Legislative Council

HANSARD

Thursday 28 November 2024

The President, **Mr Farrell,** took the Chair at 11 a.m., acknowledged the Traditional People and read Prayers.

[excerpt…]

LAND USE PLANNING AND APPROVALS AMENDMENT (DEVELOPMENT ASSESSMENT PANELS) BILL 2024 (No. 53)

Second Reading

[excerpt...]

[5.11 p.m.]

Ms WEBB (Nelson) - Here we are again. It feels like taking another hammer and chisel to chip away some foundations of our planning system. It seems this week that has been the theme and this time the chisel is this the government's legislation, which I regard as ill-conceived and rushed. I can hear the chipping when we look at it.

I will begin by thanking all those who have provided briefings for us on the bill. Looking back further than that, those who in the community, as either individual citizens or as stakeholder groups, have taken the time to engage in some of the consultation processes that were provided in relation to this matter and this bill. It is no small thing, particularly for individual citizens, to do that and engage with processes. Even if it is through a form, a template-type submission to make, they are still doing that with a sincere intent to convey their views, concerns or their support for issues that are being consulted on. It is important to thank and acknowledge them for that because at times it must feel like they are doing that fruitlessly and being ignored in doing it.

I also thank other members for their contributions on this bill, which have been more comprehensive than the one I will give now. There is much that has been said that I agree with from other members. I am just going to pick up on some elements that I want to put on the record as part of my contribution.

To start, I will take a step back and just revisit the purpose of the Tasmanian Resource Management and Planning System (RMPS). The key act to deliver this planning system is the *Land Use Planning and Approvals Act 1993*, which is the one we are seeking to amend with this bill. I look to the fact that it states very clearly in the LUPA act the objectives to be furthered. Those objectives are set out in schedule (1). It says the objectives of the Resource Management and Planning System of Tasmania are:

> (c) to promote sustainable development of natural and physical resources and the maintenance of ecological processes and genetic diversity.
>
> (d) to provide for the fair, orderly and sustainable use and development of air, land and water.
>
> (e) to encourage public involvement in resource management and

planning.

So those are the primary objectives. Then it goes on to say:

(f) to facilitate economic development in accordance with the objectives set out in paragraphs (a), (b) and (c),

(g) to promote the sharing of responsibility for resource management and planning between the different spheres of government, the community and industry in the state.

I think that is a really important foundation for us to bear in mind when we are looking at this bill. It is pertinent to remind ourselves and the government that these objectives exist, they are mandated, and it appears that in many regards they have either been forgotten or deliberately ignored in relation to the way this bill has come about and been presented to us.

I am going to focus on mentioning the key democratic, good governance, transparent planning principles that are important for us to have consideration of in relation to this bill. I am not going to go into minute details of the clauses of the bill because we will leave that for the committee stage, should the bill get to that stage.

Despite the rhetoric and the Chicken Little hysteria promulgated by some in the government that our current planning scheme is choked, bottlenecked, apparently worse than peak hour traffic maybe on the Southern Outlet that I experienced at times, we have had some pertinent, salient facts placed before us by those professionals and experts who work in the planning area in this state about the effectiveness of our planning system here.

For example, we have heard from the Local Government Association about some of that in briefings this morning. Other members have gone into that data and detail in their contributions and I am not going to repeat the numbers. What it provided was valuable data to understand the reality of our approval processes here and the fact a very small percentage of development applications are refused going through our planning system. Of those that go to appeal, largely they are upheld as being correct decisions made by the planning authority in the first instance.

My takeaway from the data that has been placed before us as opposed to the not data, or the anecdotes, or the absence of data -

Ms O'Connor - Anecdata.

Ms WEBB - Anecdata. What an interesting term that is. My takeaway from the actual data is we should be applauding our system instead of setting it up to be a scapegoat for what I perceive to be fairly crass ideological purposes. I would emphasise salient points made during this morning's briefings and that was the councils' high passing rate of discretionary applications. Also, the rate by which TasCAT upholds councils' initial decisions is attributable in no small part to community and proponent engagement, working together to find appropriate resolution. Sometimes this occurs through the formal or informal mediation processes as we have heard from some examples this morning. The main point being under the proposed DAP bill, those proven successful engagement consultation mediation processes may be largely set aside on these particular matters that go through the DAP process. Given the nature of those particular sorts of projects that would be put through this process under this bill, they are probably the sorts of projects that would best benefit, not from being taken away from

engagement, consultation and mediation processes in the current system and put elsewhere, but from being put through those processes.

We come out the other end having projects and proposals considered in ways that bring people together ultimately, rather than having contention being stoked and the community feeling that it was set aside. It is a regressive approach to go down pathways that take us away from community engagement and ownership of outcomes and give special consideration to particular interests.

I note the property development sector points to stalling of developments. They then provide quite a list of factors contributing to that stalling. Among that list is some form of holding-up occurring in the planning approval process. I have only heard them speak to that anecdotally, without actual data or evidence to demonstrate exactly how much of a factor this represents or the specific problems needing to be addressed to fix that apparent blockage. Pointing to anecdotal examples of development applications that ran into problems or delays is not a robust basis for forming policy or legislation. It is a given that every development application will be unique and, despite what occurred in this place yesterday, we cannot provide everyone with a bespoke legislative approval process.

We need to have a system that is fair, transparent, consistent and accountable. We need a system based on natural justice, that has checks and balances and is unbiased. The system we have now may be far from perfect and in desperate need of an overhaul, but it is explicitly based on those fundamentals that it is fair, transparent, consistent and accountable. Our commitment should be to improving that system, not finding ways to work around it. Let me flag my disquiet at the fact this bill appears to be driven by ideology rather than the principles of good public policy or the objectives of our resource management and planning system. Nothing shrieks more loudly of ideology than phrases such as taking the politics out of planning.

The government's PR spinners clearly think they are on a winner there. Let us break down this hypothetical problem of local politics, as it is mentioned in the government's second reading speech in the bill package. What exactly does that mean and why exactly is it a problem? Local politics is the community. Community consultation is not just providing people one opportunity to shout into a void, only to be ignored.

Local community representation is about genuinely listening to, engaging with, and testing those expressed views. In a democracy that actually values, instead of paying lip service, to a community -…

Ms WEBB - I was saying, in a democracy that actually values, instead of just pays lip service, to community involvement and diverse opinions, it is natural for there to be tension between different views. Do you know when it is that people get angry and when those tensions risk boiling over? It is when people feel they are being ignored and locked out of decision-making processes that affect them, which this bill threatens to do.

This is not about taking local politics out of planning. It is about taking legitimate community involvement out of decision-making. It is not about a development assessment process. It is a privileged approvals process for a few.

The objectives from our RMPS clearly place community involvement front and centre. In contrast, the so-called consultation process for this bill reveals worrying contempt for

genuine community or stakeholder engagement. Despite a rushed consultation period on the draft bill, there was, however, a total of 482 submissions received. Of those, 461 were received by the closing date of 12 November and a further 21 came in a bit late.

Of the total of 482, 440 opposed the DAPs proposal in this bill and that equates to 92 per cent against the proposed DAP bill. Yet a mere seven days later, the government tabled the final bill in the other place, seven days apparently to consider in a thorough and respectful manner 482 submissions, even though granted, a number of those are based upon a template expressing similar views.

We know the LGAT was still meeting at that time that the bill was tabled; it was planning to meet to formalise its response when the government charged off and brought that bill on for debate in the other place. The LGAT, the peak group for the very sector this is most relevant to, was still in the process of bringing together that sector to formalise its response to this. But of course, we could not wait for that. We rushed ahead and pushed it on through the other place.

We heard that after making submissions to the government's position paper from 2023, the local government sector stakeholders felt they were not engaged with further in an effective way until the draft bill appeared this year. That does not seem to be a mistake. It seems to be a deliberate rebuff of arguably the central stakeholders. That is exactly how it looks from the outside, when you have those central stakeholders tell us they felt there was no engagement with them in a meaningful way to develop this bill, which they had stated an openness to in its central proposition, of putting in place a DAP process. It is not the central proposition that they object to; it is the way it is being done in this bill.

I do not see a world in which any of us would consider that was acceptable behaviour by a decision-making government. Further to that, it is not an edifying sight to see the Premier then publicly disparaging feedback from four greater Hobart mayors as nothing more than self-interest and grandstanding.

Ms O'Connor - It is disgusting.

Ms WEBB - Taking the politics out of planning is certainly not what we saw from the Premier that day. I feel that it was shockingly disrespectful to representatives of their local communities. This in fact was confirmed to be a shared view of all 29 councils unanimously around the state by their peak body. In contrast, should a developer complain about a decision arrived at through due democratic processes, we do not see them publicly vilified and demeaned by the Premier.

Ms O'Connor - No, they get their own legislation.

Ms WEBB - In fact, that would be a situation in which we would see the very definition of self-interest actually, complaints from a developer. However, that is not labelled and vilified. Instead, as the member for Hobart said - she must have read my notes - they get their very own standalone piece of legislation.

Ms Rattray - That is the second member she has read the notes of -

Ms O'Connor - This is my superpower, okay. Just be careful. I can read minds.

Ms WEBB - It is deeply worrying. It is a deeply worrying situation. The minister in the other place has stated that, while reducing the role of local councils, the bill does not completely

remove their involvement, and that while they are not completely absent, they are not the decision-maker. Let us just pause and think about that for a moment. 'Local councillors are not the decision-maker'. Democratically elected representatives elected by their community peers to make decisions on the community's behalf set in our legislation as the decision-makers, as the planning authorities primarily, are having that role ripped away from them in relation to these particular projects. It is beyond their control in terms of who decides that those particular projects go through a DAP process. This democratically elected tier of government is basically being told: 'Possibly you may be allowed to make a decision, but if the developer thinks you might make the wrong one, they can choose to go down this other path'.

We know there has always been the perception and risk that powerful vested interests get special treatment and consideration, but this bill seems like a step towards codifying that. It was also suggested in the other place that controversial matters may be best removed from a council's hands as they are put under immense pressure to vote contrary to planning schemes, apparently. That smacks of infantilism. I am concerned about that.

It is interesting too, when you think about it - and let me just say, I am not someone here with a local government background, so I am not speaking from personal experience, although I very much appreciate hearing from others who are. What I am given to understand, and I think it was brought up in our briefings this morning from the LGAT, is that there is a great deal in our planning system and our scheme that is not just black and white, you comply or you do not. There are many aspects of it where there is an element of discretion, an element of grey area, or a sliding scale of something. It is in that place that the elected representatives and our local councils can bring their decision-making to bear. They may have something recommended to them by their planning officers, but if they decide differently from that recommendation, it is not always that they are contravening the planning scheme to do that. Their decision may still sit within the planning scheme, but be different from what was recommended by planning officers. Let us be really clear, if they did make a decision that did technically contravene the planning scheme, presumably that would be the basis for an appeal that would be available to the proponent. We know when appeals are brought, by and large decisions are made by TasCAT upholding the original decision.

I am very comfortable with the fact that elected members at a local government level bring to bear in that space decision-making that may be different from recommendations made. The recommendation might comply with the planning system. The decision by elected members might also comply with the planning system. We have an excellent process in place for independent appeals to be heard if there is any contention about that.

Instead of patronising the local government sector, maybe the state government should prioritise its own responsibilities instead, and actually address the longstanding and problematic outdated planning scheme that others have identified as being there and being in need of attention. Would we consider it appropriate to have our rights and responsibilities as elected representatives removed because apparently we could not cope with the risk of being pressured over controversial matters? I do not think we would be happy with that in this place. I do not think the local government sector should be happy with that either. We have been told that a proposal taken to a development assessment panel is final with no right of appeal based on merits. That apparently somehow still reflects a commitment to natural justice. I just have to ask: for whom? How does the removal of access to merits-based appeal comply with the principles of natural justice and appropriate administrative decision-making. These are well-accepted principles.

We got an excellent memo provided to us by Anja Hilkemeijer, Professor Jan McDonald,

Cleo Hansen-Lohrey, Dr Phillipa McCormack and Dr Emille Boulot from the UTAS law school. They lay out very clearly the fact that a legally sound administrative decision requires that decision-makers have very key factors, such as access to all relevant facts and sufficient time to consider how applicable legal rules apply to those facts. It is their contention in this memo that this should also include administrative decisions being subject to merits review, that they are fundamental to good governance and good practice, and that this bill falls short on all three of those basic requirements.

They point out very clearly that commission panels are no substitute for a TasCAT review process being available. We are excluding TasCAT with this bill. We are excluding that independent review process that TasCAT provides. The memo goes on to say that a commission panel hearing is no substitute for TasCAT review for the following reasons: it is logically impossible for a decision-maker to review its own decision, the fact that a commission panel conducts a hearing before finalising its decision is not a substitute for an independent merits review of that decision, and second, commission panels are not designed to be as transparent, procedurally fair, comprehensive and independent as TasCAT panels.

They also set out very clearly a set of four key ways that commission panel processes may not meet natural justice standards. In the interests of time in this place, I am not going to read through all of them. I will just mention the areas they touch on. Commission panel hearings are time-limited. They are constrained to a particular time frame which amounts to 18 calendar days. Although it is 28, it cannot start until 10 days after the exhibition period. They cannot get an extension to the hearing's time period. They can potentially get an extension from the minister to the final decision time period, but not the hearing's time period. They are very constrained in how long they can spend receiving information through that public hearings process. They are required to finalise the decision within a very particular time frame. The minister and the applicant can seek to grant an extension for the making of that final decision That is a very self-interested group of people who can do that, the minister or the applicant. The draft assessments are made without hearing from all the affected persons, perhaps. Also, commission panels do not provide written reasons for their decision. Those are just a few. There is a lot of detail in this memo and it is a shame that we are unable to - I should probably have sought to table it, but I have a very messy version here, so I will not.

Suffice to say, I have serious concerns about the appropriateness of this administrative decision-making process and it complying to what we would all understand to be the standard foundations for that process, particularly in relation to appeals.

I find the matters raised regarding the need to support this to help address affordable and social housing outcomes particularly problematic. I can already hear the government accusing people who oppose this bill of somehow putting barriers in front of much-needed social and affordable housing in this state. I would absolutely stand firm in the face of that. My roots are in social justice and the community services sector, with the housing sector as part of that. I will not stand here and be gaslit by anyone suggesting that I would put things in the way of that in an unwarranted fashion.

I will also call out that when I see vulnerable people and issues such as a lack of housing being exploited for blatant ideological purposes. I think partly in this case they are conveniently being used in that way. If the government and the planning minister were genuinely driven by a desire to address our urgent need for appropriate, safe and liveable social and affordable housing, they would have prioritised urgently needed revision of the planning scheme, which is struggling effectively to deal with mid- to high-density proposals. They would have done that differently. If the government and planning minister were genuine about getting roofs over

heads now, they would take meaningful action to stem short-stay accommodation which is suffocating our housing market. They would place some meaningful control in the hands of local government to decide what is best for their communities on that front. I say to the government: do that first. Attend to your own legislative backyard before you come looking to circumvent key democratic principles in this way in spill.

To conclude, what is the problem this bill is seeking to fix? There is no clear evidence to demonstrate a problem. It seems anecdotal and multifactorial, more a case of the vibe of the thing. Yet despite that lack of problem definition, we see with this approach the fingers of blame squarely being pointed at that messy thing we call democracy. The irony of having this government which has made an art form of lambasting non-elected entities or scientific experts or statutory bodies who may try to tell them what to do, suddenly embracing non-elected bodies to do the work of an elected tier of government as a planning authority. It is quite astounding.

Apparently, as a planning authority, local government may not be able to withstand potential political interference. They could succumb to conflicts of interest. The minister, however, who under this bill retains considerable power, will apparently always act apolitically and never be at risk of a potential conflict of interest, either personally or on behalf of their party. How very reassuring. The Tasmanian people have a right to be passionate about where they live, both in terms of the immediate and the long term. This is reflected by the legislative objectives in our RMPS. People should be involved in decisions that impact where they live, where they have chosen to bring up their family or to retire or to work, rest or play. People should be involved in their local planning processes.

How often have we stood here recently and been castigated by the government about the need to protect the Tasmanian way of life? Really, we have had to apparently risk interfering with a Supreme Court action in recent times to protect that Tasmanian way of life. Well, I can tell you what the Tasmanian people value as a pillar of their way of life is a democratic, accessible, transparent and equitable planning system as recognised by the objectives in our RMPS. A key factor of the Tasmanian way of life is equitable access to merit-based appeals at the very least. That shows that we are all equal before the law. This bill does not remove politics from planning. Instead it centralises and insulates political power in the role of the minister and in the absence of merit-based appeal rights for projects that are most likely in need of them. Rather than removing politics from planning, under this bill ordinary people are removed from the planning process.

I will finish up by reiterating my concerns about the poor precedent this bill sets by eroding democracy by stealth. I commend to this place the Tasmanian people's right to a robust, sound, transparent and democratic planning system. On that basis I cannot support this bill, which I think is anti-community and anti-democracy.

[end of excerpt…]