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12 November 2024

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

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

Dear State Planning Office,

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

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

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

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

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

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

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

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

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

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

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

We should be investing in expertise to improve the local government system and existing planning processes by providing more resources to councils and enhancing community participation and planning outcomes. This will also help protect local jobs and keeping the cost of development applications down.

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

Yours sincerely,

Sophie

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KEY CONCERNS

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

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

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

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

- **Makes it easier to approve large scale contentious developments like** the kunanyi/Mount Wellington and Cataract Gorge cable cars, high-rise in Hobart (like the 200 m high-rise Fragrance proposal), Cambria Green planning scheme amendment, high-density subdivision like Skylands at Droughty Point and the UTAS Sandy Bay campus re-development. Highrise apartment blocks like Empress Towers in Battery Pont will be able to built anywhere.

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

- **Removing merits-based planning appeals removes the opportunity for mediation on development applications in the planning tribunal**.
    - A critically important check and balance within the planning system will be removed – DAPs remove a layer of oversight.
    - **In Tasmania, only about 1% of planning applications go to appeal** and the decisions made by elected representatives were no more likely to be appealed than those by council officers.
    - **Almost half of appeals in the last three years resulted in mediated outcomes**.
    - **Only about 20% went to full appeal in the last three years**.
    - These statistics demonstrate that Tasmania's appeals system is working.
- **Developments will only be appealable to the Supreme Court based on a point of law or process which have a narrow focus and are prohibitively expensive.**
- **Removing merits-based planning appeals has the potential to increase corruption, reduce good planning outcomes, favour developers and undermine democracy**. The NSW Independent Commission Against Corruption recommended the expansion of merit-based planning appeals as a deterrent to corruption. Mainland experience demonstrates planning panels favour developers and undermine democratic accountability. Local planning panels, which are often dominated by members of the development sector, were created in NSW to stamp out corruption, but councillors from across the political spectrum say they favour developers and undermine democratic accountability. Mainland research demonstrates removing merits-based planning appeals has the potential to reduce good planning outcomes – including both environmental and social.
- **Increased ministerial power over the planning system increases the politicisation of planning and risk of corrupt decisions**. The Planning Minister will decide if a development application meets the DAP criteria. The Minister will be able to force the initiation of planning scheme changes, but perversely, only when a local council has rejected such an application, threatening transparency and strategic planning.
- **Flawed DAP approval process**:
    - **No rules for panel composition**. Total discretion for TPC (Tasmanian Planning Commission) on panel composition, qualifications and decision-making process.
    - **Panels don't have to adhere to the statewide scheme** – that is panels do not need to apply planning rules.

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

- **Flawed planning panel criteria.** Changing an approval process where the criteria is on the basis of '*perceived conflict of interest*', '*a real or perceived bias*', '*the application relates to a development that may be considered significant*' and the '*development is likely to be controversial*' is fraught. The Planning Minister has political bias and can use this subjective criteria to intervene on any development in favour of developers. NOTE: The scope of the DAPs includes a range of subjective factors that are not guided by any clear criteria:

    - Valuations of $10 million in cities and $5 million in other areas.
    - A determination by Homes Tasmania that an application includes social or affordable housing. There is no requirement for a proportion of the development to be for social or affordable housing. For example, it could be one house out of 200 that is affordable.

- **Poor justification – there is no problem to fix.** Only about 1% of council planning decisions go to appeal and Tasmania's planning system is already among the fastest in Australia when it comes to determining development applications. The Government wants to falsely blame the planning system for stopping housing developments to cover its lack of performance in addressing the affordable housing shortage.

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