

I write to make a submission to the review of the Tasmanian Planning Commission. The TPC is an essential part of our democratic processes as it enables individuals and community organisations to have input into planning decisions in Tasmania.

I therefore recommend that the TPC

- continues to operate independently of government and ministerial influence
- retain its role to review, hold hearings and report to the Minister on planning policies and on planning schemes and amendments
- retain its role in assessing and approving projects of state and regional significance
- retain its role to review, hold hearings and report on representations on national park, reserve, World Heritage Area and Wellington Park management plans and amendments
- be adequately funded to prepare Tasmanian State of the Environment reports every 5 years, and to make recommendations on future actions.



Planning Policy Unit
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15th May, 2020

Submission to the review of the Tasmanian Planning Commission.

The Tasmanian Planning Commission (TPC) plays an important role in the land use and planning systems in Tasmania. While in our view the TPC does require strengthening of its powers and responsibilities for protection of natural values, biodiversity conservation and ecosystems, we oppose any moves to reduce the powers, independence or functions of the TPC. Please see our list of recommendations below.

1. The TPC should be mandated to give primacy to considerations of protection of natural values, including biodiversity, in all assessments and decisions.
2. All logging activity should be subject to assessment by the TPC.
3. The addition of an additional commissioner being a person who representing community interests who has conservation advocacy experience.

In addition, we endorse the following recommendations, in line with Planning Matters Alliance Tasmania, of which Bob Brown Foundation is a member:

4. The TPC must have its independence maintained, broadened and strengthened.
 - The TPC must retain its capacity to perform its current functions independently of government.
 - The TPC's power to act independently of the government should be expanded. The TPC should be given the power to make and amend the Tasmanian Planning Scheme.
 - The TPC's governance should be free from Ministerial influence, and no changes should be made that undermine the public perception of the independent operation of the TPC.
5. The TPC must maintain its function in policy development.

The TPC must:

- Retain its existing role to review and hold hearings on representations and report to the Minister on draft State Policies and amendments.

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- Retain its existing role to report to the Minister for Planning regarding Draft Tasmanian Planning Policies and to amend any planning scheme to be consistent with those policies.
 - Restore its role as the body responsible for making planning scheme controls and amendments by making the TPC the decision-maker for State Planning Provisions and removing Ministerial oversight for Local Provisions Schedules. This would provide the TPC with an important role in influencing planning policy.
6. The TPC should develop Tasmania's Regional Land Use Strategies
- Legislation should be changed to give the TPC the responsibility to develop, amend and approve Regional Land Use Strategies with public notice and hearings.
7. The TPC must maintain its function of assessing Projects of State and Regional Significance
- The TPC must retain its existing responsibility to assess projects of State significance e.g. major projects like Gunns Pulp Mill and Ralphs Bay and to provide advice and recommendations to the Minister.
 - The role of the TPC in assessing and approving projects of State and regional significance through existing processes should not be undermined e.g. through the draft Major Projects Bill.
8. The TPC must retain its function of Reviewing National Park and Reserve management plans
- The TPC's role in independently and transparently reviewing reserve management plans must be retained and legislation should be amended to clarify that the TPC may make recommendations for changes to reserve management plans.
9. State of the Environment Reporting should remain with the TPC
- The problems with State of the Environment (SoE) reporting identified by the TPC in 2013 (and reconfirmed in 2018) should be addressed and the TPC should continue to produce SoE reports every five years. These reports are vital for a range of reasons, including informing good planning.
10. The TPC must be properly funded
- Properly fund the TPC to allow it to carry out existing statutory roles, including the State of Environment Report and new State Policies.

The Bob Brown Foundation strongly urges the consideration of these recommendations.

Scott Jordan
Bob Brown Foundation

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SUBMISSION IN RELATION TO THE REVIEW OF THE TASMANIAN PLANNING COMMISSION

I write as a recently retired urban and environmental planner, who served as a Commissioner with the Tasmanian Planning Commission (TPC) and also as an expert member of the Resource Management and Planning Appeals Tribunal.

I make the following comments in relation to the current review of the TPC

Maintain the Independence of the TPC

It is essential that the TPC maintains its independence from government and is free to make independent decisions on planning and development matters, as it has done for many years. The TPC enjoys a high level of public trust. In a small State where everybody knows everybody, this level of trust is essential for the integrity of the planning system. It ensures that planning decisions are made and seen to be made independent of any political influence. It gives the community confidence that public hearings are meaningful and worthwhile and not just a 'tick the box' exercise in community consultation, that wastes the time and energy of the community and will have no real bearing on the planning decision.

Reject a Ministerial centered model of decision making

A Minister-centered model which appears to be what the government is favouring is a very unwise way to go, especially in a small state where it is easy for a few powerful individuals or groups to wield undue influence over government ministers. This puts ministers under immense pressure and also politicizes the planning process. It significantly increases the possibilities for the planning system to become corrupted and for the community to lose confidence in its integrity. This has happened in other states where planning decisions lie ultimately with the planning minister.

The TPC allows a panel of people with a range of relevant expertise to be the decision makers on all of the important planning policy matters and planning scheme standards and amendments. They also conduct public hearings in a fair and impartial way. Hearings are run in a way that remains relatively easily accessible for many of the community, who may not be knowledgeable about the planning system, but have many pertinent points to make on how a planning policy or a rezoning may affect them, or their local area.

The processes, functions and powers of the TPC have served Tasmania well and have maintained the public trust in this the highest decision making body on planning matters in the State. It should not be exchanged or become subordinate to a Ministerial model. It is essential that decisions on planning are evidence based and made by a panel of people with expertise across planning, infrastructure, environmental and resource management. This panel should be able to make the decisions, not just refer a recommendation to the Minister who only needs to consider their advice, rather than being required to take it.

Retain the Policy Making functions of the TPC

The TPC must maintain its independent function in policy development. While the Minister for Planning called for the review in light of 'administrative changes to the Commission's role in policy making', the terms of reference do not specifically address the TPC's policy functions. This fails to help people understand the government's concerns, its intentions or the purpose of the review. Whilst State policy making has been a slow and cumbersome process, lack of adequate resourcing of the TPC has often been a key reason for this, plus government

disinterest in adequately resourcing policy implementation.

The TPC should be the key decision-maker for State Planning Provisions and for Local Planning Provisions, rather than the Minister. It should also have oversight and review functions in relation to the Regional Land Use Strategies.

The TPC must maintain its function of assessing Projects of State and Regional Significance

The TPC must retain its existing responsibility to assess projects of State significance e.g. major projects like Gunns Pulp Mill and Ralphs Bay, and to provide advice and recommendations to the Minister.

The TPC must retain its function of Reviewing National Park and Reserve management plans

A key function of the TPC is to review, hold hearings and report to the Environment Minister on public representations on draft reserve management plans and amendments e.g. National Park Management Plans. This must be retained. In addition, the ambiguity over whether the TPC has authority to recommend changes to management plans in response to public submissions should be clarified and they should be given that authority. The public assumes that when the TPC holds hearings and writes a report with suggested modifications to the proposed management plan that they also have the authority to require the modifications to be made. It causes frustration and confusion when this does not occur.

Thank you
Catherine Nicholson

15.05.2020

Planning Policy Unit
Department of Justice,
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To Whom it May concern

It is my understanding that the current functions and powers of the Tasmanian Planning Commission (TPC) are to undergo a review by the Minister for Planning.

The current role of the TPC acting in an independent and professional manner has allowed for community input and involvement in the planning system. This has enabled an independent panel to review controversial developments and with informed community input to make a fair and reasonable judgement.

This will not be the case if any of the existing powers and functions of the TPC are altered to decrease or omit community involvement in the decision making process.

To date the TPC in its current form has the respect of the community as being an unbiased and well-informed panel of professional persons.

In closing I wish to reiterate my concerns that any review of the current powers and functions of the TPC must and should take in to account the necessity for community involvement and inclusion in the planning process and decisions made by the TPC.

In addition that for any review of the role of the TPC , it is essential that the community be involved in the review process and this is not a government rubber stamp that excludes community members.

Yours sincerely,

Christine Needham.

Cr Gideon Cordover
Kingborough Councillor

15 May 2020

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To whom it may concern,

Thank you for the opportunity to make a submission on the Tasmanian Planning Commission Review (the Review).

I believe that our planning system should protect cultural and natural values and promote the public purpose above private self-interest. The independence of the Tasmanian Planning Commission (the Commission) is imperative for its effective operation.

Recommendation 1: more public consultation

Public input should be sought on the reviewer's draft report, *before* a final report is provided to the Minister.

Recommendation 2: More specificity regarding the functions and powers of the Commission

Over recent years, the Commission has become increasingly sidelined. On some occasions, the Commission is being consulted after-the-fact by government on planning policy, instead of being allowed to function as per the *Tasmanian Planning Commission Act 1997*. The Review should explicitly consider the integrity and capacity of the Commission to operate with independence and primacy, where appropriate. This would address concerns about the Commission having been increasingly sidelined over recent years.

Recommendation 3: Removing responsibilities from the Commission, including State of Environment (SOE) Reporting, needs to consider whether there is any other body with sufficient capacity and independence to undertake the task

State of Environment Reporting is critical for our state. I believe these reports must be independent and impartial and therefore not be subject to ministerial direction or any other interference. Some authorities, such as the Environmental Protection Authority in Tasmania have not been able to demonstrate sufficient independence from the Minister. Therefore, an assessment by the Review of which other body could undertake the SOE Reporting task in a robust, independent, impartial and scientific way would be welcome.

Recommendation 4: Consider the adequacy of current mechanisms for safeguarding the Commission's independence

Sincerely,

Cr Gideon Cordover

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To whom it may concern,

I hold serious concerns about the nature of the Review process that is being implemented. It is already apparent that the role of the Commissioner is being undermined by the persistent presentation of *fait-accompli* policy, rather than allowing for proper consultation and amendment. Retrospectively consulting the commissioner after the decision has apparently been made is NOT an appropriate manner to conduct representations. Any review should recognise that the State Government is obliged to fairly and honestly consult the Commission, and the Public, rather than expect it to behave as some form of “rubber stamp”.

It is critical to maintain the independence of the Commission and it’s decisions. In this regard, I strongly recommend including the review of the current provisions that protect the Commission’s independence. This must be safeguarded to ensure integrity and fairness in their processes; preferably to guarantee all functions and powers are exempt (under Schedule 3A of the Act) unless there is a clear need for Ministerial interference; and for sufficiently broad offences, with appropriate penalties, to apply to those who inappropriately influence or obstruct the Commission.

As it happens, no “State of Environment” reports have been submitted since 2009, despite a clear obligation to provide such every four years. Not only is this reporting long overdue, but it needs to be performed in a manner *independent* of ministerial interference. This is presently not the case, and as such what little reporting is released is potentially subject to political manipulation. It behoves parliament to provide an independent process, via some statutory body, so that independence and impartiality can be clearly seen and maintained. To do so, **the Terms of Reference should be expanded to include possible expansions of the role of the Commission, and whether some parts of the role might be better performed by a separate, independent agency.** This may include a reconsideration of the contents of `Schedule 3A`.

In any case, **the entire (draft) report should be opened up to the Public for comment for a reasonable time-frame, prior to presentation to Parliament and the Minister.** The terms of reference deserve public consultation before it can be truly seen as representative of the needs of Tasmanians. The need for public consultation on such a vital process is paramount.

Regards;

[PLEASE REDACT NAME WHEN PUBLISHING THIS SUBLISSION]

Submission on:

Major Projects Bill
Tasmanian Planning Commission Review
Draft World Heritage Area Tourism Master Plan
Local Provisions Schedules

In the midst of this crisis, I would ask you to consider all of the land-use planning changes currently in train but unresolved in Tasmania – including the review of the Tasmanian Planning Commission (TPC), major projects legislation, the draft World Heritage Area (WHA) Tourism Master Plan, and local provisions schedules for most of the state.

I would suggest that even had this crisis not occurred, the proposed planning changes and instruments required much additional work - for example several are complex, some are vague in parts, and together they lack coordination and clear strategic direction. Indeed there are so many problems with the combined changes that there has seemed little point in commenting on their detail. For example references to the TPC in the major projects legislation are fairly meaningless when the TPC is itself under review.

Furthermore, given the crisis, the current planning changes are likely to be fairly irrelevant to new circumstances and time wasting in their implementation. For example, the local provisions schedules, still incomplete after some five years, are now based on out-of-date population predictions. In the major projects bill, despite a very different foreign investment climate, there are no provisions for basic due diligence checks on major project proponents, nor preventing time-wasting on proposals that may be rejected by the Foreign Investment Review Board under new foreign investment rules. At a time when, ironically, national parks have been shut due to the impacts of global travel, the draft WHA Tourism Master Plan is based on an out-of-date position paper providing the tourism and visitor forecasts.

I would have thought that it was obvious that the proposed planning changes in their current form cannot provide the planning guidance and encouragement now needed by a damaged society and economy that must undergo substantial restructuring. At this point of course, none of us can know exactly what the future holds – but the International Monetary Fund is forecasting the worst global downturn since the great depression, and there is no reason to believe that Tasmania will not be affected.

I would therefore urge you to put the currently proposed planning changes aside. I note that even Michael Bailey, head of the Tasmanian Chamber of Commerce and Industry, seems to think that existing planning laws are sufficient to deal with upcoming projects.

Instead of the proposed changes, expert state and local planners should consider turning their attention to the types of land use planning that are likely to be needed – at state and local level - to shape a healthy and resilient post-crisis future for Tasmania.

In the spirit of providing constructive suggestions in the crisis, you might wish to consider both immediate and longer-term proposals such as:

- removing any barriers to changing appropriate tourist accommodation over to long term residential (eg. using a planning directive), to boost the affordable rental supply in a tourism-depressed and high-unemployment market;
- bringing forward most of the planning permit exemptions in the state planning provisions (eg. via planning directive) to boost small construction projects (noting the now anomalous matter of tourist accommodation in the exemptions);
- developing planning-related grants or loans schemes to boost small construction projects, eg. a bushfire-ready grants scheme targeted at cash-strapped property owners in bushfire-prone areas to upgrade their home's defences (eg. drawing on the successful No Interest Loans Scheme);
- reshaping the TPC review, and requesting consultants to advise on broader options for Tasmania's post-crisis planning administration, and resilience-building planning approaches to guide future planning interventions;
- reviewing the regional land-use strategies, as promised, but now drawing on new demographic and economic forecasts and linking to greater metropolitan governance structures (and postponing finalisation of local provisions schedules until this work is completed);
- reviewing planning provisions related to residential zones, as promised, but now taking into account likely demographic and social changes arising from the current crisis (eg. facilitating somewhat lower residential densities and more garden space in some zones, in light of likely slower population growth and new pandemic-related changes such as increased telecommuting);
- reviewing planning policies, provisions and mapping relating to agriculture to ensure better protection for agricultural lands (eg. from even less justifiable tourism and residential encroachment) and enhanced opportunities for sustainable industry development;
- requesting the Macquarie Point Development Authority to provide options on how it might contribute to post-crisis recovery, and any planning changes required for Macquarie Point in light of new economic and demographic forecasts;

In relation to the WHA Tourism Master Plan, and national parks management more generally, you may wish to consider drawing a lesson from the depression and war-time eras of national parks history – placing greater emphasis on upgrading basic park infrastructure (involving jobs), providing inexpensive recreational opportunities

for a socio-economically-stressed population, and the objective of making a stronger contribution to population health and fitness.

With best wishes for your well-being and safety.

Dr Peggy James
April, 2020.

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To whom it may concern,

SUBMISSION TO THE TASMANIAN PLANNING COMMISSION REVIEW

1. Scope of Submissions and public input to the process

This call for submissions is limited to submissions addressing the terms of reference for reviewing the Tasmanian Planning Commission (the Commission). The opportunity to have input at this early framing stage of the review is welcomed.

It is noted, however, that the Minister for Planning called for an independent review of the Commission on 20 October 2019. Public comment on the Terms of Reference was extended due to the disruption associated with the Corvid19 pandemic to 15 May, but it appears that the consultants report is still expected by the end of June 2020.

It is concerning that this timeframe appears to give very limited time for the consultants (Planning Policy Unit/ Minister ?) to review what is likely to be a large number of submissions on the terms of reference that underpin the review, much less take the issues raised on board, investigate/consult on these matters and where appropriate address the issues in the review report.

It is a further concern that, while the consultants report will be publicly released by the Government, there appears to be no commitment to allow for public comment on the findings and recommendations of the report. Rather *“The Government will then progress any legislative changes to address recommendations arising from the Review.”*

The Commission is one of the fundamental components of Government that interfaces with the lives of all Tasmanians through, planning policies, planning schemes and development approvals that it assesses and determines, or provides advice on. It does and has the potential in the future to impact on their plans for the home they live in, their interactions with their neighbours, the future form and functioning of their local community, Council area, their local environment, and the heritage values that may make it distinctive and may be their reason for choosing to live where they do, or influence their employment opportunities.

It may impact on wider environmental aspects to their area from potential for noise, dust, odour or chemical pollution in the air they breath, the flows and potential flooding to their local stream, and their access to open green or blue space, which for many people is critical for their health and fitness. The current Corvid19 virus has highlighted the importance of these very issues for many people.

More widely, the the Commission has a critical role in preparing draft State Policies, providing for public comment and hearings on draft Reserve Management Plans and amendments, including to National Parks and Tasmania’s World Heritage Areas, and in relation to the future use of Public Land.

For all these reasons it is very important that any proposals to amend the roles, structure or functioning of the Commission should be open for public consultation. Limiting comment to consideration of narrow and broadly worded Terms of Reference, without providing for comment on the outcome of the review is not sufficient to provide an open and transparent process that takes genuine account of community views and concerns, or canvasses their support for the issues raised and recommendations made, or issues overlooked in the review.

Recommendation

The consultant’s report reviewing the Tasmanian Planning Commission should be released for public consideration and comment, and these comments should be considered in preparing a fi-

nal report and recommendations to Government for any legislative, structural, or functional changes to the Commission.

2. Comments on the Terms of Reference

The terms of reference are not accompanied by a statement of any detail presenting the Government's case for the need to review of the Commission at this time.

I note, in this context, that the Commission, unlike many government agencies and political processes, has a generally high level of trust within the Tasmanian community, because of its independence from government, expert based assessments, and processes that allow for public participation and public hearings that are widely accessible and fair.

The absence of such a statement of reasons for the review and the briefly worded scope of the review, do not provide much clarity as to the intent of the review, or its potential scope. As such, they create (legitimately) a level of concern that the review might be a precursor to intended moves to centralise yet more planning and planning policy powers in the Minister, rather than the professional and independent Commission, as has happened with the statewide planning scheme/State Planning Provisions.

In this context, it is pleasing to note that the Government has indicated, in **Term of Reference 1. a.** that it seeks to ensure that the Commission "*... is able to continue to perform its role as an independent decision maker and advisory body, in a fair, just, efficient and effective manner;*"

The scope of this commitment to independence is not entirely clear. It is to be hoped that the statement applies across the full range of the Commission's statutory planning roles, and to the true professional independence of the senior executive/officers of the Commission.

Term of Reference 1.b. - seeks to review the role of representatives of state agencies as members of the Commission. It needs to be recognised that State Agencies have a deep understanding of issues within their remit, which provides benefit to expert, evidence based consideration of planning matters. There will of course be conflicts of interest where an agency member is also a proponent. These issues should be able to be addressed in the normal processes of declaring an interest. Agency representatives must be required to provide advice on the basis of their best professional understanding, free of overt political/ministerial perspectives.

Alternatives, such as appointing consultants as members, will not avoid the potential for conflict of interest, but it might limit the scope of knowledge on key matters that come before the commission, and the understanding of potential legislative constraints.

The appointment by ministerial processes of 'independent' consultants as members of the Commission, brings with it the potential for the political perspectives of potential candidates to be factor in the selection process, rather than their level of expertise and experience in the relevant field. I have worked in a professional capacity for an independent statutory authority in another state for almost 30 years. In that time I have seen occasions where relatively poorly qualified, but politically compatible people have been appointed to an independent statutory authority, and the detrimental effect it has on the quality of decision making.

Recommendation

In reviewing Term of Reference 1.b. - the consultants must have regard for the specific knowledge that representatives of State Agencies can bring to the Commission.

All members of the Commission are to provide advice that is based on their best professional judgement, and to declare a conflict of interest where appropriate.

Selection of any independent members of the Commission must prioritise the professional expertise and standing of the candidate in their field, as it relates to the role of the Commission.

Term of Reference 1.d. makes specific reference to the State of Environment reporting function, in relation to ensuring the functions of the Commission are not undermined by historically designated roles. This is notably the only reference to a specific example made in the Terms of reference.

State of Environment Reporting is an important function of the Commission, particularly in these times of rapid Global Warming and a global species extinction crisis. While Tasmania is famous for its extensive areas of globally important cool temperate wilderness, particularly in the western half of the state, it also has extensively cleared and modified regions, which support large numbers of threatened species and threatened ecological communities. A report in 2017 identified the Lyons Electorate in Eastern Tasmania as one of the top 10 in Australia for the number of threatened species in the electorate (Watson J et.al. *Just ten MP's represent more than 600 threatened species in their electorates*. The Conversation, September 11 2017).

The regular preparation of an independent and authoritative assessment of the State of Environment (at State and National levels) is a critically important, but often neglected function of Government. It is, or should be, a gauge of the progress (or otherwise) of measures to maintain or restore the quality of the environment of Tasmania and point to key issues and threats/threatening processes (such as Global Warming) that need to be addressed, as well as the success stories. It is a key strategic warning document, essential independent information that any Government that recognises that its overriding role and reason for being is to care for and seek to advance the wellbeing of its population and the environment that serves as the essential undermining of a sustainable and resilient community.

This process must be at arms length from the politics of Government. The Commission has the independence and broad role that makes it a suitable agency to undertake this role, but It has not been resourced to fulfil this role in recent years.

Recommendation

This review must not be used as a vehicle to disregard the need and importance of preparing a State of Environment Report every 5 years.

The review could argue for the Commission to be specifically funded to prepare the State of Environment Reports. If not it must provide a well argued case for an alternative independent agency to be adequately resourced take on this role.

Given the long term strategic importance of this regular reporting process it should be identified as a statutory function for whichever agency has the role.

Term of Reference 4

I am concerned that the stated intent to maintain the independence of the Commission, as argued in Term of Reference 1, is potentially compromised by Term of Reference 4., which flags reviewing the “*roles, functions and appointment of the Executive Commissioner*”, notably 4.c. which includes ensuring “*flexibility of appointment*”.

I observed the detrimental impact of Government actions designed to enhance political/ministerial influence over agencies that, like the Commission, that have and need statutory independence from the Government of the day, to fulfil their statutory role and functions in the interest of the community and the environment of which, and within which, we are a component.

To function effectively agencies like the Commission need to be able to make expert-based decisions that consider the immediate and long term impacts and benefits of policies, plans, schemes and development proposals, free of short term political or election cycle considerations.

In my experience, a critically important component of maintaining the independence of an agency, such as the Commission, from Government, is ensuring that the professionals occupying senior executive positions have security of employment in the position, (subject to normal professional conduct/competence criteria), such that their position is not subject to the whim or approval of the Minister or Government of the day.

In recent years there has been an increasing tendency to employ people in senior executive positions on contract, with performance conditions set by the Minister. At first glance this may seem to be a reasonable performance review measure, but in practice it serves to compromise the independence and integrity of the public service and ultimately damages the perception, and in my experience, the practice of providing frank and fearless, evidence-based decisions and advice to government.

The result is an erosion of the performance of the agency, particularly in relation to politically contentious issues, a reduction in the community trust in decisions and advice given, and greater disquiet in relation to the veracity of advice on contentious proposals. Where supposedly independent decision making bodies are providing advice or making decisions that are tainted by knowledge of Government perspectives and expectations, (or the performance conditions in the Executive officers employment contract), the risk is that these determinations are biased towards short term political considerations, rather than the best long term or ongoing outcomes for the community, environment, and/or social wellbeing of society.

In highly contentious cases, such as the Tamar Pulp Mill, this lack of proper independent advice to Government can also cause real political damage to the Government of the day.

Conversely when an independent Commission or Authority is seen to be genuinely independent and respected, and operates through transparent process of public comment, the Government can more effectively stand by its decisions as (genuinely) independent best practice advice.

Recommendation

In considering Term of Reference 4, the Consultants should be very mindful of the requirement for the Executive Commissioner, Chairman, and other senior executives serving the Commission to be independent of Government, so that they and the Commission are best placed to make decisions and provide frank and fearless advice to Government, in the best interests to the people and environment of Tasmania.

In this context, careful consideration should be given to ensure that recruitment and appointment processes are based on the expertise, experience and professional standing of applicants.

Candidate selection for roles such as the Executive Commissioner, and Chairman (at least) should be made by an independent apolitical body, with appropriate experience and background that provides a short list of suitable candidates to the Minister, and may make a recommendation as to a preferred candidate.

To the extent possible, the review should highlight the need for officers appointed to key senior Executive positions in statutorily independent agencies, such as the Commission, to be appointed on a standard long term contract, without Ministerial performance conditions.

3. Suggested Additional Terms of Reference

3.1 Inclusion of Currently Exempt Industries

Some of the most contentious and environmentally damaging industries in Tasmania are currently exempt from assessment through the planning and development approval processes of the Commission. In particular marine fish farming industries, particularly salmon farming, and the section of the timber industry based on logging native forests.

These industries occupy extensive areas of state marine waters and public land respectively, which are public commons with very high values for environmental conservation, landscape/seascape, public recreation (they occupy prime sheltered embayments and waterways that are and have been highly valued for recreational fishing and boating; and the terrestrial areas for hiking, camping, cycling, fishing and hunting etc.), and support important tourism attractions or potential tourism interest.

The State marine waters also supported other commercial fishing industries that were displaced by the salmon farms. The terrestrial environments occupied by the timber industry also provide very substantial environmental services to the Tasmanian community, in terms of clean water, carbon sequestration, and habitat for Tasmania's flora and fauna. These areas also provide essential

resources for other industries, like Leatherwood which (in addition to providing one of the unique honeys of Tasmania) is an essential support for the beekeeping industry in this state, which in turn provides essential pollination services to significant components of Tasmania's growing horticulture industry.

Recommendation

The exemption of marine fish farming and native forest logging industries from independent open public scrutiny through the Commission is inappropriate and should be included within the scope of the Terms of Reference for this review.

3.2 Strategic Bio-regional Environmental Planning

The current Terms of Reference to not make any specific reference to the import role of the Commission in broad scale strategic land-use planning and policy.

In my experience, broad scale strategic planning that specifically takes into account environmental/heritage values and constraints (strategic regional scale environmental planning), can be a very effective and cost efficient way to both identify and plan to protect areas of significant environmental and heritage value, well ahead of the development front, and so facilitate coordinated strategic planning for future infrastructure and development centres such that they do not impact on significant natural and heritage values.

These strategic scale studies require a comprehensive assessment of environmental/conservation (and potentially Indigenous/cultural heritage) significance, and a robust planning policy that provides for the identification and protection of areas of significance.

By identifying and mapping areas of significant constraint at this strategic scale well ahead potential development, this approach facilitates a coordinated approach to environmental/conservation planning that can better protect the integrity of significant areas and better maintain connectivity and viability/resilience to change, more effectively than attempting to achieve this at the structure planning or worse the rezoning/subdivision stage of planning.

The approach also facilitates more integrated environmental and development outcomes, with potential benefits for communities in terms of better access to green space and exposure to nature with associated physical and mental health benefits. The current experience with Covid19 has highlighted the well recognised benefits of access to nature and open space.

For planners and developers, strategic scale environmental planning serves to flag areas of environment (and potentially heritage) significance at a very early stage, such that they can, to the extent possible, plan and locate developments such that they should not have significant environmental impacts, which reduces the potential for lengthy contentious environmental (heritage) disputes and costly delays and uncertainty in gaining planning and environmental approvals.

Clearly this approach dovetails with planning for future climate change impacts, including floodplain mapping and sea level rises, the identification and protection of key refugia for native species, and planning for climate resilience.

Recommendation

The Terms of Reference of the review should include specific consideration of the potential benefits of resourcing the Commission to undertake (in collaboration with other agencies, as appropriate) more strategic regional scale environmental planning in key areas, to provide improved early identification of environmental (and Heritage) values and constraints, and more effective environmental/conservation and planning/development outcomes.

Sincerely,

Gary Whisson

Hobart not Highrise

Submission to the Review of the Tasmanian Planning Commission

Responses to the terms of reference

1. The Commission is able to continue to perform its role as an independent decision maker and advisory body, in a fair, just, efficient and effective manner;

We support and wish to maintain the TPS as an independent and expert based decision making and advisory body. The TPC's independence is critical to the communities trust and confidence in its roles and responsibilities for land use planning.

The central planning authority needs to have evidence based and merits based decision making not developer influenced or politically driven decision-making. Hobart not Highrise has found the Tribunals to be professional and independent, while considerate of all views and issues in reaching its decisions within the constraints of the relevant legislation.

TPC hearings are the only forum where the community can be heard without needing a lawyer or a body of experts to represent it on the issues it is concerned about with regard to planning and environmental matters.

The TPC gives communities the right to have input into strategic planning matters. It is vital that it continue to hold public hearings, be staffed by experts and remain independent from government or industry dominance.

2. the Commission's statutory functions are not compromised by its membership including representatives of State Agencies or bodies that are proponents of matters that the Commission's functions extend to;

Key people from groups like TasWater and State Growth (transport and other infrastructure planning) are essential on the Commission. But we should consider changes to the list of desired attributes in the act. There is a need to achieve a balance of expertise which includes consideration of environmental, social and economic sustainability factors. The profiles of the current Commissioners on the website do not suggest a balanced focus has been achieved. Perhaps Commissioners could include scientists and experienced social planners/social services managers, as well as members with Local Government, Legal, and Government Authority experience.

Under the *Tasmanian Planning Commission Act 1997* the TPC is *(b) to provide advice to the Minister in respect of matters related to land use planning*. There seems to be a lack of use of this facility with regard to the environmental, social and economic sustainability factors, perhaps because there is a lack of broad representation on the Commission.

The TPC's planning roles are important for reducing the risk of corruption and maintaining separation of powers which are a critical aspect of functional liberal democracies. The government passes the legislation which governs the planning sphere and the TPC ensures the laws are applied fairly and openly.

The TPC should maintain and enhance its key role in public participation in planning. Public hearings for major developments should be required and not discretionary.

3. The ongoing structure of the office of the Commission and its resourcing is reflective of its extended role in the planning system as an independent decision maker and advisory body on the new components of the Tasmanian planning system;

The TPC needs to be better resourced so that it can deliver on its obligations under the Acts; and potentially be given greater powers than merely advising the Minister. It may be reasonable to give the TPC an Ombudsman's powers to be the final arbiter in the decisions relating to complaints.

The TPC needs an appropriate number and types of people to do its role. Lack of staff has resulted in them taking far too long with the LPS's which have been required as part of the new planning scheme.

The TPS should have power to issue the SPPs and LPSs and to make changes (perhaps major ones could be subject to parliamentary approval).

Under the *Tasmanian Planning Commission Act 1997* the TPC is *(b) to provide advice to the Minister in respect of matters related to land use planning*. A planning authority should be concerned with planning, not just the rules around building structures in the landscape. Unfortunately they seem to have been ignored in initial proposals around large scale new developments like those proposed at Huntingfield and the former Hobart Showground which offer the opportunity for strategic long term planning. There appears to be no regard to the environmental, social and economic sustainability factors if the proposals released to the public are correct. These proposals fail to offer green space with trees to reduce heat and improve mental and physical wellbeing? Why is there not better planning for using stormwater to create wetlands? If there were broader representation on the Commission these matters could be given better consideration and there would be more scope for sound well researched advice going to the Minister to ensure planning for liveable developments and resilient communities.

Tasmania's three Regional Land Use Strategies (RLUS) are likely to be reviewed this year and will guide land use planning. The regional land use strategies have a significant role to play in the setting the medium to longer-term strategic directions for each region in Tasmania. The development of the RLUS should come under the TPC not be developed by private consultants as with the current RLUS.

4. Its functions are not undermined by the demands of historically designated roles under other legislation that might be better reallocated to another agency or body.

The TPC must have a broad policy role and this should not be removed. As the people continually examining and applying any planning legislation or planning schemes to practice within the community, they are best placed to be aware of problems or shortcomings in these matters. Their expertise should be valued and extended with the addition of experts in areas relating to environmental, social and economic sustainability factors.

If the TPC lost its policy role they could not advise on the Regional Planning Strategies and Tasmanian Planning Policies. This would be a serious loss to the Community because the TPC is best placed to have an unbiased overview.

Questions have been raised around the Commission being the most appropriate agency to conduct reporting on the State of the Environment under the *State Policies and Projects Act 1993*. If the Commission were properly staffed and included a biodiversity expert it could consider and report on these matters

- (a) the condition of the environment; and*
- (b) trends and changes in the environment; and*
- (c) the achievement of resource management objectives; and*
- (d) recommendations for future action to be taken in relation to the management of the environment.*

These matters are of vital importance to planning in the state and so should come under the considerations of the TPC. Other bodies may also make representations to the government but the

TPC should not lose its role in such matters. As said before they should be able to offer advice on all planning matters not just building structures and their surrounds. Protected areas cover almost 50% of Tasmania – thus reviewing their management plans should remain independent.

Reviewing National Park and Mount Wellington Park management plans should remain with the TPC. This is especially important in light of the Governments agenda of opening up protected area to commercial tourism developments. A suggested improvement to this process would be for the TPC to review the final management plans to check that it included reasonable responses to public comments and representations.

The functions and powers of the Commission as outlined in the *Tasmanian Planning Commission Act 1997* seem entirely appropriate and necessary. Our only concern is that the Minister has authority over the Commission and we can see a danger of this being abused. If the government has set up good legislation around the role the TPC and the laws and regulations around planning then there should be no problems with an independent and authoritative TPC.

5. The roles, functions and appointment provisions of the Executive Commissioner to ensure that they:

- a) provide for the appointment of an appropriately qualified person;**
- b) align with the State Service expectations of a senior executive;**
- c) provide flexibility of appointment; and allow for the effective management of the Commission and the Commission's office.**

The Executive Commissioner's position is integral in ensuring the TPC maintains the high standards of governance and accountability in performing its functions and exercising its powers at arm's length from developers, government and political processes. The public expect and rely on this independence.

The Executive Commissioner role is to ensure conflicts of interest are avoided in decision-making and in giving advice to the government. The person fulfilling such a role must show evidence of a high level of personal integrity and an ability to manage an organization and select staff with the required expertise. They would be expected to attain a detailed knowledge of the State's Planning Laws and Regulations but need not have such detailed knowledge as a starting point.

The role of the TPC has been weakened by governments increasing the role and power of the Minister. There has been no open public discussion of this change and no indication that it was necessary.

There should be no conflict between giving advice to the government on policy and being an independent statutory body. If it is able to operate openly and within its legislation the TPC is best placed to have a complete overview of planning in the state.

Extra questions for consideration

Views on terms of reference for the Review?

We were concerned to see this sentence in the outline *"The Secretary may establish a Steering Committee or Reference Group to oversee the review with representatives from the Local Government Association Tasmania (LGAT), the Planning Institute of Australia (PIA), and the Law Institute"*.

We believe community groups should always be represented on such committees or reference groups.

There is a need to consider a complete planning strategy that considers all future projections of state development and needs. Currently the system is piecemeal and the idea of a comprehensive strategy and appropriate planning legislation is ignored while planning is used as a political tool.

What success would look like as an outcome of the Review?

- The TPS remains an independent and expert based decision making and advisory body with oversight of the range of land use planning issues.
- The TPC maintains and improves its role in policy development and strategic planning for the state.
- The TPS has power to issue the SPPs and LPSs and to make changes.
- That the Commission is staffed so that they can deliver their role fully. They could be more effective by using their expertise to undertake public land use enquiries, assist with policy making regarding strategic planning and report on the state of the environment.

What are the key issues the Review needs to look at?

How the Commission performs its roles and functions in the Tasmanian Planning System? (e.g. policy, assessment, advice)

There is an increasing trend of the State Government to develop Master Plans to manage National Park issues. Master plans are not subject to the legal requirements for openness and transparency which apply to formal management plans. The Master Plan process basically undermines the role of the TPC. These matters should be part of the role of the TPC with extensive community input.

In order for the TPC to be able to effectively implement holistic integrated planning laws and policies in Tasmania there must be an end to exemptions such as Forestry on public land, Private Timber Reserves, Aquaculture, Mining exploration, Dams, Utilities, Agriculture etc

A new Major Projects Bill is expected to be released for public comment shortly. The Bill would likely allow for major projects to be pulled out of the normal planning process and be assessed via a new State Government process. The new major projects assessment process might be able to call-in projects like Cambria Green, the cable car, highrise buildings and port facilities. We believe this would be a mistake. Planning processes should be followed for all projects.

Margaret Taylor

Brian Corr

From: [Jane Wilson](#)
To: [Planning Unit](#)
Subject: Feedback: Review of the Tasmanian Planning Commission
Date: Friday, 15 May 2020 4:29:30 PM

Professor Roberta Ryan,

Submission to the review of the Tasmanian Planning Commission (TPC). Please see my list of recommendations below:

I participated a year or two ago in a TPC hearing as a representor opposing a proposal to amend the Kingborough Planning Scheme to allow a particular development to go ahead.

My experience at the hearing reinforces, in my opinion, the need for the TPC to be strengthened in its role.

The outcome of the hearing was disappointing to me. It was a proposal to build on an open space area adjacent to a long standing built development.

The broad issue of the imperative to retain some open space at the particular site and consider open space in Kingston overall was not addressed.

The need for open space was disregarded as the large site, historically, did not have any part of it zoned open space.

If the remit of the TPC was to broaden so, for example, that it may take into account in its decision making an overview of land use at a site and area (see recommendations below) then that would only work to the advantage of a community in the long term.

I support the position of Planning Matters Tasmania on the review of the TPC, and my recommendations below are taken from their recommendations.

THE TPC MUST HAVE ITS INDEPENDENCE MAINTAINED, BROADENED AND STRENGTHENED

RECOMMENDATIONS

The TPC must retain its capacity to perform its current functions independently of government.

The TPC's power to act independently of the government should be expanded. The TPC should be given the power to make and amend the Tasmanian Planning Scheme.

THE TPC MUST MAINTAIN ITS FUNCTION IN POLICY DEVELOPMENT

RECOMMENDATIONS

The TPC must:

Retain its existing role to review and hold hearings on representations, and report to the Minister on draft State Policies and amendments.

Retain its existing role to report to the Minister for Planning regarding Draft Tasmanian Planning Polices and to amend any planning scheme to be consistent with a those policies.

Restore its role as the body responsible for making planning scheme controls and amendments by making the TPC the decision-maker for State Planning Provisions and removing Ministerial oversight for Local Provisions Schedules. This would provide the TPC with an important role in influencing planning policy.

THE TPC SHOULD DEVELOP TASMANIA'S REGIONAL LAND USE STRATEGIES

RECOMMENDATIONS

Legislation should be changed to give the TPC the responsibility to develop, amend and approve Regional Land Use Strategies with public notice and hearings.

THE TPC MUST MAINTAIN ITS FUNCTION OF ASSESSING PROJECTS OF STATE AND REGIONAL SIGNIFICANCE

RECOMMENDATIONS

The role of the TPC in assessing and approving projects of State and regional significance through existing processes should not be undermined e.g. through the draft Major Projects Bill.

THE TPC MUST RETAIN ITS FUNCTION OF REVIEWING NATIONAL PARK AND RESERVE MANAGEMENT PLANS

RECOMMENDATIONS

The TPC's role in independently and transparently reviewing reserve management plans must be retained and legislation should be amended to clarify that the TPC may make recommendations for changes to reserve management plans.

STATE OF THE ENVIRONMENT REPORTING SHOULD REMAIN WITH THE TPC

RECOMMENDATIONS

The problems with State of the Environment (SoE) reporting identified by the TPC in 2013 (and reconfirmed in 2018) should be addressed and the TPC should continue to produce SoE reports each five years. These reports are vital for a range of reasons, including informing good planning.

THE TPC MUST BE PROPERLY FUNDED

Yours sincerely

Patricia Jane Wilson



**Planning Policy Unit
Department of Justice**

By email to haveyoursay@justice.tas.gov.au

15th May 2020

Tasmanian Planning Commission Review

Thank you for the opportunity to make this submission.

Firstly **Launceston Heritage Not Highrise (LHNNH)** believes there are no proper reasons for this review. The Tasmanian Planning Commission (TPC) is not broken so what are the problems to fix other than perhaps properly resourcing it and reversing previous (and future) diminishment of its roles? Coming at the same time as the Draft Major Projects Bill suggests to **LHNNH** that there must be connection and that this has not been properly explained. It seems perhaps the review could be meant to pave the way to disempower the TPC, destroy its independence and politicise planning decisions. Therefore we do not have confidence in this review.

Any weakening of the independence of the TPC is a backward step in the democratic planning processes that exist in Tasmania and this will undermine public confidence in planning decisions that are made without the independence of a properly resourced TPC.

It could and should be expanded to take a greater role in public decision-making: For example reserve and water management plans; transport and climate change. **LHNNH** fear that the government intention is to strip the TPC of its advisory role on policy development and instead rely on the government's Planning Policy Unit. The TPC should be the body responsible for making planning scheme controls and amendment decisions for State Planning Provisions and for Local Provisions Schedules. Ministerial oversight should be removed. This would provide the TPC with an important role in influencing planning policy and this is desirable.

Currently planning laws give good opportunities for the community to participate in the land use decision making process. This is not red tape to be removed which seems to be the rationale for the review. It is certainly the message coming from the development/property/building community in recent years. During this current health crisis this has

stepped up in the media to almost a frenzy with many pleas to the government to get things done to enable 'shovel ready' projects to start as soon as possible. This is frightening.

Considering the ongoing TPP and LPS process currently underway it seems to **LHNN** that by having all these things going on - and at a time when public involvement and response is not easy - the opportunity for a complete mess is significant. This will affect all Tasmanians not just the development/property/building community who are pleading for their 'shovel ready' fast track.

It is clear that the review is motivated primarily as an opportunity to further weaken and diminish the role of the TPC in order to reduce so called "red tape". In other words to fast track and increase the number of approvals for development proposals in the system by favouring the vested interests of developers over due process while bypassing or reducing the roles of Local Government and the TPC as well as decreasing community participation in the planning decision making process.

Reinstate all of the TPC's former powers, roles and functions as well as recommend an expansion of those powers, roles and functions so that it can fulfil its charter as the key institution for assessing strategic land use planning in Tasmania. Ensure Tasmania has a democratic planning process.

The TPC should:

- Continue to be responsible for the State of Environment report which should be delivered in a timely manner.
- Be fully independent (ie no Ministerial intervention/interference).
- Carry on its current roles including Reviews of municipal Planning Schemes and applications to rezone land. Noting that this allows the Community, Local Government and Development Proponents an opportunity to make their case in an affordable and accessible independent forum.
- Assess and run all Regional Land Use Strategy processes including public notice and hearings.
- Assess all Master Plans, Land Use Strategies, Structure Plans and any other strategic planning documents that have significant land use planning implications.
- Assess all projects under of State and regional significance. This should not be undermined e.g. through the draft Major Projects Bill.

- Conduct Public Land Use, Marine Protected Areas Inquiries and any other related public interest land use assessment processes.
- Conduct Public Hearings for all matters that come before it.
- Retain review of reserve management plans and legislate to clarify that the TPC may make recommendations for changes to reserve management plans.
- Be given a level of resourcing that ensures all the above can be carried out to a high standard and in a timely manner.

The TPC should be:

Properly funded to allow it to carry out existing statutory roles, including the State of Environment Report and expanded to develop new State Policies in regard of reserve and water management, transport and climate change.

In addition to the above points there are two other key requirements to ensure that holistic, integrated planning based on the principles espoused in Schedule 1 of Land Use Planning and Approvals Act 1993 (LUPA) can be fully realised through the TPC process.

1. All land uses in Tasmania must be subject to LUPA and the requirements of Schedule 1 (ie no exemptions). The current situation of increasing exemptions and permitted uses means that integrated planning is impossible. Planning laws can only work if all land uses are subject to those laws
2. An effective Anti Corruption Commission must be established in Tasmania to ensure the highest levels of integrity are maintained in all levels of Government and in the public service. For example property development including rezoning of land is one of the most lucrative industries in Australia with over 25% of Australia's 250 wealthiest people being property developers. It is also an area because of the potential monetary gain involved that is most likely to be subject to corrupt behaviour (see Casey Council Victoria). The State Government policy of encouraging population growth and industrial tourism numbers means there will be more development pressure and as such an Anti Corruption Commission with teeth is more important than ever. The combination of having a fully independent TPC and an effective Anti Corruption Commission significantly decreases the risks of corruption in the area of land use planning such as land rezonings. **The Tasmanian Integrity Commission is not an effective anti corruption watchdog.**

In SUMMARY

The TPC provides the community with appropriate rights to formally be heard in respect of decisions it makes, or policy reviews it undertakes, including being able to appear

personally to make representations at public hearings without needing a lawyer or experts. It runs its own processes, which have enabled public participation in a way that is fair and accessible. My own experience of a recent appeal through RMPAT was a valuable first-hand view of this process. That insight informs my concern that the independence of the TPC is vital to all Tasmanians.

The TPC acts independently from government, and has for its more than 20 years of operation developed a high level of trust within the Tasmanian community. Governments have reduced the TPC's role in planning, critically making the Planning Minister and not the TPC responsible for approval of the single most important element of the statewide planning scheme – the State Planning Provisions. While the TPC can provide advice to the Minister, and retains an important hearing role, there is nothing requiring the Minister to act on that advice. This is an important time for planning in Tasmania let it go underground now and the only winners will be the money makers looking to maximise investments on whatever they can get their hands on.

Submitted on behalf of

'LAUNCESTON HERITAGE NOT HIGHRISE'

by

Linda Collier



From: [Lynette Taylor](#)
To: [Planning Unit](#)
Subject: Review of Tasmanian Planning Commission
Date: Friday, 15 May 2020 12:02:14 PM

My comments to the review are made in consideration of the need to defend, strengthen and support a trusted, expert and independent group. I would therefore oppose any changes which would further undermine or disempower the Tasmanian Planning Commission (TPC).

The TPC has since 1993 provided fair hearings on resource management and planning in a transparent accountable manner. We should not move to a Minister centred system.

The TPC not the Minister should be responsible for State Planning Provisions.

The TPC must retain all of the functions originally legislated. The need for independent, qualified experts free from political influence or direction is more important than ever. The draft Major Projects Bill proposes a Development Assessment Panel thus risking the displacement of the TPC. There is no need for the Major Projects Bill, we already have Projects of State or Regional significance legislation in place.

The TPC should continue to make and amend the Tasmanian Planning Scheme. The Minister's role in Local Provisions Schedules should be removed.

The role of the TPC should be expanded to cover Regional Land Use strategies. No land use type should be exempt or excluded from consideration by the TPC.

The TPC should continue to review reserve and parks management, water management and make decisions based upon expert scientific advice and public submissions.

The TPC should be properly resourced to meet all its legislated roles and functions. Recognise the primacy of TPC rather than giving public funding to consultancies acting in non transparent, non accountable, commercial in confidence ways.

There is a need to broaden the scope of the TPC to include policies addressing the impacts of climate change within the State and of ocean warming and acidification on the coasts.

The TPC should ensure, by recommendation or other measures, that environmental protection and biodiversity sustainability is achieved. Cumulative impacts can be very destructive upon biodiversity, scenic, environmental, cultural and economic values. Near my home water use and its sustainability is being severely impacted by 4 years of drought with below average rainfall across the catchment on the central East coast. I can not see or access any plan. DPIPWE seems to have over allocated water to irrigators, failed to recognise the potential and real impact of historical water licence rights and not measured or required metering of the take from the Swan and Apsley catchment. There is now a slow degradation of the RAMSAR listed Moulting Lagoon wetland, time will tell if this is recoverable.

The function of the TPC reviewing and amending the draft Resource, Parks, TWWHA plans and reporting to the Environment Minister and, of inquiring into the future use of Public lands should be retained and adequately resourced.

In closing, retention of the TPC (formerly RP & DC), an independent statutory and advisory authority is essential.

Thank you for the opportunity of making comment to the review.

Lyn Taylor.

Department of Justice,
Office of the Secretary,
GPO Box 825,
Hobart 7001.

15/5/20

By email have yoursay@justice.tas.gov.au

Dear Sir/Madam,

Re: Tasmanian Planning Commission Review

We would like to make a very brief submission concerning the Tasmanian Planning Commission (TPC) Review.

We consider it is essential that the TPC as a statutory body continues its role of oversight across a range of land use planning issues, especially implementing the Resource Management and Planning System, LUPAA 93 and the State Policies and Projects Act.

TPC is trusted by the public. We value its independence, including its ability to call on qualified experts in any hearings and assessments. This includes amendments to planning schemes, reviewing state policies, state planning provisions and local provisions, state of the environment reporting and assessing projects of state and regional significance.

Some brief recommendations include that the:

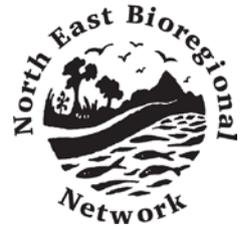
- TPC should be far better resourced to do its current job. This might include using or employing more environmental experts for example. Our involvement in a recent case supports this.
- TPC, if resourced better, would mean the State of the Environment Reporting would not lapse.
- TPC should have its powers extended so that it is incumbent on the Planning Minister to take on Commission advice, or to state publicly why TPC advice was not accepted. This is especially important after public consultation as the TPC is the only avenue for widespread public consultation. The views of the public as expressed in TPC hearings can be too easily dismissed. Our recent involvement with the draft state planning provisions demonstrates that many recommendations from the TPC have been ignored by the Minister.

Thank you for this opportunity to comment.

Yours faithfully,

Miles Harrison
BSc (Mech Eng), FIEAust

Anne Harrison
BA, Dip Ed, Grad Dip Bus Admin, AMusA, TMus



We wish to make a representation on the above review.

Our organisation is a not for profit community group focused on the protection, maintenance and ecological restoration of native ecosystems. We have a long history of involvement in land use planning via the TPC and RMPAT in order to further the objectives of our organisation. Our view is that the review should be scrapped immediately as the purpose of this process is to further weaken the role of the Tasmanian Planning Commission in order to favour the vested interests and agendas of industry and property development lobbyists.

Background

Before discussing the review we wish to comment on land use planning history in Tasmania over the past 25 years. Firstly it needs to be acknowledged that Tasmanian Governments during the 1990's introduced a number of enlightened planning policies and laws including the State Coastal Policy, The Threatened Species Protection Act, the Land Use and Planning Act as well as the creation of the Resource Planning and Development Commission and the Resource Management and Planning Appeal Tribunal.

As these laws and institutions became functional it became clear that despite some deficiencies (ie exemption of Forestry and Aquaculture from LUPA) that they would necessarily provide stronger regulation and controls on land use activities such as commercial and resource development in line with sustainable development objectives (as per Schedule 1 LUPA) and the Precautionary Principle. It was also evident that the new laws and independent institutions would provide greater opportunities for the community to participate in land use decision making processes.

In response to this various industries including real estate, tourism, aquaculture, agriculture, mining, forestry etc started agitating for "planning reform" on the basis of too much "red tape" inhibiting industry/developers agendas.

Around 2010 a more formal and organised campaign to weaken planning laws was led by Mary Massina (Property Council), Stuart Clues (Housing Industry Association) and Michael Kerschbaum (Master Builders Association). Regular appearances in the media were accompanied by alarmist statements claiming

that the Tasmanian planning system was “a horror smash”, that a “Statewide Scheme” was required and that it was too hard to get approvals for development. The reality was that very few developments were appealed against successfully in RMPAT or the TPC and that governments were undertaking incremental weakening of planning laws over time to appease property development and industry interests. This was and continues to be typified by the ever increasing number of land uses which over time have become partially or fully exempt from planning laws.

The 2014 State election saw the Liberal Government win office and they soon appointed Mary Massina to head up the Planning Reform Taskforce and later in 2017 CEO of the Macquarie Point Development Corporation. Stuart Clues is now the Red Tape Reduction Coordinator in the Office of the Co Ordinator General while Michael Kerschbaum is a Senior Advisor in the Department of State Growth. The appointment of Massina, Clues and Kerschbaum are just one example of why a fully independent Tasmanian Planning Commission is essential in order to provide a clear separation of powers to avoid interference from vested interests and Governments who may collude with such interests against the public interest. One of the most common forms of corruption in Australia is in the area of planning and property development. A properly resourced, fully independent and empowered Tasmanian Planning Commission along with an effective Anti Corruption Commission is key to avoiding the insidious spread of corruption in the property development sector.

The Tasmanian Planning Commission. Role, Powers, Resourcing.

As discussed above there has been incremental diminishment of the TPC position as independent planning authority over recent years. Some of the direct or indirect examples of this include:

- Increased opportunities for the Minister to intervene in or ignore TPC decisions and advice
- The proposed changes under the Major Projects Act to replace the TPC with “development assessment panels”

- The lack of timely publication of State of Environment reports including also proposed changes under the Major Projects Act to remove the TPC from its responsibility to oversee the State of Environment process
- The recently introduced Housing Land Supply Bill which allows rezoning of land for “affordable housing” to bypass the TPC process
- The increasing number of “Master Plans” (ie WHA and Freycinet Master Plans and proposed Bay of Fires Master Plan) which are documents with significant land use planning implications (including for Protected Areas such as National Parks) but are not assessed by the TPC
- Regional Land Use Strategies where much of the process was overseen by private entities instead of the TPC. For example the Northern Regional Land Use Strategy was coordinated by Northern Tasmania Development (NTD) a private pro development consortium with a clear conflict of interest when it comes to overseeing a land use planning strategy.
- Municipal Land Use Strategies and Structure Plans which are produced by Local Government and private consultants with no involvement from the TPC and as such not subject to a rigorous, open, transparent and independent evaluation process.
- The Planning Reform Taskforce which was headed up by former Property Council CEO Mary Massina
- Roles the TPC formerly undertook in processes such as Public Land Use Inquiries and Marine Protected Areas Inquiry which no longer seem to feature in their activities
- Public Hearings no longer being mandatory in some cases
- The increasing number of permitted uses and land use exemptions (full or partial) * which make it impossible for the TPC to ensure there is cross tenure integrated land use planning in Tasmania based on sustainable development principles

It is clear to us that the review is motivated primarily as an opportunity to further weaken and diminish the role of the TPC in order to reduce so called “red tape”. In other words to fast track and increase the number of approvals

for development proposals in the system by favouring the vested interests of developers over due process while bypassing or reducing the roles of Local Government and the TPC as well as decreasing community participation in the planning decision making process.

We reject this neo liberal direction (ie ongoing deregulation and privatisation) and call for not just the maintenance of the status quo but the full reinstatement of all of the TPC's former powers, roles and functions as well as an expansion of those powers, roles and functions so that it can fulfil its charter as the key institution for assessing strategic land use planning in Tasmania.

The TPC should:

- Continue to be responsible for the State of Environment report which should be delivered in a timely manner
- Be fully independent (ie no Ministerial intervention/interference)
- Carry on its current roles including Reviews of Municipal Planning Schemes and applications to rezone land. Noting that this allows the Community, Local Government and Development Proponents an opportunity to make their case in an affordable and accessible independent forum.
- Assess and run all Regional Land Use Strategy processes
- Assess all Master Plans, Land Use Strategies, Structure Plans and any other strategic planning documents that have significant land use planning implications
- Assess all projects under the Major Projects Act
- Conduct Public Land Use, Marine Protected Areas Inquiries and any other related public interest land use assessment processes
- Conduct Public Hearings for all matters that come before it.
- Be given a level of resourcing that ensures all the above can be carried out to a high standard and in a timely manner.

In addition to the above points there are two other key requirements to ensure that holistic, integrated planning based on the principles espoused in Schedule 1 of LUPA can be fully realised through the TPC process.

- All land uses in Tasmania must be subject to LUPA and the requirements of Schedule 1 (ie no exemptions). The current situation of increasing exemptions and permitted uses means that integrated planning is impossible. Planning laws can only work if all land uses are subject to those laws
- An effective Anti Corruption Commission must be established in Tasmania to ensure the highest levels of integrity are maintained in all levels of Government and in the public service. For example property development including rezoning of land is one of the most lucrative industries in Australia with over 25% of Australia's 250 wealthiest people being property developers. It is also an area because of the potential monetary gain involved that is most likely to be subject to corrupt behaviour (see Casey Council Victoria). The State Government policy of encouraging population growth and industrial tourism numbers means there will be more development pressure and as such a Anti Corruption Commission with teeth is more important than ever. The combination of having a fully independent TPC and an effective Anti Corruption Commission significantly decreases the risks of corruption in the area of land use planning such as land rezonings.

The Tasmanian Integrity Commission is not an effective anti corruption watchdog as evidenced by the Australia Institute report attached.

Yours sincerely

Todd Dudley

President

North East Bioregional Network

* One of the terms of reference reads:

The Commission's statutory functions are not compromised by its membership including representatives of State Agencies or bodies that are proponents of matters that the Commission's functions extend to;

On this point there has been an increasing tendency in Municipal Planning Schemes for authorisations from State Agencies to come under Acceptable Solutions (rather than Performance Criteria) thus denying Local Government and the Community the right to assess and appeal against decisions made by such agencies. Agencies such as the Policy and Conservation Assessment Branch (Threatened Species Permits), Aboriginal Heritage Tasmania, Parks and Wildlife Service (via Reserve Activity Assessments, EPA (Level 2 Activities), Forest Practices Authority (Forest Practices Plans for landclearing etc) are now primarily facilitators rather than regulators of development applications via a rubber stamp conditioned approval process. In addition uses that fall outside of LUPA such as Dam approvals (DPIPWE Water Management and Assessments Branch), regulation of mine leases and mining exploration (Mineral Resources Tasmania), Fish Farms (EPA), Forestry (Private Timber Reserves and Forestry on Public Land) are similarly approved with conditions in a largely self-regulatory environment (ie MRT to our knowledge has never prosecuted anyone for breaches of mining lease conditions).

As discussed previously the amount of exempt and permitted uses in Tasmania means the Tasmanian Planning Commission cannot ensure that land use planning across the State is integrated, holistic and consistent with Schedule 1 of LUPA.



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Research that matters.

Tasmania's toothless watchdog

A comparison of the Tasmanian and NSW anti-corruption watchdogs

The Tasmanian Integrity Commission (IC) has design flaws that render it less effective than the NSW ICAC. Between 2012 and 2016, NSW ICAC held 28 public hearings, referred 76 people for prosecution and made 123 findings of corrupt. Tasmania's IC scored zero on these measures and has never held a full inquiry

Discussion paper

Hannah Aulby

January 2018

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Executive Summary

The Tasmanian Integrity Commission (Tasmanian IC) has major design flaws that render it far less effective than the NSW Independent Commission Against Corruption (NSW ICAC) in exposing systemic corruption.

The NSW ICAC makes more findings of corrupt conduct, refers more cases for prosecution, holds more public inquiries, and tackles systemic corruption cases of public significance. Over the observed period, 2012-2016, the NSW ICAC made corrupt conduct findings against 123 people, referred 76 people for prosecution, held 28 public inquiries, and investigated cases involving complex networks of corruption within the public sector.

The Tasmanian IC has never held a full inquiry using all of its investigative powers under the Integrity Tribunal meaning that it made no misconduct findings, held no public hearings, and only tackled cases involving one or two public sector employees. The Tasmanian IC has not held an investigation into the ongoing allegations of undue influence of the gambling industry on governance in Tasmania, and limitations on its jurisdiction mean that it is unlikely it would have been able to investigate the conduct of the Federal Group employees involved in allegations of bribery during the 1972 elections.¹

Differences in the design of each body impact their respective effectiveness, including the threshold to begin investigations, definition of corrupt conduct within the legislation and the conduct of public inquiries. NSW ICAC can begin investigations and inquiries using its full powers at the discretion of the Commissioner.

Cases the Tasmanian Integrity Commission did not investigate

Alleged conflict of interest of former mining minister: The Tasmanian IC has not investigated allegations that former mining minister Adam Brooks had a conflict of interest between his public position and ownership of mining consultancy Maintenance Systems Solutions.

Influence of gambling industry on policy making: The Tasmanian IC has not investigated allegations that the gambling industry has unduly influenced policy making and governance in Tasmania.

¹ ABC, 2018, *New allegations about collapse of 1972 Tasmanian government*, 7.30 Report, ; and Boyce, 2017, *Losing streak: how Tasmania was gamed by the gambling industry*, Redback Books, Melbourne.

The Tasmanian IC has to conduct a long process of assessments, reports, minor investigations and reports to the Board before it can begin a full inquiry. The requirement that complaints be made in writing in an approved form means that had the NSW ICAC investigation into Eddie Obeid occurred in Tasmania it would not have ever got started, as this began with an anonymous phone call. As the Tasmanian IC has to date not held a full inquiry under the Integrity Tribunal, it seems clear that this process is not effective.

The Tasmanian IC also has restrictions on its jurisdiction that mean it can only investigate public officers, and is limited in investigating parliamentarians. It does not have the jurisdiction to investigate matters involving proceedings in Parliament,

Tasmanian Integrity Commission case studies

Conflict of interest of health managers: The Tasmanian IC investigated allegations that two senior health managers in the North West Area Health Service used their position to unfairly provide employment for family members.

Alleged favouritism of TasTAFE executives: The Tasmanian IC investigated allegations that the TasTAFE Chief Executive Officer gave favourable treatment, promotions, and working conditions to another senior executive on the basis of their shared background and family connections.

meaning it could not have investigated allegations that Human Services Minister Jacque Petrusma misled Parliament in relation to the safety of children under the care of Safe Pathways.²

The report compares the legislative design of each body as well as their respective effectiveness in exposing systemic corruption.

² Baines, 2017, *Tasmania's child safety minister Jacque Petrusma accused of misleading Parliament over Safe Pathways assurances*, ABC, 17th July 2017

Table 2: Comparison of state anti-corruption commissions, 2012–2016

Body	People referred to DPP	Public hearings	Corrupt conduct findings	Findings against MPs and ministers
NSW ICAC	76	28	123	12
WA CCC	47	3	n/a	0
Qld CCC	32	0	n/a	0
SA ICAC*	16	n/a	n/a	0
Vic IBAC	6	4	n/a	0
Tas IC	0	0	0	0

Sources: Annual reports of NSW ICAC, Qld CCC, Vic IBAC, SA ICAC, WA CCC and Tas IC

* Note: SA ICAC does not have the power to hold public hearings, and was only operational in 2013

Introduction

Each state and territory, apart from the ACT, has an integrity commission. These bodies vary in design features and effectiveness, but in essence are designed to expose corruption and provide independent oversight of government. Currently there is no federal anti-corruption commission, or indeed any effective mechanism to ensure scrutiny of our federal parliamentarians or other federal public officials.

Public distrust of federal government is growing, with a recent poll by The Australia Institute finding 85% of Australians believe there is corruption in federal politics.³

At a State level, recent polling in the electorate of Bass found 85% support for giving the Tasmanian Integrity Commission stronger powers and more resources.⁴

This report compares the design and effectiveness of the NSW and Tasmanian anti-corruption commissions, and distils the key design features that are critical to a commission's success.

It finds that key features, including the threshold to begin investigations, the definition of corrupt conduct and the ability to conduct public hearings in the course of investigations, render the NSW ICAC far more effective than the Tasmanian IC.

³ Polling reported in Farr, 17th January 2017, *Overwhelming majority believes polities are corrupt*, <http://www.news.com.au/finance/work/leaders/overwhelming-majority-believes-polities-are-corrupt/news-story/0f181019b1f1dcdd1485e262f5419b13>

⁴ <http://tai.org.au/content/voters-across-political-spectrum-want-greater-accountability-tasmanian-politicians>

History of the Tasmanian IC and the NSW ICAC

NSW INDEPENDENT COMMISSION AGAINST CORRUPTION

The New South Wales Parliament passed the *Independent Commission Against Corruption Act 1988 (NSW) (ICAC Act)* in 1988, in response to growing public concern about corruption among government ministers, the judiciary and at senior levels of the police force. The NSW ICAC was then established in March 1989.⁵ It remained relatively unchanged in its functioning until a High Court challenge to the NSW ICAC's jurisdiction began in December 2014. The case, *Independent Commission Against Corruption v Cunneen & Ors*, considered whether the NSW ICAC had acted outside its jurisdiction by investigating allegations that Margaret Cunneen, a NSW Crown Prosecutor, had engaged in corrupt conduct contrary to the ICAC Act. It was alleged that Ms Cunneen had adversely affected the behaviour of a police officer in an interaction between her daughter-in-law and the police officer.

The High Court found that the NSW ICAC had overreached in its interpretation of the definition of corrupt conduct, specifically in its understanding of the scope of the phrase 'adversely affect' the official function of a public official. The court limited the interpretation of 'corrupt conduct' in the ICAC Act to conduct that adversely affects the 'probity of the exercise of an official function by a public official', rather than the 'efficacy' of that function.⁶ In effect, the decision means that the NSW ICAC can only investigate cases where the conduct of a third-party results in a public official acting dishonestly. The NSW government responded to the High Court's findings through its own review of the NSW ICAC, led by former Chief Justice of the High Court Murray Gleeson AC and Bruce McClintock SC. In 2015 the recommendations of the review were accepted by NSW Parliament, including an expansion of the definition of corrupt conduct to further focus on fraud, collusive tendering and dishonest use of public money in public administration. The review found no need to limit the definition of

⁵ History, NSW ICAC, accessed 8th March 2017, <http://www.icac.nsw.gov.au/about-the-icac/overview/history>

⁶ High Court, *Judgement, Case S302/2014, Independent Commission Against Corruption vs Cunneen & Ors*, http://www.hcourt.gov.au/cases/case_s302-2014

corrupt conduct as it found that this issue had already been resolved by the High Court.⁷

The operation of the NSW ICAC was altered once again in 2016 with the enactment of the *Independent Commission Against Corruption Amendment Act 2016* (NSW). This Act significantly altered the structure and governance of the NSW ICAC. According to the then NSW ICAC Commissioner Megan Latham, the Act ‘effectively strips the Commission of the authority of a “Chief Commissioner”, and vests significant operational decisions and powers in each of the three commissioners which may be exercised independently of each other.’⁸ The Act caused the premature termination of the tenure of the Chief Commissioner, without meeting the legislated requirements for this termination, and according to former NSW ICAC Commissioners and the former NSW Director of Public Prosecutions (DPP), threatens the independence of future commissioners as they may fear similar political intervention.⁹ These changes were made without consultation with the Parliamentary ICAC Committee, or ICAC Commissioners or staff.¹⁰

Former NSW DPP Nicholas Cowdery said that this ‘appeared to be nothing more than a device to remove the commissioner, cloaked in some other reforms that were probably unnecessary.’ He followed that he was ‘concerned with the principle of independence of the commissioner, akin to judicial independence, enshrined in the legislation... independence is essential to the effective exercise of the commission's powers.’¹¹ Former NSW ICAC Commissioner David Ipp said that ‘The government has shown that, despite what is in the legislation, if it wants to, it will get rid of any ICAC commissioner if they don't like what they're doing.’¹²

⁷ *Report, Independent Panel – Review of the Jurisdiction of the Independent Commission Against Corruption*, 30th July 2015

⁸ *Statement regarding the Independent Commission Against Corruption Amendment Bill 2016*, 15th November 2016, <http://www.icac.nsw.gov.au/media-centre/media-releases/article/5051>

⁹ See Nicholls et al, November 2016, *ICAC Chief's resignation sets back corruption fighting by years*, <http://www.smh.com.au/nsw/icac-chiefs-resignation-sets-back-corruption-fighting-by-years-20161123-gsvwo3.html> and Whitbourn, November 2016, *Former DPP slams ICAC shakeup*, <http://www.smh.com.au/nsw/former-dpp-nick-cowdery-slams-icac-shakeup-20161123-gsw9mu.html>

¹⁰ Ibid.

¹¹ Whitbourn, November 2016, *Former DPP slams ICAC shakeup*, <http://www.smh.com.au/nsw/former-dpp-nick-cowdery-slams-icac-shakeup-20161123-gsw9mu.html>

¹² Nicholls et al, November 2016, *ICAC Chief's resignation sets back corruption fighting by years*, <http://www.smh.com.au/nsw/icac-chiefs-resignation-sets-back-corruption-fighting-by-years-20161123-gsvwo3.html>

TASMANIAN INTEGRITY COMMISSION

The Tasmanian Integrity Commission was established on the 1st October 2010 by the Integrity Commission Act 2009. This was in response to a cross party inquiry in 2009 into the ethical conduct of public representatives. David Bartlett, Labor premier from 2008 to 2011, commenced the inquiry and established the Integrity Commission in response to its findings.

The Liberal Party were elected to State Government in 2014 under Premier Will Hodgman. The Integrity Commission's funding was cut by twenty per cent and an attempt was made to cut its investigative function.¹³ In response, the Commission's Chief Executive Diane Merryfull told media that the State Government was trying to shut down the commission.¹⁴

Independent Reviewer, former Chief Justice of the Supreme Court of Tasmania, William Cox AC QC completed the Commission's first five year review in 2016. The Review made 55 recommendations, including a number that encouraged more efficiency in the operation of the commission. To date only the first six recommendations were implemented by State Government under the *Integrity Commission Amendment Act 2017*.¹⁵ In one important area, the amendment act went further than the review recommended and implemented changes that threaten the independence of the Chief Commissioner. The amendment inserted a number of provisions that allow the Chief Commissioner to be suspended, including "if the Governor is satisfied that the person has engaged in misbehaviour that brings the office of Chief Commissioner into disrepute".¹⁶

¹³ ABC, 2014, *Tasmania's anti-corruption watchdog faces funding cuts*, 30th May 2014, <http://www.abc.net.au/news/2014-05-30/anti-corruption-watchdog-fears-funding-cuts/5490182> and ABC, 2014, *Integrity Commission's Diane Merryfull says Tas Government trying to shut down watchdog*, 30th September 2014, <http://www.abc.net.au/news/2014-09-30/integrity/5778840>

¹⁴ ABC, 2014, *Integrity Commission's Diane Merryfull says Tas Government trying to shut down watchdog*, 30th September 2014, <http://www.abc.net.au/news/2014-09-30/integrity/5778840>

¹⁵ Hansard, second reading, <http://www.parliament.tas.gov.au/ParliamentSearch/isysquery/1ffd6575-16bb-41e1-9e12-bfff6497e705/5/doc/>

¹⁶ *Integrity Commission Amendment Act 2017* (Tas)

Design features—how many teeth?

By comparing the *Independent Commission Against Corruption Act 1988* (NSW) and its 2016 amendments, with the *Integrity Commission Act* (Tas) and its 2017 amendments, key design features of both bodies have been outlined in the table below.

Table 1: Comparison of NSW ICAC and Tasmanian IC design features.

	NSW ICAC	Tas IC
Independence of Commissioner	2016 amendment appoints 3 commissioners each with similar power to act on behalf of the Commission, thereby ending the former independent decision making of the Commissioner. ¹⁷ The 2016 amendment also terminated the tenure of the Commissioner before the end of her legislated 5 year term.	2017 amendments provide for a range of mechanisms for suspending the Commissioner, including for “misbehaviour”. No legislated fixed term, leaving the Commissioner’s position vulnerable to political interference.
Definition of corrupt conduct	Any conduct of any person, whether or not a public official, that adversely affects, or could adversely affect, either directly or indirectly, the impartial or honest exercise of official functions <i>Full definition provided below</i>	Limited to conduct of public officers, and excludes any conduct in relation to the proceedings of parliament <i>Full definition provided below</i>
Investigative powers	Full investigative powers of a Royal Commission, including coercive powers, search warrants, public and private hearings, and make findings	Limited powers during assessment and investigation, including power to obtain information and search premises. The ability to hold hearings, cross examine witnesses and make findings is only available

¹⁷ See Nicholls et al, November 2016, *ICAC Chief’s resignation sets back corruption fighting by years*, <http://www.smh.com.au/nsw/icac-chiefs-resignation-sets-back-corruption-fighting-by-years-20161123-gsvwo3.html> and Whitbourn, November 2016, *Former DPP slams ICAC shakeup*, <http://www.smh.com.au/nsw/former-dpp-nick-cowdery-slams-icac-shakeup-20161123-gsw9mu.html>

		during an Integrity Tribunal inquiry, which has never been held
Indirect jurisdiction	Includes third parties, though limited by Cunneen decision ¹⁸	Does not include third parties
General functions	Corruption prevention, investigating and exposing corruption	Referral, assessment and investigation of complaints, Integrity Tribunal for inquiries
Public hearings	Under 1988 Act, the Commission could conduct public hearings if it deemed them in the public interest.	Hearings of the Integrity Tribunal are generally to be in public, though commission assessments and investigations are not able to hold hearings. The Integrity Tribunal has never held an inquiry.
Private hearings	Can begin private hearings during preliminary investigation	Can only hold private hearings in an Integrity Tribunal inquiry, once the Commissioner has decided to close hearing to the public
Cross examination	Can cross examine in public hearings	Can only cross examine in Integrity Tribunal hearing, which has never occurred
Ability to begin inquiry	Decision to begin preliminary investigation and full inquiry is at the discretion of the Commissioner	Initial assessment, then investigation, then inquiry under Integrity Tribunal with sign off required by CEO at each stage and Board at final stage

Source: *Integrity Commission Act 2009 (Tas)*, *Integrity Commission Amendment Act 2017 (Tas)*; *Independent Commission Against Corruption Act 1988 (NSW)*, *Independent Commission Against Corruption Amendment Act 2016 (NSW)*

KEY POINTS OF DIFFERENCE

As seen in the above table, there are a number of key differences in the design of the Tasmanian and NSW anti-corruption bodies, namely in the definition of corrupt conduct, investigative powers, and process to begin investigations. The key differences are expanded upon below.

¹⁸ Watson, 2017, *The Darkest Corners*, Accountability and the Law conference paper, The Australia Institute

Definition of corrupt conduct

The jurisdiction of NSW ICAC provided by the definition of corrupt conduct is broad. It allows the Commission to investigate any person, whether or not they are a public official, whose conduct adversely affects the honest exercise of public office. It also includes breaches of public trust, official misconduct, dishonestly using public funds for private benefit, and a long list of matters that could be involved. Any conspiracy or attempt to engage in corrupt conduct is also included.

The key section of the definition from the NSW ICAC Act is provided below:

(1) Corrupt conduct is:

- (a) any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority, or
 - (b) any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions, or
 - (c) any conduct of a public official or former public official that constitutes or involves a breach of public trust, or
 - (d) any conduct of a public official or former public official that involves the misuse of information or material that he or she has acquired in the course of his or her official functions, whether or not for his or her benefit or for the benefit of any other person.
- (2) Corrupt conduct is also any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the exercise of official functions by any public official, any group or body of public officials or any public authority and which could involve any of the following matters:
- (a) official misconduct (including breach of trust, fraud in office, nonfeasance, misfeasance, malfeasance, oppression, extortion or imposition),
 - (b) bribery,
 - (c) blackmail,
 - (d) obtaining or offering secret commissions,
 - (e) fraud,
 - (f) theft,
 - (g) perverting the course of justice,
 - (h) embezzlement,
 - (i) election bribery,
 - (j) election funding offences,
 - (k) election fraud,
 - (l) treating,
 - (m) tax evasion,
 - (n) revenue evasion,
 - (o) currency violations,
 - (p) illegal drug dealings,
 - (q) illegal gambling,
 - (r) obtaining financial benefit by vice engaged in by others,
 - (s) bankruptcy and company violations,
 - (t) harbouring criminals,
 - (u) forgery,
 - (v) treason or other offences against the Sovereign,
 - (w) homicide or violence,

- (x) matters of the same or a similar nature to any listed above,
- (y) any conspiracy or attempt in relation to any of the above.¹⁹

2015 additions:

- (a) collusive tendering;
- (b) fraud in or in relation to applications for licences, permits or clearances under statutes designed to protect health and safety or designed to facilitate the management and commercial exploitation of resources;
- (c) dishonestly obtaining or assisting or benefiting from the payment or application of public funds or the disposition of public assets for private advantage;
- (d) defrauding the revenue;
- (e) fraudulently obtaining or retaining employment as a public official

In contrast, the Tasmanian definition is narrower in its jurisdiction. It is limited to solely investigating the conduct of public officers. The Act provides a specific list of who is defined as a public officer, which includes people employed by the Parliament of Tasmania, in Ministers' or MPs' offices, government departments, the police service, a state owned company, local government or any other body funded by public money. It limits the ability to investigate parliamentarians, and anyone not a public officer.

The Tasmanian IC is limited in its ability to investigate parliamentarians by the definition of misconduct, and by the protections of parliamentary privilege. The protection of parliamentary privilege means that parliamentarians are immune from investigation requests for information or documents. The definition of misconduct provides that the Tasmanian IC cannot investigate conduct that is connected with a proceeding in Parliament. This is broadly defined as *'all words spoken or acts done in the course of, or for the purposes of or incidental to, the transacting of the business of a House of Parliament or of a committee...'*²⁰

This restriction means that the Tasmanian IC would not have been able to investigate allegations that Human Services Minister Jacquie Petrusma misled Parliament in relation to the safety of children being cared for by Safe Pathways.²¹

The Tasmanian IC cannot investigate anyone that is not a public officer. For example, this means that it cannot investigate an industry representative aiming to unduly influence the decisions of a public servant or parliamentarian. This restriction means that it is unlikely that the Tasmanian IC would have been able to investigate the

¹⁹ *Independent Commission Against Corruption Act 1988* (NSW)

²⁰ *Integrity Commission Act 2009* (Tas)

²¹ Baines, 2017, *Tasmania's child safety minister Jacquie Petrusma accused of misleading Parliament over Safe Pathways assurances*, ABC, 17th July 2017

conduct of employees of Federal Group that were involved in the bribery allegations surrounding the 1972 elections recently exposed by the 7.30 Report.²²

It also does not have indirect jurisdiction, for example to investigate collusion between two business people aiming to secure lucrative contracts by misleading the government.²³

misconduct means –

(a) conduct, or an attempt to engage in conduct, of or by a public officer that is or involves –

(i) a breach of a code of conduct applicable to the public officer; or

(ii) the performance of the public officer's functions or the exercise of the public officer's powers, in a way that is dishonest or improper; or

(iii) a misuse of information or material acquired in or in connection with the performance of the public officer's functions or exercise of the public officer's powers; or

(iv) a misuse of public resources in connection with the performance of the public officer's functions or the exercise of the public officer's powers; or

(b) conduct, or an attempt to engage in conduct, of or by any public officer that adversely affects, or could adversely affect, directly or indirectly, the honest and proper performance of functions or exercise of powers of another public officer –

but does not include conduct, or an attempt to engage in conduct, by a public officer in connection with a proceeding in Parliament;²⁴

Investigative powers

NSW ICAC has the full investigative powers of a Royal Commission, including:²⁵

- Power to obtain information including to compel production of document, statement of information or other thing at a specified time and place
- Power to enter public premises at any time
- Search warrant for private premises can be provided by Commissioner
- Conduct private compulsory examinations if in the public interest to do so
- Conduct public inquiries, if in the public interest to do so
- Examination and cross-examination
- Require attendance at hearings including the production of evidence, information, document or thing

²² ABC, 2018, *New allegations about collapse of 1972 Tasmanian government*, 7.30 Report, <http://www.abc.net.au/7.30/new-allegation-about-collapse-of-1972-tasmanian/9359246>

²³ Watson, 2017, *The Darkest Corners*, Accountability and the Law conference paper, The Australia Institute

²⁴ *Integrity Commission Act 2009* (Tas)

²⁵ *Independent Commission Against Corruption 1988* (NSW)

- Apply for a warrant for arrest of witness if they fail to appear before examination
- Apply for use of surveillance devices
- Claims to protection by privilege not accepted
- Make findings of corrupt conduct

Importantly, the NSW ICAC Act also provides for the incidental power to do all things necessary to exercise its function so that it is not limited by the list above.

The investigative powers of the Tasmanian IC are more limited. Full powers can only be used under an Integrity Tribunal inquiry, which to date has never been held. This means that the power to hold public hearings has not yet been used, and investigations have been limited to obtaining information and searching premises. The power to make findings of misconduct is also limited to Integrity Tribunal inquiries, and has not yet been exercised.

Even under an Integrity Tribunal inquiry all information and evidence may be protected by professional privilege, which means that parliamentarians and lawyers may hide all necessary information. This is critical to NSW ICAC's success, as all information required of Parliamentarians and lawyers is made available. In an inquiry, searching premises is also more restricted than in NSW, as applications for search warrants must be made to the magistrate rather than the ICAC Commissioner.

Public hearings

The Tasmanian IC can only hold public hearings once the investigation has reached a full inquiry under the Integrity Tribunal, which has not yet occurred. Tasmanian IC pre-inquiry investigations cannot hold any hearings, whether public or private. This means it cannot cross examine witnesses. This contrasts with NSW ICAC that uses public and private hearings in preliminary investigations and full inquiries. The NSW ICAC Act that says that the Commission can decide to hold a public hearing if it considers it to be in the public interest. From 2012-2016, NSW ICAC held 28 public hearings, and many more private hearings.

As the role of anti-corruption commissions is to investigate and expose corruption, and much of the content of investigations comes out in hearings, the act of hiding hearings from public view threatens the proper function of the commission. Integrity commissions assist in building public trust in government, particularly when hearings are held in public view. Australia Institute polling shows that 85% of people believe

public trust in parliament would increase with a federal ICAC with public hearings, but that without public hearings 57% of people said public trust would fall.²⁶

Anti-corruption commissioners across Australia have recognised the power of public hearings. SA ICAC Commissioner Bruce Lander, who is currently the only commissioner who is not able to open hearings, has made a recommendation to the SA State Government to allow the commission to hold public hearings to ensure transparency.²⁷ Victorian IBAC Commissioner Stephen O'Bryan QC has said that openly examining cases of alleged serious corruption and misconduct in public hearings has encouraged and empowered people to come forward and report suspected wrongdoing.²⁸ Former assistant NSW ICAC Commissioner Anthony Whealy QC has said "there are many people out there in the public arena who will have information that's very important to the investigation. If you conduct the investigation behind closed doors, they never hear of it and the valuable information they have will be lost."²⁹ Former NSW ICAC Commissioner David Ipp QC has said that "Its main function is exposing corruption; this cannot be done without public hearings."³⁰

As outlined by former judge and adviser to the design of Victoria's IBAC, Stephen Charles AO QC, public hearings also lead to immediate improvements in governance, and attract fresh leads to potential corrupt conduct. "Operation Ord, which exposed corrupt conduct at the Department of Education & Training, showed the community what was happening, lead to immediate action by the Department to prevent any recurrence and was followed by many complaints to IBAC about other possibly corrupt conduct at the Department, and elsewhere."³¹

²⁶ The Australia Institute, 2017, *Polling – National ICAC*, December 2017, <http://www.tai.org.au/content/polling-%E2%80%93-national-icac>

²⁷ MacLennan, 2016, *ICAC Commissioner Bruce Lander pushes for public hearings to ensure transparency*, ABC, 31st October 2016, <http://www.abc.net.au/news/2016-10-31/icac-commissioner-bruce-lander-wants-public-hearings-in-sa/7980960>

²⁸ IBAC, 2016, *IBAC sheds light on serious corruption in its third year*, Media release, 14th September 2016, <http://www.ibac.vic.gov.au/media-releases/article/ibac-shines-light-on-serious-corruption-in-its-third-year>

²⁹ <http://www.abc.net.au/news/2016-05-12/icac-inspector-david-levine-calls-for-end-to-public-hearings/7409126>

³⁰ Gerathy, 2016, *ICAC inspector calls for end to public hearings to stop 'trashing of reputations'*, ABC, 12th May 2016, <http://www.abc.net.au/news/2016-05-12/icac-inspector-david-levine-calls-for-end-to-public-hearings/7409126>

³¹ Charles, 2018, *Victoria's anti-corruption watchdog is still too weak*, <http://www.tai.org.au/sites/default/files/Briefing%20paper%20-%20IBAC%20Stephen%20Charles.pdf>

Process to begin inquiries

The NSW ICAC can begin preliminary investigations and full inquiries using all its investigative powers at the discretion of the Commissioner. The inquiry that resulted in the conviction of Eddie Obeid and Ian Macdonald began from an anonymous phone call, and it was only through the application of all investigative powers that the full network of corruption was uncovered.³²

The Tasmanian IC must go through a prolonged process before it can launch a full inquiry using all its investigative powers. The result of this is that the Tasmanian IC has never launched a full inquiry under the Integrity Tribunal.³³

A complaint must be made in writing in an approved form. This initial hurdle means that the Obeid investigation would never have got started if it was in Tasmania. Once the complaint is made the CEO may choose to dismiss it, refer it, recommend to the Premier that a commission of inquiry be established, or conduct an assessment. An assessment is done internally by an assessor using limited investigative powers including the powers to compel the production of documents and information. If the CEO decides it, the assessment will be followed by an investigation. The investigation is done by an investigator using the investigative powers described above, which do not include the power to hold hearings or make findings. The investigation report goes to the CEO and Board, and the Board makes the final decision to hold an inquiry using the full investigative powers of the Integrity Tribunal.

At each stage the CEO may notify the principal officer of the public authority being investigated or the public officer to whom the complaint relates. This includes giving a draft report of the investigation to the public officer or authority being investigated for their comment. This creates many opportunities for the public officer or authority under investigation to hide or destroy evidence, challenge the Commission in court, or apply to the court for an injunction.

At each stage the CEO may dismiss the complaint or refer it to another body. None of the stages or reasons behind decisions of the CEO or Board are made public. Investigation reports are made public only on occasion that they are tabled in parliament. The Tasmanian IC website shows that this occurs only once or twice a year.³⁴

³² Ibid.

³³ Tasmanian Integrity Commission Annual Report 2014-15

³⁴ Integrity Commission website, *Reports – Tabled reports*,

http://www.integrity.tas.gov.au/reports_and_publications/reports accessed 16th January 2018

Independence of Commissioner

The independence of any anti-corruption or integrity commissioner is critical to ensuring they have the confidence to do their job without fear of political interference. Independence can be ensured by legislating the terms of the Commissioner's appointment, and ensuring any appointment is apolitical.

NSW ICAC has legislated five-year terms for the Commissioner, who can only be removed under a strict set up circumstances, including if they are charged with a serious crime, become bankrupt or die. Commissioners are appointed by a joint parliamentary committee after receiving a referral from the Minister. The joint committee has the power to veto the Minister's referral. This legislated independence was challenged in 2016 by the NSW Government's amendment that introduced three commissioners instead of one Chief Commissioner, prematurely ending the five-year term of the sitting Commissioner Megan Latham.³⁵

Commissioners in Tasmania are appointment on recommendation of the Minister after consultation with a joint committee. The Tasmanian IC Act does not have a legislated tenure for the Commissioner. The terms of employment are specified in each individual's contract rather than the legislation.³⁶ Amendments to the Tasmanian Integrity Commission Act in 2017 inserted a number of provisions that allow the Chief Commissioner to be suspended, including "if the Governor is satisfied that the person has engaged in misbehaviour that brings the office of Chief Commissioner into disrepute."³⁷ The amendment was in response to the five year review of the commission, but went further than review recommendations.³⁸ This threshold for suspension of the Commissioner is significantly lower than in the NSW ICAC Act and potentially threatens the independence of the Commissioner.

³⁵ See Nicholls et al, November 2016, *ICAC Chief's resignation sets back corruption fighting by years*, <http://www.smh.com.au/nsw/icac-chiefs-resignation-sets-back-corruption-fighting-by-years-20161123-gsvwo3.html> and Whitbourn, November 2016, *Former DPP slams ICAC shakeup*, <http://www.smh.com.au/nsw/former-dpp-nick-cowdery-slams-icac-shakeup-20161123-gsw9mu.html>

³⁶ *Integrity Commission Act 2009* (Tas)

³⁷ *Integrity Commission Amendment Act 2017* (Tas)

³⁸ Cox, 2016, *Report of the Independent Reviewer – Review of the Integrity Commission Act 2009*, http://www.integrityactreview.tas.gov.au/data/assets/pdf_file/0006/347649/Report_of_the_Independent_Review_of_the_Integrity_Commission_Act_2009_-_May_20162.PDF

Comparing impact - do they bite?

“The Commission is yet to convene an Integrity Tribunal” – Tasmanian Integrity Commission Annual Report 2014-15³⁹

Table 2: Comparison of state anti-corruption commissions 2012 – 2016

Body	People referred to DPP	Public hearings	Corrupt conduct findings	Findings against MPs and ministers
NSW ICAC	76	28	123	12
WA CCC	47	3	n/a	0
Qld CCC	32	0	n/a	0
SA ICAC*	16	n/a	n/a	0
Vic IBAC	6	4	n/a	0
Tas IC	0	0	0	0

Sources: Annual reports of NSW ICAC, Qld CCC, Vic IBAC, SA ICAC, WA CCC and Tas IC

* Note: SA ICAC does not have the power to hold public hearings, and was only operational from 2013

Table 2 above shows the results from integrity commissions around the country from 2012 to 2016. NSW ICAC is the most effective, referring more people for prosecution, increasing public trust by holding more public hearings, and making findings of corrupt conduct.

One core reason for the Tasmanian IC’s low performance is that it has never used its full powers by holding an inquiry under the Integrity Tribunal. Investigations to date have not been able to hold hearings, either public or private, or make findings of misconduct. Hearings have been critical to the success of anti-corruption investigations in NSW and other states.

The available data shows that the NSW ICAC is dramatically more effective in exposing corruption. With 5-10 public hearings each year, NSW ICAC delivered corrupt conduct findings against 123 people and referred 76 people for prosecution over the observed period 2012-16. The Tasmanian IC did not launch any full inquiries during the period, and therefore did not make any misconduct findings or referrals for prosecution.

³⁹ Integrity Commission Annual Report 2014-15, page 27

What the data does not show is the content or topic of the investigations. For this reason case studies are provided below, showing that as well as delivering more findings of corrupt conduct the NSW ICAC has tackled much larger and systemic issues, often involving a complex web of people including parliamentarians. The case studies below show the Tasmanian IC tackle cases involving one or two public servants, whereas the ICAC cases involve true 'systemic' corruption of networks within the public sector and parliament.

The data and case studies also do not cover the scale of these investigations. As an indication, the NSW ICAC 2012-13 Annual Report states that 'in the Operation Jasper segment of the public inquiry, 86 witnesses gave evidence, and there were more than 5,000 pages of transcript generated over the 45 days of the inquiry. The Operation Acacia segment ran for 37 days, 52 witnesses gave evidence, and there were over 3,500 pages of transcript produced.'⁴⁰

⁴⁰ NSW ICAC, *Annual Report 2012-13*

Case Studies

NSW ICAC CASE STUDIES

Operation Spicer

The NSW ICAC investigated allegations that during the 2011 state election, members of the NSW Liberal Party received political donations that were undeclared under the *Election Funding, Expenditure and Disclosures Act 1981* (NSW). Some donations were over the legislated cap, and others were solicited from banned donors including property developers. It also found that donations were channelled through associated entities including the Free Enterprise Foundation.⁴¹

Operation Credo

The NSW ICAC is investigating allegations that people with financial interest in the company Australia Water Holdings were attempting to influence a lucrative deal with Sydney Water Corporation. Conduct includes claiming expenses from other business pursuits in a SWC claim, drawing from funds allocated to other purposes, and withholding information regarding Australia Water Holdings true financial position.⁴²

Operation Acacia and Jasper

The NSW ICAC conducted two investigations concerning the issuing of mining leases and licences involving former NSW Government ministers. Operation Jasper found that then Resources Minister Ian Macdonald accepted personal benefit from the Obeid family in return for decisions regarding the Expression of Interest process for mining licences and leases covering areas owned by the Obeid family. This case involved a network of people involved in corrupt conduct for financial gain.⁴³ Operation Acacia found that Macdonald also acted corruptly in the allocation of a mining licence to

⁴¹ *Operation Spicer*, NSW ICAC, <http://icac.nsw.gov.au/investigations/past-investigations/investigationdetail/220>

⁴² *Operation Credo*, NSW ICAC, <https://www.icac.nsw.gov.au/investigations/current-investigations/investigationdetail/203>

⁴³ NSW ICAC, *Annual Report 2012-13*

Dowles Creek Mining Pty Ltd, run by his ‘mate’ John Maitland, without tender and against departmental advice.⁴⁴

TASMANIAN IC CASE STUDIES

Conflict of interest of health managers

The Tasmanian IC investigated allegations that two senior health managers in the North West Area Health Service used their position to unfairly provide employment for family members. The investigation revealed that the two managers failed to comply with procurement policy and procedures.⁴⁵

Alleged favouritism of TasTAFE executives

The Tasmanian IC investigated allegations that the TasTAFE Chief Executive Officer gave favourable treatment, promotions, and working conditions to another senior executive on the basis of their shared background and family connections.⁴⁶

Cases the Tasmanian IC did not investigate

Alleged conflict of interest of former mining minister

The Tasmanian IC has not investigated allegations that former mining minister Adam Brooks had a conflict of interest between his public position and ownership of mining consultancy Maintenance Systems Solutions.⁴⁷

⁴⁴ Nicholls, November 2014, *Former Labor Minister Ian Macdonald prosecuted over Doyles Creek mine deal*, <http://www.smh.com.au/nsw/former-labor-minister-ian-macdonald-prosecuted-over-doyles-creek-mine-deal-20141119-11qbch.html>

⁴⁵ Integrity Commission, 2014, *Report 1 of 2014 - An investigation into allegations of nepotism and conflict of interest by senior health managers*, http://www.integrity.tas.gov.au/reports_and_publications/reports

⁴⁶ Integrity Commission, 2017, *Report 2 of 2017 - An investigation into a complaint of an alleged conflict of interest against senior executive officers of TasTAFE*, http://www.integrity.tas.gov.au/reports_and_publications/reports

⁴⁷ ABC, 2016, *Adam Brooks: Tasmania's suspended Mining minister resigns*, 13th June 2016, <http://www.abc.net.au/news/2016-06-13/tasmanias-suspended-mining-minister-adam-brooks-resigns/7506556>

Influence of gambling industry on policy making

The Tasmanian IC has not investigated allegations that the gambling industry has unduly influenced policy making and governance in Tasmania, despite detailed allegations compiled by the 7.30 Report and author James Boyce suggesting gambling giant Federal Group exerting significant political influence over the distribution of contracts and approvals.⁴⁸

Holding private and public hearings has been critical to untangling the complex webs of corruption in New South Wales. Operation Jasper, exposing the corruption of Eddie Obeid among others, would not have been successful without hearings and cross examination. NSW ICAC Commissioner David Ipp AO QC, who oversaw this inquiry, has said that witnesses coming forward with new evidence at public hearings was critical to the investigation.⁴⁹

As described by independent MP Andrew Wilkie on the 7.30 Report, police investigations into the matter have not been sufficient. “I think it would be appropriate that there be some sort of royal commission or commission of inquiry because this is bigger now than just a police matter. This is about governance in Tasmania.”⁵⁰

⁴⁸ ABC, 2018, *New allegations about collapse of 1972 Tasmanian government*, 7.30 Report, <http://www.abc.net.au/7.30/new-allegation-about-collapse-of-1972-tasmanian/9359246>; and Boyce, 2017, *Losing streak: how Tasmania was gamed by the gambling industry*, Redback Books, Melbourne.

⁴⁹ Ipp, 2017, *Accountability and the Law – Anti-corruption Agencies in Australia*, Accountability and the Law Conference opening statement, The Australia Institute, <http://www.tai.org.au/content/accountability-and-law-anti-corruption-agencies-australia>

⁵⁰ ABC, 2018, *New allegations about collapse of 1972 Tasmanian government*, 7.30 Report, <http://www.abc.net.au/7.30/new-allegation-about-collapse-of-1972-tasmanian/9359246>

Conclusion

Tasmania's Integrity Commission is far less effective than NSW ICAC and its interstate counterparts. It has never held a full inquiry, meaning it has never used all of its investigative powers to expose corruption and misconduct in Tasmania. Its investigations do not hold hearings, public or private, and do not make findings. Often investigations focus on scenarios involving one or two public servants, rather than complex networks of systemic corruption, and it publishes one or two reports each year on its website, leaving the public in the dark about potential corruption and misconduct in Tasmania.

NSW ICAC, on the other hand, has successfully exposed corruption and misconduct at every level of public administration in the state. Between 2012 and 2016 it referred 76 people for prosecution, made 123 corrupt conduct findings and held 28 public hearings. It has investigated 12 Ministers and parliamentarians, including exposing the corrupt networks of former ministers Eddie Obeid and Ian Macdonald that resulted in millions of dollars of public money being misspent.

Design features lead to this difference in performance. NSW ICAC can use the full suite of investigative powers at the beginning of any investigation if the Commissioner decides it, whereas the Tasmanian IC has to go through a prolonged process including assessments, preliminary investigations, and multiple reports to the CEO and Board before it can progress to a full investigation. To date a full inquiry has not occurred, and the Tasmanian IC has not held private or public hearings or made any misconduct findings. NSW ICAC also has a broader jurisdiction than the Tasmanian IC, with the ability to investigate any person, whether or not they are a public official, whose conduct might affect the impartiality of public administration. The Tasmanian IC can only investigate public officers, excluding any industry figures or third parties aiming to unduly influence policy, and is limited in its investigation of parliamentarians.

Corruption has been exposed in every state that has a serious corruption watchdog. Corruption does not stop at state borders, but the investigation and exposure of it does.

Submission to: Independent review of the Tasmanian Planning Commission's roles and functions

I submit the following views for consideration by the review team.

Submitter:

Rob Nolan is a town planner of over 40 years Tasmanian experience at the State, regional and local levels of planning as well as the NGO National Heart Foundation. Roles have included Planning Director at the Southern Metropolitan Planning Authority, Chief Planning Officer and Deputy Commissioner for Town and Country Planning and full-time planning delegate at the Tasmanian Planning Commission and the organisations that preceded the Commission. Rob is a member of the Tasmanian Resource Management and Planning Appeal Tribunal. He continues to be engaged as a Senior Planning Consultant on a casual fixed-term basis with the Tasmanian Planning Commission.

Rob is a registered planner and Life Fellow of the Planning Institute of Australia.

Review terms of reference

This submission does not address any particular term of reference. Whilst the terms of reference do not specifically require a review of the Commission's roles, nevertheless at least an understanding of those roles to be performed is necessary for the review to provide meaning to the structure and resourcing of the Commission. This submission is an advocacy for the Commission to have the capacity to advise Government on matters of resource management and planning policy from the perspective of independent fact finder and its capacity and expertise in conducting public enquiries in public.

Commission roles in resource management and planning policy

The Commission has roles at a number of levels:

Tasmanian sustainable development policies (State Policies)

I contend that State Policies under the *State Policies and Projects Act 1993* is the most unused and misunderstood and missed opportunity for setting policy that impacts on activities of councils and State agencies. A State Policy represents a whole of Government aspirational agenda that has longevity. Since 1994 there has been just 3 State Policies made¹. These policies require, that when it comes to, say, the Commission's assessment of a planning matter, at least there is a framework on matters of the coast, agriculture land and water quality management to guide the Commission's decision making².

Some say it is too hard to make and too hard to amend or withdraw a State Policy. All true. However, there is a lack of knowledge, absence of political will and a too ready acceptance of the perceived problems with State Policy. The legislation for State Policy stands and the Commission has a central role in the assessment of a draft State Policy and the implementation of a Policy once made. Further a State Policy must be reviewed at least every 5 years. This requirement has not been complied with, at least in terms of the Commission's role, few draft amendments being progressed.

¹ Apart from NEPMs that are deemed to be State Policies.

Absent of high-level policy for health and the built environment, the National Heart Foundation Tasmania drafted a State Policy for Healthy Spaces and Places. The draft was in the knowledge of the short comings of prospective legislation for planning policies (later called Tasmanian planning policies) and the need for community health and the built environment to be a feature of a health in all policies approach by state agencies and councils. The draft State Policy for Healthy Spaces and Places can be found at:

https://www.heartfoundation.org.au/getmedia/34374494-1f3d-4479-85fa-8a8e55c05afb/DRAFT_for_a_State_Policy_for_Healthy_Spaces_and_Places_2019.pdf

State of environment reporting

The role of the Commission in the conduct of state of environment reporting is a Term of Reference for the review. State of environment reporting under the *State Policies and Projects Act 1993* is a legislative requirement that has not been fulfilled for many years (most recent 2009?). Whilst not popular for many and with the experience with the reports to date, clearly the scope of the reporting needs to be refined and focus brought to key indicators. However, within the legislative and policy framework state of environment reporting needs to remain a function of the Commission to advise the Commission itself, particularly where it constitutes an expert panel for its role as a determining body. Aside from state of environment reporting providing an evidence base for the Commission and to Government, a Commission role in the preparation of state of environment reports should add to the report's credentials through independence of government offering less likelihood to suffer claims of sanitisation which could be levelled at a government department prepared state of environment report.

Tasmanian Planning Policies

Tasmanian planning policies under the *Land Use Planning and Approvals Act 1993* is a recent creation. They have been described as a rung down the policy hierarchy below State Policy, with a 'simpler' approval process. Unlike State Policy, for Tasmanian planning policies there is no whole of government or council application in respect to their own activities. In contrast to State Policy, the application of Tasmanian planning policies is confined to regional land use strategies and planning schemes. In many ways the bringing-in of Tasmanian planning policies reflect a propensity for legislation rather than using and improving existing mechanisms.

We are yet to see any draft Tasmanian planning policies but for the Commission their making, is not too dissimilar to State Policy. The Commission needs to be resourced for the prospective Tasmanian planning policies, the first draft of a suite of policies was last seen in 2017.

Public Land Use Inquiry

Under the *Public Land (Administration and Forests) Act 1991* the Commission may receive a reference to inquire into and make recommendations on the use of public land. It has been many years since the last reference to the Commission, nevertheless this is useful legislative provision given the large percentage of Tasmania being public land and the seemingly never-ending contesting of access to and exploitation of the public land resource. This legislation brings into focus the resource management aspect of the RMPS.

Review of management plans

Under the *National Parks and Reserves Management Act 2002* the Commission is to review and report on draft management plans for reserved land.

Review of Wellington Park management plans

Under the *Wellington Park Act 1993* the Commission is to review and report on draft management plans for Wellington Park.

Environment protection policies

Under the *Environmental Management and Pollution Control Act 1994* the Commission Chairperson is to chair the Environmental Protection Policy Review Panel to assess draft environment protection policies.

The view at the time was that legislation for environment protection policies was introduced to provide an alternative to State Policy. Environment protection policies have a regulatory focus in comparison to State Policy and were born out of the difficulties experienced with the *State Policy on Water Quality Management 1997*.

Commission representation on other bodies

Legislation provides for a Commission nominee on the Marine Farming Planning Review Panel, Nomenclature Board and probably other bodies.

Summary

There are significant tools available in legislation requiring the Commission to determine or recommend. The available tools have the capacity to set the policy frameworks for the use and development of land (as defined in the legislation being land covered with water and water covering land) and context for other instruments such as planning schemes. This contrasts with the Commission's current focus being the bringing in of the Tasmanian Planning Scheme that for some aspects lacks policy content. To briefly expand on this, the State Planning Provisions as the major component of the Tasmanian Planning Scheme is strong on regulation but weak on provisions for such matters as streets, food security including urban agriculture, active living and active travel.

What does this mean for the Review of the Commission?

The above identifies some of the broad range of roles for the Commission that is defined in legislation. Therein at anytime the Commission may have a reference or some other direction to assess matters of policy, that lifts policy above simply government policy. In this context, the Commission in carrying out its roles and functions, is not responsible for government policy.

Therefore, where the Review is to examine structure, membership, resourcing and other aspects of the operation of the Commission, please recognise its important role in the articulation of policy. This is particularly the case for the membership of the Commission and, for example, questions regarding the function of state of environment reporting. It would be unfortunate if the Commission's role was to be simply defined by the 'new components of the Tasmanian planning system' where presumably this is the Tasmanian Planning scheme, Tasmanian planning policies, and major projects legislation.

Rob Nolan RPIA (Life Fellow)

From: Rodger Griffin Bartlett
Subject:
Date: 15 May 2020 at 2:53 pm
To:



RB

Planning Policy Unit
Department of Justice

15 May 2020

To whom it may concern

Submission on the Terms of Reference for a Review of the Tasmanian Planning Commission

I refer to the draft terms of reference provided by the Office of the Minister for Planning and make the following comments.

My main experience of the Tasmanian Planning Commission (TPC) has been the review of the Cambria Green Specific Area Plan draft amendment AM 2018-03 under the Glamorgan Spring Bay Scheme 2015. Also more recently I provided a submission to Glamorgan Spring Bay Council on the Local Planning Scheme provisions that highlighted the lack of policy and resources to ensure that the plan will deliver on its proposed user friendly planning objectives in a sustainable way.

Item 1. (b). With Cambria Green I was concerned that the Taswater officers had provided a statement to the proponent that the 33 square kilometre development could be adequately serviced with potable water and sewerage services when none of this area currently is serviced by Taswater. I note that the CEO of Taswater is a commissioner and consider that Taswater had a conflict of interest if the enquiry had proceeded to examine the many planning issues associated with the proposal. This comment also applies to item 2 of the review.

Item 1. (c). The examination of this objective is supported as it is apparent that the Tasmanian Planning Commission is unable to deliver the Tasmanian Planning Scheme and Local Schemes as promised. For example the TPC has not been able to deliver a desktop accessible printout of the policies affecting individual properties throughout Tasmania. I believe that the State of Victoria has had a GIS planning system in place for over 10 years with this capability. What role if any does the TPC have in compliance matters? It has not undertaken the 4 year State of the Environment reports. Has this been due to a lack of resources or political interference?

The Government's Draft Major Projects Bill would displace existing TPC review processes for Projects of State Significance and planning scheme amendments. This proposed Bill threatens and would weaken the role and objectives of the TPC and the proposal should be a part of the review.

This review is timely given the Government's allocation of greater responsibilities to the TPC. The need for environmental strategic and statutory planning has never been more apparent than at this time of crises, the pandemic, climate change and the likely inflow of people to Tasmania seeking refuge and safety.

Yours sincerely

Rodger Bartlett

Vicki Campbell

Email:

Phone:

I support the TPC in its current role as an independent decision-maker and advisor. In its current form, the TPC provides the community with an avenue to become involved in planning and resource management matters.

It is important that the community continues to have the opportunity to express their concerns on planning and environmental matters – without needing a lawyer or a body of experts.

My main concerns and recommendations regarding potential changes are as follows:

1. The TPC must remain independent.

It must continue to be able to perform independently of government. There should be no changes which undermine its independence. Indeed, if anything, its independence from government should be widened and strengthened. Politicians do not necessarily have significant expertise in planning, and are not the best people to make planning decisions.

2. The TPC must continue to have a role in policy development.

The TPC is qualified and experienced in planning and resource management, and this expertise should be utilised as much as possible. This can only lead to improved outcomes and better policy.

3. Furthermore, the TPC should take on responsibility for the development and amendment of Regional Land Use Strategies. As indicated above, they are experts in this area!

4. The TPC must continue to be responsible for assessing major projects (i.e. those of State and regional significance). Again, they have the expertise and are well-placed to advise and make recommendations to the Minister. Their role in this must not be diminished or undermined in any way.

5. The TPC must continue to undertake reviews of National Park and Reserve Management Plans. Again, their independence is vital and provides transparency in the process – thus giving the community greater confidence in decisions. Additionally, the TPC should also be given the opportunity to make recommendations for changes to reserve management plans.

6. The TPC should continue to produce the State of the Environment Reports. Good planning depends on sound information!

7. The TPC must be adequately resourced to effectively carry out its functions.

Thank you for the opportunity to comment.

Date: 15 May 2020

Department of Justice
Office of the Secretary
GPO Box 825
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via: haveyoursay@justice.tas.gov.au

Tasmanian Planning Commission Review

Thank you for the opportunity to participate in the review of the Tasmanian Planning Commission (the Commission).

Woolcott Surveys provides professional land development advice and services from offices in Launceston, St Helens, Hobart and Devonport with a team of 20 plus personnel. We submit a large number of planning applications annually for subdivisions and residential and commercial developments and have submitted more than many planning scheme amendments. We provide consultancy services to a number of Tasmanian Councils and have over 80 years combined planning experience on staff.

We appreciate that the Commission has a number of statutory functions. Our interest lies with the regulation of land use planning and this submission is therefore limited to those matters only. Our submission relates to how the Commission currently approaches some of its functions and decision-making processes.

Operational

In our experience, some of the ways in which the Commission operates are particularly frustrating for our staff and our clients.

The terms of reference refer to consideration of the Commission's role as an advisory body. We consider this an important role, but note that:

- Pre-application discussions with the Commission are not possible, for private firms or Planning Authorities (example below).
- The Commission and Planning Authorities can, and regularly do, have opposing views on how regional land use strategies should be applied in a particular circumstance. Logically, interpretation should not differ widely between Planning Authorities and their professional staff.
- These opposing views are only determined at the conclusion of very long and very costly planning scheme amendment proposals.

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The current approach exposes the industry to significant risk and uncertainty which can be difficult to identify and mitigate on behalf of our clients.

Example of responses to requests for assistance.

I'm sorry to say that I cannot comment or provide feedback on the proposed amendment. As an independent review body, the Commission is unable to comment on the merit of draft amendments unless they are part of the formal decision making process under the *Land Use Planning and Approvals Act 1993*.

It is important that the integrity of the Commission's decision-making processes are maintained where the Commission observes the rules of natural justice and brings an open and unprejudiced mind to matters. I consider that to comment on a draft amendment outside the normal process would undermine these principles.

Regards

We note Council's encourage pre-application discussions and appropriately manage issues of natural justice and impartial decision making. We suggest that the Commission should:

- Make staff members available for advice and clarification, who then take no part in the formal assessment process.
- Provide a liaison service to Planning Authorities to improve the level of knowledge and understanding of regional land use strategies and their interpretation and the priorities of Planning Authorities and the Commission.
- Immediately provide resources to facilitate the completion of the Tasmanian Planning Scheme, which is well overdue, and would end a prolonged period of uncertainty regarding the timing of planning reform. We are aware that the Commission previously provided some Councils with direct assistance, including in the drafting, researching and completing elements of their Local Provisions Schedules, but that this no longer occurs.

Commission Decision Making

The hearing process conducted by the Commission is vastly different to the processes followed by the Tribunal. Whilst a less legalistic approach has merit, it creates a number of cost, risk and procedural fairness issues.

We believe that the Commission should adopt similar practices to the Tribunal, particularly a directions hearings and a form of statements of agreed facts and contentious. The current approach can see issues raised without prior, or adequate, advanced notice which leads to increased time and costs. We also believe that there is an opportunity to broaden the membership delegated panels, similar to the Tribunal.

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We also consider it essential that businesses such as ours and the Councils that we deal with have the ability to discuss proposals prior to lodgement, and that every effort is made to ensure that the Commission and Planning Authorities have a shared understanding of the detailed application of regional land use strategies.

Lastly, we note that there are many other elements of the planning system in need of review to modernise and streamline administrative processes that cause undue delay and cost. We would welcome an opportunity to discuss these.

Please contact our office if you have any queries regarding this submission.

Yours faithfully

Shane Wells

**Senior Town Planner
for Woolcott Surveys**

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