Environmental Defenders Office

Submission on the revised draft Land Use Planning and Approvals Amendment (Development Assessment Panels) Bill 2025

11 December 2025

About EDO

EDO is a community legal centre specialising in public interest environmental law. We help people who want to protect the environment through law. Our reputation is built on:

Successful environmental outcomes using the law. With 40 years' experience in environmental law, EDO has a proven track record in achieving positive environmental outcomes for the community.

Broad environmental expertise. EDO is the acknowledged expert when it comes to the law and how it applies to the environment. We help the community to solve environmental issues by providing legal and scientific advice, community legal education and proposals for better laws.

Independent and accessible services. As a non-government and not-for-profit legal centre, our services are provided without fear or favour. Anyone can contact us to get free initial legal advice about an environmental problem, with many of our services targeted at rural and regional communities.

www.edo.org.au

Submitted to:

State Planning Office
By email only: haveyoursay@stateplanning.tas.gov.au

For further information on this submission, please contact:

Mae Tanner
Managing Lawyer, Tas/Vic
T: (03) 6165 1951
E: mae.tanner@edo.org.au

Rachael Chick
Senior Solicitor
T: (02) 9262 6989
E: rachael.chick@edo.org.au

Acknowledgement of Country

EDO recognises and pays respect to the First Nations peoples of the lands, seas and rivers of Australia. We pay our respects to the First Nations Elders past, present and emerging, and aspire to learn from traditional knowledges and customs that exist from and within First Laws so that together, we can protect our environment and First Nations cultural heritage through both First and Western laws. We recognise that First Nations Countries were never ceded and express our remorse for the injustices and inequities that have been and continue to be endured by the First Nations of Australia and the Torres Strait Islands since the beginning of colonisation.

EDO recognises self-determination as a person's right to freely determine their own political status and freely pursue their economic, social, and cultural development. EDO respects all First Nations' right to be self-determined, which extends to recognising the many different First Nations within Australia and the Torres Strait Islands, as well as the multitude of languages, cultures, protocols and First Laws.

First Laws are the laws that existed prior to colonisation and continue to exist today within all First Nations. It refers to the learning and transmission of customs, traditions, kinship, and heritage. First Laws are a way of living and interacting with Country that balances human needs and environmental needs to ensure the environment and ecosystems that nurture, support, and sustain human life are also nurtured, supported, and sustained. Country is sacred and spiritual, with culture, First Laws, spirituality, social obligations and kinship all stemming from relationships to and with the land.

Introduction

Environmental Defenders Office (**EDO**) is a community legal centre specialising in public interest environmental law. We welcome the opportunity to provide feedback on the revised draft Land Use Planning and Approvals Amendment (Development Assessment Panels) Bill 2025 (**Draft Bill**). EDO has a long history of providing legal advice on environment, planning and development matters in Tasmania, including the planning framework established by the *Land Use Planning and Approvals Act 1993* (**LUPA Act**). EDO also provided feedback on the two previous iterations of this proposal in 2024 and in April 2025.

We are pleased that some of the concerns EDO had with the draft 2024 Bill and earlier draft 2025 Bill have been addressed by the Draft Bill. However, we remain concerned that the Draft Bill creates a framework for planning decisions to be made for certain types of developments, if the proponent chooses, by an Assessment Panel that removes community rights to seek review of decisions. It effectively expands options for proponents, without appropriate environmental and public interest safeguards or sufficient transparency and accountability measures. We are concerned that the policy intent of the proposed framework, as reiterated in the *Background Report for Consultation* (**Report for Consultation**),[1] "to take the politics out of planning" is not given effect by the Draft Bill and that, to the contrary, the Draft Bill's proposed amendments to the LUPA Act provide more scope for political involvement in planning decisions. As drafted, we do not support the Draft Bill.

Specific key issues are outlined below, and relate to:

- Applicant-initiated referral of a project to an Assessment Panel, with criteria subject to change via regulations;
- Removal of third party merits review rights for projects approved by way of an Assessment Panel;
- Inadequate public exhibition, hearing and decision timeframes; and
- Insufficient transparency and accountability.

As drafted, we **do not support** the Draft Bill.

[1] Revised Land Use Planning and Approvals (Development Assessment Panel) Bill 2025, Background Report for Consultation (October 2025) (**Report for Consultation**).

Summary of Recommendations

Recommendation 1: Criteria for determination by Assessment Panel must be objective and mandatory, and fully set out in the legislation rather than deferred to regulations.

Recommendation 2: Third party merits review must be available to the community with respect to decisions determined by an Assessment Panel.

Recommendation 3: The procedure for establishment of Assessment Panels must be set out explicitly in the legislation, as is the case for Development Assessment Panels under Part 4, Division 2A of the LUPA Act and the Commission under the TPC Act.

Recommendation 4: Remove s 60AG(1)(e)(v) requiring a draft permit to be included in the exhibition as part of the public consultation process.

Recommendation 5: Amend the Draft Bill to include a provision allowing reviewing entities an opportunity to respond to any additional concerns raised during the public consultation period.

Recommendation 6: Remove proposed s 60AK of the Draft Bill which allows the Commission to disregard a representation if it is of the opinion the representation is frivolous or vexatious.

Recommendation 7: Lengthen the period for public consultation to at least 28 days, and the period for completion of hearing and decision to at least 42 days.

Recommendation 8: Amend the Draft Bill to include a requirement that decision-makers provide reasons for decisions under the new Part 4, Division 2AA.

The Draft Bill provides for a new Assessment Panel pathway by which certain permit applications may be assessed

The Draft Bill proposes a new pathway (through a new Part 4, Division 2AA of the LUPA Act) under which certain applications for permits may be assessed and determined by way of Assessment Panel.

The proposed new Division, at s 60AC, provides that a person (being the applicant for the discretionary permit, or the relevant planning authority with the consent of the applicant) may apply to the Tasmanian Planning Commission (**Commission**) for an application for a discretionary permit to be determined by an Assessment Panel if the application:

- relates to social or affordable housing; or
- exceeds certain development values ($10 million in a city or $5 million outside a city – or another value prescribed in regulations); or
- the council is both parties in relation to the application and the development value exceeds $1 million or a prescribed amount; or
- falls within a class of applications prescribed for the purpose of the section.

If certain criteria are met, the Commission must establish an Assessment Panel in respect of the application.

The Commission must, within 7 days, either: request further information from the proponent or the development authority; return the application if the application does not meet the requirements or if it is an application to which s 25 of the *Environmental Management and Pollution Control Act 1994* relates; or establish an Assessment Panel in respect of the application.

Assessment Panel pathway remains discretionary, and largely at the choice of the applicant

EDO welcomes the Government's recognition of concerns raised with respect to the previously proposed s 60AD Ministerial pathway, which was highly and inappropriately discretionary, and its removal in response to those concerns. Proposed s 60AC remains, however, and provides a pathway where an applicant may *choose* to have the application for a discretionary permit considered by Assessment Panel established by the Commission.

Notwithstanding the removal of the Ministerial pathway, EDO remains concerned that through the retention of the Commission pathway, as with the two previous draft Bills, the proposed Division continues to essentially allow an applicant to choose the pathway it believes to be more advantageous to itself. If an applicant believes the relevant planning authority will provide an unfavourable decision, it can apply to the Commission (where it falls within the matters set out a proposed s 60AC(1)) to have the application determined by an Assessment Panel.

There is no *requirement* for an application to be submitted for determination by an Assessment Panel, even where the application falls within the criteria set out at s 60AC(1). A development that meets the value thresholds, for example, can still proceed under the usual pathway and be determined by the relevant planning authority.

There is potential for the scope of the proponent's options to be further broadened as other classes of application eligible for submission to an Assessment Panel can be prescribed in regulations, adding only more uncertainty.

Recommendation 1: Criteria for determination by Assessment Panel must be objective and mandatory, and fully set out in the legislation rather than deferred to regulations.

Removal of third party merits review rights for projects approved by an Assessment Panel will reduce decision quality, community input and remove independent oversight

The Draft Bill provides that, where a planning authority issues a permit at the direction of an Assessment Panel, there is no right of merits appeal for the permit (proposed s 60AO(1)(d)).

Currently, s 61 of the LUPA Act provides that certain third parties (including those who made representations of a proposal under s 57 of the LUPA Act) may appeal a decision on its merits to TasCAT. Third party merits review is an important accountability and anti-corruption mechanism that improves decision making, including by improved conditions, and fosters community confidence in a decision-making framework. These provisions have been working effectively for decades under the LUPA Act and no evidence has been provided to substantiate any need for their amendment or removal.

The Report for Consultation at page 6 defends the decision to remove appeal rights, arguing that the processes included in the Draft Bill provide adequate natural justice and due process. We respectfully disagree that allowing the public to make representations and be heard based on materials provided at exhibition displaces the need for appeal rights. Further, the proposed hearing processes for Assessment Panels at proposed s 60AI, coupled with the Commission's broad discretion in establishing

Assessment Panels (both discussed below), do not provide the requisite level of independence, oversight, or scrutiny to displace the need for third party merits review to be available.

In our view, decisions made by an Assessment Panel should be subject to third party merits review.

Recommendation 2: Third party merits review must be available to the community with respect to decisions determined by an Assessment Panel.

No process or criteria are provided in the Draft Bill for the establishment of an Assessment Panel

There remain no real process or criteria for the establishment of an Assessment Panel under the Draft Bill – as with the previous draft Bills.

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

The term 'Assessment Panel' is defined in the Draft Bill (at proposed s 60AA) as:

> ***Assessment Panel***, in relation to an application under this Division, means the Development Assessment Panel that –
>
> (a) is constituted in accordance with s 60AB; and
>
> (b) is established, in respect of the application, by the Commission under s 60AD;

Proposed ss 60AB and 60AD simply state that the Commission is to establish an Assessment Panel to undertake an assessment of applications made under the new Part 4, Division 2AA, but are otherwise silent as to process for establishing the panel, appointment and expertise of the panel, remuneration and functions of the panel.

Incongruously, although no provision is made for the qualifications or expertise of members of an Assessment Panel generally, if the Commission "(a) is of the opinion that the scale, specialist nature or complexity of the development to which the application relates requires the Assessment Panel to include persons with particular qualifications or experience to assist in the assessment of the application; and (b) the Commission is satisfied, on reasonable grounds, that more than 3 persons are required as members of the Assessment Panel to ensure that the Assessment Panel has those qualifications and experience" (proposed s 60AB(2)). This tends to suggest that there are no requirements for persons with particular qualifications or experience to be appointed to the panel in circumstances where the Commission does **not** decide that scale, specialist nature or complexity are an issue. No other parameters are placed around appointments to Assessment Panels (including with respect to real or perceived conflicts of interest).

This is concerning as it would put assessment and decision-making into the hands of unknown persons at the unfettered discretion of the Commission. The absence of process and criteria around appointments to Assessment Panels also creates uncertainty for the Commission and could compromise public trust in it as "an independent statutory body at arm's length from government".[2]

This is in contrast to Development Assessment Panels constituted under Div 2A (especially s 60W) of the LUPA Act for major projects, which sets out criteria for Development Assessment Panels. If the policy intent is that the procedure for establishing Development Assessment Panels under Division 2A

[2] Report for Consultation, p 8.

should apply to Assessment Panels for the purposes of proposed Division 2AA, this needs to be made explicit.

The Report on Consultation for the draft 2024 Bill, when considering similar concerns by stakeholders, drew analogies to processes for establishing the Commission under the *Tasmanian Planning Commission Act 1997* (**TPC Act**) and the provisions on the LUPA Act for the establishment of Development Assessment Panels for major project applications (see Part 4, Division 2A, Subdivision 6 of the LUPA Act). Based on that earlier Report on Consultation, we understood that the policy intent was for Assessment Panels established under new Part 4, Division 2AA to be established under a similar process. We are surprised by statements in the October 2025 Report for Consultation, responding to further concern from stakeholders about the independence of Assessment Panels, that appear to walk back from this policy intent. The Commission's statutory independence, expertise and reputation are not a justification to omit proper process for the establishment of Assessment Panels.

We reemphasise the need to define the process and criteria for establishing Assessment Panels to ensure clarity for the Commission, provide public trust in the system, and guarantee decision-making by independent experts.

Recommendation 3: The procedure for establishment of Assessment Panels must be set out explicitly in the legislation, as is the case for Development Assessment Panels under Part 4, Division 2A of the LUPA Act and the Commission under the TPC Act.

Inappropriate Ministerial review at the applicant's request of decisions of planning authorities not to amend a Local Provisions Schedule

We welcome the removal from this Draft Bill of the earlier proposed s 40BA. This amendment would allow, in certain circumstances, the Minister to overturn the decision of the planning authority to refuse an application to amend to the Local Provisions Schedule.

However, we note this has only been removed from the Draft Bill because it is separate to the DAP process, and that the amendments may still be passed in a separate amendment Bill,[3] not because it has been recognised that the proposal inserts inappropriate politicisation, contrary to the stated intent to "take the politics out of planning".

We reiterate our opposition to such a proposal. In our view it is an inappropriate politicisation of the planning scheme by allowing the Minister to become directly involved at the request of a proponent. Any similar amendment should be ruled out for future consideration on this basis.

Inadequate timeframes for public exhibition, hearing and decision

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

- A draft permit will be exhibited as part of the public consultation process (see s 60AG(1)(e)(v)). This pre-empts the proper identification and consideration of key issues during the public consultation process, and undermines the integrity of the process.

[3] Report for Consultation, [5.2] at p 12.

- The public exhibition process also occurs after a reviewing entity has considered an application, preventing the reviewing entity from having an opportunity to consider and respond to any concerns raised by stakeholders. While it may be useful for public stakeholders to consider the views of reviewing entities during the public consultation period, the process must also provide those reviewing entities with an opportunity to respond to any additional concerns raised during the public consultation period.
- Representations can be deemed by the Assessment Panel to be frivolous or vexatious and for that reason disregarded (proposed s 60AK). This subjective power, with no apparent right of reply or appeal, is an unjustified addition to standard development processes for assessing representations. It presents a further obstacle to public participation in the process.
- A public consultation period of 14 days (excluding days the exhibition place is closed), as provided by proposed s 60AG(3), is inadequate and will not allow for genuine public participation. This is particularly the case given the stated policy intent for Assessment Panels to be "for more complex or contentious development applications." A 14-day consultation period does not reflect genuine public consultation and hearing of objections. Consultation takes up the time and resources of community members and is often done without financial incentive or support. Short time periods do not allow for stakeholders to engage with the key issues, seek feedback from members (e.g. in the case of peak or community organisations), or seek expert advice. Longer time periods should be implemented to allow for genuine engagement with stakeholders.
- Similarly, short timeframes for public hearings and decision risk undermining identification of key issues, consideration of evidence and procedural fairness. The Draft Bill provides (at proposed ss 60AG(1)(e)(vi) and 60AI(2)) for hearings to start and finish in the period between 10 and 28 days after the close of the exhibition period. A decision must also be made within 28 days of the close of exhibition (proposed s 60AL(1). This allows the Assessment Panel very little time to consider information provided to it during hearing – particularly in circumstances where the hearing concludes on the same day a decision must be made. As the DAP process is designed to decide more complex or contentious development applications, it necessitates timeframes that befit that complexity or contention. By comparison, the public exhibition period for a major project is 28 days, with a decision within 90 days after that (LUPA Act, ss 60ZZB(5), 60ZZM). Contrary to statements in the Report for Consultation that the process ensures natural justice,[4] short timeframes for the commencement and completion of hearings and for a final decision (with no appeal) do not afford procedural fairness to affected communities, and do not meet the need for a separate and independent avenue for review. For example, the need for external expertise might only become apparent following the exhibition period. If external expertise is required to determine the application, how is it reasonably possible for this expert to be found, engaged and briefed, let alone for an opinion to be provided, in the time periods mandated in the Bill? Any extension of time relies on Ministerial discretion or consent between the Assessment Panel and applicant (proposed s 60AM).

[4] Report for Consultation, p 11.

Recommendation 4: Remove s 60AG(1)(e)(v) requiring a draft permit to be included in the exhibition as part of the public consultation process.

Recommendation 5: Amend the Draft Bill to include a provision allowing reviewing entities an opportunity to respond to any additional concerns raised during the public consultation period.

Recommendation 6: Remove proposed s 60AK of the Draft Bill which allows the Commission to disregard a representation if it is of the opinion the representation is frivolous or vexatious.

Recommendation 7: Lengthen the period for public consultation to at least 28 days, and the period for completion of hearing and decision to at least 42 days.

Transparency and accountability

As in the case for all environment and planning decisions, transparency and accountability are crucial to maintain integrity in decision-making and public confidence in the system.

Overall, in our view, the Draft Bill, although removing some problematic elements of the previous draft, still undermines transparency and accountability measures, through (as discussed above) its proposed removal of third party merits review rights, insufficient legislative parameters on the establishment of Assessment Panels and the performance of their functions, and cursory provision for community participation.

In addition to the discussion and recommendations above, to provide a measure of transparency and accountability, the Draft Bill, if it is to proceed (noting that it is our view that the Draft Bill should not proceed), should be amended to require decision-makers to provide reasons for decisions under the new Part 4, Division 2AA.

Recommendation 8: Amend the Draft Bill to include a requirement that decision-makers provide reasons for decisions under the new Part 4, Division 2AA.