

Development Assessment Panel (DAP) Framework

Stage 1 – Testing ideas

Presentation: 13 November, 2023

State Planning Office
Department of Premier and Cabinet



In recognition of the deep history and culture of this land, we would like to acknowledge and pay our respects to all Tasmanian Aboriginal people; the past and present Custodians of the Land upon which we meet and gather.

Thanks for joining us this afternoon for this presentation on the first stage of our work on a framework for Development Assessment Panels.

To start I would like to acknowledge the first nations people of Lutruwita - In recognition of the deep history and culture of this land, we would like to acknowledge and pay our respects to all Tasmanian Aboriginal people; the past and present Custodians of the Land upon which we meet and gather.

Before I hand over to my colleague Nell Nettlefold to walk you through the presentation, I want to explain that while we have been directed to develop this framework, this is very much a process of seeking responses to some initial ideas and considering suggestions. Already we have received some really good advice to help us improve the draft framework and I'm sure there will be others submitted over the coming weeks. The consultation is open until 30 November – another two and half weeks.

Nell will take you through the reason for this initiative, the principles we are applying to help develop the framework, and what this would look like and how it would operate. Ultimately we want the best model for these DAPs and that involves seeking your ideas.

Please note we are recording this presentation and you can ask questions or make comment in the Chat room and we will try to answer those at the end.

Thanks Brian, and thank you to everyone for joining us today.

Today's presentation is on the establishment of a Development Assessment Panel (or DAP) framework that seeks to provide an alternate pathway to determine certain development applications by an independent planning panel established by the Tasmanian Planning Commission.

As Brian mentioned, my name is Nell Nettlefold and I'm a Senior Planning Adviser with the State Planning Office and helping out with the development a DAP framework that, following consultation and further refinement, will ultimately inform the drafting of a Bill to amend the Land Use Planning and Approvals Act.

The purpose of today's presentation is to give you a better understanding of what some of the issues are that are driving the need for a DAP framework and what that framework might look like.

It is hoped that by helping you to understand the issues and the SPO's approach to the development of the framework, that this will provide greater context for you and support your engagement in our current consultation period.

Why?

Ensuring important planning decisions
are based on the planning rules

planning authority

VS

elected members representing community
interests

The Premier announced the preparation of a DAP framework back in June, with the stated intent 'to take the politics out of planning' by providing an alternate approval pathway for certain types of development applications.

As discussed in the Position Paper, one of the issues that has been identified, and which the framework seeks to address, is the contested role of councillors.

Councillors are required to act as part of a 'Planning Authority' under the Land Use Planning and Approvals Act which does not always align with their personal views or their role as an elected member, representing the interests of their constituents.

This is an inherent problem in the system and one that has been identified and discussed at some length in the Future of Local Government Review Stage 2 Interim Report.

The Interim Report identified strong division between those who believe Councillors have a role in determining development applications and those who believe their planning role should only relate to strategic land use planning.

Our preliminary consultation with the Local Government Association of Tasmania also suggests that there are a range of varying opinions on this matter and we are expecting the full spectrum of those views in the submissions received as part of this consultation.

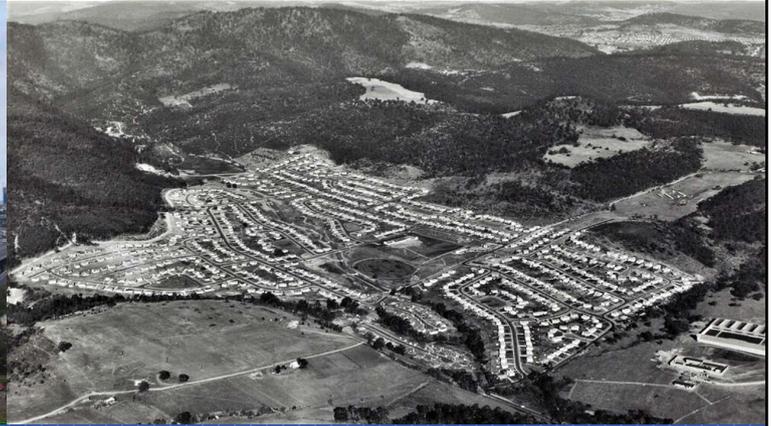
A secondary driver of the development of a DAP framework is the current housing crisis.

Social housing is a particular concern



Melbourne public housing towers

<https://www.abc.net.au/news/2020-07-06/communities-react-to-being-locked-down-melbourne-towers/12425968>



Risdon Vale 1950's

<https://www.tryanphotos.com/tasmanian-modernism-blog/tag/Risdon+Vale>

I've included these images because they remind us of past responses to the provision of social housing and how far we have come.

The State government has committed to deliver 10,000 social and affordable homes.

There have been a few, but highly publicised cases, where applications for social and affordable housing have been refused on the grounds of the social stigma around that type of housing, rather than the applicable use and development standards, which, as we all know do not differentiate between the future occupant of the residential use and development or their financial situation.

The DAP framework provides an alternate pathway to make sure that those social and affordable housing applications are assessed against the existing planning provisions and determined by an independent panel. This allows homes to be delivered where they are needed most and frees up Elected Members to make representations on these applications, if they so wish.

As we were unpacking some of these issues, it became apparent that there might be other types of development applications that would benefit from being referred to a DAP for determination. For example in scenarios where there is the perception of bias on the part of a Councillor or stated conflicts of interest, or where Council is the applicant and decision maker.

We have also asked the question of whether those same issues might be relevant when Council is considering a request to amend their LPS, and whether there should be an alternate pathway for the Minister to direct the planning authority in certain circumstances. Those matters are discussed in the Position Paper under Consultation issue 2 – and we look forward to your thoughts on that.

Development Assessment Panel

Draft Framework
to inform
amendments to
LUPAA

DAP Framework principles:

- Use those existing parts of the system that we know are working well
- Only address those applications that are problematic
- Adopting processes or practices that are known, understood, tested and trusted will mean more efficiency and familiarity.

Attachment 1 of the Position Paper outlines a proposed draft framework that, as already mentioned will inform amendments to LUPAA.

In the first instance, the draft framework is based on commitments made by the Premier in his media release and preliminary consultation with Key Stakeholders including Homes TAS, the Property Council and the Local Government Association of Tasmania.

Based on these initial outcomes, the framework has been constructed around some higher order principles being:

- To capitalise on those existing parts of the system that we know are working well –
- **Only Address those applications that are problematic;**
- adopting processes or practices that are known, understood, tested and trusted that will provide for more efficiency and familiarity.

We know that planners are doing a great job assessing DAs and ensuring statutory timeframes are met as backed up by some statistics discussed in the position paper.

We also know that we have processes in place and used by the TPC to establish independent assessment panels and an existing framework for the TPC to determine development applications in the form of a combined planning scheme amendment and permit application.

The draft framework essentially adopts those LUPAA processes under the old section 43A model and the new 40T process. These existing and understood processes have been used as a starting point to build the DAP framework.

DAP framework

What types of development applications are suitable for referral to DAP for determination?

The Framework proposes:

- Discretionary referral;
- Mandatory referral; or
- Ministerial referral.

Going back to one of those principles, we think its important that the framework refers only those development applications that are problematic, or perceived to be problematic, within the system. We've already discussed some of those scenarios in a previous slide, but I refer to Consultation Issue 1 of the Position Paper which asks some questions that will hopefully tease out what those problematic applications are.

For the purpose of developing the draft Framework, we have made some assumptions about what types of development applications might be suitable for referral to a DAP.

The framework proposes a discretionary referral process and a mandatory referral process. It also proposes a Ministerial referral process which I'll just park for the time being while we work through discretionary and mandatory referrals.

DAP framework

Development applications (s57) suitable for DAP determination

Discretionary (agreed) referral

- Planning authority and applicant choose, and agree, to refer application to DAP, and
- Satisfy 1 or more of the “DAP Criteria”:
 - Council is the applicant;
 - \$10 Million or \$5 Million in non-metropolitan area;
 - Particularly complex DA;
 - DA potentially contentious and Councillors wish to represent views of their community; or
 - Where there is a case of bias, or perceived bias.

The discretionary or agreed referral part of the DAP framework proposes that the Planning Authority or applicant can choose to refer the DA to a DAP for determination if both parties agree.

To be suitable for this type of referral, the development application must satisfy one or more of the “DAP criteria”, which includes;

- Where Council is the applicant;
- The development application is worth \$10 Million or \$5 Million in non-metropolitan areas;
- The development application is particularly complex or requires a level of technical expertise that the planning authority doesn't believe it has;
- The development application is potentially or likely to be contentious and Councillors may wish to express their personal or political views, or represent the views of their constituents, which may be at odds with their role as a planning authority; or
- Where there is a case of bias, or perceived bias, on the part of the planning authority or members of it. This might also include where Councillors have a conflict of interest with what is proposed or who has proposed it.

DAP framework

Development applications (s57) suitable for DAP determination

Mandatory referral

- The planning authority must refer a development application to a DAP for determination if it is for a prescribed purpose.
- “Prescribed Purpose” include:
 - Council is the applicant and project valued over \$1 Million;
 - An application from Homes Tas or social and affordable housing provider;
 - An application for ‘critical’ infrastructure;
 - Other(?)

The second referral process is Mandatory, where Council must refer a development application to a DAP for determination.

The framework proposes identifying development applications that are for ‘prescribed purposes’ that must be referred to a DAP.

These ‘prescribed purposes’ might include:

- development applications where council is the applicant and the value of the development is over (say) \$1 Million;
- The application is from Homes Tas or a social and affordable housing provider and is to provide for social and affordable housing; and
- An application for “critical ‘ infrastructure.

We acknowledge that both the ‘DAP criteria’ and “Prescribed Purposes” are a little rudimentary at this stage but please bare In mind that this is a draft framework and the feedback received will be used to further refine it.

The framework proposes that notification of a discretionary or mandatory referral to a DAP occurs early in the assessment process..... **So what happens when issues** with an application do not become apparent until further into Council’s assessment of the development application?

DAP framework

Development applications (s57) suitable for DAP determination

Ministerial referral

- Applicant or Planning Authority;
- Minister must be satisfied that the “DAP Criteria” is met;
- Can occur at any stage of the assessment;
- Minister to direct DAP and Planning Authority to undertake assessment functions;

This is where we have introduced the third way a development application can be referred to a DAP for determination, and that is by the Minister.

The framework allows an applicant or Planning authority to make a request to the Minister to refer a DA to a DAP for determination.

This type of referral can occur at any stage of the assessment process and is intended to accommodate those situations, such as a conflict of interest or considerable public opposition, that arise later in the process. The Minister can only refer the development application to a DAP if satisfied that it meets the DAP criteria.

Because this type of referral can occur at any time during the assessment, the Minister is required to direct the parties to undertake the relevant assessment tasks depending on where in the assessment process it was referred to a DAP for determination.

DAP framework

Capturing local council knowledge

Preliminary assessment by planning authority

Planning Authority undertakes preliminary assessment of development application

- Review application for validity;
- Request for additional information:
- Assessment against the planning scheme provisions;
- Recommends either to grant, or refuse to grant, a permit;
- Advertises the application, assessment report and draft permit (if recommended for approval);
- Receives, reviews and prepares a statement of merit on the representations

Consultation issue 3 of the Position Paper explores ways to capture and incorporate local knowledge into the DAP assessment.

The DAP framework proposes that this is achieved through the Planning authority undertaking the preliminary assessment of the development application.

This is consistent with the assessment of the development application component of a combined application under section 40T of the Act.

Council's preliminary assessment would include:

- Reviewing the application for validity;
- Requesting additional information, if needed;
- Undertaking an assessment against the relevant planning scheme provisions;
- Making a recommendation to either refuse to grant a permit or grant a permit, including conditions.
- Advertising the application, assessment report and any permit;
- Receiving and reviewing representations and providing a statement of opinion on the merit the representations, including any modifications to the recommendations on the development application, including the permit and conditions.

Its worth noting here that the process differs from s57, where the application is advertised before the council makes the decision so those matters raised in the representation can be taken into consideration in its decision .

The proposed framework has adopted the section 40T process where Council advertises the application and its assessment and recommendations on the development application, including any permit if recommended for approval. Following advertising, the Council reviews the representations and provides a statement of opinion on the merit of the representations to the DAP.

The reason why we have adopted the 40T model is because it is an existing process that has been tested, and unlike s57 process, allows for the applicant and third parties to be privy to, and scrutinise, all of council's assessment of the development application, including any permit and conditions of approval.

DAP framework

Assessment and Determination by the DAP

- Council provides all information to the DAP;
- DAP notifies parties that it has received the information and makes it available to the parties;
- Invites parties to attend a hearing, encourages hearing to be held locally;
- Normal hearing procedures under the *Tasmanian Planning Commission Act 1997*;
- DAP to make a determination 35 days from receiving the information from Council;
- DAP to inform parties of its decision;

Once Council has completed its preliminary assessment we move into the DAP assessment and determination phase.

Firstly, Council provides all the material associated with the development application and council's assessment of it, to the DAP.

The DAP notifies the parties that they have received the development application and associated Council assessment documents and makes all the information available to the parties.

The DAP invites parties to a hearing. We've included a step whereby the DAP can dispense with a hearing if there are no representations or parties don't wish to attend a hearing.

And to supporting local involvement in the process, we have included that hearings should be held locally.

The DAP hears submissions from the parties and conducts its hearing in accordance with the Tasmanian Planning Commission Act.

The framework requires the DAP to make its determination within 35 days from receiving the application and assessment documents from Council.

Once the DAP has made its determination on the development application, it must inform all the parties of its decision.

DAP framework

Using the current system

Implementation of DAP determination

Post approval processes

- If approved, DAP directs Council to issue a permit;
- Council to enforce permit;
- Council to process requests for minor amendments to the permit;
- No appeal rights – same as the s.40T combined DA and amendment

Following the DAP determination, the post approval processes reverts back to the usual roles and functions of the planning authority.

If the development application has been approved by the DAP, it directs the Council to issue a permit.

Similar to permits issued by TasCAT, Council is also responsible for enforcing permits that come through the DAP approval pathway.

Council also processes any requests for minor amendments to the permit as provided under section 56 of the Act.

Finally, and we understand it is going to be a contentious proposition among some, but the framework does not include the ability for a merit appeal on the decision made by the DAP.

The reason for this is simply that the DAP assessment processes provides the same opportunities provided by the appeal process whereby the parties concerns are aired in a public forum, and they make submissions directly to the decision maker, who, like a TasCAT appeal process, comprises an independent expert planning panel.

The Position Paper identifies other existing assessment processes such as Major Projects and permits issued under section 40T where, similarly, there is no right of appeal.

While DAP decision is not subject to a merit appeal, it will still be subject to Judicial Review.

DAP framework

Timeframes

Assessment timeframes

	7 days	Running total
Lodging and referrals, including referral to DAP	7 days	Running total
DAP confirms referral	7	14
Further information period (can occur within the timeframes above, commencing from time of lodgement)	7	21
Council assesses development application and makes recommendation whether or not to grant a permit	14	35
Development application, draft assessment report and recommendation on permit exhibited for consultation	14	49
Council provide documents to DAP, including a statement of its opinion on the merits of representations and whether there are any modifications to its original recommendation	14	63
DAP hold hearing, determine application and give notice to Council of decision	35	98
If directed by the DAP, Council to issue a permit to the applicant	7	105 max

This is an extract from the Position Paper that provides an outline of anticipated timeframes for the various parts of the process.

Obviously, the additional steps in the process means that it is unrealistic for the assessment to be completed in the usual 42 day statutory timeframe for determining discretionary applications.

We have come up with a maximum total running time of 105 days.

I'm not going to run through each of these timeframes, but we encourage any feedback on whether you think these are appropriate and achievable.

DAP framework

Other matters and next steps

Other Matters

- Resourcing implications
- Assessment fees

Next steps

- Refine framework
- Draft amendments to LUPAA
- Consult on draft amendments

Some other matters that should be mentioned is the resource implications for both Council and the TPC, and in light of that the need to apply additional assessment fees to cover those cost.

The framework suggests that Council charges its normal application fees and when it is determined that a development application is to be referred to a DAP for determination, an additional fee is charged.

Naturally we want to make this as fair and equitable as possible so would appreciate everyone's views on how we can achieve this.

The Next steps involve reviewing all the submissions received during consultation and preparing a Report on the Consultation, which will include a refined framework that we will use to draft amendments to LUPAA.

Further consultation will be undertaken on the draft amendments to the Act which we are hoping to run early next year.

Questions or Suggestions

Thank you

For further information on the DAP Framework please contact the State Planning Office on:

Phone: 1300 703 977

Email: stateplanning@dpac.tas.gov.au

Or visit:

<https://planningreform.tas.gov.au/planning-reforms-and-reviews/planning-legislation-reviews/draft-land-use-planning-and-approvals-amendment-bill-2024>

