

Development Assessment Panel (DAP)

Fact Sheet



Overview

The government is proposing to introduce the Land Use Planning and Approvals Amendment (Development Assessment Panels) Bill 2024 (the draft Bill) which provides for an alternate assessment pathway for development applications to be determined by an independent Development Assessment Panel established by the Tasmanian Planning Commission (the Commission).

The draft Bill also provides for the Minister to direct a planning authority to prepare a draft amendment to its Local Provisions Schedule (LPS) under certain circumstances where a review under section 40B of the *Land Use Planning and Approvals Act 1993* (the Act) has been exhausted.

DAP Framework - Eligible development applications

A development application may be eligible for DAP determination if it is for a discretionary permit, is not subject to the *Environmental Management and Pollution Control Act 1994*, and meets one of the following:

1. is an application for subdivision to accommodate social and affordable housing or the development of social and affordable housing, that is endorsed by Homes Tasmania as being suitable for DAP determination;
2. where an applicant, or the planning authority with the consent of the applicant, chooses that the development application be determined by a DAP subject to satisfying the following value thresholds:

- a. over \$10M;
 - b. over \$5M in a non-metropolitan area; or
 - c. over \$1M if council is the applicant and the planning authority;
3. Upon request to the Minister from either the applicant or the planning authority, where the Minister determines that the development application is suitable for DAP determination because it satisfies one or more of the following criteria:
 - a. the application is considered to be of significance to the local area or State;
 - b. the application is overly complex and the planning authority does not have the expertise to assess it;
 - c. the application is controversial, or likely to be controversial;
 - d. the planning authority has, or is likely to have a conflict of interest, or there is perceived bias on the part of the planning authority.

When can applications be referred to a DAP?

Development applications can be referred to a DAP at the beginning of the assessment or anytime during the planning authority's assessment. An application that is referred at the beginning of the assessment follows the process and timeframes outlined in the flowchart in *figure 1*, with the DAP overseeing and coordinating the assessment.

Applications that enter the DAP process partway through the planning authority's assessment has the remaining assessment processes and timeframes determined by the DAP, including the possibility of repeating elements of the assessment.

DAP to seek advice from 'reviewing entities'

The DAP refers all development applications to relevant 'reviewing entities', including the planning authority, Heritage Council and regulated entities. Reviewing entities may request further information through the DAP. The DAP consolidates and coordinates requests and responses to further information.

Planning authority to advise DAP on certain matters

The Planning authority is to provide the DAP with advice on the following:

- any matters relevant under the *Local Government (Building and Miscellaneous Provisions) Act 1993*;

- issues or concerns regarding the impact of the proposed use and development on council's assets or infrastructure;
- suggested draft permit conditions that should be imposed to address the impact of the use and development on council infrastructure and assets;
- any other matter that the planning authority would like to bring to the DAP's attention.

DAP undertakes preliminary assessment and exhibits draft report

Once the DAP has advice from the reviewing entities and any further information provided by the applicant, it undertakes a preliminary assessment of the application against the planning scheme provisions. Where the DAP's preliminary assessment is for approval, the draft report will include a draft permit and conditions.

The DAP exhibits the application, advice from reviewing entities, any additional information provided by the applicant and the DAP's preliminary report, including any draft permit, for a period of 14 days. The exhibition notice also includes notification of a hearing date, which is to be not less than 10 days after the close of the exhibition period.

The DAP publishes all representations received during the exhibition period within 3 days of it closing.

DAP to hold public hearings

The DAP is to hold a hearing into the matters raised in the representations. This allows all parties to present their evidence and test the evidence of others.

The DAP can only dispense with holding a hearing if it is satisfied that no representations were received or the representations support the preliminary assessment, and no parties to the proceeding wish to attend a hearing.

DAP to determine development application

Following the hearing, the DAP considers all the information presented and makes a decision on the application. The DAP is to give notice of its decision to the applicant, reviewing entities and representors within 4 weeks of the close of exhibition unless an extension of time has been granted.

If the DAP's decision is to approve the application and grant a permit, the DAP must, in its notice to the planning authority, direct it to issue a permit in accordance with the DAP's decision.

Statutory assessment timeframes

An application involving the provision of social and affordable housing is determined by the DAP within 91 days. The timeframe for determination of other applications is 112 days.

Other statutory timeframes are shown in Figure 1.

Post DAP decision

The planning authority is responsible for enforcing the permit.

Because the assessment has involved a public hearing and the DAP is bound by the rule of natural justice and procedural fairness, there is no right of appeal on the grounds of planning merit to the DAP's decision.

The planning authority can receive and determine applications for a minor amendment to a permit for an application that has been determined by a DAP.

Fees

Fees for the assessment of the application by the DAP and the provision of advice by reviewing entities will be prescribed in the Regulations.

Ministerial Direction to prepare draft amendment to an LPS

Section 40B of the Act allows an applicant to request the Commission to review the planning authority's decision to refuse an application to amend its LPS. The Commission can direct the planning authority to reconsider its decision. Where that has occurred, and the planning authority still does not agree to prepare an amendment, the draft Bill allows the Minister to direct the planning authority to prepare a draft amendment of its LPS in accordance with section 40C of the Act, subject to being satisfied that the LPS criteria is met.

An LPS amendment that has been prepared by a direction of the Minister is subject to the usual independent assessment by the Commission.

Figure 1. Proposed DAP Framework Flow Chart

