

Development Assessment Panel (DAP) Framework

Position Paper



Author:
State Planning Officer

Publisher:
Department of Premier and Cabinet

Date:
October 2023

© Crown in Right of the State of Tasmania December 2019



Contents

1.	Introduction	4
2.	Background	4
2.1	Role of planning authorities	4
2.2	Planning system	5
3.	Identification of Issues	8
3.1	Conflicting role of Councillors	8
3.2	Retaining local input	10
3.3	Request for further information	11
3.4	Timeframes for assessment and appeal rights	12
3.5	Post determination roles of Council	14
4.	Draft DAP framework	15
5.	Next Steps	15

ATTACHMENT I - Draft DAP Framework



1. Introduction

The Tasmanian Government has announced the preparation of new legislation to introduce independent Development Assessment Panels (DAPs) to take over some of councils' decision-making functions on certain development applications.

The stated intent for introducing DAPs is 'to take the politics out of planning' by providing an alternate approval pathway for more complex or contentious development applications.

Any DAP determined applications will still be assessed against the current planning rules and use and development standards in existing planning schemes. It is intended that, where possible, the DAP framework will utilise existing processes and incorporate local knowledge into the decision-making process.

The project also consider whether there should be an enhanced role for the Minister to direct a council to initiate a planning scheme amendment under certain circumstances.

The purpose of this Position Paper is to explore these matters by providing some background context on the role of council, identifying the current issues associated with determining development applications, seeking input on what applications might be suitable to be determined by a DAP, options for what a DAP framework might look like and how it might be integrated into the planning system.

Throughout the Position Paper 'Consultation issues' are identified and followed by text boxes containing specific questions that are intended initiate conversations for the purpose of consultation. In addition, to help explain what a DAP framework might look like, an outline of a draft framework is provided in **Attachment I** for comment.

2. Background

2.1 Role of planning authorities

In Tasmania, councils are 'planning authorities' with defined responsibilities to determine development applications in accordance with the *Land Use Planning and Approvals Act 1993* (LUPAA). Section 48 of the LUPAA requires that:

'where a planning scheme is in force, the planning authority must, within the ambit of its power, observe, and enforce the observance of, that planning scheme in respect of all use and development undertaken within the areas to which the planning scheme relates.'

A council is required to act as a planning authority when it is determining development applications, irrespective of the personal or political views of individual Councillors and the constituents they represent. This presents a degree of conflict for those elected to represent their constituents under the *Local Government Act 1993* and perform the planning authority function. This conflicted role of Councillors has been identified in the Future of Local Government Review Stage 2 Interim Report (the Interim Report) (released in May 2023).

The Interim Report identified that there was strong division between those who believe Councillors have a legitimate role in making planning decisions on development applications,



and those who believe the role should relate primarily to strategic land use planning where they can legitimately represent community views in planning processes leaving decisions on applications to local professional planners, or in the case of complex applications, by independent planning panels. Indeed, some councils specifically requested that planning decisions be totally removed from elected councils.

Following the publication of the Interim Report, the Minister for Local Government amended the terms of reference for the Future of Local Government Review by removing councils' development assessment role, and referred this to the Minister for Planning for further consideration.

The Interim Report identified eight reform outcomes with some applicable reform options to consider. Of relevance to the Planning portfolio, Reform outcome 5 – “Regulatory frameworks, systems and processes are streamlined, simplified, and standardised” identifies the following options:

- *Deconflict the role of councillors and planning authorities*
 - *Refer complex planning development applications to independent assessment panels appointed by the Tasmanian Government*
 - *Remove councillors' responsibility for determining development applications*
 - *Develop guidelines for the consistent delegation of development applications to council staff.*

Typically, planning authorities don't consider many amendments to planning schemes, however they still have the potential to raise similar issues of conflict between planning considerations and the preferences of some constituents, to those experienced when determining development applications. Although the initiation process only signifies the commencement of the assessment of the planning scheme amendment, refusing to initiate is effectively a refusal of the application to amend the planning scheme and it does not progress to exhibition and assessment by the Council and final determination by the Commission.

As part of seeking feedback on a legislative framework for DAPs, the scope of this Position Paper has been broadened so that where Councillors are, or perceived to be, conflicted or compromised, or making a decision based not on planning considerations, whether it may be appropriate for the Minister to have the power to direct a Council to initiate in certain circumstances.

If there is support for an alternate planning scheme amendment initiation pathway, it would seem logical to include it as part of this project and incorporate any amendments to the Act in a single draft Bill. Any recommendations to include an alternate initiation pathway that is informed by the outcomes of this consultation process will be further consulted on early next year.

2.2 Planning system

Since 2014, the Government has been implementing significant reforms to the Tasmanian planning system, including delivery of the Tasmanian Planning Scheme, the development of



the Tasmanian Planning Policies and a comprehensive review of the three regional land use strategies.

The results of these reforms are now becoming apparent. The Tasmanian Planning Scheme is in effect in 23 local government areas and the most recent consolidated data from 2021-22 shows that discretionary applications are being determined in a median timeframe of 38 days (40 average) and permitted in 21 days (21 average). Where the 'clock is stopped' to request further information, discretionary applications are being determined across the State in a median of 46 days (53 average) including those 'clock stopped' days.

By way of comparison, noting the differences in assessment processes and classifications, in the June 2023 'Improving the Performance of Land Zoning, Planning and Land Release System' report prepared for the Australian Government Treasury, average approval times in South Australia were around 46 days, Northern Territory 55 days, Australian Capital Territory 61 days, New South Wales 83 days, Queensland 86 days and Victoria a median of 81 days and an average of 129 days. There were no figures for Western Australia, but the statutory time frame for the equivalent of permitted developments is 60 days and for discretionary is 90 days (as opposed to 28 days and 42 days in Tasmania).

Tasmanian councils are also determining more applications than ever before, with annual totals rising from around 6,500 in 2016-17 to over 12,000 in 2021-22. In 2021-22 there were also over 1,750 single dwellings signed off in a matter of days as no permit required.

These statistics indicate that overall, our planning system is already among the fastest, if not the fastest, in the country when it comes to determining development applications.

However, the broad rights of appeal provided under Tasmanian legislation mean that these very timely outcomes are sometimes extended by an appeal process by many months resulting in an overall approval timeframe of perhaps 9-12 months. The appeal process provides a very important check and review of the initial decision of the planning authority by an independent panel of experts with the opportunity for all parties including those that made representations, to speak to their issues and test the evidence of other parties.

A review of the use of panels to determine development applications in other planning jurisdiction reveals that most States have an alternate pathway to local councils for determining certain developments. Although the nature of each DAP framework differs according to the underlying planning system, typically each model relies on meeting certain application criteria to be suitable for referring an application to a panel for determination with the assessment and determination functions of other development applications remaining with local government. Additionally, many of these other jurisdictions do not have the broad third party appeal rights that apply in Tasmania, meaning the DAP process and decision is more aligned to the appeal or review process.

Development Assessment Panels, or their equivalent, are already used in the determination of certain developments in the Tasmanian planning system including major and state significant projects and those which are dependent on a concurrent planning scheme amendment.



The Tasmanian Planning Commission (the Commission) is an independent statutory authority that reviews, advises on, and determines a range of land use planning matters. In performing these functions, it delegates tasks to expert panels.

The current proposal to develop a DAP framework is based on the principle of utilising existing parts of the planning system that are working well, including the existing and highly regarded independence and expertise of the Commission, in establishing DAPs to determine applications.

With respect to the proposal to introduce a role for the Minister to direct that a planning scheme amendment should be initiated, this too will retain the current process with Panels established by the Commission determining planning scheme amendments.

The table below identifies where Panels are currently used to determine development applications in the State's planning system¹. While these types of developments are not determined by the planning authority, they are informed by, and rely heavily on, the information and understanding of local issues received from it through submission, reporting or recommendations including a draft permit and conditions.

Legislation	Type of Assessment	Panel established by:
LUPAA	Major Project	Tasmanian Planning Commission
LUPAA	Combined planning scheme amendment and permit application	Tasmanian Planning Commission
<i>Major Infrastructure Development Approval Act 1999</i>	Linear infrastructure proposals across multiple municipalities	Tasmanian Planning Commission or decision made by a Combined Planning Authority
<i>State Policies and Projects Act 1993 -</i>	Projects of State Significance	Tasmanian Planning Commission

Table 1. *Types of applications determined by independent expert panels.*

The types of developments that are currently determined by a Panel are often complex, large in scale, time consuming, expensive and resource intensive assessment processes or involve changes to the planning scheme rules. To be eligible for these alternate assessment pathways, applications are required to meet eligibility requirements specified in the respective Acts.

¹ Expert DAPs are also used to determine discretionary development applications where the decision has been appealed to TasCAT



3. Identification of Issues

3.1 Conflicting role of Councillors

Despite the statistical evidence, there remains a perception that some Councils are less supportive of new development than others and that on occasion the personal views of elected councillors in relation to a proposed development, such as large-scale apartments, or social housing, may influence their decision-making despite being outside of the relevant planning scheme considerations they are bound to administer as part of the obligations of a planning authority.

The State Government has committed to delivering 10,000 new social and affordable houses by 2032. As identified in the Interim Report, where a development is controversial, there can be a tension between councillors' role as community advocates and as members of a statutory planning authority. The proposed DAP framework is intended to remove this tension and to deliver appropriate and timely assessments of housing projects undertaken by Homes Tasmania and registered Community Housing Providers.

Currently, only a small proportion of all development applications actually come before the elected members for decision with between 85 and 90 percent being routinely determined under delegation by council officers. These development applications are assessed by council planners against the requirements of the relevant planning scheme in accordance with the established processes defined in LUPAA. Many planning authorities delegate the determination of development applications to senior officers, and to sub committees. While only a small percentage of applications are determined by the full elected council, these applications typically involve a significant number of representations and are therefore subject to higher levels of local political interest. In some circumstances the full elected council will determine any application that has been recommended by council planners for refusal or where the application is actually proposed by council.

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. Additionally, any proposed changes should seek to utilise those parts of the assessment process that are operating efficiently.

Based on the discussion so far the following issues have been identified for feedback:



Consultation issue I – Types of development applications suitable for referral to a DAP for determination

- a) What types of development applications are problematic, or perceived to be problematic, for Councils to determine and would therefore benefit from being determined by a DAP?

Options

- i. Applications for social and affordable housing which often attract considerable opposition within the local community based on social stigma rather than planning matters;
 - ii. Critical infrastructure;
 - iii. Applications where the Council is the applicant and the decision maker;
 - iv. Applications where Councillors express a conflict of interest in a matter and a quorum to make a decision cannot be reached;
 - v. Contentious applications where Councillors may wish to act as elected representatives supporting the views of their constituents which might be at odds with their role as a member of a planning authority;
 - vi. Where an applicant considers there is bias, or perceived bias, on the part of a Council or Councillors;
 - vii. Complex applications where the Council may not have access to appropriate skills or resources;
 - viii. Application over a certain value;
 - ix. Other?
- b) Who should be allowed to nominate referral of a development application to a DAP for determination?

Options

- i. Applicant
 - ii. Applicant with consent of the planning authority;
 - iii. Planning authority
 - iv. Planning authority with consent of the applicant
 - v. Minister
- c) Given the need for a referral of an application to a DAP might not be known until an application has progressed through certain stages of consideration (such as those set out in a) above) have been carried out, is it reasonable to have a range of referral points?

Options

- i. At the beginning for prescribed proposals;
- ii. Following consultation where it is identified that the proposal is especially contentious;
- iii. At the approval stage, where it is identified that Councillors are conflicted.

Consultation issue 2 – Provision of an enhanced role for the Minister to direct a council to initiate a planning scheme amendment under certain circumstances.

- a) Under what circumstances should the Minister have a power to direct the initiation of a planning scheme amendment by a Council?
- b) Is it appropriate for the Minister to exercise that power where the Council has refused a request from an applicant and its decision has been reviewed by the Tasmanian Planning Commission?

For example:

Section 40B allows for the Commission to review the planning authority's decision to refuse to initiate a planning scheme amendment and can direct the planning authority to reconsider the request. Where that has occurred, and the planning authority still does not agree to initiate an amendment, is that sufficient reason to allow Ministerial intervention to direct the planning authority to initiate the planning scheme amendment, subject to the Minister being satisfied that the LPS criteria is met?

- c) Are there other threshold tests or criteria that might justify a direction being given, such as it aligns to a changed regional land use strategy, it is identified to support a key growth strategy, or it would maximise available or planned infrastructure provision?

3.2 Retaining local input

One of the concerns of a DAP framework is that it relies on decisions being made by experts that do not necessarily have the local knowledge that would otherwise be available within a local council and considered and applied when determining a development application.

The proposed DAP framework can utilise and benefit from this local knowledge. By way of example the current assessment process for a combined planning scheme amendment and permit application (s. 40T of LUPAA or s.43A under the former provisions of LUPAA) is undertaken by both the planning authority and the Commission, with the Commission being the final decision maker. For the development application component of a s43A or s40T application, it is the planning authority that assesses the proposal against the amended provisions of the planning scheme, issues a draft permit, undertakes the notification procedures in accordance with the LUPAA, it receives representations and addresses the issues raised by the representations. All these matters are presented in a report prepared by the council officers and provided to the Commission. Then all parties including those that made representations are invited to attend a hearing and present their issues before the final determination is made by the panel.



This is a tried and tested process that ensures valuable local input into the assessment and allows all parties to present their case and be heard directly by the decision maker. Being an established process that is understood by planners it has been identified as the preferred basis for the preliminary draft DAP framework as presented in Attachment I.

Consultation issue 3 –

- i. **Incorporating local knowledge in DAP decision making.**
- ii. **DAP framework to complement existing processes and avoid duplication of administrative processes.**

- a) To allow DAP determined applications to be informed by local knowledge, should a Council continue to be:
 - the primary contact for applicants;
 - engage in pre-lodgement discussions;
 - receive applications and check for validity;
 - review application and request additional information if required;
 - assess the application against the planning scheme requirements and make recommendations to the DAP.
- b) Is the current s43A (former provisions of the Act) and s40T of the Act processes for referral of a development application to the Commission, initial assessment by Council and hearing procedures suitable for being adapted and used in the proposed DAP framework?

3.3 Request for further information

There have also been concerns raised by both Council and the development industry regarding request for further information stalling the determination of development applications.

Application requirements are specified under clause 6.1 of the State Planning Provisions. The application requirements are intended to give applicants certainty as to the range of matters and level of detail needed in their application to allow the planning authority to undertake its assessment against the provisions of the planning scheme.

Once the planning authority receives a valid application the assessment 'clock' commences against either the timeframe of 28 days for the assessment of a permitted application or 42 days for a discretionary application. Section 54 of LUPAA allows the planning authority to request additional information from the applicant where the application lacks the necessary information for the planning authority to undertake an assessment. The time taken for the



applicant to respond to the planning authority's request does not count towards the assessment timeframe as the 'clock is stopped'. The assessment clock recommences once the planning authority is satisfied that the information provided addresses the matters raised in the request for additional information.

There is anecdotal evidence that with some contentious proposals (particularly social housing) the additional information process is being used to delay or frustrate the timely assessment of a proposal. While a request for further information can be appealed to the Tasmanian Civil and Administrative Tribunal (TasCAT) the associated costs and uncertainty regarding the timeframe for resolution is a deterrent.

Sections 40A and 40V allows an applicant to request the Commission to review the planning authority's request for additional information for an amendment to an LPS and a combined amendment and planning permit (respectively). Similar provisions, sections 33B and 43EA, apply under the former provisions of LUPAA.

These sections of LUPAA provide an opportunity for the applicant to test the requirement for, and content of, requests for further information from the planning authority. The Commission can direct the planning authority to revoke the request for additional information, issue a new notice requesting additional information or determine that the request for additional information was appropriate.

This raises questions around what the appropriate process is for resolving contended additional information requests where the proposed DAP process is being used.

Consultation issue 4 – Resolving issues associated with requests for, and responses to, further information.

- a) Should a framework for DAP determined development applications adopt a process to review further information requests similar to the requirements of section 40A and 40V of LUPAA?
- b) Are there any changes that could be made to the Act or planning scheme to improve requests for, and responses to, additional information?

3.4 Timeframes for assessment and appeal rights

The proposed DAP framework incorporates both the review of the application by the council (in forming advice) and the DAP (as the decision-maker) and the coordination of hearings into representations to provide representors with the opportunity to address the panel and final determination by a DAP. This, in effect, combines the initial stage of the current process (consideration by the Planning Authority) and a possible subsequent appeals process (currently unconstrained by time). The existing statutory 42 day timeframe for determining discretionary applications is, therefore, not adequate for this process.



A DAP framework, utilising the Commission to establish the panel, would be subject to the requirements of the *Tasmanian Planning Commission Act 1997*. A panel established by the Commission is required to determine matters following the rules of natural justice and providing for procedural fairness similar to other LUPAA processes that are undertaken by the Commission. This involves hearings where the parties can make submissions and be heard by the decision maker in much the same way as a TasCAT appeal hearing.

The purpose of appealing a planning authority's decision to TasCAT is to provide for an independent review of the process, in a public forum and without political interference. By using the Commission to establish the DAP, the independent review function will be built into the DAP framework. This removes uncertainty, delays and costs associated with determining contested applications through TasCAT.

Legislation	Type of Assessment	Decision maker	Subject to merit Review	Judicial Review
LUPAA	S 58 development application (permitted)	Planning authority	Yes (applicant on permit conditions only)	Yes
LUPAA	S 57 development application (discretionary)	Planning authority	Yes	Yes
LUPAA	Major Project	TPC	No	Yes
LUPAA	Combined planning scheme amendment and permit application	TPC	No	Yes
<i>Major Infrastructure Development Approval Act 1999</i>	Linear infrastructure proposals across multiple municipalities	Combined Planning Authority or TPC panel	Yes	Yes
<i>State Policies and Projects Act 1993 -</i>	Projects of State Significance	TPC	No	Yes

Table 2. Development application processes that are subject to appeal

Table 2 shows that the only process that allows a TPC decision to be subject to a merit appeal to TasCAT is under the *Major Infrastructure Development Approval Act 1999* (MIDA). An application under MIDA is considered a section 57 application under LUPAA. The application is determined by a panel established by the TPC or a Combined Planning Authority. In determining the application there is no requirement under MIDA for the decision maker to hold a public hearing before making a decision. The appeal rights for



MIDA applications are a consequence of not being guaranteed a public hearing in the initial determination of the application.

Consultation issue 5 – Appeal rights and assessment timeframes for DAP determined applications.

- a) Is it reasonable that decisions on DAP determined applications are not subject to TasCAT appeals where the TPC holds hearings and provides all parties the opportunity to make submissions and test evidence?
- b) Given the integrated nature of the assessment, what are reasonable timeframes for DAP determined applications?

OPTIONS

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

3.5 Post determination roles of Council

Planning authorities are responsible for enforcing permit conditions and considering any proposed amendments to permits that have been issued by them.

It is necessary to explore how these roles and functions might be impacted by the development application being determined by a DAP.



It is anticipated that the DAP will engage extensively with the planning authority in preparing the permit and conditions of approval. Any legislative framework for a DAP model will be required to establish the post determination functions of the planning authority.

Under both State significant and major project processes, there is a role for the planning authority as the normal compliance body for administering the permit. Consistent with the principle of the DAP framework utilising current parts of the planning system that are operating effectively, it is proposed to parallel the process of TasCAT determinations whereby the planning authority is required to administer the planning permit.

Consultation issue 6 – Roles of the planning authority post DAP determination of a development application.

- a) Should the planning authority remain the custodian of planning permits and be required to issue permits in accordance with a direction from a DAP?
- b) Is it appropriate for planning permits associated with a DAP determined application to be enforced the Council?
- c) Is it appropriate for minor amendments (in accordance with s56 of LUPAA) to DAP determined permits to be made by the planning authority?

4. Draft DAP framework

Based on initial consultation with key stakeholders, commitments made in the Premier's announcement and the identification of issues as discussed above, the following DAP framework has been drafted as a starting point for discussion.

The draft DAP framework is provided in **Attachment I**. The draft framework is cross referenced with the Consultation Issues that have been raised in the text boxes in the body of this Position Paper. Comments are invited on any other matter that the draft DAP framework raises.

5. Next Steps

Following the consultation period on the Position Paper the submissions received will be reviewed and inform modifications to the DAP framework. Based on the revised framework, the Government will prepare a draft amendment to the Act which will be further consulted early next year.

It is proposed that the Bill will be tabled in Parliament in early 2024.



ATTACHMENT I - Draft DAP Framework



Draft Development Assessment Panel (DAP) Framework

Ref	Stage of assessment process	Responsible person/ authority	Proposed Framework	Comments and additional Questions for consultation
1	Pre-lodgement discussion between applicant and planning authority	Planning Authority and applicant	No change to current process.	Existing informal processes undertaken on an as needs basis. Discussions may include whether or not the development application is eligible for DAP referral.
2	Lodge Development Application	Applicant lodges with Planning Authority	No change to current process	Existing process for the lodgement of development applications.
3	Determination of valid application and referral to other entities	Planning Authority	Planning Authority reviews application and determines if the application is valid in accordance with the existing provisions of the Act. Refers application to TasWater, Tasmanian Heritage Council or EPA as required.	Existing process for determining that a development application is valid ² . See section 24 and 25 of this section for information regarding application fees.

² must comply with 51(IAC) and (IAB) and 51A;

(IAC) For the purpose of subsection (IAB), a valid application is an application that contains all relevant information required by the planning scheme applying to the land that is the subject of the application.

(IAB) A planning authority must not refuse to accept a valid application for a permit, unless the application does not include a declaration that the applicant has-

- a) notified the owner of the intention to make the application; or*
- b) obtained the written permission of the owner under section 52.*

Section 51A refers to the payment of application fee.

4A	<p>Planning Authority reviews Development Application and decides if it is to be determined by a DAP.</p> <p>Discretionary referral</p>	Planning Authority	<p>Planning Authority to determine if the Development Application should be referred to a DAP for determination.</p> <p>The Planning Authority may determine that the development application meets the criteria for DAP referral and, if so, notifies, and seeks endorsement from the applicant, to refer the development application to the DAP for determination, within 7 days of the Planning Authority receiving a valid application.</p> <p>The applicant may also make a request to the Planning Authority for it to consider referring the application to a DAP for determination subject to the Planning Authority being satisfied that the application meets the criteria for DAP referral.</p> <p>DAP Criteria An application may be suitable for referring to a DAP if it is a discretionary application and the referral is endorsed by both the Planning Authority and the applicant, provided one or more of the following criteria for DAP referral is satisfied:</p> <ul style="list-style-type: none"> • where the council is the proponent and the planning authority; • the application is for a development over \$10 million in value, or \$5 million in value and proposed in a non-metropolitan municipality; 	<p>Refer to Consultation issue 1 in the Position Paper.</p> <p>Additional considerations:</p> <p><i>Is 7 days a reasonable timeframe for this function to be undertaken by the Planning Authority? Could it be delegated to senior planning staff?</i></p> <p><i>Where a dispute arises between the Applicant and the Planning Authority over a development application being referred to a DAP for determination, is it appropriate for the Minister to have a role in resolving, subject to being satisfied that the development application meets the DAP criteria?</i></p> <p><i>If not the Minister, who should be responsible for resolving the matter?</i></p> <p><i>Is it appropriate to consider the value of a development as a criteria for referral to a DAP for determination? If so, what should the stated value be?</i></p> <p>Note: See sections 21 and 22 of this table which provides options for development applications to be referred at later stages of the assessment process as issues become apparent, such as after exhibition.</p>
----	------------------------------------------------------------------------------------------------------------------------------------------------	--------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

			<ul style="list-style-type: none"> • the application is of a complex nature and council supports the application being determined by a DAP; • • the application is potentially contentious, where Councillors may wish to act politically, representing the views of their constituents, rather than as a planning authority; or • Where there is a case of bias, or perceived bias, established on the part of the Planning Authority. 	
4B	<p>Planning Authority reviews Development Application and decides if it is to be referred to DAP</p> <p>Mandatory Referral</p>		<p>The Planning Authority must determine to refer the development application to a DAP for determination, within 7 days of the Planning Authority receiving a valid application, if the development application is a discretionary application and for a prescribed purpose:</p> <p>Prescribed purpose:</p> <ul style="list-style-type: none"> • An application over \$1 million where the council is the proponent and the planning authority; • An application from Homes Tas for subdivision for social or affordable housing or development of dwellings for social and affordable; • An application for critical infrastructure; • Other(?) 	<p>Refer to Consultation issue 1 in the Position Paper.</p> <p>Additional considerations:</p> <p><i>Is 7 days a reasonable timeframe for this function to be undertaken by the Planning Authority? Could it be delegated to senior planning staff?</i></p> <p><i>Are there any other examples of development applications under the prescribed purposes that might be suitable for referral to a DAP for determination?</i></p> <p><i>Is it appropriate to consider the value of a development for DAP referral where council is the applicant? If so, what value is reasonable?</i></p> <p><i>What might be considered as ‘critical infrastructure’?</i></p>

5	PA requests referral of DA to DAP for determination.	Planning Authority and DAP	<p>Planning Authority requests referral of the development application to the DAP within 7 days of the Planning Authority determining that the development application is suitable for DAP referral in accordance with section 4A and 4B above.</p> <p>The Planning Authority's written referral request includes all the material that comprises the development application (at this stage).</p> <p>If the DAP does not agree that the development application meets the DAP criteria or is for a prescribed purpose, the DAP must give notice to the Planning Authority and applicant of its decision.</p> <p>If the DAP does not agree that the development application meets the DAP criteria, the assessment of the development application continues in accordance with the existing LUPAA provisions.</p> <p>If the DAP accepts the Planning Authority's request that the development application meets the criteria for DAP referral or is for a prescribed purpose, the DAP must give notice, within 7 days of receiving the Planning Authority's request, to the Planning Authority and applicant of its decision.</p>	<p><i>Should the time taken for an application that has been referred to a DAP for determination that, in the opinion of the DAP, does not satisfy the relevant referral criteria or is not for a prescribed purpose, count towards the relevant period referred to in s57(6)(b) of the Act given the assessment will continue in accordance with a s57 application if it is not eligible for DAP referral?</i></p>
6	Review of DA to determine if further information is required to	Planning Authority	<p>Where the DAP has accepted the Planning Authority's request to refer the development application to the DAP for determination, the Planning Authority reviews the development application to determine if additional information is</p>	<p>Additional information request can occur simultaneously with the Planning Authority's request for DAP determination. Regardless of the outcome of the request to refer the development application to the DAP, the Planning Authority is required to ensure it has the</p>

	undertake the assessment		<p>required and, if so, must make a request within 21 days of receiving a valid application.</p> <p>Clock stops while waiting for the applicant to provide additional information to the satisfaction of the Planning Authority.</p>	<p>necessary information it needs to undertake the assessment.</p> <p>The 21 day timeframe and ‘stopping the clock’ is consistent with section 54 of the Act.</p>
7	Review of further information requests	Applicant	<p>Within 14 days after being served a request for further information in accordance with 6 above, the applicant may request the DAP to review the Planning Authority’s additional information request.</p> <p>The DAP, within 14 days of receiving a request to review the PA’s additional information requirement must:</p> <ul style="list-style-type: none"> • Support the Planning Authority’s request for additional information; • Revoke the Planning Authority’s request for additional information; or • Issue a new notice to the applicant requesting additional information. <p>The DAP must give notice of its decision to the Planning Authority and applicant.</p>	<p>Refer to Consultation issue 4 in the Position Paper.</p> <p>Because the DAP has agreed that the DA will be DAP determined, it already has a copy of the development application.</p> <p>The review of a Planning Authority’s request for additional information is similar to the existing provisions under s40V of the Act.</p>
8	Provision and review of additional information.	Applicant and Planning Authority	<p>Once the applicant provides the additional information and, in the opinion of the planning authority, it satisfies either the original request or one that has been modified by the DAP, the assessment clock recommences.</p> <p>If the additional information does not satisfy the original request or one that has been modified by</p>	<p>This part of the framework is similar to existing processes.</p>

			the DAP, the Planning Authority advises the applicant of the outstanding matters and the clock remains stopped.	
9	Planning Authority assesses DA	Planning Authority	<p>Planning Authority assesses the application against the requirements of the planning scheme and recommends either:</p> <ul style="list-style-type: none"> • granting a permit; or • refusing to grant a permit. 	<p>Refer to Consultation Issue 3 in the Position Paper.</p> <p>Note:</p> <p>The proposed framework has adopted a process that is similar to the section 40T of the Act process where council assesses the application and then places the application and the Planning Authority's report on exhibition (as below).</p>
10	Public notification of application and Planning Authority recommendations	Planning Authority	<p>Planning Authority to advertise the development application, its assessment report and recommendations, including a draft permit (if recommended for approval), for a period of 14 days (and in accordance with section 9 of the LUPAA Regulations) during which time representations are received.</p>	
11	Planning Authority to review representations	Planning Authority	<p>Planning Authority to review representations and prepare a statement of its opinion as to the merits of each representation and the need for any modification to its recommendation on the development application, including the draft permit and conditions.</p>	<p>This part of the proposed framework is similar to the existing provisions of section 42 of the Act.</p>
12	Provision of all documents to the DAP	Planning Authority	<p>The Planning Authority provides DAP with:</p> <ul style="list-style-type: none"> • a copy of the application (although they should already have it) and any further information received; • a copy of the recommendation report and any draft permit; 	<p>This part of the proposed framework is similar to existing processes for a section 40T(1) application</p>

			<ul style="list-style-type: none"> • a copy of all the representations; and • a statement of its opinion as to the merits of each representation and any modifications to its original recommendations on the DA as a consequence of reviewing the representations; • DAP fee (refer to section 25) <p>within 14 days of the completion of the exhibition period.</p>	
13	DAP review and publication of information and hearing determination	DAP	<p>DAP reviews and publishes all the information provided by the Planning Authority (as listed in 12 above) and notifies all parties advising that they have received the relevant documents from the Planning Authority, where those documents can be viewed and requesting advice regarding which parties would like to attend a hearing.</p> <p>If there are no representations or no parties that wish to attend a hearing, the DAP may dispense with the requirement to hold a hearing.</p> <p>The DAP must notify the Planning Authority, applicant and representors of their determination to hold, or dispense with holding, a hearing.</p>	An option is given to dispense with the requirement for a DAP to hold a hearing in situation where there are no representations, all representations are in support, representations have been revoked or there are no representations that want to attend a hearing.
14	DAP hearing into representations	DAP	<p>Representors, applicant and Planning Authority invited to attend hearing and make submissions to the DAP on the development application.</p> <p>Parties to the proceedings must be given at least one weeks' notice before the hearing is scheduled.</p>	The draft permit conditions are subject to contemplation by the parties at the hearing. It is anticipated that this will resolve issues around the future enforcement of those conditions by council or other issues that would otherwise arise and be subject to appeal through TasCAT.

			<p>Natural justice and procedural fairness for conduct of hearings consistent with <i>Tasmanian Planning Commission Act 1997</i>.</p> <p>DAP hearings are encouraged to be held locally.</p>	
15	DAP determination	DAP	<p>DAP undertakes the assessment considering all the information and evidence presented at the hearing and determines the development application.</p> <p>DAP must determine application within 35 days from receiving documents from Planning Authority (under section 12 above)</p> <p>DAP may request an extension of time from the Minister.</p>	Refer to Consultation Issue 5 in the Position Paper for questions regarding assessment timeframes.
16	Notification of DAP decision	DAP	<p>Within 7 days of the DAP determining the development application it must give notice of its decision to the Planning Authority, applicant and representors.</p>	Similar to existing notification provisions under section 57(7).
17	Issuing of Permit	DAP/ Planning Authority	<p>If the decision of the DAP is to grant a permit, the DAP must, in its notice to the Planning Authority (under section 16 above), direct it to issue a permit in accordance with its decision within 7 days from receiving the notice from the DAP.</p> <p>The permit becomes effective 1 week from the day it is issued by the Planning Authority.</p>	
18	Enforcement	Planning Authority	<p>The Planning Authority is responsible for enforcing the permit.</p>	Refer to Consultation Issue 6 in the Position Paper. This is the same process for permits issued by TasCAT.

19	Appeal rights	All parties	There is no right of appeal on the grounds of planning merit as the decision has been made by an independent panel with all parties engaged in the process.	Refer to Consultation Issue 5 in the Position Paper for questions regarding appeal rights. While the draft framework proposes that DAP determined development applications are not subject to a merit appeal, the decision of the DAP is subject to judicial review by virtue of the <i>Judicial Review Act 1997</i> .
20	Minor amendment to permits	Planning Authority	A Planning Authority can receive a request for a minor amendment to a permit involving an application that has been determined by a DAP.	Refer to Consultation Issue 6 in the Position Paper. Minor amendments to permits are assessed by the Planning Authority against the existing provisions of section 56 of the Act.

Other opportunities for a development application to be referred to a DAP

Ref	Stage of assessment process	Responsible person/ authority	Proposed Framework	Comment
21	Ministerial Call in Powers	Planning Authority or applicant	At any stage of the assessment process the applicant or Planning Authority may make a request to the Minister that a development application be referred to a DAP for determination. The Minister may refer the application to a DAP provided the Minister is satisfied that the development application meets the DAP criteria.	This provides an opportunity for referral when issues only become apparent at the later stages of the assessment process. <i>Is it appropriate for the Minister to have the power to call in a development application in these circumstances?</i> <i>In this scenario, is it necessary for the applicant and Planning Authority to agree to the request?</i>
22	Ministerial referral of DA to DAP	Minister	Where the Minister refers the DA to a DAP for determination (in accordance with 21 above), the Minister must, by notice to the DAP and Planning Authority (if required), direct the DAP and Planning Authority (if required) to	Because this type of referral can occur at any stage, there needs to be a direction to specify those parts of the assessment process that still needs to be completed. These processes will include elements that need to be undertaken by the DAP and may include

			undertake an assessment of the development application and specify the process and timeframes for the DAP and Planning Authority (if required) to follow. The Minister can also specify that the Planning Authority must provide all relevant documents relating to the application and its assessment to the DAP within a timeframe.	elements that need to be undertaken by the Planning Authority. The Planning Authority is required to provide all relevant documents to the DAP
--	--	--	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------

DAP membership

Ref	Stage of assessment process	Responsible person/ authority	Proposed Framework	Comment
23	Establishment of Panel	Tasmanian Planning Commission (Commission)	No change to existing Commission processes.	The framework adopts the Commission's well established processes for delegating assessment functions to panels.

Development application fees

Ref	Stage of assessment process	Responsible person/ authority	Proposed Framework	Comment
24	Lodging DA	Planning Authority	Planning Authority charges applicant normal application fees.	Planning Authority doing the same amount of work, just not making the determination so is entitled to the application fee.
25	DAs referred to DAP for determination	Planning Authority and DAP	A DAP determined development application will incur an additional application fee. The Planning Authority is to charge the applicant an additional fee at the time the DAP	Additional fee is to cover some of the costs incurred by the Commission.

			<p>notifies the Planning Authority that they have accepted the Planning Authority's request to refer the development application.</p> <p>The DAP application fee is to be included in the information provided to the DAP following the exhibition of the development application (section 12 above).</p> <p>No order for costs can be awarded by the DAP.</p>	<p>The additional application fee is going to be cheaper than the cost of going to a full tribunal hearing.</p>
--	--	--	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------



Tasmanian
Government

Department of Premier and Cabinet
State Planning Office

Phone:
1300 703 977

Email:
stateplanning@dpac.tas.gov.au

www.planningreform.tas.gov.au