



NO PLANNING APPROVAL REQUIRED CERTIFICATES

Planning Matters Alliance Tasmania Inc - Submission in Response to the January 2021 Department of Justice Options Paper

About Planning Matters Alliance Tasmania (PMAT)

PMAT is an apolitical alliance of nearly 70 groups across Tasmania united with a common concern over the weakening of the State's planning laws and the need for a shared vision for our future.

Planning schemes must offer a balance between development, individual rights and community amenity, and not just make it easier for development at the cost of communities and wild places.

The State Government is introducing changes via the development of the new and about-to-be implemented statewide Tasmanian Planning Scheme (TPS). PMAT believes these changes will weaken the planning system and the protections for places we live in and love around Tasmania. Land use planning is critical, as it affects every inch of Tasmania, and the well-being of us all.

To achieve the best future for Tasmania and all Tasmanians, PMAT believes the land use planning system must be underpinned by the six key principles outlined in our Platform document which is included as *Attachment 1*.

PMAT's planning principles underpin:

- The health and well-being of the whole community;
- the liveability of Tasmania's cities, towns and rural areas;
- the protection of the natural environment and our cultural heritage;
- independence in our planning system; and
- meaningful public participation in planning decisions.

Late last year PMAT was announced as the 2020 national winner of the industry Planning Champion Award for community advocacy and education about the planning system changes in Tasmania. The Planning Institute of Australia's bio describes PMAT as:

"a strong model for uniting community groups to think about and engage with planning frameworks. The breadth of community groups and individuals engaging with PMAT demonstrates the organisation's reach, and the platform of 6 key principles clearly focusses on promoting good planning outcomes. The role PMAT has played in educating the community about shifting planning schemes and the strong advocacy for the planning profession has increased understanding of what planning is about and how it relates to broader issues like climate change."

Planning Institute of Australia website <https://www.planning.org.au/awards>



Overview

The Options Paper proposes an alternative approach to that of making a request to a Council planning authority for confirmation that a development does not require planning approval - where that development complies with the relevant planning provisions in the applicable planning scheme. This includes developments that are 'exempt' from the requirements in the planning scheme, or those classified as 'no permit required' in the planning scheme.

The Paper puts forward two options for allowing private planning consultants to issue *No Planning Approval Required certificates*. This proposal for private planning consultants to issue such certificates for 'exempt' or 'no permit required' developments came out of the Premier's Economic and Social Recovery Advisory Council (PESRAC) Interim Report (Recommendation 26). It is intended both to reduce delays caused by Councils having to make 'no permit required' determinations and the workload on Councils.

Neither *Option 1* nor *Option 2* as outlined in the Options Paper provided by the Department of Justice provides a convincing argument for changing to a 'privatised' certification model. The changes are therefore opposed for the following reasons:

- No real evidence of the need for a private planning consultant-based system is presented.
- There will be additional (as yet unspecified) costs to users for having a private planning consultant issue a certificate and another regulatory component in the system.
- Questions of liability and enforcement remain unclear.
- There is increased potential for conflict of interest utilising private planning consultants for certification in a small market like Tasmania – and potential for users to 'shop around' on marginal developments.
- The proposed models may lead to increased uncertainty – and therefore delays and/or costs – when Councils can override private consultant certificates.
- No real transparency in the process – the public will not be able to go to a recognised information source such as local government to find out whether a development has been confirmed as exempt.

Specific Questions raised in Options Paper

Do you have a preferred option listed above? Why?

Option 3 – no change – is preferred given the lack of demonstrated need for, and uncertainties associated with, the private planning consultant model.

There is no data or analysis provided on time delays or extra workload associated with the existing Council arrangement, so there appears little justification for introducing a parallel process and more uncertainty into the system. It seems this initiative is being undertaken largely on the basis of PESRAC recommendation number 26 rather than demonstrated need. The PESRAC report itself provides no hard evidence of delays or excessive Council workload under the current process.



It is understood too that Councils will continue to be able to provide confirmation that no planning approval is required and take action where a private planning consultant has issued a certificate in error.

To the extent that there are currently delays, perhaps additional resourcing of Councils to undertake the function would provide a simpler and more cost-effective solution. Most Councils do determinations now for a small cost or for free.

Does Part 21 Division 5 of the Building Act 2016 provide sufficient immunity from liability for approval providers (building surveyors & permit authorities)?

No specific comment is offered on the level of immunity provided under the *Building Act 2016*; however, it is clear that certificate providers will require liability insurance as redress for developers/owners for any errors will be against the planner issuing the certificate. The cost of this insurance will feed into the fees that consultants will be charging for certificates – as it does for other privatised inspection regimes. Detail around enforcement and liability arrangements more generally remains unclear.

It is of some concern that the proposed model is based on the scheme for building inspections/approvals that has proved problematic in recent years, with reports of significant building defects around the country. Tasmania now has a Code of Practice for Building Surveyors under the *Occupational Licensing Act 2005* which may go some way towards addressing these issues. If *Option 2* in this paper is adopted, then a Code of Practice for Private Planning Consultants will likely also be required – with its associated regulatory and cost overheads to consumers who are already burdened with high costs.

Does a requirement for the Private Planning Consultant to hold a licence provide any additional clarity to approval providers?

Compared to *Option 1*, the requirement to hold a licence under *Option 2* would provide some additional clarity to approval providers, those seeking a certificate and the wider community - in so far as the licensing process would provide reassurance that a Private Planning Consultant does have the qualifications, experience and insurance required. However, any such benefit would be minimal given the wider issues of uncertainty in outcome and cost under the proposals.

Do you agree with the positive and negative aspects of the options?

The discussion in the paper of *Options 1 and 2* appears to overemphasise the benefits of the outsourced model and minimise the cost, regulatory load and uncertainty downsides of such an approach.

There is too an increased potential for conflict of interest with private certificate issuing that is unlikely to be completely mitigated by licensing and a Code of Practice. This is particularly true in a small market like Tasmania where consultants are unlikely to be far removed from past or potential future commercial clients.



Do you believe that any of the proposed options will result in a reduction of regulatory roadblocks?

Options 1 and 2 might reduce the time to obtain a certificate compared to the existing process in some instances. However, the overall loss of certainty, increased regulatory burden and additional costs involved would outweigh any benefits compared with *Option 3*.

Are there any other likely impacts associated with implementing any of the proposed options?

Transparency and public access to information are essential if the community is to have trust in the planning system and its supporting processes. People need to be able to easily access information about decisions that confirm developments have been declared exempt. This would seem to be inherently simpler when Councils alone hold the information. Under a Private Planning Consultant model the information would be dispersed – unless it is proposed that a central register of certificates be kept that the public can access. The latter would involve additional administrative overhead and cost.

APPENDIX 1 PMAT Platform



Planning Matters Alliance Tasmania Platform

April 2017

The Planning Matters Alliance Tasmania considers that, to achieve the best future for Tasmania and all Tasmanians, the planning system must be underpinned by the following key principles (to be read in conjunction with the explanatory notes)

- 1 Community and Environment**

Prioritise the health and well-being of the whole community, the liveability of cities, towns and rural areas, and the protection of the natural environment^a and cultural heritage^b.
- 2 Strategic Vision**

Establish and implement a community endorsed, sustainable, long-term strategic vision for Tasmania.^{c,d}
- 3 Transparency & Independence**

Ensure that planning and decision-making processes are open and transparent^e, and overseen by an independent commission, with appeals heard by an independent tribunal.
- 4 Community Involvement**

Provide opportunities for informed community input in planning matters and decisions, including provision of appeal rights.
- 5 Integrated Approach**

Provide an integrated^f assessment process across all types of developments^g on all land tenures^h which includes consistent provision of mediation, public comment and appeal rights.
- 6 Implementation**

Consistent with the above principles, planning to be shared between state and local government, with local governmentⁱ to retain primary responsibility for local planning and development decisions^{j,k} through community consultation.

Explanatory notes on following page



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www.planningmatterstas.org.au



Planning Matters Alliance Tasmania Platform

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EXPLANATORY NOTES

- a Including freshwater, marine, terrestrial and the coastal zone.
- b Both Aboriginal and European/historic.
- c Including social, economic and environmental goals.
- d Supported by community endorsed state and/or regional policies on a wide range of issues (e.g. affordable housing, biodiversity, fire management, climate change, coastal development, energy efficiency, equity, health, infrastructure, population, public transport, residential amenity, good design, social inclusion, visual amenity, wastewater, water quality).
- e i.e. all information, including details of proposal and assessment documentation, is available to the public
- f Some types of developments will require specialised assessment by a referral agency with appropriate expertise, but the planning system must define an integrated approach which incorporates these specialised assessments and ensures a single planning outcome (analogous to the manner in which current legislation integrates specialist EPA assessment of industrial activities with the Council assessment).
- g Including mining, forestry, aquaculture, dams and tourism developments.
- h Including reserved land (e.g. national parks), public land allocated to timber production (formerly known as state forest), and the marine environment.
- i i.e. a restricted role for state government (including the Coordinator-General) or the Minister and the maintenance of the role of local government as:
 - i) The authority responsible for preparing planning provisions; and
 - ii) The planning authority (the decision making authority) for the vast majority of development applications, subject to advice from appropriate referral agencies.
- j Consistent with state and regional policies.
- k It is acknowledged that an alternative approach, such as assessment by the Tasmanian Planning Commission, is needed for projects which affect multiple councils (e.g. pipelines) and projects which meet the criteria for Projects of State Significance.



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