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10 April 2024

Ms Sonia Mellor
Principal Advisor Policy
Department of Natural Resources and Environment Tasmania
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By email: RAAreform@nre.tas.gov.au; sonia.mellor@nre.tas.gov.au

Dear Ms Mellor,

RE: PMAT Submission: Proposed changes to development assessment in National Parks and Reserves + Reserve management planning

The Planning Matters Alliance Tasmania (PMAT) thanks the Department of Natural Resources and Environment Tasmania for the opportunity to comment on its:

1. *Consultation Paper: National Parks and Reserves Management Act 2002 - Reserve Activity Assessment Process Reform – Statutory Environmental Impact Assessment Process* which proposes a new fast-track development assessment process for large or controversial projects on public reserved land. 'Independent' Assessment Panels (roughly equivalent to the proposed Development Assessment Panels for urban/private land) formed by the Tasmanian Planning Commission will assess developments in our National Parks and Reserves and Crown Land.
2. The supplementary *Information Sheet: Proposed Management Planning Processes* proposes major changes to how Reserve Management Plans are prepared and amended. A Management Plan for a National Park or other Reserve is a document prescribed in legislation that sets out the "rules" which determine what activities and developments can occur within a park, analogous to the role of a planning scheme in Local Government.

Public comment was invited between 11 January - 9 March 2024 – see here. We thank the Department of Natural Resources and Environment Tasmania for allowing PMAT to lodge our submission on the 10 April 2024.

The submissions received will apparently inform the drafting of the legislative amendments, which will be released in the form of a draft Bill for further consultation – see timelines and steps below.

The State Government's Next Steps and Timelines

As of January 2024, the Department of Natural Resources and Environment Tasmania stated the next steps and timelines are:

1. Step 1 - Consultation Paper to facilitate engagement and stakeholder meetings held 11 Jan - 29 March 2024 (extended until 10 April 2024)
2. Step 2 - Summary report on issues identified by Government, Key Stakeholders, and other stakeholders, May 2024
3. Step 3 - Public consultation on the draft Bill, Mid 2024
4. Step 4 - Delivery of draft Bill to Government, Late 2024

Given the March 2024 State Election, the Tasmanian Liberal Government's legislative agenda may have changed.

The proposed changes constitute the most significant undermining of democracy and transparency in Tasmania's planning history.

As highlighted by PMAT's public meeting of 6 March 2024 (watch here), the largest held during the State election campaign, the 400-strong #ScrapTheDAP Town Hall meeting heard the Liberal government is proposing a developer-friendly development assessment and approval process for both all urban/private land across Tasmania *and* all our World Heritage Areas, National Parks, Reserves and Crown Land, covering 50.4% of our State.

Many in the community are unaware of these proposed changes.

#ScraptheDAP campaigns have run on mainland Australia where community advocates describe DAPs as 'traumatic' and 'terrible'.

The proposed changes are a backward step for transparency and democracy in Tasmania.

The Tasmanian Liberal Government does not propose to 'reform' the existing inadequate Reserve Activity Assessment process. We assume that will still be used to assess the majority of proposed developments on reserved land.

Instead, the government is proposing a new Statutory Environmental Impact Assessment process for large or controversial projects on reserved land that includes no option for merits-based planning

appeals where statutory Reserve Management plan[1] rules can be changed to suit developers. **We do not support these proposed changes.**

The Tasmanian Planning Commission, and the 'Independent' Assessment Panels that would be formed within the Commission to assess the developments, will lack rigorous independence, while their decision will be final.

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

The proposed processes will also most likely increase the destruction of reserved land.

Together with the changes bought in via the new *Tasmanian Planning Scheme*, combined with the current proposed changes, it appears the intent of the Tasmanian Liberal Government is **to remove all credible opportunity for public involvement with decision-making on public reserved land**.

This will lead to the loss of confidence by the public in the integrity of the assessment process. Developers will lose any prospect of gaining a social licence and land use conflict will continue to cause division in Tasmania.

Public consultation process – overall comments

1. **Poor public consultation timing**: Public comment was advertised during the 2024 summer holidays when most Tasmanians were disengaged. Public consultation also ran during the 2024 State Election when NGO's and community members were focused and busy on election related matters.
2. **Poorly articulated**: It is unclear from both the *Information Sheet: Proposed Management Planning Processes* and the covering letter from the Secretary of the Department of Natural Resources and Environment Tasmania (dated 11 January 2024) that the proposed changes to how Reserve Management Plans are prepared and amended is also out for public comment. Given the proposed significant changes could impact 50.4% of Tasmania it is reasonable to expect that these proposed changes should have a dedicated public consultation process.
3. **Confusing and unsuitable language**. The title of the Consultation Paper infers that the current Reserve Activity Assessment process is being reformed when it is not. Two new processes are being proposed simultaneously for development assessment in Tasmania. One on public

[1] A Management Plan for a National Park or other Reserve is a document prescribed in legislation that sets out the "rules" which determine what activities and developments can occur within a park, analogous to the role of a planning scheme in Local Government.

reserved land (using 'Independent' Assessment Panels) and one on private/urban land (using Development Assessment Panels). This is very confusing to communicate to the public. There is a view that the public consultation processes, which have been advertised almost simultaneously, are deliberately using different language to further confuse the general public.

4. **The Tasmanian Government should adopt the principles set out in the Aarhus Convention**. The United Nations Economic Commission for Europe's *Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters*. It sets out the public rights regarding access to information, public participation, and access to justice, in governmental decision-making processes on matters. It focuses on interactions between the public and public authorities. In particular see articles 6 and 9 of the Aarhus Convention.

PMAT's submission

PMAT's submission covers:

1. What is PMAT
2. PMAT's key concerns
3. PMAT's key recommendations

A summary of PMAT's key concerns

1. The *Tasmanian Planning Scheme* removes guarantee of public comment and merits-based planning appeal rights on reserved land.
2. There is no proposal to 'reform' the existing inadequate Reserve Activity Assessment process.
3. The 2019 Reserve Activity Assessment review was internal, with no public consultation, nor were the review findings ever made public.
4. 'Independent' Assessment Panels make it easier to approve large scale contentious developments on reserved land.
5. Privatisation and destruction of our National Parks, Reserves and World Heritage Areas.
6. 'Independent' Assessment Panels will be formed by and within the Tasmanian Planning Commission, which lacks independence.
7. Undermines local democracy and removes local decision-making.
8. Reserved land will effectively be removed from our planning system - similar to fish farming, forestry, mining and dams.
9. As per NSW ICAC research, increasing complexity of the planning system increases the risk of corruption.
10. The 'Independent' Assessment Panel decisions will be final with no opportunity to appeal that decision to the Tasmanian Civil and Administrative Tribunal. Removing merits-based planning appeal rights removes what matters to the community.

11. As per NSW ICAC research, removing merits-based planning appeals has the potential to increase corruption.
12. Removing merits-based planning appeals removes the opportunity for mediation.
13. Mainland experience demonstrates removing merits-based planning appeals has the potential to reduce good planning outcomes – including both environmental and social.
14. Mainland experience demonstrates planning panels favour developers and undermine democratic accountability.
15. Developments will only be appealable to the Supreme Court based on a point of law. Such appeals have a narrow focus, are prohibitively expensive and focused on the decision-making process, rather than the outcome.
16. Increased ministerial power over the planning system decreases transparency and increases the politicisation of planning and risk of corrupt decisions.
17. Flawed proposed Management Planning Processes.

Section 2 below outlines our key concerns in more detail.

A summary of PMAT's key recommendations

1. Amend the use classes of the *Tasmanian Planning Scheme*.
2. Make all Reserve Activity Assessments publicly available on the Tasmanian Parks and Wildlife Service website.
3. The Reserve Activity Assessment process must guarantee merits-based planning appeal rights for any significant development proposed on reserved and/or crown land.
4. Make all Level 2 and 3 Reserve Activity Assessments a *Discretionary* use within the *Environmental Management Zone* of the *Tasmanian Planning Scheme*.
5. Reserve Activity Assessment in progress (especially those related to the Office of Coordinator General Expression of Interest process projects) should be paused or abandoned until our concerns are addressed.
6. Reject the proposal to create 'Independent' Assessment Panels to assess significant proposed developments on reserved land. Instead improve the existing Reserve Activity Assessment process.
7. Increase rather than decrease public participation in planning and ensure its truly transparent and independent.
8. Improve opportunities to take merits-based planning appeals.
9. Abandon planning panels and instead better resource Councils to support their development assessment roles.
10. Proposed changes to reserve management planning should have their own dedicated public consultation process and be re-advertised.

11. Retain the existing rigorous process for making and amending Reserve Management Plans.
12. Improve the integrity of the existing rigorous Management Planning process rather than diminishing it.
13. Tasmania's National Parks and other significant reserves should have Management plans using the existing process.
14. Prohibit property developers from making donations to political parties, improve Right to Information laws and create a strong anti-corruption watchdog.

Section 3 outlines our recommendations in more detail.

We must ensure transparency, independence and public participation in local decision-making – this is critical for a healthy democracy. We need to keep decision-making local with opportunities for merits-based planning appeals.

We are happy for our submission to be made public.

Yours sincerely,

Sophie

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1. WHAT IS PMAT

The Planning Matters Alliance Tasmania (PMAT) is a growing network of over 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 considers that the incoming *Tasmanian Planning Scheme* and the associated 'planning reform' weakens the protections for places where we live and places we love around Tasmania.

2. PMAT'S KEY CONCERNS

1. The *Tasmanian Planning Scheme* removes guarantee of public comment and merits-based planning appeal rights on reserved land.

Since coming to office in 2014, the Tasmanian Liberal government has dramatically changed planning laws, reducing the power of local councils to make decisions about developments across Tasmania. This has also removed the rights of local communities to have a say about developments in their most treasured National Parks and Reserves, including our World Heritage Areas over approximately 50.4% of Tasmania.

The Tasmanian Liberal Government has achieved this via the *Tasmanian Planning Scheme*. The Scheme is made up of the *State Planning Provisions* which includes 23 planning zones (including the *Environmental Management Zone)* and 16 planning overlays called codes.

Most of Tasmania's National Parks and Reserves, including our World Heritage Areas, have been zoned as *Environmental Management Zone*.

Within the *Environmental Management Zone* (see page 245 of 520 of the *Tasmanian Planning Scheme*), all commercial tourism developments, along with many other inappropriate uses, can be approved in most Tasmanian National Parks and Reserves, **with no guarantee of public comment and merits-based planning appeal rights.**

Instead, the Tasmanian Government has been relying on the inadequate Reserve Activity Assessment (RAA) process to assess developments on reserved land.

PMAT has been raising concerns about the inadequacies of the RAA since 2016. This was one of the main reasons PMAT formed as an organisation.

2. There is no proposal to 'reform' the existing inadequate Reserve Activity Assessment process.

The Reserve Activity Assessment is an internal government process not prescribed in legislation (i.e. non-statutory) that lacks independence and transparency.

Notwithstanding the bigger question about whether there should be built commercial development in our National Parks, Reserves and World Heritage Areas, PMAT has been advocating for improved Reserve Activity Assessment since 2016.

The Tasmania Parks and Wildlife Service is responsible for Tasmania's reserves and for protecting the biophysical and cultural values of reserves.

The Tasmania Parks and Wildlife Service developed the Reserve Activity Assessment process to '*guide decisions about appropriate use or development and the management of associated environmental impacts in Tasmania's reserves. The RAA process is equivalent to an environmental impact assessment process*.'

In 2017, as part of the creation of the *Tasmanian Planning Scheme*, the Tasmanian Planning Commission identified the level of public concern regarding the Reserve Activity Assessment process and recommended that it be reviewed to improve transparency.

The then-Minister for Planning Peter Gutwein acknowledged that the Reserve Activity Assessment process "needs review" but made no amendments to the *Environmental Management Zone* of the *Tasmanian Planning Scheme* in relation to developments on reserved land.

In 2019, the State Government finally reviewed the Reserve Activity Assessment process – but the review was internal, and its findings were never made public.

3. The 2019 Reserve Activity Assessment Review was internal; with no public consultation, nor were the review findings ever made public.

The current Consultation Paper states on page 3 that '*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*.' However, the Review was internal; with no public consultation and the review findings were never made public.

In 2019, eleven community groups working to protect values in publicly-owned parks and reserves held a joint press conference at Tasmania's Parliament House. Frustrated by the lack of clarity on the review, the group lodged a Right to Information (RTI) request to seek transparency. See PMAT's media release here: Has Hodgman abandoned the review of RAA process for developments in national parks and reserves?

Instead of fixing the inadequate Reserve Activity Assessment process the State Government is now proposing an entire new inadequate Statutory Environmental Impact Assessment process where developments on reserved land would be assessed by an 'Independent' Assessment Panel.

4. **'Independent' Assessment Panels make it easier to approve large scale contentious developments on reserved land.**

   'Independent Assessment Panels' will make it easier to approve large scale contentious developments such as the kunanyi/Mount Wellington cable car and developments in our National Parks and Reserves.

   Resurrection of failed developments, such as the Cataract Gorge gondolas in Launceston and the kunanyi/Mount Wellington cable car, is highly likely.

   Developments will be forced on communities that would have little chance of being approved through normal local council processes.

5. **Privatisation and destruction of our National Parks, Reserves and World Heritage Areas.**

   The 'Independent' Assessment Panels will be a legislated instrument of privatisation of reserved land. No area will be safe from transmission lines, tourism developments, wind farms, helicopters, visitor centres and more.

6. **'Independent' Assessment Panels will be formed by and within the Tasmanian Planning Commission, which lacks independence.**

   Legal experts assert the lack of structural independence of the Tasmanian Planning Commission is reason alone that 'Independent' Assessment Panels cannot be justified, and that the Commission Act does not provide the usual indicators for strong institutional independence. Legal experts are also of the opinion there is no justification for the Commission to replace the role of Councils and the planning tribunal in planning decision-making.

7. **Undermines local democracy and removes local decision-making.**

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

8. **Reserved land will effectively be removed from our planning system - similar to fish farming, forestry, mining and dams.**

   All reserved land will effectively be removed from the *Land Use Planning and Approvals Act 1993*.

The community would only be able to conduct a merits-based planning appeal if the proposal triggered a discretion. Meaning the community would not be able to lodge an appeal against the overall impact of a development on reserved land.

9. As per NSW ICAC research, increasing complexity of the planning system 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 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.'

10. The 'Independent' Assessment Panel decisions will be final with no opportunity to appeal that decision to the Tasmanian Civil and Administrative Tribunal. Removing merits-based planning appeal rights removes 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. This means planning related issues cannot be the basis for lodging an appeal.

Merits-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:

- impacts on biodiversity;
- the height, bulk, scale or appearance of buildings;
- impacts on local amenity;
- the suitability of landscaping provided;
- traffic, noise, smell, light and other potential amenity impacts;
- the appropriateness of access;
- 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.

11. As per NSW ICAC research, 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 adopt 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 outlined below.

Note that EP&A is NSW's *Environmental Planning and Assessment Act 1979* which institutes the 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.***

12. 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 merits-based planning appeals and provides expert and experienced mediators to help the parties resolve their differences 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 and improve planning outcomes.

13. 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'.

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

The NSW 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).'

14. 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.'

15. **Developments will only be appealable to the Supreme Court based on a point of law. Such appeals are narrow in focus, are prohibitively expensive and focused on the decision-making process, rather than outcomes.**

Developments will only be appealable to the Supreme Court, via Judicial review, based on a point of law.

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.

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

The Tasmanian Liberal Government wants new top-down Ministerial powers. The Minister for Parks will have greater power, including taking large developments proposed for reserved land out of the normal assessment process to be dealt with by 'Independent' Assessment Panels.

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

The report recommended that the NSW Government adopt 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':**

'*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.'

17. Flawed proposed Management Planning Processes

Major changes are proposed to the current rigorous process for the preparation and amendment of statutory reserve management plans.

1. **Reserve Management plan rules could be changed to suit developers**, such as what happened with the Lake Malbena and Halls Island wilderness helicopter camping plan proposed for the Tasmanian Wilderness World Heritage Area.
2. **Short term flexibility** would cater for developments impacting reserved land and counter long-term management intent;
3. **Increased Ministerial power:** The Director of Parks can approve "minor" amendments to Management Plans without any public consultation. Minor amendments could in fact be major, with major consequences for reserved land;
4. **Reduces public involvement:** The opportunity for public involvement in management planning on public reserved land would be reduced;
5. **Non-statutory plans are being used to justify developments:** Tourism Master Plans are being used to justify developments in National Parks and Reserves. They are also being ignored when it suits developers. For example, new standing camps within Freycinet National Park are contrary to the Tourism Master Plan.
6. **Combined development application and Management Plan changes:** What is proposed is similar to what is called 'section 43A' proposal under the *Land Use Planning and Approvals Act 1993* where a development application and a planning scheme amendment is considered at the same time. We do not support this as the decision of the Tasmanian Planning Commission would be final with no opportunity to appeal the decision on planning grounds.

3. PMAT'S KEY RECOMMENDATIONS

1. Amend the use classes of the *Tasmanian Planning Scheme*.

Amend which uses (outlined below) are listed as *No Permit Required* and *Permitted* within the *Environmental Management Zone* of the *State Planning Provisions* of the *Tasmanian Planning Scheme*. Amendments could be made as part of the current review of the State Planning Provisions.

All *No Permit Required* and *Permitted* uses should be moved to the *Prohibited* use class, or at minimum moved to the *Discretionary* use class.

Discretionary uses guarantee public comment and merits-based planning appeal rights for proposals on public reserved land.

It is fair, reasonable, and strategic that developments on reserved public land be treated as part Tasmania's broader planning system under the *Land Use Planning and Approvals Act 1993*.

Environmental Management Zone

23.2 Use Table

No Permit Required
Natural and Cultural Values Management
Passive Recreation
Permitted
Community Meeting and Entertainment
Educational and Occasional Care
Food Services
Pleasure Boat Facility
Research and Development
Residential
Resource Development
Sports and Recreation
Tourist Operation
Visitor Accommodation

2. Make all Reserve Activity Assessments publicly available on the Tasmanian Parks and Wildlife Service website.

In line with the recent welcome commitment by the Tasmanian Government to improve transparency by making all leases and licenses on reserved land publicly available, all Reserve

Activity Assessments (Levels 1 to 3) should be publicly released via the Tasmania Parks and Wildlife Service website.

In December 2023, the Tasmanian Government launched a new Lease and Licence Portal and stated that it is '*committed to ensuring transparency of all lease and license agreements issued on reserved land under the National Parks and Reserves Management Act 2002. Part of this commitment is for all active leases and licenses over reserved land to be published. To deliver this, the new Lease and Licence Portal has been launched*.'

Making all Reserve Activity Assessments publicly available would not only improve transparency about the use of public reserved land, especially by private developers and commercial operators, it would also help ensure development proposals on reserved land are not under-classified leading to greater land use conflict.

For example, the Reserve Activity Assessment for the highly contentious Expression of Interest process project, the Lake Malbena wilderness helicopter camping plan for Halls Island in the Walls of Jerusalem National Park, was under-classified and not released for public comment when it clearly should have been.

3. The Reserve Activity Assessment process must guarantee merits-based planning appeal rights for any significant development proposed on reserved and/or crown land.

This could simply be achieved by amending the *23.0 Environmental Management Zone*, set out in the *State Planning Provisions* of the *Tasmanian Planning Scheme.* See details below.

4. Make all Level 2 and 3 Reserve Activity Assessments a *Discretionary* use within the *Environmental Management Zone* of the *Tasmanian Planning Scheme.*

Amend 23.0 *Environmental Management Zone*, set out in the *State Planning Provisions* of the *Tasmanian Planning Scheme* (see page 245 of 520), by including Level 2 and 3 Reserve Activity Assessments as a *Discretionary* use in the *23.2 Use Table*.

This would:

- Ensure integration with the planning system by linking the *National Parks and Reserves Management Act 2002* with the *Land Use Planning and Approvals Act 1993.* This is also important if developments have impacts beyond reserve boundaries.
- Ensure independence and accountability within the process.
- Ensure transparency. This would guarantee public comment and merits-based planning appeal rights for developments on public reserved land.

- 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.

5. **Reserve Activity Assessment in progress (especially those related to the Office of Coordinator General Expression of Interest process projects) should be paused or abandoned until our concerns are addressed.**

6. **Reject the proposal to create 'Independent' Assessment Panels to assess significant proposed developments on reserved land. Instead improve the existing Reserve Activity Assessment process.**

   PMAT does not support the creation of a new Tasmanian Planning Commission process to assess significant proposed developments on reserved land.

   As we have been advocating since 2016, we should improve the existing Reserve Activity Assessment process as per the recommendations made above.

7. **Increase rather than decrease public participation in planning and ensure its truly transparent and independent.**

   Public participation (including rights of appeal and opportunities for mediation) is critical to best practice decision-making. Such participation improves the information available to decision-makers, holds decision-makers to account, improves community support for assessment processes and has been recognised as an important protection against corruption.

   We must also ensure the community has a right of say with planning appeals heard by an independent appeals tribunal and that Councils maintain their role as a Planning Authority.

8. **Improve opportunities to take merits-based planning appeals.**

   Instead of removing the opportunity for the community to take merits-based planning appeals, the existing system should be improved by providing practical support to take appeals against planning decisions. This would ensure those rights can be exercised by all by:

   - Consult with the community early
   - increasing appeal and representation times from 14 days to 28 days;
   - reducing the fees of lodging an appeal;

- funding legal support;
- investigating court-appointed experts;
- investigating other means of levelling the playing field in terms of affordable access to legal representation and planning / other technical expertise. This could include court-appointed experts, funding for planning aid and ensuring legal services such as the Environmental Defenders Office are funded to support public interest litigation activities;
- providing for protective costs orders;
- ensuring a specialist environmental and planning appeal body by maintaining the specialist environment and planning registry within TASCAT; and
- ensuring TASCAT is adequately resourced to conduct mediation, develop community resources and maintain a broad pool of expert Tribunal members.

9. Abandon planning panels and better resource Councils to support their development assessment roles.

Action should be taken to improve governance and the existing Council planning process. More resources are needed for Councils to enhance community participation and ensure good planning outcomes.

10. Proposed changes to reserve management planning should have a dedicated public consultation process and be re-advertised.

Given the Tasmanian Government's own Public Submissions Policy, and the significant proposed changes to how Reserve Management Plans are prepared and amended, a dedicated public consultation process should be conducted and re-advertised.

11. Retain the existing rigorous process for making and amending Reserve Management Plans.

The Tasmanian Planning Commission currently drafts National Parks and Reserve Management Plans and amendments. The Commission reviews public representations, holds hearings and reports to Environment Minister. Examples include amendments to the Freycinet National Park and Tasmanian World Heritage Area Management Plan.

This process should be retained and improved rather than diminished.

A much tighter definition of a "minor amendment" than the one contained in the information sheet is also required.

12. Improve the integrity of the existing rigorous Management Planning process rather than diminishing it.

- Clarify the role of the Tasmanian Planning Commission in reviewing the merits of National Parks and Reserves management plans.

  The Commission's role regarding management plans has been interpreted very narrowly - the Commission believes its role is confined to reviewing the Director's report on public submissions, rather than reviewing the merits of proposed changes to the management plan itself.

  This is a far more confined role than the Commission previously played and, to the extent necessary, legislative amendments should clarify the Commission's role in reviewing the merits of management plans.

- Clarify the *Environment Protection and Biodiversity Conservation Act 1999* requirements for making management plans for World Heritage Areas.

13. Tasmania's National Parks and other significant reserves should have Management plans using the existing process.

PWS is responsible for managing Tasmania's 19 national parks, three World Heritage Areas (WHAs), and over 800 other reserves including marine reserves, Marine Conservation Areas (MCAs), Crown land and sites of historic and cultural significance.

Management plans, site plans and other reports currently guide management of Tasmania's reserved lands.

Tasmania's National Parks and other significant reserves at least should have Management plans using the existing process.

14. Prohibit property developers from making donations to political parties, improve Right to Information laws and create a strong anti-corruption watchdog.

Prohibit property developers from making donations to political parties (as has been done in NSW, ACT and QLD), enhance transparency and efficiency in the administration of the Right to Information Act 2009 (EDO research shows our Government is the most secretive in Australia), and create a strong anti-corruption watchdog (Australia Institute research shows that Tasmania has one of the weakest in Australia).