#PlanningMatters
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30 November 2023

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

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

Dear State Planning Office,

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

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

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

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

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

What is being proposed by the Tasmanian Government?

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

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

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

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

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

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

PMAT's submission

PMAT's submission covers:

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

PMAT's key concerns

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

Broadly, our key concerns relate to:

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

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

PMAT's key recommendations

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

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

We should abandon the planning panels and instead take action to improve governance and the existing Council planning process by providing more resources to councils and enhancing community participation and planning outcomes.

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

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

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

Yours sincerely,

Sophie

Sophie Underwood
State Director – Planning Matters Alliance Tasmania
E: sophie_underwood@hotmail.com
M: 0407501999
www.planningmatterstas.org.au

1. WHAT IS PMAT

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

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

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

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

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

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

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

2. PLANNING/LEGISLATIVE CHANGES - BACKGROUND AND PROCESS

July 2023

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

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

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

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

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

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

October 2023

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

The proposed planning changes were worse than we expected.

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

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

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

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

December 2023

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

2024

Public comment on Draft Bill

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

It is understood that the *Draft Land Use Planning and Approvals (Development Assessment Panel) Amendment Bill 2024* will be released for public comment most likely in January 2024, for a minimum of five weeks, before being tabled in Parliament in early 2024.

Tabled in Parliament

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

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

The Bill could be tabled anytime from March 2024.

Possible Implementation

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

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

3. PMAT'S KEY CONCERNS

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

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

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

3.2 Makes it easier to approve large scale contentious developments

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

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

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

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

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

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

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

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

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

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

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

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

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

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

As per ICAC, merit-based appeals are:

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

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

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

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

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

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

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

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

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

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

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

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

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

Discussion

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

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

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

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

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

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

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

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

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

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

Recommendation 16

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The report concludes:

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

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

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

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

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

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

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

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

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

3.9 Flawed planning panel criteria

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

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

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

3.10 Undermines local democracy and removes and local decision making

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

3.11 Mainland experience demonstrates planning panels favour developers and undermine democratic accountability

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

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

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

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

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

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

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

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

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

Here are just three of the many examples:

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

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

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

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

What an astonishing insult that is to our collective intelligence!

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

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

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

But the Minister wants to expand it.

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

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

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

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

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

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

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

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

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

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

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

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

3.12 Poor justification for planning changes

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

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

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

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

Issue 1

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

Issue 2

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

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

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

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

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

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

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

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

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

Issue 3

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

6.13 Increasing complexity increases risk of corruption

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

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

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

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

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

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

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

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

4. PMAT RECOMMENDATIONS

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

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

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

New planning proposal removes independent review

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

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

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

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

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

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

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

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

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# of decisions and risks, undermining confidence

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

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

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

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

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

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

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

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

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APPENDIX 2 – Development Assessment Panel Criteria

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

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

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

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

Development Assessment Panel Criteria

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

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