

Development Application Panel (DAP)

Presentation Questions and Answers – 13 November 2023

Participants = 88

1. Who pays for the DAP hearing and assessment/determination?

The proposed 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.

It is anticipated that the applicant would pay the additional fee.

2. Working days or calendar days for the timeframes?

Calendar days.

3. How many members will be on the DAP panel?

The Commission will determine the number of DAP members through its normal delegation process which is typically based on the greater the scale and complexity of the application, the more members of the panel.

4. When will the submissions on the Position Paper and DAP framework be released to the public?

Submissions on the Position Paper and the proposed DAP framework will be published following the completion of the consultation period (30 November 2023).

5. Can you please explain the process of the ‘further consultation’ on the draft Bill? The planning reform website states that ‘submissions received will inform the draft Bill that undergoes further consultation and refinement.’

The State government has a process for consultation on draft legislation. This process involves a minimum 5 week consultation period to seek feedback on the draft Bill.

6. What would the DAPs mean for landowner consent on private land, council owned land and State owned land?

The DAP framework is not proposing any changes to the requirements for owner’s consent.

7. You referred to a Local Government Review Report? Can you please provide a direct URL link to the report that you mentioned?

[TLG-Reforms stage-2-interim REP-FIN.pdf \(futurelocal.tas.gov.au\)](#) (link to PDF of report)

[Publications – Future of Local Government Review \(futurelocal.tas.gov.au\)](#) (general website)

8. How will a panel be selected? i.e. what type of expertise will they have?

The Commission will select the panel and likely to match the expertise with the nature of the application and the issues it raises.

9. Will the DAP panel comprise TPC delegates? Or will a panel also comprise external representation/expertise from outside the TPC - similar to the some of the panels that have been constituted for major projects to date?

The Commission will determine who comprises the panel.

10. When will the draft Bill be out for public comment. You said in the New Year - does this mean January?

The SPO anticipates the draft Bill will be ready for public comment in mid January 2024.

11. How did DPAC arrive at the \$10 million / \$5 million non-metro thresholds?

The value thresholds are indicative only. The consultation process will refine any dollar value and if it is a meaningful criteria.

12. Given that a DAP referral is effectively removing the right of Councilors to determine the application, it is inappropriate to delegate the DAP referral process to staff. How do you propose that a decision to refer to the DAP can be undertaken in 7 days?

Any delegation of DAP referral to staff is a matter for the planning authority to determine.

The mandatory referral process is quite clear what applications are to be referred to the DAP.

If the timeframes are not achievable, we welcome comments on what would be considered reasonable.

13. So just to be clear - will the draft Bill be advertised in January 2023?

The SPO is aiming to advertise the draft Bill in mid January 2023 however, that may be subject to change based on other competing work priorities that arise.

14. The position paper (on page 8) acknowledges that the concerns raised regarding social housing decisions are not backed up by statistical evidence but rather a 'perception'. The paper then notes

“Because the evidence is that the inappropriate political determination of applications is limited to isolated, but well publicised, cases, the response should be proportional, so it does not undermine the integrity and success of the existing reforms, or the planning system itself. Changes should only be proposed where an issue has been identified”.

Are these two statements contrary to each other?

There is evidence, in the form of specific cases where social housing projects have been subject to decisions that have not been in accordance with planning provisions.

Those decisions seem to have been based on the perception of the social stigma around social housing rather than the planning rules.

15. Will there be a process for a threshold increase (ie every 5 years?) be considered if the dollar threshold remains?

That is detail that we will need to consider further based on comments received during the consultation and a review of how other value thresholds are legislated.

16. 4B refers to Homes Tas; will there be a minimal \$ threshold

The framework does not propose a value threshold for the provision of social and affordable housing by Homes Tas or equivalent provider, but it may need to be clarified that development applications for extensions or renovations (or the like) following initial approval can be assessed through the normal process.

17. What is the standard length of public comment on a draft bill? Will it be the five week period length that you were referring to?

Five weeks is the minimum period for public comment on draft legislation.

18. Can the Framework have regard to the nature of the discretion being exercised for a particular application? This will likely differ quite a bit from application to application.

Question is unclear. SPO would be happy to receive clarification and respond accordingly.

19. Why do you want to remove merits based appeal rights?

Typically, the Commission's decisions are not subject to merit appeals, but are subject to Judicial Review. The DAP (as nominated by the Commission) assessment process would provide the same opportunities as those provided by the merit appeal process, whereby the parties concerns are aired in a public forum and submissions are made directly to the independent decision maker. This is similar to the TasCAT appeal process so it is not necessary to duplicate.

20. But even TASCAT decisions have further rights of appeal

TasCAT's decisions are not subject to further merit based appeals but they are subject to Judicial Review. DAP decisions will also be subject to Judicial Review.

21. If the referral is discretionary and the power is with the planning authority to make the referral (you would have to assume that Elected Members will not delegate this power to officers) then how do you think the decision on the referral would work in a practical sense within 7 days when there are statutory timeframes for meetings / agendas etc?

Any delegation of DAP referral to staff is a matter for the planning authority to determine.

The mandatory referral process is quite clear what applications are to be referred to the DAP.

If the timeframes are not achievable, we welcome comments on what would be considered reasonable.

22. What is perceived bias?

Perceived bias is where there is a reasonable perception that someone will vote on a certain matter in a way and on an issue which is not necessarily in accordance with the planning rules. This might be because the person has a connection or particular interest either with the applicant or the proposed development.

23. Nell mentioned that Minister referrals under this proposed process have “been parked.” Can you provide further context as to why, and any concerns identified?

The Ministerial referral process was discussed after the discretionary and mandatory referral processes in the presentation. Refer to slide number 9.

24. How would you define potentially contentious?

Potentially contentious development applications are those where the council, from knowing and understanding the community that they represent, pre-empt that what is being proposed is going to raise significant issues.

25. The nature of the preparation for a planning authority decision is VERY different to the level of preparation for an appeal. Are you expecting a DAP decision would involve lawyers / submissions on legal issues etc like an appeal?

The Commission's process is similar to a TASCAT appeal. The Commission's hearings are conducted in a more inquisitorial way often enabling more open discussion on issues, while still observing the rules natural justice. The Commission hearings often involve lawyers and submissions relating to legal issues, where they arise, similar to a TASCAT appeal.

26. Could the Minister's call in powers for amendments be built in to circumstances where s40B of LUPAA applies (that is where TPC directs the planning authority to reconsider a refusal)

Yes, that could be an option.

27. Is it appropriate to have a panel at the commission effectively circumventing the purpose of s59 LUPAA for applications where Council cannot reach a quorum? (Consultation issue 1 a) option iv) - The situation in option iv. can only arise once the application has gone before Council for determination as whilst Councilors may give an indication of their feelings about a proposal, these feelings may change up until the motion is put. The DAP option may not actually save much time in this instance particularly as TASCAT will consider both merit and judicial matters when making their decision.

We are not exactly sure of the question. The following may be relevant observations.

The use of s.59 is not a good planning outcome as it delays the decision, places significant financial burden on the Council, and takes up valuable TasCAT resources. There may be occasions where a council makes a decision simply to avoid the s.59 process and that may not be the most appropriate determination.

Where elected officials have expressed views about a proposal prior to their final consideration there is a reasonable case of apprehended bias even if they do not necessarily vote as they previously suggested.

The DAP proposal will ensure that an independent panel makes a decision based only on the planning rules in place.

28. With regard to giving the power to the Minister for Planning to direct a planning scheme amendment - does that mean SAPs, SSQs, and PPZ's as well as a change of zone?

Yes.

29. Can you please explain the definition and source for Affordable Housing Provider? That is different from Community Housing Providers that are required under a national community housing regulated system.

The SPO will seek advice to ensure the terminology is correct. The intention is to align to current regulated systems.

30. Who determines the mix of skills on a panel?

The Commission.

31. If the Minister directs a planning scheme amendment - does the Council have to agree?

No. This proposed process is for instances where council has refused a request to amend the LPS and where it is reasonable that council should have initiated the amendment.

The Minister already has powers to direct the planning authority to prepare an amendment to an LPS under section 40C. These include, to ensure consistency with the SPPs or the applicable regional land use strategy, or on the advice of the Commission.

32. So the Minister can only direct an initiation of a planning scheme amendment if the Council has rejected it?

Yes. The council should be requested in the first instance. If the Council agrees then there is no need for the Minister to even consider the matter.

33. Where the Minister Directs initiation against the wishes of the Council, why isn't the subsequent processing addressed by the SPO?

This is asking why a process similar to the rezoning under the Housing Land Supply Act 2017 is not suggested – ie. where the Government processes the amendment not the Commission. There is no intention to expand the processes under that Act. The preferred approach is to allow the normal scheme amendment process to proceed through to the Commission in line with the normal LUPAA provisions. The proposal simply starts this process and there is no role for the Government or Parliament once the initiation has commenced.

34. timeframe for possible implementation?

Implementation is most likely to be in the middle of 2024.

35. What safeguards are you expecting so that the Minister will not put the politics into planning by having a greater role in DA determination?

There is no role for the Minister in determining the development application. That is done by the DAP. The Minister's role is only to refer it to the DAP.

36. An issue that occurs occasionally is where elected members approve/refuse a permit against the advice of the Planning Department. If this decision is not appealed then the situation can arise where Council as a Planning Authority has approved/refused things which are not on a planning basis. Is there capacity to look at a mechanism for reviewing decisions made against professional advice which are not appealed by a member of the public? (for example refusal of a dwelling in an agriculture zone where no reps are received)

***meant approval of a dwelling against recommendation sorry**

This question is outside the scope of the proposed DAP framework.

37. Given there is the s57 process (development assessment process), section 40T process (combined DA and scheme amendment – determined by TPC) and the major project process (allows for the Minister to declare a project – determined by DAPs), is there a need for this additional hybrid process? How is it different to the existing assessment pathways?

In the section 40T process, the DA must be accompanied by a planning scheme amendment so is only relevant where the proposal cannot proceed under the current planning rules.

The Major Project process captures those larger developments that often do not fit within the existing planning provisions so a panel establishes the assessment criteria specific to the proposal.

The proposed DAP framework provides an alternate pathway for those development applications that might be contentious, sensitive or overly complex, but which are assessed against the existing planning scheme provisions. The only change is who makes the decision.

38. Just a comment, the difference in cost thresholds for metro and non metro doesn't seem to make sense

The cost thresholds are indicative at this stage and we are seeking advice on their appropriateness.

39. What happens if timeframes aren't met? Ie. current s.59: failure to make decision within timeframe is deemed approval?

We would be working on the assumption that if it sits with the Commission, it will meet the time frames. There may be a need to ensure that there's an ability to request an extension of time but the proposed framework will not adopt the section 59 of the Act approach.

40. Consultation issue 4(b), interested to learn if Council has ability to make multiple RFI

It is not the intention of the proposed DAP framework to change council's ability to issue RFI's. The current setting is that RFIs have to be to the satisfaction of the council otherwise the clock is still stopped.