



7 December 2023

State Planning Office
Department of Premier and Cabinet
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RE: Development Assessment Panel (DAP) Framework Position Paper

To whom it may concern,

The Tasmanian Chapter of the Australian Institute of Architects (the Institute) would like to thank you for the opportunity to provide feedback on the Development Assessment Panel (DAP) Framework Position Paper. Overall, the Institute is highly supportive of strategies that can assist in determining development applications in a streamlined and equitable manner – especially one that removes the potential for conflicts of interest or bias to impact on whether a development is advanced, and engages trained design and planning professionals and other relevant built environment expertise.

Below is feedback that responds directly to the consultation questions, which is then followed by some additional comments on the proposed DAP framework shown in Appendix 1. of the discussion paper.

Consultation issue 1 – 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?*
- b) Who should be allowed to nominate a referral of a development application to a DAP for determination?*
- 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?*

Types of development application

All of the proposed options (i-vii) as set out for Consultation issue 1, Question a) present a potential situation where there could be benefit from being determined by a DAP.

However, the Institute considers criteria viii - which deems applications over a certain value to be automatically subject to a DAP - as unhelpful and unnecessary. Value of a project alone is not sufficiently indicative to be a criteria on its own.

For example, a high quality residential development of either NCC Class 1a) dwellings or NCC Class 2 apartments that embodies a high degree of design excellence, pursues zero operational carbon through a “passive house” design, includes very high quality durable surfaces internally and externally (e.g artisan stonework) and incorporates all landscaping features into the project could strongly enhance the neighbourhood realm and thus shouldn't require a DAP, regardless of the value of the application.

Similarly, major renovations and/or adaptive re-use of an existing development with a significant heritage component may have a higher project value because of the heritage conservation works involved.

Therefore, using project value to somehow flag project complexity and /or scale, that might challenge established precinct building types or neighbourhood character is not reliable. It would be better to develop indicators for complexity and scale which might challenge neighbourhood character or local values for those development typologies or building classes that are permitted within the local scheme.

A further criterion that could be added for referral of a development application are simply those applications which do not neatly fit the local scheme or provisions schedule.

That is to say, development applications that already fully comply with the provisions under a given scheme or plan, and either deliver the acceptable solutions and/or performance criteria set out in the Tasmanian Planning Scheme State Planning Provisions (SPP) should not require determination by a DAP.

The panel resources should be used economically, and the planning authority should continue to approve those applications which are fully compliant.

However, the Institute sees important value in using DAP as a tool to assist infill development. For example, the 30-year Greater Hobart Plan notes,

Prioritising and facilitating targeted infill development in preference to greenfield expansion will see the emergence of more inner-city housing through medium density development. In delivering this, the Greater Hobart Committee is committed to maintaining local character and protecting heritage values. To implement this Greater Hobart Plan we will need design solutions to protect what people love about our capital city and its natural and built environment. (p. 3)

Infill development will require design excellence in order to ensure that local character is positively evolved and that heritage values are protected. Attempting to apply a “tick the box” approach to development applications may likely see those applications fail. Often sites can be small or topographically challenging. It is these development applications that will be among the situations that will most benefit from multi-disciplinary DAP.

Economy of process, such as the avoidance of duplicating processes, will help ensure that Tasmania continues to enjoy timely application decisions. The Planning Authorities might perform the initial checking that all required information has been gathered, but there should not be duplication of decision making itself. The DAP process should not be treated as an appeal process, but rather as an alternate process where qualitative appraisal is required. The DAP process should still make decisions that are consistent with the objectives set out in the State Planning Provisions, but which also demonstrate qualitatively how the objectives are met where they are not clearly demonstrated through full compliance with accepted solutions and /or performance criteria.

However, there is a gap in that the current planning provisions do not adequately address medium density development nor apartments design parameters. A critical success factor will be the establishment of medium density and apartment design guidelines which are also mirrored in the State Planning Provisions. The need to address the housing shortage requires the efficient building of medium density and apartment developments, however, Tasmania needs to ensure those developments are of quality and avoid the problems experienced in other States.

These are necessary for the efficient operation of development approval whether or not this is via the current pathway of the relevant planning authority applying the acceptable solutions and/or performance criteria set out in the Tasmanian SPP or via a DAP qualitatively assessing the application against the objectives.

Referral parties

Proposed options i, ii, iv and v of parties who may refer an application to a DAP are supported. However, option iii) is not supported. An applicant should always consent to DAP referral. This effectively provides them with the option to withdraw their application if they have initially made an application on the premise it would readily pass non-DAP approval process.

Requiring applicant consent will ensure that they have the opportunity to revise their application to either meet the non-DAP approval processes or not proceed at all. Proceeding to a DAP process may attract additional time and cost for the applicant (e.g. consultant planner or architect presenting and responding to the DAP) and the applicant should therefore be able to effectively halt the process and limit their costs.

Referral points

Proposed options i-iii are all appropriate referral points. However option iii (*At the approval stage, where it is identified that Councillors are conflicted*) would need to be identified earlier as an option ii “contentious” proposal.

Much earlier processes should identify - well before the approval stage - if the application would likely proceed to a Councillors’ decision and that any Councillors would, therefore, be 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?
- 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?

Ministerial direction

Ministers should have a power to direct the initiation of a planning scheme amendment by a Council where Councils:

- have not amended schemes and kept them up to date with Regional Land Use Strategies. For example, the Northern Tasmania RLUS¹ states that,

The preparation of draft Local Provisions Schedules by the planning authorities for each of Northern Tasmania’s eight municipal areas will reflect the State Planning Provisions and the planning framework expressed in this RLUS (p.3).

- where it is evident that the Council is deliberately impeding or delaying the delivery of important Tasmanian Planning Policies particularly the delivery of infill development and social and affordable housing. We note for example the risk of “not in my back yard” (NIMBY) response of local government authorities (representing their communities) to the presence of social and affordable housing in their community.

Circumstances of Tasmanian Planning Commission review.

Where a decision has been reviewed by the Tasmania Planning Commission, and the Council continues to fail to initiate a planning scheme amendment after a given time frame (e.g. determined by months or ‘n’ cycles of ordinary Council meetings), then the Minister should retain the power to direct the initiation.

This would be consistent with the Ministerial direction powers under Section 35 of the Land Use Planning and Approvals Act 1993 where the Minister, by notice in writing to a planning authority, may direct the planning authority to prepare and submit to the Tasmanian Planning Commission a draft Local Provisions Schedule that applies to the municipal area of the planning authority.

Other threshold tests or criteria

We have already noted other threshold tests or criteria could include changes to the applicable Regional Land Use Strategy which then act as a trigger to update planning schemes (Local Provisions Schedules).

¹ Northern Tasmania Regional Land Use Strategy, https://planningreform.tas.gov.au/_data/assets/pdf_file/0003/615585/Attachment-3-NTRLUS-PDFdocument-future-investigation-areas-amendment-June-2021-FINAL.PDF

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 the 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, an initial assessment by Council and hearing procedures suitable for being adapted and used in the proposed DAP framework?

Informed by local knowledge

It is important for local knowledge to come into DAP decision-making, and we support the first four dot points regarding the primary contact point, pre-lodgement discussions, receiving and checking applications for validity.

We also support that Council – namely officers and planners – may provisionally assess the application against the planning scheme requirements noting where it does or does not comply. The recommendations that are made by the Council to the DAP should not constitute a quasi-determination. Such recommendations could specify what would need to change in order for the application to meet the objectives of the Local Provisions Schedule in concert with the State Planning Provisions.

To leave no doubt, while supporting the continued delegated role of officers and planners in routinely determining of 85% –90% planning applications, as discussed on page 8 of the discussion paper, we do not support the continued role of elected councillors in determining applications, and see this as a fundamental reason to establish DAPs. This is consistent with the position we adopted in our submission² to the Department of Premier and Cabinet in response to the *Future of Local Government Review* in February this year.

Processes for referral

We have been unable to obtain a copy of the Act containing the details of repealed Section 43A of the original 1993 version of the Act. Section 40T (*Permit application that requires amendment of LPS*) does not provide sufficient detail that could be adapted to the DAP framework. It would be more efficient to determine the directions established by the Consultation issues 1 and 2 as well as Consultation issue 3, Question (a) and then draft fit-for-purpose legislation and regulations to give effect to the processes.

² See: https://www.architecture.com.au/wp-content/uploads/Aust_Inst_Arch_submission_Future-of-Local-Government-Review_February-2023.pdf

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?*

Review of further information requests.

A process to review further information requests, similar to the requirements of section 40A and 40V of LUPAA, could be adopted with respect to applications being heard by a DAP, however these current provisions pertain to the original application for a permit or to vary a Local Provisions Schedule.

Similar to our response to Consultation issue 3 Question (b), regarding processes for referral, we cannot properly appraise the adequacy of these provisions without fully understanding the full process and its settings. We recommend consultation drafts of proposed legislative settings are made available for public response.

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?*

Appeals to TasCAT

The Institute supports the establishment of Development Assessment Panels that are able to make binding determinations.

The Draft DAP framework proposed parties can make submissions and be heard by the decision maker in much the same way as a TasCAT appeal hearing. It is also advised in the discussion paper that a DAP, as 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.

We conditionally support that the decision would be binding without TasCAT appeal subject to knowing more about the panels’ proposed composition.

One important matter that the draft framework has not addressed is the composition of the Development Assessment Panels. It is essential that these are multi-disciplinary. Expertise must be wide ranging and include not only planners, but architects, urban designers, landscape architects, traffic engineers as appropriate to the development application. There must also be a legal counsel or commissioner to ensure procedural correctness.

Reasonable timeframes for DAP-determined applications.

Until there is greater clarity about the options adopted under Consultation issues 1 and 2 and the role of Council in Consultation issue 3, we are unable to answer this question. The process would require councils to:

- receive applications,
- check applications for validity,
- review applications and make requests for further information, and
- assess against planning scheme requirements and make recommendations

before referral to a panel. The panel would then need to be duly constituted, and an opportunity would need to be created to receive public submissions. Therefore, it would seem that the timeframes would be longer than for applications determined in-house by Councils' officers (not Councillors). A comparative process map would aid an analysis.

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?*

Custody.

It would reduce overall administrative burden and costs for Tasmanians and reduce confusion if the planning authority remains the custodian of planning permits and would be required to issue permits in accordance with a direction from a DAP.

Council enforcement

It would also reduce overall administrative burden and costs for Tasmanians and reduce confusion if planning permits associated with a DAP-determined application were to be enforced the Council.

Minor amendments

It would be appropriate for minor amendments (in accordance with s56 of LUPAA) to DAP-determined permits to be made by the planning authority. It is assumed here that reference to the Appeal Tribunal in subsection 56(2) would be substituted by a reference to the Development Assessment Panel.

Summary on feedback on Draft DAP Framework

The Draft Development Assessment Panel described in Appendix 1 appears well-considered and robust.

Again we note that more information and consultation about the composition of is required. This also needs to include parameters such:

- selection and nomination process of applicants,
- the size of the panels,
- duration of a term on a panel.

In addition, the framework needs a terms of reference and a charter for Development Assessment Panels. In the interest of robust probity, all decisions, minutes and reports should ultimately be made public on similar terms to minutes of Council meetings where planning applications have been determined. This would remove the perception or fact of panellists favouring projects, or any political interference. Any panellists should be required to declare conflicts of interest.

Thank you again for the opportunity to provide feedback on this important issue. Please feel free to contact us if you would like to discuss any of the above points raised in further detail.

Yours sincerely,

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