

# Friends of the East Coast Inc



*Protecting the unique environment of the East Coast  
from inappropriate development*

[www.friendsoftheeastcoast.org](http://www.friendsoftheeastcoast.org)

**Submission to  
The future of local government review  
on  
Options Paper: Appendix**

To whom it may concern

This submission from **Friends of the East Coast Inc** (FotEC) concerns only a specific section of the **Options Paper: Appendix -Review Stage 2 – December 2022**.

This submission is not focussed on the proposed three broad pathways to reform, namely:

1. Significant (mandated) sharing and consolidation of services
2. Boundary consolidation to achieve fewer, larger councils
3. A 'hybrid model' combining both targeted sharing of services and targeted boundary consolidation

Rather, the submission's focus concerns **Options 5.1: Deconflict the role of councillors and the role of planning authorities**. These options we submit challenge the current well established processes by removing by varying extents the local democratic process of public planning.

FotEC believes the current processes have strengths and weaknesses but does not accept the proposals put forward by the Review Board will have better outcomes, but will lead to further undesirable outcomes.

FotEC believes the Review Board should be more cognisant of the fact that planning is a public process. Decisions made by Councils, planning staff or independent panels are decisions made by public or pseudo-public officers that result in many cases private benefit. This is the nature of the exercise. Developers may well prefer more consistent and predictable processes. FotEC believes the public wants open, transparent and democratic processes to be followed.

FotEC suggests the current system would be more effective if new Councillors were required to undertake an education program about the planning process they are responsible for. The focus would be the Tasmanian Planning Scheme and its associated Acts, including the roles and responsibilities of Councillors acting as a planning authority. It could well include comparison to other planning processes in Australia.

The Board's interest in floating the proposal to replace local planning decision-making with centralised panels of experts opens up the possibility of further changes in the future. Centralised decision making, particularly when it is promoted as a means of improving efficiency and consistency, offers the opportunity of Artificial Intelligence or machine learning. This is the emerging trend in complex decision systems. Such a development would increase the alienation of the community from planning their future.

(Perhaps it's already arrived when coastal landscape and vegetation can be deemed bright white! See the attached comments.)

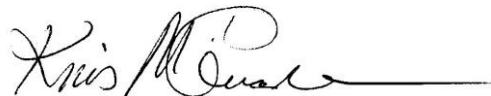
FotEC comments on specific proposals are included below.

We hope the Review Board gives due consideration to this submission.

Faithfully



Graeme Wathen  
Secretary



Kris McQuade  
President

## Priority Reform Outcome 5: Regulatory frameworks, systems, and processes are streamlined, simplified, and standardised

### Option 5.1

Deconflict the role of councillors and the role of planning authorities

#### Rationale

The Board has heard that the role of councillors “to represent the community” often conflicts with the role of planning authorities to objectively apply the provisions of a planning scheme regardless of the views of the community. Councillors found it difficult to participate in important public debates about major developments in their municipality for fear of ‘pre-judging’ development applications or being accused of bias in the assessment process.

**The Planning Authority Guidelines (BODC July 2013) clearly states Councillors may not “Express an opinion on a development application or a proposed development outside of a planning authority meeting”, and in the BODC Councillors Code of Conduct Policy (March 2019) “Part 8: Representation: “A councillor must clearly indicate when he or she is putting forward his or her personal views.” It seems there is some lack of clarity about Councillors expressing views within or without the Planning Authority framework. Obviously this is an important matter in ensuring impartiality in decision making.**

The Board accepts that this conflict creates issues in only a very small proportion of development applications. Some stakeholders, however, expressed the view that this small number of cases created significant friction between councillors and between councils and their communities.

**If only a very small proportion of applications lead to apparent so-called conflict, why has the Board proposed a range of quite radical changes to the process?**

The Board does not have a clear view on the best way forward to address this issue and presents a three options below for further discussion.

### Option 5.1a

Refer complex planning development applications to independent assessment panels appointed by the Tasmanian Government

#### Rationale

The assessment of complex development applications depends on access to technical expertise, robust data, efficient administrative systems, sound decision-support systems, and strong communications support.

**At the moment “complex planning development applications” often end up before the Tasmanian Planning Commission. For example, the controversial large-scale tourism**

**development, the Cambria Green proposal. This process, perhaps not supported by developers, has generally served the community well.**

Independent panels appointed by the State Government would have access to a diverse range of specialists and establish robust administrative and technical support systems, allowing a consistent standard of decision making state-wide.

**Independence of panels appointed by the State Government raises the important question – how independent?**

Clear criteria would be established to define which developments must be referred. This could include:

**How are criteria to be established? This sounds very much like the already established Major Projects process.**

- . high value developments;
- . developments in which the council or councillors have a direct interest, including developments on council land;
- . developments in sensitive locations;
- . developments of particular industry types; and
- . developments with particular types of impacts.

**And what process would allow 3rd-party representations on development proposals?**

Freed from the constraints of acting as a planning authority, councils would be able to represent their community and its views in submissions on complex developments as they are being assessed.

**Freeing up Councillors to express views would be contrary to the current codes on Councillor behaviour and may place Councillors in opposition to the Mayor or a majority Council position. This is fraught with problems.**

Councils would continue to assess and determine other development applications and retain overall land-use planning responsibilities.

## **Engagement feedback**

- . This reform would only apply to a small proportion of applications, with the majority of development applications continuing to be determined by councils and their delegated council staff.
- . Costs involved should not fall back on the councils it was designed to assist. Rather a proponent user-pays model would be appropriate. Panels should comprise a range of relevant skills and knowledge and must include a person with knowledge of the local context of the particular development, including community and council priorities.

**And how would this “one person with knowledge of the local context ...” be chosen? Would this be a Councillor? Is it proposed the “local content” person replaces the role of 3<sup>rd</sup>-party interests?**

**The proposal for “independent expert panels” does not seem to be well thought out. It seems obvious this proposal would restrict public input into the decision making.**

## Insights

NSW has five Sydney planning panels and four regional planning panels introduced in 2009 to enhance decision-making on regionally significant development applications (generally having a capital investment value of over \$30 million). The panels are each independent bodies, not subject to the direction of the Minister of Planning and Public Spaces.

**Seems mechanical to have a monetary selection criterion.**

### Option 5.1b

Remove councillors' responsibility for determining development applications

#### Rationale

This option is similar to option 5.1a but elected representatives would be removed from the process of determining development applications entirely. Applications would routinely be assessed by planning staff in councils and, if required, escalated to independent panels appointed by the State Government.

**This is a totally unacceptable proposal as it removes any democratic process into the decision making. While the current system may have some drawbacks it is more preferable to a process which removes totally the decision making from elected Councillors and places decision making entirely with planning officers or so-called independent panels. No mention is made of 3<sup>rd</sup>-party interests. Since 2015 the Liberal Party has adopted a policy to reduce 3<sup>rd</sup>-party influence in planning decisions. This seems to be another step towards that end.**

Councillors would still have responsibility for all the strategic elements of the planning system, including strategic land use planning and recommending Local Provision Schedules.

**Currently the strategic elements are over-sighted by the Planning Commission.**

Council would also be able to make representations to independent planning panels on discretionary elements of development applications (in addition to officer level advice as currently provided to councils).

**It is not clear that individual councillors, who may have minority views, would have any input to independent planning panels.**

#### Engagement feedback

- Community planning and environment groups strongly support maintaining councillors' role in determining significant local development determinations.
- Development interests are seeking a development approval system that is consistent and predictable. They did not find that this is always the case when development determinations were made by councillors.

## Insights

This option has parallels with the introduction of [Local Planning Panels](#) in some areas of New South Wales. Under this system, a local

planning panel is made up of a chair (appointed by the Minister), expert members (appointed by the council from a list approved by the Minister) and a community member (appointed by the council).

## Option 5.1c

Develop guidelines for the consistent delegation of development applications to council staff

### Rationale

While most development applications are determined by council officers under delegation, a small proportion are considered by councillors (or independent panels as proposed in 5.1a) acting as a planning authority. An absence of clear guidance on options to delegate planning processes to council staff can frustrate and lengthen the planning assessment processes.

Planning decisions must be based on professional, technical assessments against criteria under the planning scheme. However, councillors are often under community pressure to make decisions that reflect popular opinion based on considerations outside their formal statutory role as a planning authority. This can unduly divert council resources and undermine community confidence in the council and in the planning system.

**It should be recognised that the Planning Scheme structure provides for Discretionary Uses as well as providing more flexible Performance Criteria rather than limiting Acceptable Solutions. Discretionary Uses usually requires Councillor decision making. In most situations Performance Criteria require judgement value decision making, not an exact science, so there are bound to be a variety of opinions about whether a proposal meets Discretionary Use criteria or meets Performance Criteria. The sometimes complex nature of decision-making should not be a reason to remove the democratic process of decision-making.**

**Decision making is not just a problem for Performance Criteria but also when assessing conformance with Acceptable Solutions. For example, an Acceptable Solution for BODC's Environmental Living Development Standards regarding "The colours of external surfaces must be the same shades and tones of the surrounding landscape and vegetation elements", would seem rather straight forward. Note there are no Performance Criteria for this particular matter.**

**However, in a recent Development Application (DA 043-2019) approved by BODC the Council accepted the Planning Officer's recommendation as follows: "It is proposed that the colours of external surfaces will be colours to blend with the existing buildings on the site. Coastal colour tones are proposed. The buildings of the existing development are white in colour and the access roads and parking areas are a light brown/beige gravel colour. It is noted Landscape includes not just natural elements but built elements in a view. White is a colour common in coastal environments in terms of built structures as well as light colour schemes. Sandy shores and wave breaks provide for natural light-coloured features in the surrounding area. The proposal complies with the Acceptable Solution." So the BODC planning staff chose white buildings as the landscape and ignored surrounding vegetation. A somewhat staggering interpretation. No wonder Councillors and the general public are confused at times.**

Guidelines would help councils to determine which decisions should be made by councillors, and which should be made by the council's

planning staff under delegation. The criteria in such a policy could be based on the nature of the development (e.g., capital value, location, activity proposed), the nature of the proponent (private individual, business, government agency, council, councillor) and/or the number of representations received.

This would provide clarity to proponents and the community and reduce the potential for the development application process to be unduly influenced by local political pressures. It may also lead to more efficient decision-making, as proponents, council staff, councillors, and the broader community would be clearer on who will be making key decisions, and on what basis.

**Guidelines are based on value judgements. The number of representations is very often a reflection of popular opinion, which is negatively touted as a rationale for selective guidelines.**

### Engagement feedback

- . There was a range of views on whether all councils need to take a consistent approach to this issue, or whether some discretion is acceptable and desirable.
- . While few thought the problem was bad enough to warrant a mandatory approach to delegation, there was some support for councils being offered guidelines they could choose to adopt.

### Insights

While there do not appear to be any precedents for such a policy, the variety of approaches councils currently apply to this issue suggests there would be some benefit from clearer/improved guidance.