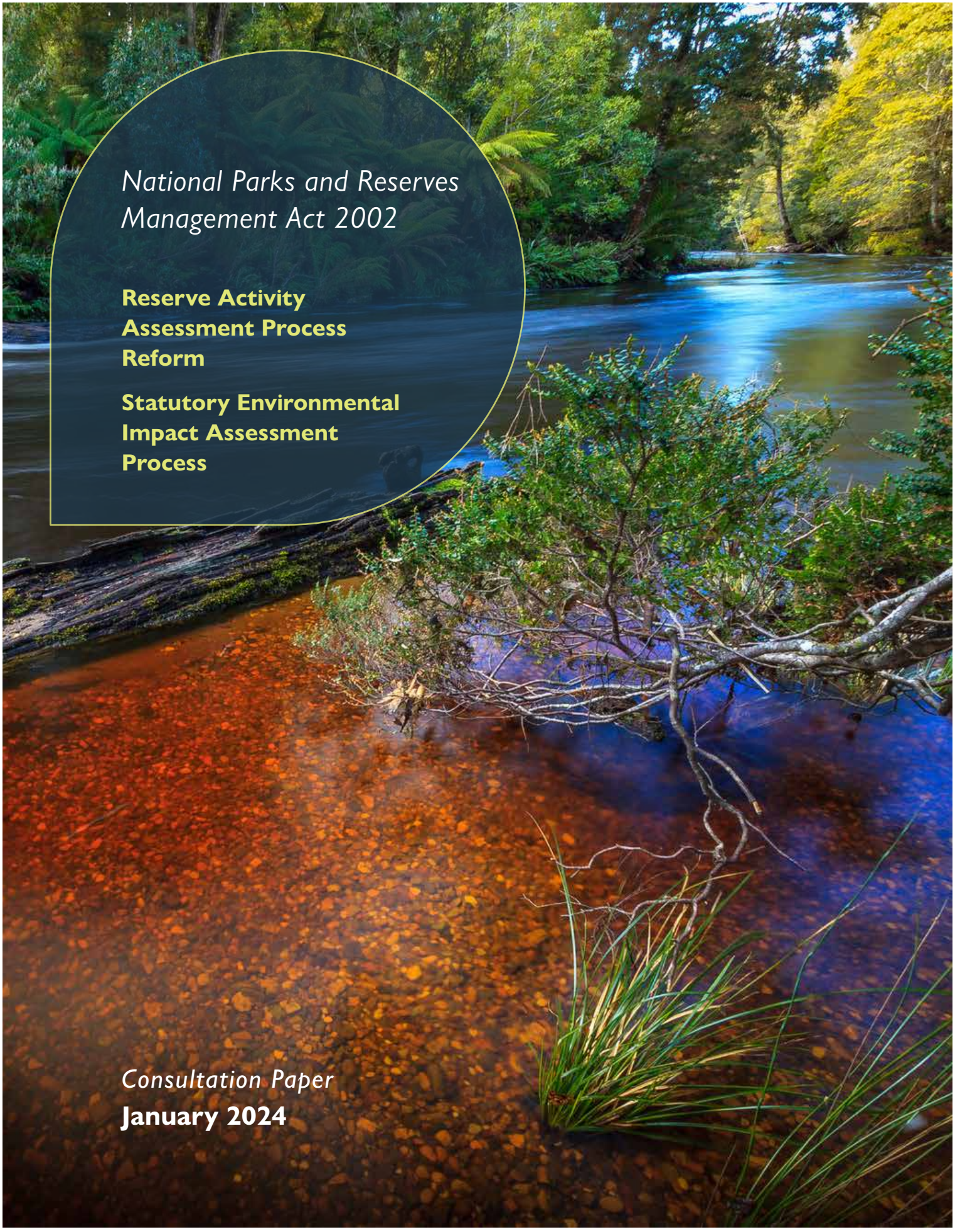
We therefore recommend that the *Draft Land Use Planning and Approvals Amendment (Development Assessment Panels) Bill 2024* be rescinded. Any important development matters could, instead, be addressed by amending the Major Projects Act to include such project types.

Please do not hesitate to contact CHPT if you have any queries in relation to our submission.

Yours sincerely,

Anne McConnell

Coordinator
Cultural Heritage Practitioners Tasmania (CHPT)



National Parks and Reserves Management Act 2002

Reserve Activity Assessment Process Reform

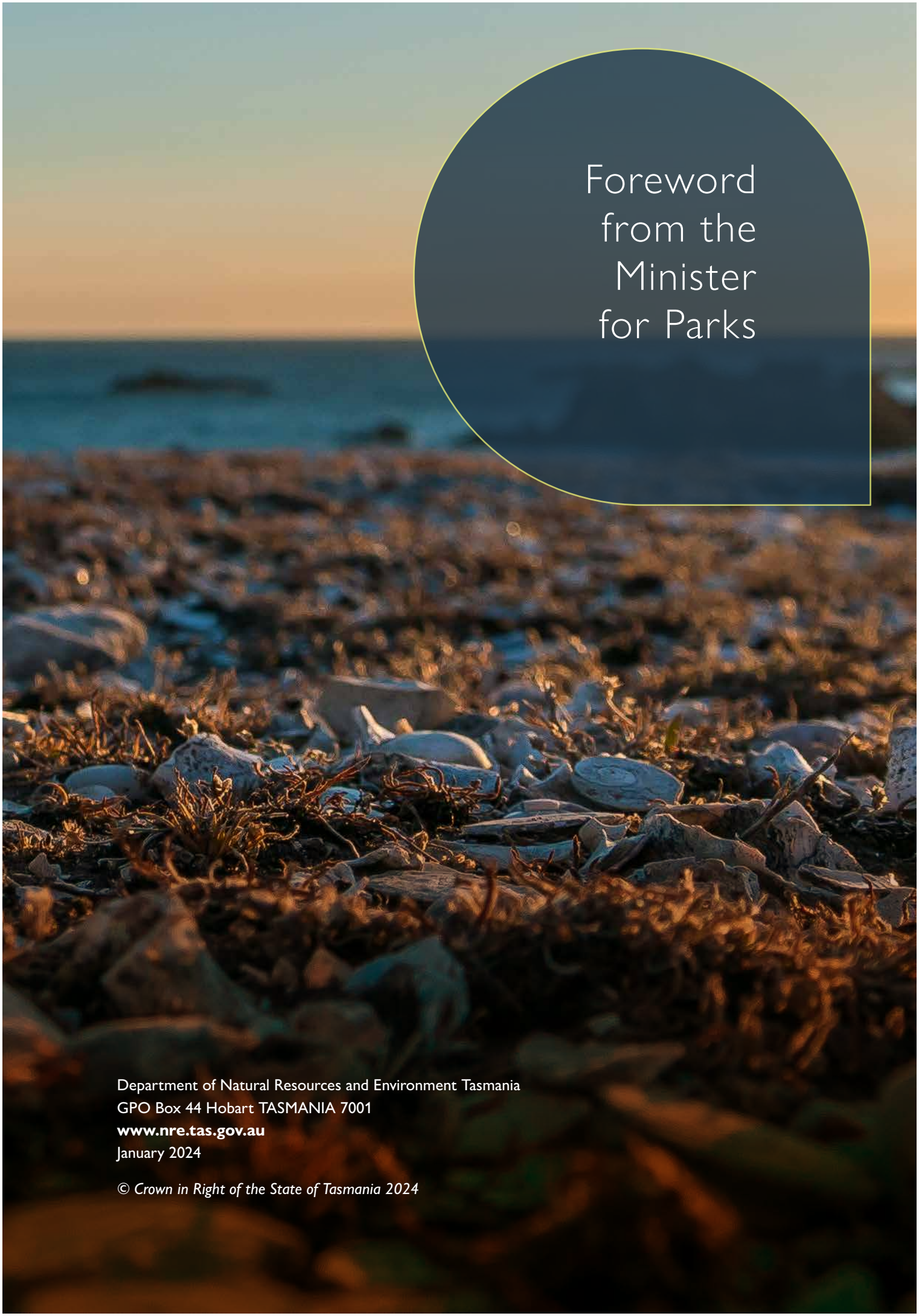
Statutory Environmental Impact Assessment Process

Consultation Paper

January 2024

Department of
Natural Resources and Environment Tasmania

Tasmanian Government



Foreword from the Minister for Parks

Department of Natural Resources and Environment Tasmania
GPO Box 44 Hobart TASMANIA 7001
www.nre.tas.gov.au
January 2024

I am pleased to release the '*National Parks and Reserves Management Act 2002* – Reserve Activity Assessment Process Reform – Statutory Environmental Impact Assessment Process - Consultation Paper' as part of the Reserve Activity Assessment (RAA) Process Reform.

Implemented in 2005, the current RAA process is underpinned by an extensive policy-based framework and is used to assess potential environmental impacts of use or developments on reserves managed by the Tasmania Parks and Wildlife Service (PWS). During 2019, PWS conducted a review of the RAA process and implemented a range of amendments that has delivered more consistent and accountable assessment outcomes.

This next stage of the reform will be to build on these improvements and ensure greater transparency along with independent decision making. To achieve this, the Tasmanian Government intends to deliver a dedicated statutory environmental impact assessment process within the *National Parks and Reserves Management Act 2002 (NPRMA)*.

The Government intends to draft amendments to the NPRMA to provide for the following:

- A statutory environmental impact assessment process for proposed use or development on reserved land that meet the eligibility criteria.
- An independent and transparent assessment process and accountable decision making on use or development proposals.
- Cost recovery for assessments.
- Removal of duplication with assessment processes under the *Land Use Planning and Approvals Act 1993*.
- Public access to copies of leases and licences issued over reserves through a Head of Power to publish active leases and licenses issued on reserves.
- Additional reserve management planning processes.

Through these reforms we will deliver:

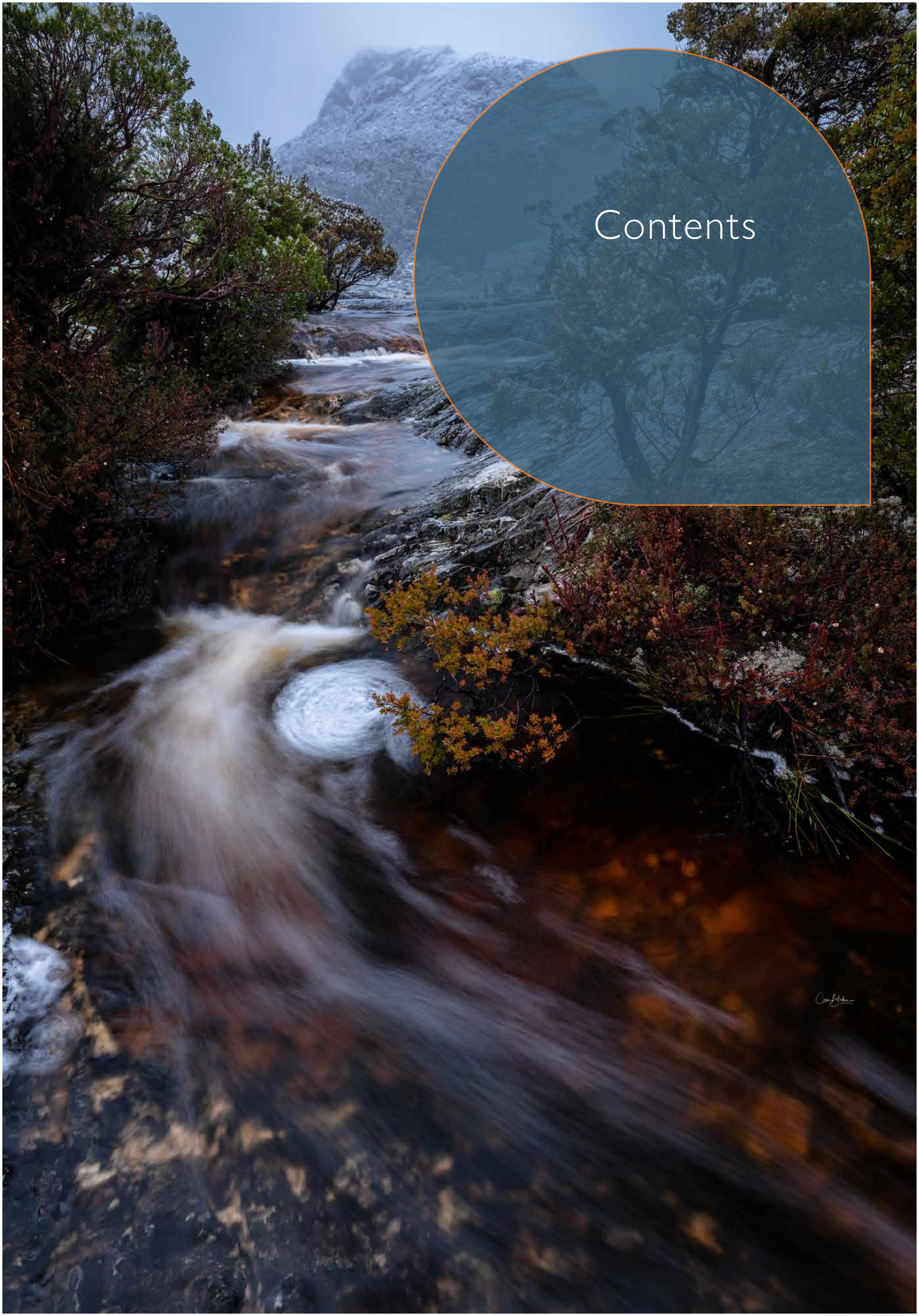
- independent assessment and decision making;
- more efficient assessment processes by reducing regulatory and administrative duplication;
- greater understanding and transparency of the process with key elements being enshrined in legislation;
- easier public access to lease and licence documentation; and
- agile and responsive reserve management planning.

In addition to seeking written feedback on this Paper, there has already been preliminary engagement with key stakeholders. This engagement will continue as part of this next phase with important feedback from this process used to inform the drafting of the legislative amendments. It is anticipated that a draft Bill will be released for further consultation in late 2024.

The Tasmanian Government remains committed to continuous improvement through increased transparency and a more robust process, with these reforms designed to deliver on those important commitments.

Hon Nick Duigan MP
Minister for Parks

The Department of Natural Resources and Environment Tasmania acknowledges and pays respect to Tasmanian Aboriginal people as the traditional and original owners and continuing custodians of this land, and acknowledges Elders past, present and emerging.



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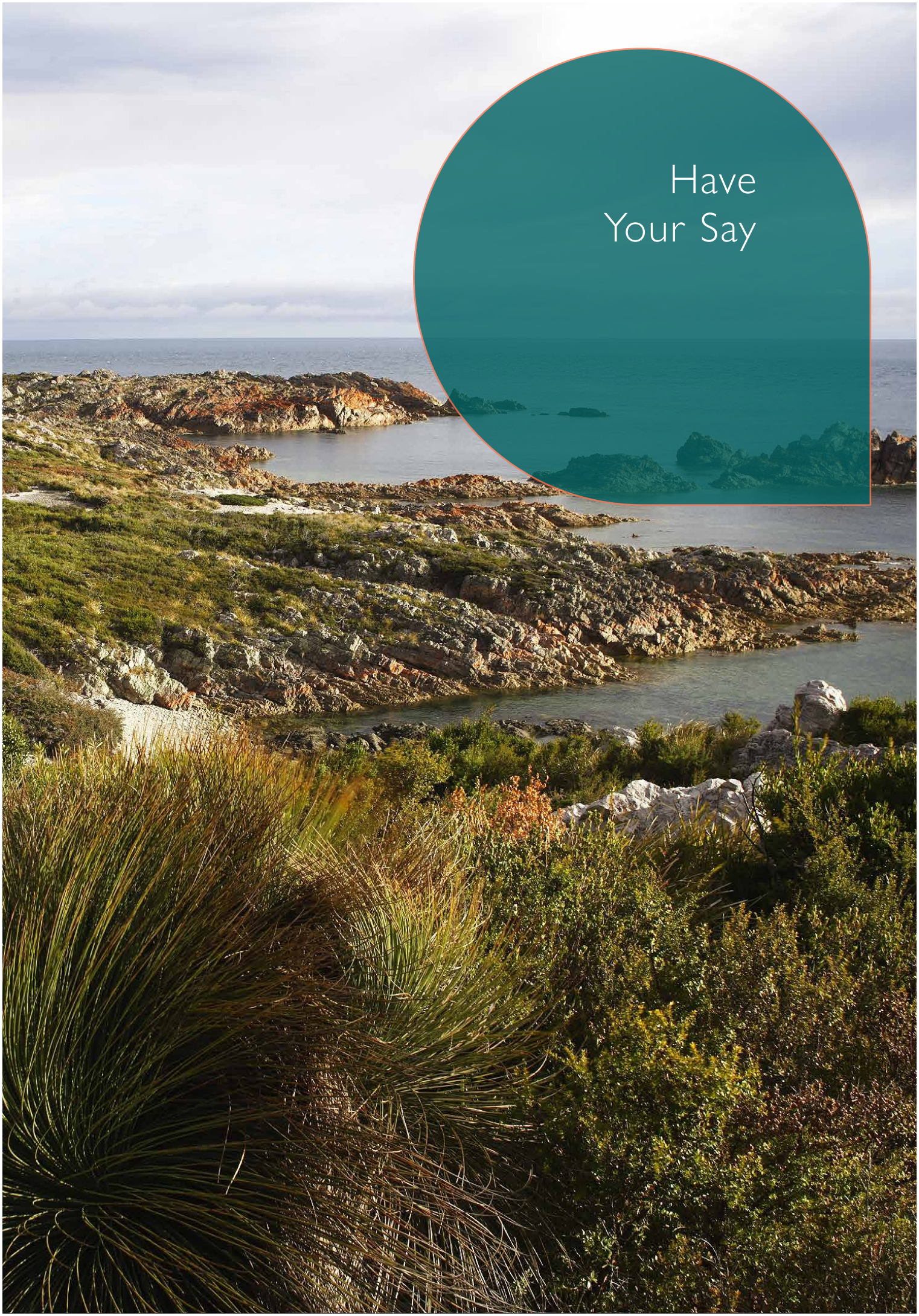

Have
Your Say

This Consultation Paper (Paper) seeks public submissions on a proposal to develop a statutory assessment process to consider proposed use or development on reserve land.

The Tasmanian Government announced in September 2021 that amendments to the *National Parks and Reserves Management Act 2002* (NPRMA) would be undertaken to establish a statutory assessment process as a means of increasing transparency and independent decision making.

The NPRMA is the principal Act under which national parks and reserved land is managed. The NPRMA is one act in a suite of legislation, including the *Land Use Planning and Approvals Act 1993* (LUPAA), that sits within the Resource Management and Planning System.

The Minister for Parks and the Director of National Parks and Wildlife have decision making responsibilities in accordance with the requirements of the NPRMA for reserved land that is managed by the Tasmania Parks and Wildlife Service.

Currently, to determine whether any proposed use or development is consistent with the requirements of the NPRMA and the Resource Management and Planning System's objectives, a Reserve Activity Assessment (RAA) is undertaken. Although applied to support decision making under the NPRMA, the RAA process is a non-statutory, or administrative, assessment process.

The current RAA process is underpinned by an extensive policy-based framework and is a rigorous and effective process of assessment that has functioned well over many years, having assessed hundreds of proposed activities.

During 2019, PWS conducted a review of the RAA process and made a range of changes that has delivered more consistent and accountable assessment outcomes. This next stage of the RAA review will be to build on these improvements and ensure greater transparency along with independent decision making by incorporating the assessment of significant proposals under the RAA process into a statutory process under the NPRMA.

The proposed changes to the RAA process and amendments to the NPRMA are intended to provide greater confidence to both proponents and the broader community that complex, and ecologically and culturally significant proposals will receive fair, objective and transparent consideration.

This Paper is structured around the key phases of an assessment process and presents information on the corresponding amendments to the NPRMA that are proposed to establish a statutory assessment process including:

- The criteria that would determine whether a proposed use or development on reserve land requires assessment under the proposed statutory assessment process.
- Establishment of an Independent Assessment Panel.
- Transparency of process and decision making.
- Appeal rights.
- Recovery of costs.

Further information is available on the RAA Reform webpage:
https://parks.tas.gov.au/about-us/managing-our-parks-and-reserves/reserve-activity-assessment

How to make a submission

Submissions can be made by completing and submitting the form at the following address: https//nre.tas.gov.au/conservation/reserve-activity-assessment-reform/have-your-say-on-reserve-activity-assessment-reform

If attachments are necessary, please provide them in Microsoft Word format (or equivalent) or pdf.

The Government cannot take responsibility for the accessibility of documents that are provided by third parties.

Submissions may also be emailed to: RAAReform@nre.tas.gov.au

Submissions must be received by **11.59 PM on 8 March 2024.**

Other than indicated below, submissions will be treated as public information and will be published on the Department of Natural Resources and Environment Tasmania (NRE Tas)'s website.

No personal information other than an individual's name or the organisation making a submission will be published.

Accessibility of submissions

The Government recognises that not all individuals or groups are equally placed to access and understand information. We are therefore committed to ensuring that government information is accessible and easily understood by people with diverse communication needs.

Please contact NRE Tas at RAAReform@nre.tas.gov.au if you require assistance with making a submission.

Important information

Confidentiality

Your name (or name of organisation) will be published unless you request otherwise.

If you would like your submission treated as confidential, whether in whole or in part, place the confidential comments into the *'Confidential comments'* box on the submission form. Your submission should also explain the reasons why you wish for all or part of the submission to remain confidential.

In the absence of a clear indication that a submission is intended to be treated as confidential (or parts of the submission), NRE Tas will treat the submission as public.

Copyright in submissions remains with the author(s), not with the Tasmanian Government.

NRE Tas will not publish, in whole or in part, submissions containing defamatory or offensive material. If your submission includes information that could enable the identification of other individuals, then either all or parts of the submission will not be published.

Personal Information

Personal information collected from you will be used by NRE Tas for the purpose of acknowledging and publishing your submission. Your submission may be published unless it is marked 'confidential'. Personal information will be managed in accordance with the *Personal Information Protection Act 2004*.

Right to Information Act 2009

Information provided to the Government may be provided to an applicant under the provisions of the *Right to Information Act 2009* (RTI). If you have indicated that you wish for all or part of your submission to be treated as confidential, your statement detailing the reasons may be taken into account in determining whether or not to disclose the information in the event of an RTI application for assessed disclosure. You may also be contacted to provide your views on the disclosure of the information.

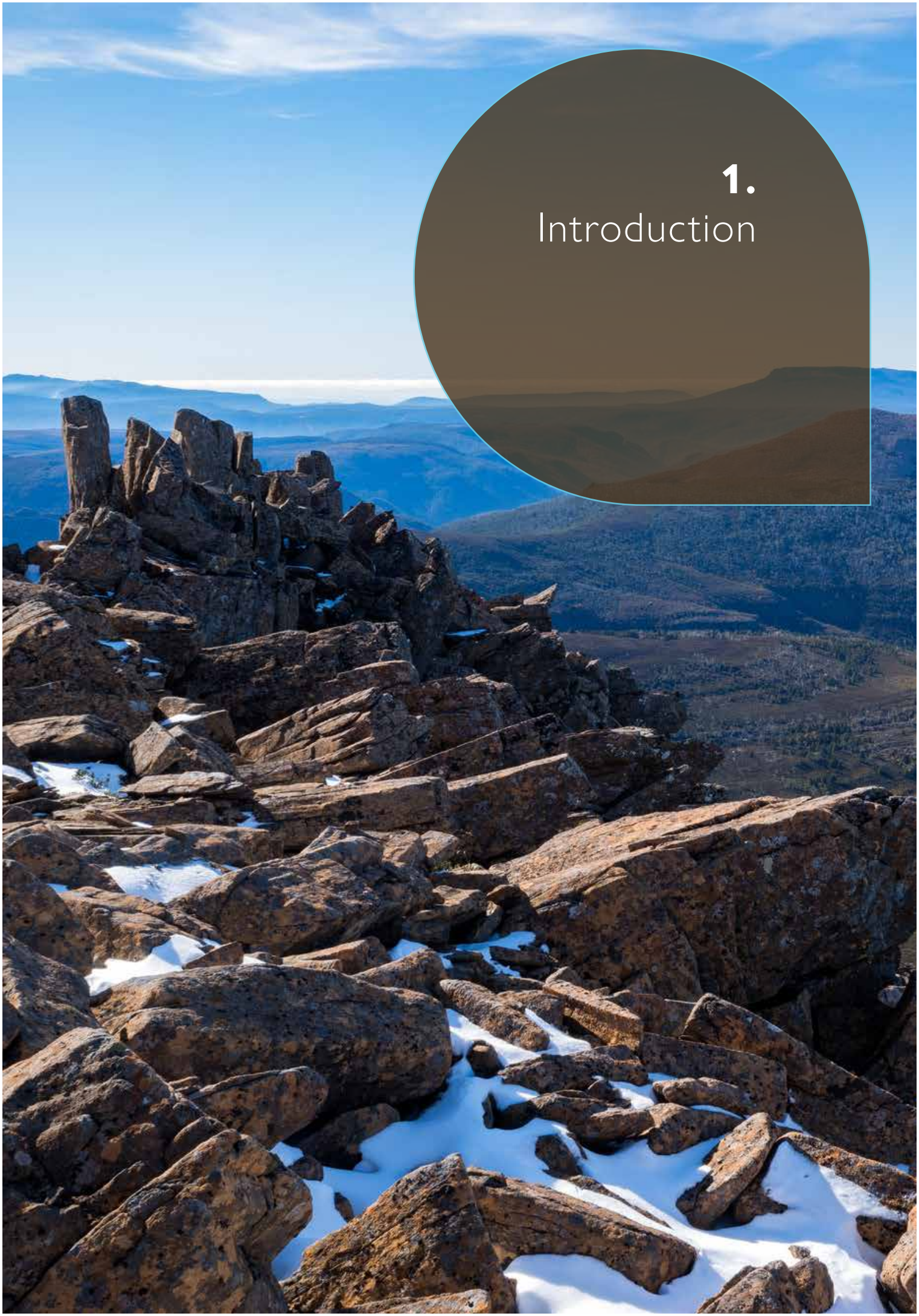
Next Steps

The submissions received as part of this Paper will be used to inform the drafting of the legislative amendments, which will be released in the form of a draft Bill for further consultation. The draft Bill will contain the finer technical and legal detail.

The intention is to release the draft Bill for comment in mid 2024, with a view to its introduction in Parliament in late 2024.

Timeline

Release and comment on this Paper	**January - 8 March 2024**
Summary Report on comments and issues identified through comment on this Paper and by other stakeholders.	**May 2024**
Public consultation on the draft Bill	**Mid 2024**
Delivery of the **draft Bill** to the Government	**Late 2024**



1.
Introduction

The Reserve Activity Assessment (RAA) process used by the Tasmania Parks and Wildlife Service (PWS) is equivalent to an environmental impact assessment process. PWS has adopted the term 'RAA process' to clearly identify assessment processes for proposals on reserved land and waters managed by PWS under the *National Parks and Reserves Management Act 2002* (NPRMA). Reserved land includes national parks, conservation areas, nature reserves, nature recreation areas, state reserves, regional reserves and marine reserves.

The RAA process, while non-statutory, is intended to ensure that approval and conditioning of proposals is consistent with reserve management plans, reserve management objectives and the Resource Management and Planning System objectives, which relate to sustainable development.

The Tasmanian Government announced in September 2021 that amendments to the NPRMA would be undertaken to establish a statutory assessment process as a means of increasing transparency and independent decision making.

This Paper, and the consultation process that accompanies it, is designed to facilitate a conversation with interested parties, including Tasmanian Aboriginal people, non-government organisations, local government, reserve visitors, tourism operators and proponents, and the broader Tasmanian community. It summarises the key elements of the Government's proposed approach to establishing a legislated environmental impact assessment process and seeks feedback to assist in the development of a draft Bill to amend the NPRMA.

1.1 Why create a new statutory impact assessment process?

1.1 Why create a new statutory impact assessment process?

A statutory use and development assessment process tailored to the management of the reserve estate that provides for certainty, statutory timeframes, public representation, independent decision making, and review opportunities is essential.

Reserves managed by PWS are subject to the provisions of LUPAA which is the key legislation in Tasmania relating to use and development of land. Proposals under LUPAA are assessed against the relevant local government planning scheme. Planning schemes regulate the use, development, protection and conservation of land within a specific geographical area by dividing land into specific zones and setting out objectives and development standards for land uses within each zone. For each zone, planning schemes identify land uses and developments that are exempt, permitted, discretionary or prohibited.

In December 2015, changes to LUPAA provided for the establishment of a single planning scheme for Tasmania, known as the Tasmanian Planning Scheme. Changes to the Tasmanian Planning Scheme allowed the Director of National Parks and Wildlife (Director NPW) to authorise use and development (which is currently assessed through the RAA process) on reserves managed by PWS which could then be deemed a 'permitted' activity under LUPAA. Councils, as the relevant planning authority under LUPAA, must approve permitted activities, provided they meet relevant development standards. A development application for a permitted use is not open for public comment, however conditions may be imposed under the planning permit.

While significant proposals subject to the RAA process are released for public feedback as a matter of policy, they are not subject to the same statutory requirements under LUPAA for public advertising and representations as 'discretionary' activities.

The intent of the proposed amendments is to create a statutory process under the NPRMA for significant proposals to ensure that those proposals are subject to a statutory assessment

process that provides for similar processes to that required for discretionary use and development under the LUPAA, including a public representation process.

Approval of significant proposals considered through the RAA process, while informed by expert advice, is ultimately a matter for the Director and, in considering the granting of licence and leases subsequent to that assessment, the Minister. In some instances, significant proposals are initiated by PWS.

The proposed amendments will establish an Independent Assessment Panel (the Panel) for significant proposals. The Panel will determine the matters that will be required to be considered in the assessment and will function as an independent decision maker. Importantly, this will ensure that significant proposals initiated by the PWS will be subject to independent assessment.

The Panel will be an independent body, prescribed in legislation, convened to assess any referred proposal. It will ensure independent review and oversight. It is proposed that the Panel will be established by the Tasmanian Planning Commission. The Panel will consist of members with qualifications and expertise relevant to the assessment process.

In addition to the establishment of zones, planning schemes also apply codes. A code provides controls for dealing with land use issues. An example of a code that applies across reserved land is the Bushfire Prone Areas Code, which is intended to ensure that use and development is appropriately designed, located, serviced, and constructed, to reduce the risk to human life and property, and the cost to the community, caused by bushfires.

Codes have been drafted to regulate the general use of land and may not always be a good fit for a proposal on reserved land, which has specific management objectives. Compliance with the Bush Fire Areas Code for example, may require clearing of vegetation that may not be appropriate within reserved land. Another example is the Parking and Sustainable Transport Code, which may apply to proposals remote from vehicle access.

Where a proposal on reserved land does not satisfy the requirements of a code, that part of the proposal is then subject to assessment under the LUPAA as a discretionary activity. Under the proposed statutory assessment process, this outcome would lead to duplication, whereby a proposal would be considered in its entirety through the statutory RAA process under the NPRMA while discrete elements would be considered as a discretionary use under the LUPAA.

The proposed amendments will remove the application of the planning scheme codes to proposals assessed through this process. The Panel may consider which requirements of any code should be considered in the assessment in consultation with the relevant councils. The intention is that proposals approved under the statutory process would not require a planning permit under LUPAA.

1.2 Current RAA process

PWS manages 806 reserves covering approximately 2.86 million hectares, or around 40% of Tasmania's land area. These reserves have been declared under the Nature Conservation Act 2002 (NCA) which sets out the values and purposes of each reserve class and how they are managed under the NPRMA according to the management objectives for each class of reserve.

The reserves have significant values that are protected under a range of legislation, including the NPRMA. These values include sites/areas of cultural significance, biological diversity, geological diversity, water quality, and areas of high wilderness quality.

In tandem with maintaining the reserve values, PWS is also charged under the NPRMA with encouraging certain forms of use within reserves. These include research, education, tourism and recreational use and enjoyment. The use of reserves, particularly for recreation, is highly valued by the community. In some classes of reserves other activities, such as grazing, apiculture, forestry, mining, marine farming and hunting, may also occur under certain conditions. The management objectives for each reserve class are not ranked and must be balanced when a determination is made regarding an activity. In reserves where a management plan applies, the management plan may set out how those objectives are to be applied and met.

PWS is responsible for ensuring use and development in reserved areas is in accordance with approved Management Plans or the reserve objectives listed in the NPRMA and the Resource Management and Planning System objectives.

PWS has developed the RAA process to guide decisions about appropriate use or development and the management and mitigation of associated environmental impacts in Tasmania's reserves within the context of that responsibility.

Activities that require assessment via the RAA process are all works, developments, or activities that, over a period of time, have the potential for environmental, social or economic impacts. Cumulative impacts are also a consideration.

The RAA process applies equally to both PWS and external proponent's activities in parks and reserves. Any person or entity, including PWS, other government departments and organisations, private entities, or infrastructure providers, proposing activities in parks and reserves may be subject to a RAA.

There are three environmental impact assessment levels in the current RAA process.

PWS determines whether assessment via the RAA process is required and if so what level of assessment is appropriate. Proposals are assessed in accordance with PWS's policies and guidelines. PWS determines the level of assessment required based on the proposal's scale, location, degree of public and stakeholder interest and consistency with approved Management Plans or the reserve objectives listed in the NPRMA and risk to any natural or cultural reserve values. PWS may seek advice from other agencies, for example the Department of Premier and Cabinet's Aboriginal Heritage Tasmania, to assist in making a determination.

The three assessment levels currently used are:

Level 1 RAA process– proposals subject to this assessment process would be minor in scale, the site's environmental values would be well known, there would be no evidence of Aboriginal heritage at the site, and any environmental impacts would likely be very low with standard management practices applicable. Community interest would not be likely to be significant. Example proposals that may be subject to a Level 1 RAA process might include upgrades to an existing road, minor repairs to existing infrastructure; small scale new infrastructure such as a toilet pod; or short-term events or volunteering activities in a discrete area.

Level 2 RAA process – proposals subject to this assessment process would be subject to specialist studies, Aboriginal heritage might be present but would not be expected to require further assessment or management interventions. Impacts to environmental values would also be manageable through implementation of an environmental management plan, and there may be some level of local community interest. Example proposals might include major repairs or renewal of existing assets; new boardwalks, bridges, lookouts and communications infrastructure; feral animal control programs; or activities held over large areas over multiple days.

Level 3 RAA process – proposals subject to this assessment process would be those requiring a detailed publicly available Environmental Impact Statement (EIS), informed by multiple specialist studies. These proposals would typically attract a high level of community interest. Example proposals subject to this environmental assessment process might include construction and operation of new infrastructure or uses that have a high potential for significant environmental or social impacts.

The process stages for a Level 3 RAA are as follows:

Stage 1

The proponent prepares the draft EIS to a standard acceptable for public consultation. The draft EIS is developed in accord with project specific guidelines issued by the PWS.

Stage 2

Public consultation by the proponent including publishing the draft EIS, advertising in three regional papers, posting of the draft EIS on the PWS 'Have you say' web page for a minimum of four weeks. The PWS may also seek specialist advice.

Stage 3

PWS collate public and agency submissions and advise the proponent. The proponent prepares the final EIS including a Submissions Report addressing comments received during the public consultation process.

Stage 4

PWS assessment of the final EIS is completed. PWS prepares an Environmental Assessment Report (EAR) including submissions report, statement of reasons and public submissions.

Stage 5

Final EIS and EAR published on the PWS website

Where an external assessment is required under another Act, such as the *Environmental Management and Pollution Control Act 1994* (EMPCA) if that external process is assessing the same impacts and values, PWS identifies where there is potential for duplication and adjusts the requirements for proponents to provide this duplicate information.

Examples of proposals that have undergone the current Level 3 process include PWS proposals such as the Maria Island critical infrastructure upgrades, the shared use track in the Freycinet National Park and the Cockle Creek campgrounds upgrade. PWS projects undertaken in the Tasmanian Wilderness World Heritage Area by PWS that have also been through the Level 3 process include the Dove Lake Shelter, the Kia Ora and Windemere hut upgrades and the Walls of Jerusalem Recreation Zone Plan implementation project.

Proposals by external proponents, including other government departments, local government and private enterprises, may also be subject to the Level 3 process. Recent proposals by the Department of State Growth that have undergone a Level 3 assessment process include the Eaglehawk Neck safety upgrade and the New Bridgewater Bridge; local government proposals including the Tippogoree Hills Mountain Bike Trails; and private enterprise proposals including the Discovery Holiday Park Cradle Mountain Expansion and the Ida Bay State Reserve Destination Public Artwork and Visitor Centre.

It is important to note that the PWS has already undertaken an extensive review of the RAA system in recent years, progressively implementing improvements to the system for greater transparency and consistency. These improvements focused on administrative aspects; increasing opportunity for public consultation and comment; and providing a formal decision report in respect of decisions made. The RAA is a robust process successfully applied to hundreds of proposals over many years.

Further information on the existing RAA process can be found on the PWS website which provides an RAA Process overview:
https://parks.tas.gov.au/Documents/Guideline%20RAA%20process%20overview.pdf

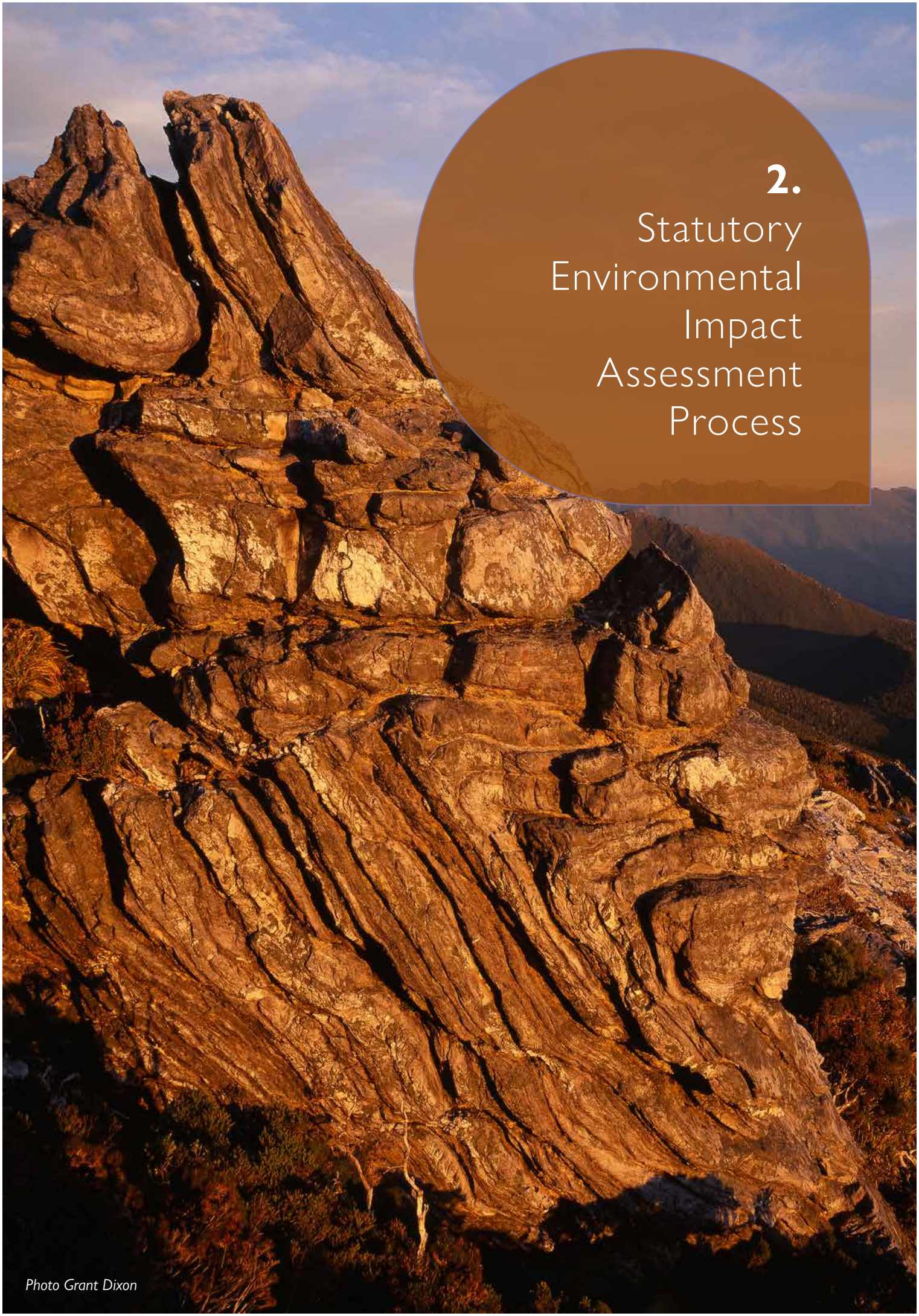
1.3 Which Proposals would be subject to a statutory RAA process?

A statutory process brings significant checks and balances and independence to the decision making around a proposal. It also adds additional time and effort for government, the applicant and the community.

Making all RAAs across all levels subject to a statutory process is not in the public interest and risks significantly delaying essential and time critical works that are typically low impact and a regular part of the management reserved land (i.e., Level 1 and Level 2 proposals).

Some of the proposals currently assessed as Level 3 in the RAA process would be expected to meet the criteria for assessment under the statutory assessment process.

It is therefore desirable to develop threshold criteria that will give the community confidence that proposals are correctly determined to be eligible to follow a statutory assessment process (refer to Section 3.1.1).



2. Statutory Environmental Impact Assessment Process

Photo Grant Dixon

The current RAA process is non-statutory and is a policy position of the government. It is therefore not legislated and able to be enforced. A statutory process provides certainty to government; the community and proponents about how certain proposals will be assessed and the timelines that apply. It will deliver on the Government's commitment for all significant RAA decisions to be more informed, justified, transparent and accountable.

2.1 Assessment principles

The proposed statutory assessment process will be in accordance with best practice. The statutory process will specifically improve the current RAA process by:

- clarifying the eligibility criteria around proposals that are eligible for the statutory process;
- formalising public exhibition so that stakeholders have the opportunity to be informed, participate, and decisions are explained;
- providing assessment criteria and information requirements that are tailored to the proposal and commensurate with potential risks;
- establishing an Independent Assessment Panel (the Panel) and using expert advice to inform decision making;
- removing duplications with other assessment processes such as LUPAA;
- providing for administrative appeals of assessment processes and authority decisions;
- providing a consistent assessment process, timelines and outcomes;
- providing for assessment outcomes to be incorporated into management of the reserve to ensure reserve objectives/management plan objectives are achieved; and
- providing for the payment of fees (cost recovery) associated with impact assessment for proposals subject to the statutory process.

2.2 Fit with other statutory assessment processes

The proposed statutory assessment process will need to consider the roles and responsibilities of those involved in the process including the proponent, the Minister for Parks, the Director NPW, other management authorities, the proposed Independent Assessment Panel (the Panel), relevant Ministers, Tasmanian Aboriginal people, specialists, and other stakeholders, including other assessment agencies and statutory authorities.

The major challenge with designing a new statutory assessment process is that there are other statutory assessment processes relevant on reserved land. The intent is that the new statutory NPRMA assessment process should not duplicate or replace a suitable assessment process that is undertaken by persons with relevant expertise.

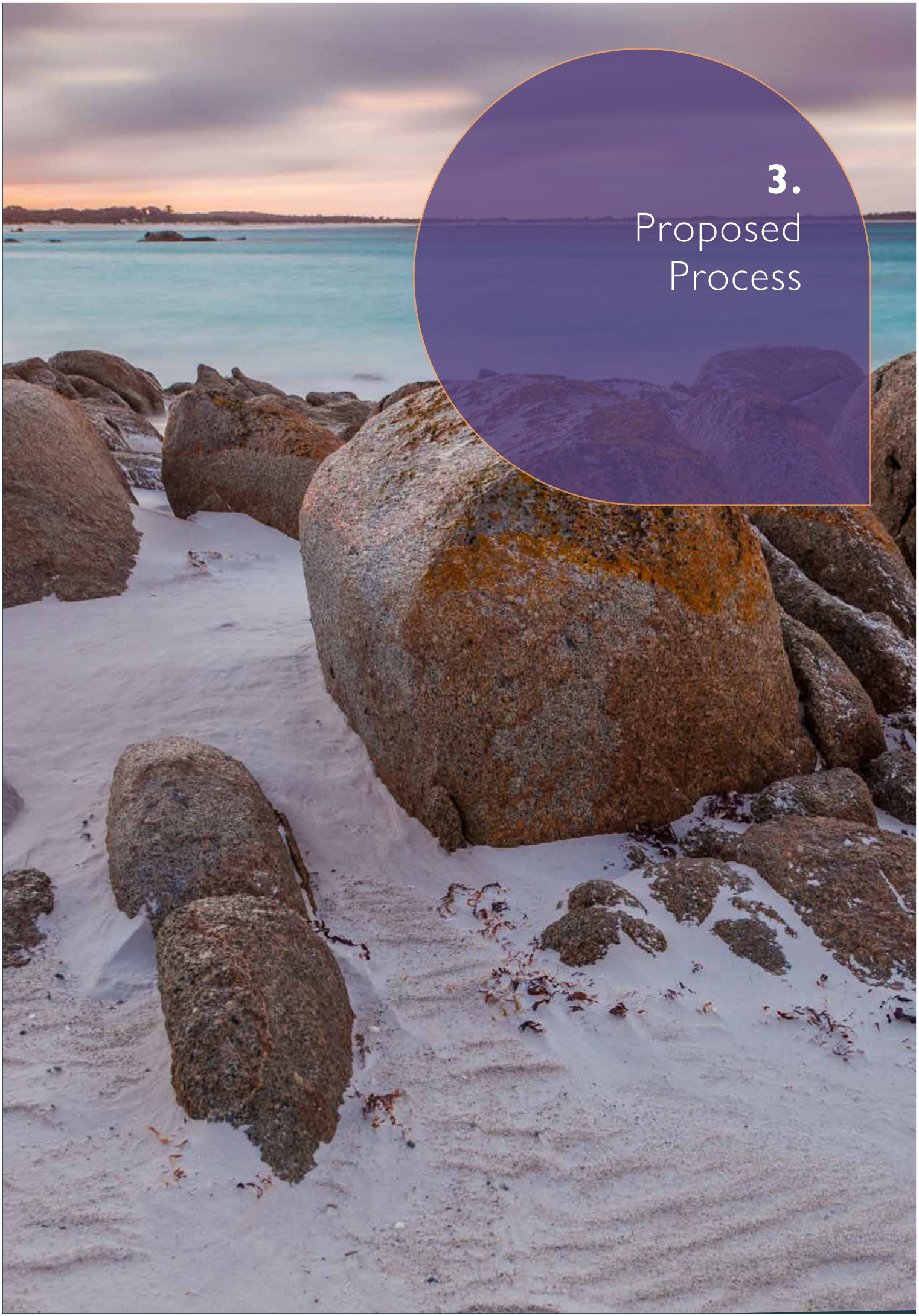
The following needs to be taken into consideration in designing the assessment process if this outcome is to be achieved:

- Involvement of local planning authorities during the assessment phase, particularly where reserve use or development directly impacts on local communities.
- Referral and early advice of agencies and bodies with expertise in management of Aboriginal heritage and carriage of the *Aboriginal Heritage Act 1975*.
- Referral and early advice of agencies and bodies with expertise in management of historic heritage (*Historic Cultural Heritage Act 1995*) or threatened species (*Threatened Species Protection Act 1995*).
- Activities that will also require assessment under EMPCA by the Environment Protection Authority.
- A proposal that is declared a Major Project under section 60 of LUPAA or a Major Infrastructure Project under the *Major Infrastructure Development Approvals Act 1999*. The statutory RAA assessment would not apply for a proposal declared as a major project under LUPAA.
- A proposal that will be subject to a determination by an independent Development Assessment Panel appointed by the Tasmanian Planning Commission should proposed amendments be made to LUPAA via the Land Use Planning and Approvals (Development Assessment Panel) Amendment Bill 2024.
- A proposal that needs assessment under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBCA) (Cwlth).

Aboriginal heritage considerations

There is an explicit need to give appropriate and early consideration to the management and protection of Tasmania's significant Aboriginal cultural heritage, including incorporating acknowledgement that Tasmania's Aboriginal people are the custodians of their cultural heritage.

Early engagement with Tasmanian Aboriginal people and any statutory Aboriginal representative body will be a key consideration in the determination of acceptance of a proposal for assessment.



3. Proposed Process

The key components of the statutory impact assessment process proposed to be captured in the proposed amendments are outlined below and have been divided into distinct phases:

1. **Eligibility phase**, whereby a proposal is assessed as to whether it is acceptable under existing legislation, plans or policy. In addition, only those activities that are significant would be considered for assessment under the statutory assessment process. Eligibility criteria and guidelines would set out the terms and conditions for proposals to meet before they can be considered.
2. **Determining assessment criteria**, where the Panel determines what factors would be considered in assessing the proposal. It is proposed that the draft assessment criteria would be provided for public comment with the final criteria determined after consideration of public comments.
3. **Preliminary Assessment**, where the Panel would consider the impacts and actions to minimise adverse impacts documented in the draft EIS prepared by the proponent and make a preliminary assessment against the assessment criteria and draft an assessment report.
4. **Final consultation and assessment**, which includes public exhibition of the EIS and draft EAR prepared by the Panel. The Panel would then consider any public submissions and would have the discretion to hold public hearings after which the Panel would prepare the final report and make a recommendation.

3.1 Eligibility Phase

It is intended that proposals for use or development will be received by the Director NPW. The proposal is then subject to a preliminary assessment to determine if it is permissible under current legislation or is in accordance with an approved Management Plan.

As part of the initial assessment, the proposal will be referred to other relevant authorities to determine if it requires assessment under other statutory processes, e.g., EMPCA.

As part of the eligibility phase the activity must be of sufficient scale, complexity and present a level of risk that would require a statutory assessment. This involves consideration of the type, size and characteristics of the proposed activity; the sensitivity of the receiving environments and types of likely impact. Cumulative impacts can also be taken into account, as well as the level of public interest.

The decision as to whether a proposal is eligible to be assessed to go through the statutory process is proposed to be based on criteria set out in the NPRMA and any statutory guidelines developed.

Potential eligibility criteria could be any proposal that:

- will require significant leasing of, or a significant occupation of, a reserve or reserves in a particular class (e.g., National Park, State Reserve, Nature Reserve, Game Reserve, Historic Site); or
- is likely to generate a very high level of public interest; or
- possesses one or more of the following criteria:
  - is a large scale development or comprises a series of stages or separate developments that cumulatively would be of a large scale,
  - has the potential for environmental and/or cultural impacts across a wide area,
  - proposes activities in locations that contain cultural[1] or natural values that may be vulnerable to a proposed use or development,
  - has the potential to have a significant impact on a threatened species[2] and/or threatened native vegetation communities[3],
  - are developments that have an intense impact in a small area (e.g., towers).

The Minister for Parks will make a decision about whether a proposal meets the eligibility criteria. Minister notifies with reasons whether the proposal is eligible for the statutory process, and this is publicly exhibited.

3.2 Determining Assessment Criteria

Once the Minister has determined that a proposal is eligible to be assessed under the statutory process it will be referred to the Panel.

This phase details what the impact assessment should include and describes the expected outputs. It ensures the impact assessment focuses on the key issues and establishes assessment criteria to review the quality of the impact assessment and guide the final report.

In this stage it is expected that the Panel would prepare appropriate assessment criteria which the Panel members will use to determine whether the proposal is acceptable or not. The NPRMA requires any use and development to be consistent with any approved Management Plan, or in the absence of a Management Plan, management objectives listed for a particular type of reserve and finally, the Resource Management and Planning System objectives. These requirements would form the high-level basis for appropriate assessment criteria. However, there would usually be other policies and standards that apply depending on the type of development or use, including relevant use and development provisions of the applicable planning scheme. In practice it would be expected that standard assessment criteria would always be applied, with specific criteria as required for individual proposals.

It is proposed that the Panel would undertake a consultation process with relevant regulators and authorities and receive advice to determine the draft assessment criteria. The draft criteria would be released for public comment prior to being finalised.

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1 Cultural values have the same meaning as defined in the Burra Charter and encompass places, areas, objects, spaces and views of aesthetic, historic, scientific, social or spiritual value for past, present or future generations. Consequently, it includes Aboriginal, historic and natural places.

2 As defined by the *Threatened Species Protection Act 1995.*

3 As listed in Schedule 3A of the *Nature Conservation Act 2002.*

3.3 Preliminary Assessment

Once the Panel has issued the assessment criteria, the proponent would be required to prepare a draft EIS and associated documentation, within a timeframe determined by the Panel, to enable the Panel to assess the proposal against the assessment criteria

3.4 Final Consultation and Assessment

The draft EIS would be assessed by the Panel and other relevant regulators and authorities. A draft EAR would be prepared by the Panel.

The Panel would advertise the draft EIS and draft EAR and invite public submissions.

Any submissions would be received and reviewed by the Panel. It is proposed that the Panel could determine that hearings may be held to provide the opportunity for persons to present information to the Panel.

The Panel would invite the proponent to prepare and submit the final EIS taking into account any public submissions. All submissions would be made public, and the proponent's response would be made public following approval by the Panel. The Panel would assess the final EIS and make a decision as to whether the proposal should be rejected, approved, approved with conditions or not approved. The Panel would then prepare a final EAR which would outline the Panel's decision and reasoning for that decision. The decision and final EAR would be published.

The assessment outcome decision may also include recommendations to amend the existing Management Plan (MP), or resource the implementation of parts of an existing MP or advance the development of a new MP or management statement [see Discussion Paper 1].

To maintain the independence of the Panel, the statutory process would not provide any role for the Minister in assessing the proposal. The decision of the Panel is final but still could be subject to challenge under judicial review.

It is proposed that the Panel would inform the Minister for Parks, the Director NPW or, if applicable, any other reserve managing authority as to the decision, all of which would be bound by that decision.

If the proposal was approved or approved subject to conditions, the Minister for Parks, Director NPW or other managing authority would issue either a lease, licence or authority providing approval to the proponent inclusive of any conditions determined by the Panel. A range of other permits and approvals may still be required including building approval.

3.5 Transparency and Opportunities for Public Comment and Submissions

The Government recognises the importance of involving Aboriginal people and local communities in the assessment of proposals for use and development of reserve land. One of the objectives of the new statutory process is to enhance the role of communities' involvement in the impact assessment process. It is proposed that community participation will start early and continue through the process to integrate public input at each step of the process.

The proposed amendments to the legislation should provide for Tasmanian Aboriginal people, the broader

public, relevant State agencies, environmental non-government organisations and other key stakeholders involvement as early as possible during decision-making and impact assessment processes.

In addition, it is proposed that the Panel must consult with relevant local councils during the preparation of the assessment criteria and also during the final assessment of the proposal.

This proposed statutory process enables local government councillors to advocate issues on behalf of their community across a range of matters, including engineering issues, planning issues, social/community issues and political issues.

The following measures are proposed to increase transparency and to provide multiple opportunities for public comment and submissions, including:

- Minister notifies with reasons whether proposal is eligible for the statutory process.
- Draft Assessment Criteria made are released for public comment.
- Final Assessment Criteria are released.
- Draft EIS and draft EAR are publicly exhibited inviting comments.
- Public hearings may be conducted by the Panel.
- An additional management plan process would include public consultation and direct stakeholder engagement.
- Final Decision of the Panel including EAR published.

3.6 Appeal rights

There is currently limited ability to seek a review of, or to appeal, decisions made under the RAA process. The proposed amendments to the legislation would provide for administrative appeals of the Panel's environmental impact assessment processes and authority decisions. Appeal rights would relate to matters such as whether a proposal's assessment process has been undertaken in keeping with the process set out in the NPRMA.

It should be noted that when a proposal requires other approvals, such as under the EPBCA (Cwlth) then appeal processes on those decisions are provided under that legislation.

The 'decision making model' of the Panel proposed under the statutory process would be similar to that of the Tasmanian Civil and Administrative Tribunal (TASCAT). It would be an expert independent body like TASCAT that could hold hearings into the proposal and its impact assessment before determining the final decision. Due to the independence of the Panel, merit based appeals against determinations of the Panel are not appropriate by TASCAT.

The proposed statutory process would not provide any role for the Minister for Parks in the assessment of the proposal.

Importantly, the process for administrative review under the *Judicial Review Act 2000* will remain.

3.7 Cost recovery and financial risks

Cost recovery

PWS bears all costs for its own assessments under the RAA process. These are often delivered internally using PWS staff and resources from across NRE Tas. From time to time, external consultants are used where specialist internal expertise does not exist. Given that the majority of PWS RAAs are to deliver on the desired objectives for reserve land, it is appropriate that the costs of these assessments are absorbed by NRE Tas and government.

PWS does not prepare assessments for external proponents but does provide guidance and advice about what the assessment requirements will be. PWS undertakes the assessment of external proponent proposals once they have submitted the final RAA documents. Apart from application fees associated with a lease or licence, external proponents do not currently pay for the assessment of proposals under the RAA process. Depending on the significance of the proposal, this assessment may consume considerable departmental resources.

The NPRMA does not currently contain provisions for charging for EIAs.

It is proposed that a 'recovery of costs' model be applied to the statutory assessment process. This is to ensure that the costs of administration and environmental assessments are appropriately borne by the proponent, rather than by government and the Tasmanian public more broadly.

Cost recovery may also be applied to the NPRMA authorities that direct payments for reserve management using a pre-determined formula.

A potential model is provided within the *Land Use Planning and Approvals Regulations 2014* for major projects under LUPAA. This provides for a cost recovery model with fees associated with the following steps:

- lodging the proposal,
- preparation and determination of assessment criteria,
- consideration of the draft EIS,
- final assessment of EIS including conducting hearings, and
- decision to grant or refuse a permit and any future amendments to the permit.

Another model is provided in the *Environmental Management and Pollution Control (General) Regulations 2017* which prescribes the **fees charged** for environmental assessments conducted by the EPA Board. This structure allows for a fixed component and variable fee component (including an hourly rate for staff time) based on the level of complexity of the proposal.

Bonds

The financial risk associated with a proposal should also be considered as a proposal would be undertaken on, and may potentially occupy, public land. This risk includes the financial capacity of the proponent to undertake and complete the project and address any environmental harm caused from the activity, or to remove the assets on default or termination of the lease.

Covering the risk could involve a requirement that the proponent lodge a bond or bank guarantee for the life of the lease or licence. The amount could be based on a percentage of the likely costs, expenses, loss and damages that might be incurred if the government needed to step in to address any environmental harm associated with or arising from the activities proposed.

3.8 Leases and licences

A further outcome of this reform is to ensure that a Head of Power is created under the NPRMA to enable all future leases and licence agreements for reserves can be made public.

The Lease and Licence Portal has also been developed to provide a platform to publicly release all active agreements. The Portal can be used to find and download active agreements on reserve land.

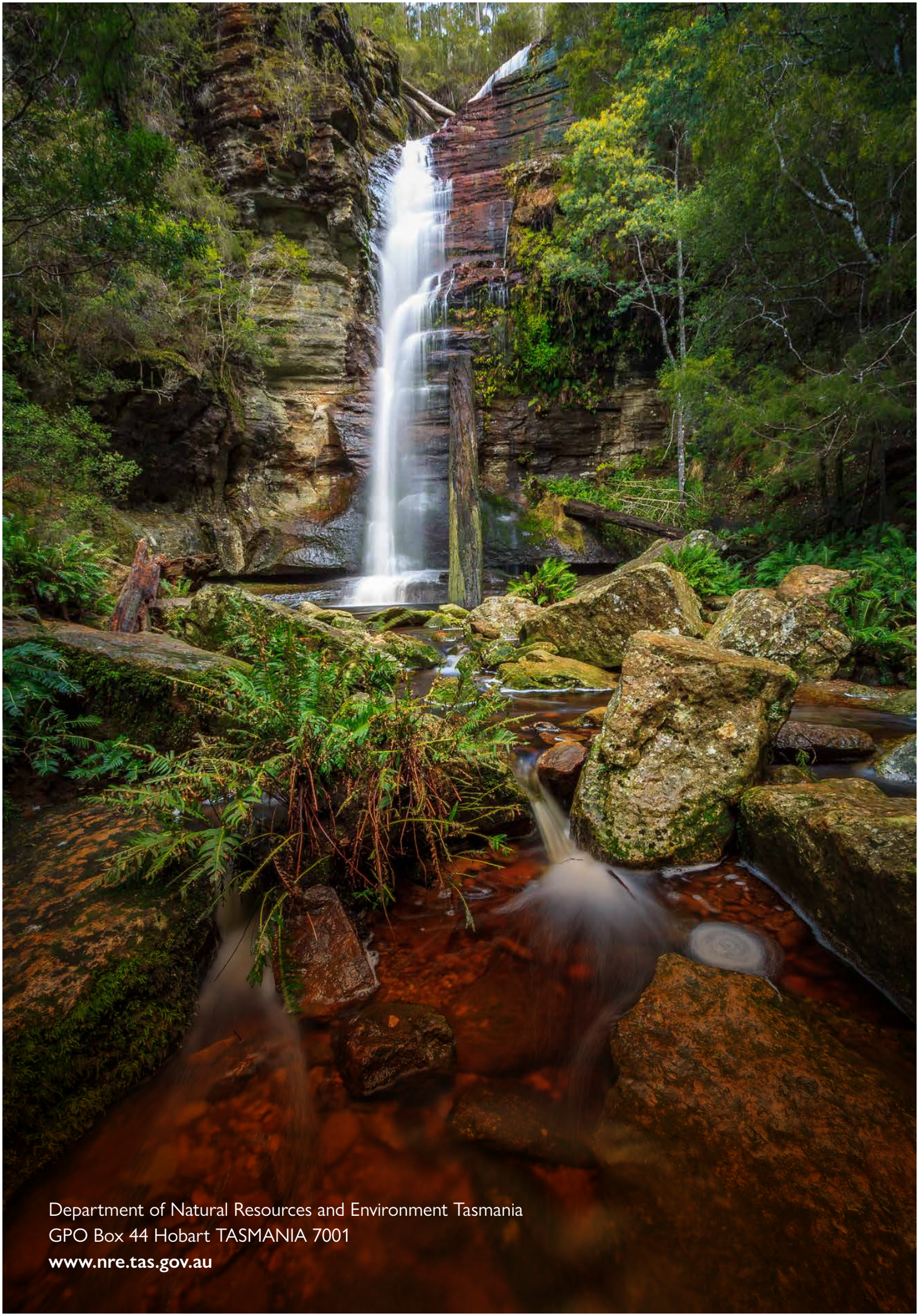
The Portal contains a redacted copy of the active agreements so that we can protect the personal information of the agreement holder in accordance with the *Personal Information Protection Act 2004*.

New agreements will be loaded into the Portal on a regular basis and existing agreements are regularly reviewed and updated as required. PWS is continually updating agreements as they expire. While an Agreement is undergoing renewal it will be removed from the webpage and then reloaded once a new agreement is released.

The Lease and Licence Portal can be accessed here: **https://leaseslicences.nre.tas.gov.au**

Glossary

Director NPW	Director of National Parks and Wildlife
EAR	Environmental Assessment Report
EIS	Environmental Impact Statement
EMPCA	*Environmental Management and Pollution Control Act 1994*
EOI	Expression of Interest
EPA	Environment Protection Authority Tasmania
EPBCA (Cwlth)	*Environment Protection and Biodiversity Conservation Act 1999* (Commonwealth)
LUPAA	*Land Use Planning and Approvals Act 1993*
NCA	*Nature Conservation Act 2002*
NPRMA	*National Parks and Reserves Management Act 2002*
NRE Tas	Department of Natural Resources and Environment Tasmania
Panel	Independent Assessment Panel
PWS	Tasmania Parks and Wildlife Service
RAA	Reserve Activity Assessment
RTI	*Right to Information Act 2009*
TASCAT	Tasmanian Civil and Administrative Tribunal



Department of Natural Resources and Environment Tasmania
GPO Box 44 Hobart TASMANIA 7001
www.nre.tas.gov.au

CULTURAL HERITAGE PRACTITIONERS TASMANIA
PO Box 134, Hobart, Tas, 7001. Email
Website: http://www.chptas.org.au

15th May 2020

Planning Policy Unit
Department of Justice
GPO Box 825
Hobart, Tasmania, 7001

Email: planning.unit@justice.tas.gov.au

SUBMISSION ON THE DRAFT LAND USE PLANNING AND APPROVALS AMENDMENT (MAJOR PROJECTS) BILL 2020

Dear Madam/Sir,

We thank you for the opportunity to make comment on the *Draft Land Use Planning and Approvals Amendment (Major Projects) Bill 2020*. This correspondence constitutes the Cultural Heritage Practitioners Tasmania submission on this matter.

Cultural Heritage Practitioners Tasmania is a non-profit group comprising heritage practitioners from a range of disciplines. Formed in 1995, Cultural Heritage Practitioners Tasmania has an expert and long term perspective on historic heritage management in Tasmania, and an interest in the long term protection of significant cultural heritage in Tasmania.

In making this submission Cultural Heritage Practitioners Tasmania (CHPT) has restricted itself to matters of cultural heritage, which is the organisation's key expertise.

In making comment we use as our basis *The Australia ICOMOS Charter for the Conservation of Places of Cultural Significance (The Burra Charter)* (Australia ICOMOS 2013) which is widely regarded as the standard for heritage practice in Australia. We also refer to the objectives of the *Land Use and Planning Approvals Act 1993*, in particular the objectives of Schedule 1, part 2 (g), which indicates the objective and intent of the Tasmanian Resource Management and Planning System in relation to cultural heritage, namely "to conserve those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value". In relation to the *Burra Charter*, we use primarily Article 2, in particular Articles 2.1 and 2.2, which state, respectively, that "Places of cultural significance should be conserved" and that "The aim of conservation is to retain the cultural significance of a place".

Comment and Recommendations

CHPT has a number of concerns in relation to cultural heritage protection arising from the *Draft Land Use Planning and Approvals Amendment (Major Projects) Bill 2020*. A general concern is whether there is a real need for the Bill given that Tasmania has a comprehensive Resource Management and Planning System which provides reasonably balanced opportunity for development against the protection of social, cultural heritage and environmental values. Bypassing of the *Land Use and Planning Approvals Act 1993,* and various other state legislation that offers protection to acknowledged natural, cultural and social values, raises real questions about whether these values will still be protected

under the proposed Major Projects legislation, particularly given the proposed process for assessment and the lack of clarity about the extent to which existing Acts and statutory planning mechanisms will be used.

Our key specific concerns, and recommended modifications to address, or at least mitigate these are as follow:

1. Tenor of Bill

Although the stated aim of the proposed legislation to provide for independent, timely and integrated assessments of major projects in Tasmania is reasonable, the tenor and complexity of the Bill do not encourage confidence that this legislation will not diminish existing protections for cultural and environmental heritage, or will operate in a way that is open, transparent, and democratic.

CHPT therefore recommends that:

1. The assessment process allow for full public input, including consultation on the assessment guidelines, consultation on the recommendations of the Development Assessment Panel in relation to the permit and third party right of appeal.
2. The independence of the Tasmanian Planning Commission, given its key role, is guaranteed (including as a result the current review of the Commission).
3. The Development Assessment Panel has guaranteed, real independence.
4. The Development Assessment Panel is selected solely by the Tasmanian Planning Commission (i.e., without Ministerial intervention) to better ensure its independence.

and

5. The legislation is simplified (shortened) to make it easier to understand.

2. Application of Bill – Definition of 'Major Project'

The extremely broad and non-specific definition of a „major project" leads to concern that the proposed legislation is less about providing an efficient and integrated assessment process for major projects, than an opportunity to bypass existing legislation to allow a raft of new developments favoured by government to be approved without proper process. CHPT supports a process that provides an efficient and integrated assessment process for genuine major projects, but not one that facilitates projects which are not in the best interest of Tasmania and which would have major impacts on Tasmania"s significant cultural heritage. The definition of what is a major project therefore needs substantial tightening (in this context we note that criterion 'a' is redundant as it is encompassed in criterion 'd').

CHPT therefore recommends that:

1. The definition of a „major project" is tightened to ensure that only authentic major projects can use the proposed new „major projects" process. This should include:
   i. a requirement for a „major project" to have a demonstrated economic level of benefit to Tasmania (see point 3, below) above a stated numerical amount (which needs to be substantial);
   ii. the definition of „planning significance" be clearly defined and appropriate;
   iii. removal of „social" benefit as a criterion as this is not easily measurable, and a process that denies community input is not in the social interest of Tasmanians; and

iv. removal of the criterion of „unsuitability for a planning authority to determine" as this is tautological (i.e., it is why the Bill is being proposed).

2. The decision on whether a project is „major project" or not should be made by the Tasmanian Planning Commission, not government.

and

3. The decision on whether a project is „major project" or not should be determined on the basis of a professionally competent and comprehensive triple bottom line assessment of whether the criteria apply, including in the case of the economic benefit, a detailed and realistic business plan.

3. Application of Bill – Scope of Application

Although, as noted in Item 2 above, CHPT supports a process that provides an efficient and integrated assessment process for genuine major projects, there are cases where it may not be appropriate to consider new major developments. This includes any places of demonstrated high cultural heritage (and environmental) significance that have high level protection under existing legislation. CHPT argues that new major projects in such places would have an unacceptable impact on the acknowledged significance of these places, as well as be breach of public trust, and that „major projects" should therefore be excluded from these places, including under the proposed legislation.

CHPT therefore recommends that:

1. All World Heritage Areas and places on the National Heritage List in Tasmania be explicitly excluded from the application of the proposed legislation.

and

2. Highly significant cultural heritage listed on the Tasmanian Heritage Register and on the Tasmanian Aboriginal Heritage Register also be explicitly excluded from the application of the proposed legislation. Although there is at present no mechanism to identify such places, it should not be a complex matter to establish such a mechanism/s.

4. Guarantee of Existing Protections

A further concern of CHPT is that with the removal of the *Land Use and Planning Approvals Act* 1993 and the bypassing of the *Aboriginal Heritage Act 1975* and the *Historic Cultural Heritage Act 1995* from the process under the proposed legislation, there is no clear guarantee that existing protections for Tasmanian cultural heritage will be maintained.

The provision in the Bill that indicates that no decision can be made by the Development Assessment Panel that does not meet the protective requirements of the bypassed legislation is important, but it is unclear how this operates in relation to the *Aboriginal Heritage Act 1975*, which provides blanket protection for all Aboriginal heritage. How will the current Section 14 permit system for disturbance to Aboriginal heritage be used, or will that be abandoned; and in either case what consultation or expert opinion will be used to guide any decisions that are made to help achieve a sound conservation outcome?

CHPT is also concerned with protection for historic heritage of local level significance as these are only protected under the *Land Use and Planning Approvals Act* 1993 (through the planning schemes). Planning schemes have particular protections that are not contained in state heritage legislation, in particular they protect a broader suite of places

(specifically they protect landscape, precincts, and archaeology, as well as places) and have a more open and transparent (although not perfect) process of assessment and review.

CHPT therefore recommends that:

1. The proposed legislation needs to provide explicitly for at least the same level of protection for cultural heritage that exists under existing legislation, in particular that which is bypassed by the proposed legislation (and including the *Land Use and Planning Approvals Act* 1993). The proposed mechanisms to achieve this should be part of the proposed legislation.

The recommendations of items 3 and 5 also address this matter to some extent.

5. The Environmental Impact Assessment (the 'Major Project Impact Statement')

The quality of the actual environmental impact assessment (in the case of the proposed legislation the „Major Project Impact Statement") that is required is also a critical element in ensuring proper protection for cultural heritage and environmental values. It is therefore critical that the proposed legislation requires a comprehensive environmental impact assessment to be undertaken; one which is comprehensive both in the extent of matters assessed and how they are examined.

Because the heritage identification and assessment (of both Aboriginal and historic heritage) that has been undertaken to date in Tasmania is extremely inadequate to rely on for determining whether a development will or will not have a cultural heritage impact, CHPT is deeply concerned that a decision about whether to include assessment of Aboriginal and historic heritage impacts in the assessment guidelines will rely on a regulator"s opinion (as they are likely to be restricted to commenting only on impacts on known heritage places/sites) or the opinion of the Development Assessment Panel (not likely to have heritage expertise). To ensure that cultural heritage is fully considered, the impact of a major project on cultural heritage must be explicitly considered in each major project assessment and documented in each Major Project Impact Statement. It goes without saying that major project assessments of impacts on cultural heritage must be undertaken by appropriately qualified professionals, and in the case of Aboriginal heritage, this must include the Aboriginal community.

Members of CHPT also have experience of major project assessments pre- and post- the 1990s, when the approach changed from a requirement for a two stage Environmental Impact Assessment (EIA) plus following Environmental Management Plan (EMP) process to a single stage Development Plan and Environmental Management Plan (DPEMP) process. The experience of members is that a single stage DPEMP process is very poor at providing necessary protection for cultural and natural values. This is for a range of reasons including that the identification of cultural heritage (and other environmental) values and impacts can be hidden in difficult to access subsidiary documents and appendices, and that broad statements that values will be protected can be used in lieu of detailed statements on how values will be protected and impacts mitigated. CHPT therefore supports the „Major Project Impact Statement" approach in principle since it does not appear to conflate impact assessment with management planning, although we do have concerns about elements of this process (see comments above, and item 6, below).

CHPT therefore recommends that:

1. The Assessment Guidelines in all cases be required to consider all potential impacts in the environmental impact assessment (i.e., the proposed „Major Project Impact Statement" process), including in relation to Aboriginal and historic cultural heritage; and not rely on assessment of what should be included by regulators and the Development Assessment Panel which is, by necessity, a flawed assessment because it is based on what is known, which is currently inadequate.
2. The mechanism of a „Major Project Impact Statement" (although not necessarily the proscribed process for this – see elsewhere in this submission) as the environmental impact process be retained over other mechanisms which have the effect of conflating environmental impact assessment with other elements of a development approval process.
3. The environmental impact assessment (i.e., the proposed „Major Project Impact Statement" process) for all projects be required to be a comprehensive environmental impact assessment (both in extent of matters assessed and how they are examined); and be undertaken only by appropriately qualified and experienced professionals, and in the case of Aboriginal heritage, involve the Aboriginal community.

and

4. The Major Project Impact Statement, must be publicly notified and exhibited and open to comment at the same time as the Development Assessment Panel"s draft assessment report is publicly notified and exhibited for public comment.

6. Need for Expert Cultural Heritage (and Natural Environmental) Assessment

There is a lack of clarity around the expertise of the Development Assessment Panel, but it appears that there is no requirement for the Panel to have cultural heritage management expertise, and indeed given the small size of the Panel this is unlikely to occur. This is of concern to CHPT as, if impacts and the acceptability of impacts to cultural heritage values are to be assessed, expert knowledge is required to do this.

CHPT therefore recommends that:

1. The proposed legislation provide for each project assessment to have a specially constituted Expert Advisory Committee which will be independent and provide advice and recommendations to the Development Assessment Panel on all relevant expert matters including cultural heritage and natural environmental conservation and protection, and in relation to all steps of the Major Project assessment, including the Assessment Guidelines.

and

2. Each project Expert Advisory Committee is selected by the Tasmanian Planning Commission at the same time that it establishes the project Development Assessment Panel.

7. Major Project Bill and its Relationship to Other Existing Pathways for Assessment of Major Projects

CHPT is aware that there are other existing statutory pathways for fast-track approval of major projects, including „Projects of State Significance" in the *State Policies and Projects Act 1993*, „Projects of Regional Significance" in the *Land Use and Planning*

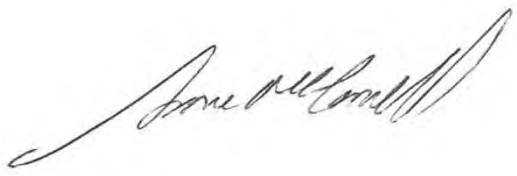
Approvals Act 1993, and the process for „Major Infrastructure Development Assessment". CHPT would be concerned if these pathways continue to exist, as this creates a complex statutory planning environment that is confusing, difficult to navigate, and provides little confidence that cultural heritage values will continue to be protected. CHPT understands that „Projects of Regional Significance" will be repealed by the proposed legislation and supports this to avoid duplication.

CHPT therefore recommends that:

1. If the proposed „Major Project" legislation is passed then all other legislated fast-track options (i.e., those cited above) be discontinued and be explicitly repealed by the proposed legislation.

Please don"t hesitate to contact CHPT if you have any queries in relation to our submission.

Yours sincerely,



Anne McConnell

Spokesperson, on behalf of
Cultural Heritage Practitioners Tasmania (CHPT)

OBJECTION : LAND USE PLANNING AND APPROVALS AMENDMENT (DEVELOPMENT ASSESSMENT PANELS) BILL 2024

TO ALL IT DOES/ SHOULD CONCERN,

The Liberal Governments' continuous neutering of their original promised and Legislated Rights of & to Tasmanians via the Forced Council Amalgamations and imposed Local Government Act 1993,(A cost shifting exercise of State Bureaucracy, an Act written by Bureaucrats for Bureaucrats and Self Interest Parties with the creation of an additional 29 potential despotic Governors) the only real benefit was the Rights to have a recognised affordable say in their Existing amenity and Futures.

The ability of the Resident, Ratepayer and Local Planning Authorities will be further constrained by the proposed DAP Legislation on top of the continuous efforts to neuter the ability of the individual, groups,Elected Councils and Council Administrations to protect Local Environment And Amenity . The progressive appeal cost increases, required increase in appellant numbers, the outrageous egregious restrictions on Planning Authorities,Communities, Groups and Individuals by the State Wide Land Use Planning and Approvals Regulation are simply abysmal Acts of Betrayal to the benefit of too few.

The introduction of Local DAPs as per Interstate Experience has the same potential for corruption as I did state during the recent Local Government Review when proposed by a Local Development Group. The proposed DAP Legislation without proper Penalty Protections must be obvious to even the most heedless.

The proposed Dap Legislation and previous mentioned undemocratic weasel actions add to the need for Local Government to be free of the subjected whims of a Single State Government Minister. The Recognition of Local Government within our Federal Constitution is long overdue. Accountability must come.

Respectfully Yours, In Fellowship John Heck .

From: Helen Cordell
Sent: Tuesday, 12 November 2024 4:09 PM
To: yoursay.planning@dpac.tas.gov.au
Cc:

Subject: #ScrapTheDAP – say no to planning panels/say yes to a healthy democracy

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

Hello, it is very disappointing to find out about the State Government's proposed manipulation and interference in the planning process for political gains.

Below is a detailed submission explaining why I oppose the creation of Development Assessment Panels (Daps) and increasing ministerial power over the planning system:

- **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,

Helen Cordell

From: Rob Howie
Sent: Tuesday, 12 November 2024 4:02 PM
To: yoursay.planning@dpac.tas.gov.au;
#ScrapTheDAP – say no to planning panels/say yes to a healthy democracy

Subject:

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

DearSir/Madam,

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 includessocial 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,

Robert Howie

From: Rosemary Costin <
Sent: Tuesday, 12 November 2024 4:06 PM
To: yoursay.planning@dpac.tas.gov.au
Cc: No to Development Assessment Panels

Subject:

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

Dear Sir/Madam

I wish to comment on the proposed legislation to introduce Development Assessment Panels to Tasmania.

These panels should be more correctly identified as **Destruction Acceleration Panels. T**hey have the potential to be destructive to participatory democracy and transparent holistic planning, and Tasmania's natural/cultural values, including our National Parks and reserves.

- **Accelerated Destruction of Democratic Processes.**

- Property developers are still able to make donations to political candidates and parties and therefore retain the potential for unfair and corrupt influence in Tasmania's planning process. The proposed DAP's will further magnify this unfair influence to the detriment of the Tasmanian public.
- Limiting planning decision making to a hand picked panel, disenfranchises Palawa and Tasmanian citizens, making them mere spectators in the future of their own country and lands, while developers will be advantaged.
- The proposed DAP decisions being non appealable on merit/s, accelerate the destruction of Tasmanian's access to participatory democracy.

- The current role of local government protects the rights of the proponent, community and local council, as the right of appeal is built into the current local government planning role. The balance and fairness of the current system will be lost .
- Appeals will only be allowed on narrow points of law.
- **Accelerated Destruction of Natural/Cultural values generally and in Reserved Land.**
- Tasmania is also facing a biodiversity crisis as are other regions of the world.
- I am most concerned that the proposed DAP's have the potential to accelerate the destruction and degradation of ecologically important habitat and reserved land such as National Parks .
- The DAP's have the potential to accelerate nature damaging development in reserved lands, as the current holistic management planning process, with inbuilt transparency and democratic participation, will be discarded to favour one party, the proponent.
- Further fragmentation of reserved land as a result of development pressure, introduction of roads and human impacts can accelerate the deterioration of natural and cultural values, habitat and ecological processes. Development can also accelerate the spread of invasive species.
- Reserved land in Tasmania needs our protection more than ever as the climate crisis unfolds.
- Allowing DAP's to determine planning in National Parks and reserved lands is the wrong approach.
- The focus now should be to prioritise nature positive planning rather than planning to enable and accelerate development.
- Tasmania requires thoughtful planning rather than accelerated pathways via DAP's with their potential to degrade and destroy the natural/cultural values in reserved lands.

Regards

Rosemary Costin.

From: Rob Frew
Sent: Tuesday, 12 November 2024 3:52 PM
To: yoursay.planning@dpac.tas.gov.au
Cc: Rob Frew
Subject: The Land Use Planning and Approvals (Development Assessment Panels) Bill 2024

State Planning Office

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

Find below my comments on the Land Use Planning and Approvals (Development Assessment Panels) Bill 2024 (the draft Bill).

The draft Bill proposes an alternate assessment pathway for '**certain'** development applications to be assessed by an independent Development Assessment Panel established by the Tasmanian Planning Commission. The draft Bill also proposes to introduce an additional mechanism allowing the Minister to direct a planning authority to prepare a draft amendment to its Local Provisions Schedule under specific circumstances.

A few perfunctory comments

One of the justifications for the proposed DAP framework comes from the *Future of Local Government Review Stage 2 Interim Report* in which it was reported that councillors were often conflicted in their role as a planning authority under section 48 of the *Land Use Planning and Approvals Act 1993* and representing the interest of the constituents by whom they were elected.

This view appears to be in contrast with the State Planning Office's previously released Position Paper which acknowledged that **Tasmania's existing development assessment process is working well** - statistics were alluded to which demonstrated this efficiency.

This anomaly aside, I note that the stated intent for introducing DAPs is **'to take the politics out of planning' by providing an alternate approval pathway for more complex or contentious development applications'.**

I also note that of the 542 submissions received, in response to the SPO's Consultation Paper, approximately 80 percent opposed the legislative changes. The main reasons for this opposition:

− Tasmania's planning system is performing well and there is no demonstrated need to introduce a new development assessment pathway;

− the DAP framework does not achieve its stated intent of deconflicting council's roles;

− fears that the Government will select panel members, thereby introducing bias and political interference in the planning process;

− taking planning decisions away from elected members undermines local democracy and reduces community participation in planning processes;

− the removal of merit appeal rights is unjust; and

− further complicates an already complicated system.

Comment

Two of these points appear worthy of comment:

−taking planning decisions away from elected members undermines local democracy and reduces community participation in planning processes;

- the draft Bill will result in the Government introducing bias and political interference in the planning process.

The draft Bill will result in a reduction in community participation in planning processes.

I note that the processes proposed in the draft Bill are similar to those currently operating under the Major Projects legislation, with safeguards set in place through the Tasmanian Planning Commission.

While I agree that, in theory, the Major Projects process 'technically allows' for concerned parties to provide comment on a proposed development - I suspect that in practice the process and involvement of the Planning Commission is 'more removed or remote from the community' and this tends to inhibit members of the community from providing input - certainly to a greater extent than say merely having to provide comment to a local council operating as a planning authority. **To this extent community participation will be diminished.**

In passing I should note that currently, where a members of council are conflicted on a planning matter - council planners and the Act both operate to negate this conflict and appeal processes work well in ensuring that a development application may be reviewed on a merits basis.

As noted, the State Planning Office's previously released Position Paper acknowledged that **Tasmania's existing development assessment process is working well!**

NOTE COMMENTS INSERTED

The draft Bill will result in the Government introducing bias and political interference in the planning process.

I refer to Section 8 of the draft Bill (Consultation Draft, dated 3 October 2024).

Part 4, Division 2AA inserted

Division 2AA – Development Assessment Panels

Subdivision 2 – Certain new applications may be determined by Assessment Panel

60AB. Certain new permit applications may be made to Commission

60AC. Minister may refer certain new permit applications to Commission

60AB. Certain new permit applications may be made to Commission

(1) A person may apply to the Commission for an application for a discretionary permit to be determined by an Assessment Panel if –

(a) the application is endorsed by Homes Tasmania as including – (i) social or affordable housing; or (ii) a subdivision, within the meaning of Part 3 of the Local Government (Building and Miscellaneous Provisions) Act 1993, for the purposes of social or affordable housing; or

Comment: This provision will allow a proponent to by pass a local planning authority by including a small component of social housing within a greater development. Very sloppy drafting.

(b) the application relates to a development that is valued in excess o(i) $10 000 000 or such other amount as may be prescribed – if all, or any part, of the development is to be located in a city; or (ii) $5 000 000 or such other amount as may be prescribed – in any other case; or

Comment: These amounts are very low by current standards. An average block of units would would surpass $10k and certainly 5K. This clause is a gift to developers who wish to by-pass a local planning authority.

(d) the application falls within a class of applications prescribed for the purpose of this section.

Comment: This is the old 'dodgy' lets include a catch all phrase - so that anything and everything can be included through Regulations - which though they are tabled in Parliament - are not subject to the same level of review as amendments to the Principal Act

60AC. Minister may refer certain new permit applications to Commission

(1) A party to an application for a discretionary permit may request that the Minister direct the Commission to establish an Assessment Panel in respect of the application if –

(a) 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

Comment: This is a very subjective piece of wording. Every development is likely to be viewed by the Minister as significant or important. Any good bureaucrat could knock up a sound business case to demonstrate that a proposed development is significant or important to the region or State. What is clear is that Ministers are likely to interfere in planning processes.

In this regard I note that the Minister has only recently declared a proposed hotel development (by Chambroad Overseas Investments Australia Pty Ltd) at Kangaroo Bay as a major project under the Land Use Planning and Approvals Act 1993 (LUPAA). In this instance clearly the Minister was of the view that the proposed development was significant or important enough to interfere in a local planning process.

(b) either party to the application **believes** that the planning authority does not have the technical expertise to assess the application; or

Comment: There would not be a proponent within the State that 'believes' a council has the expertise to assess their development application. Council land use planners are experts in their field and it is only where a development is of such scale or complexity that a greater level of skill is required - as for example a major project.

(c) the application relates to a development that **is, or is or is likely to be, controversial**; or

<u>Comment</u>: This is very sloppy drafting - in whose eyes is the proposed development likely to be controversial - the proponent - the Minister upon the advice of a trusted bureaucrat. Every development application is controversial to somebody.

(d) 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

<u>Comment:</u> Again very sloppy drafting - who gets to decide whether there is a perceived conflict of interest - the proponent - the Minister, upon the advice of a trusted bureaucrat. As noted every proponent believes that Council is against them - why would they bother even taking an application to Council.

(e) the **application falls within a class of applications prescribed** for the purpose of this section.

<u>Comment:</u> Again - the old 'dodgy' lets include a catch all phrase - so that anything and everything can be included through Regulations - which though they are tabled in Parliament - are not subject to the same level of review as amendments to the Principal Act

The combination of these provision result in the Minister of the day having the capacity to intervene and or interfere in every and any development application - allowing a proponent to by-pass a local planning authority.

<u>In conclusion</u> - if the State Government wants to take planning processes off local councils (which is clearly its intent) - then it should just get on with it - rather than trying to introduce this bizarre hybrid half way house piece of legislation - which clearly is designed to allow any proponent to by-pass their local council - and thereby diminish the input of members of the community.

Kind Regards

Rob Frew

From: Georgie
Sent: Tuesday, 12 November 2024 3:53 PM
To: yoursay.planning@dpac.tas.gov.au
Cc:

Subject: Scrap the DAP – I say "no" to planning panels and I say yes to a healthy democracy

To the Tasmanian Government,
I strongly oppose the Government's proposal for Development Assessment Panels - this proposal is not democratic, it is not in the interests of all *Tasmanians living here,* and this proposal is not what I expect of this government! It's abhorrent!

I oppose the proposal of the Development Assessment Panel (DAP) and I oppose the increasing ministerial power over the planning system, for the following reasons:

The proposed DAP 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,
Georgina Ferguson

From: Donnalee Young
Sent: Tuesday, 12 November 2024 3:53 PM
To: yoursay.planning@dpac.tas.gov.au
Cc:

Subject: Please do not support the bill to remove planning from the community via DAPs

To those with the power to determine this decision, please retain the ability of local communities to have a say over land use decisions where they and their children live, work and play. Good planning is complex and not easy, as should be the case because it is so important to everyone to get good outcomes. Currently Tasmania has one of the best planning systems in the world. The Resource Management and Planning System is integrated and all actions must seek to further the common objectives.

These are to:

- Maintain ecological processes
- Promote sustainability in development
- Include the public in decision making
- Consider the future needs of the population

Schedule 1 of LUPAA 1983 clearly states the following objectives amongst others:

- To encourage public involvement in resource management and planning, and
- To promote the sharing of responsibility for resource management and planning between different spheres of government, the community and industry in the state.

Good land use planning that complies with the objectives above cannot be achieved by panels of people behind closed doors. It is too significant to get this wrong, the responsibility is everyone's and not for a chosen few. We need more and broader dialogue not less. Local government working with their community must be integral to this dialogue.

I ask you to reject the "Development Assessment Panels" and focus on upholding the above objectives to comply with good governance. Lets not go backwards and create a less democratic system.

Yours sincerely

Donnalee Young
