

20 December 2023

State Planning Office
Department of Premier and Cabinet
GPO Box 123
HOBART TAS 7001

Via email: yoursay.planning@dpac.tas.gov.au

Dear Sir / Madam

Development Assessment Panels Framework Position Paper

Thank you for the opportunity to provide a submission on the Development Assessment Panels Framework Position Paper. This submission has been prepared by the Local Government Association of Tasmania (LGAT) on behalf of Tasmanian local government in collaboration with our members; all 29 councils.

LGAT is incorporated under the *Local Government Act 1993* and is the representative body and advocate for Local Government in Tasmania. Where a council has made a direct submission to this process, any omission of specific comments made by that council in this submission should not be viewed as lack of support by us for that specific issue.

Please contact Michael Edrich if you have any questions or would like further information, at michael.edrich@lgat.tas.gov.au or (03) 6146 3740.

Yours sincerely,



Dion Lester
Chief Executive Officer

LGAT Submission: Development Assessment Panels Framework Position Paper

Introduction

Thank you for the opportunity to make a submission to the Development Assessment Panels (DAPs) Framework Position Paper (the Paper). LGAT has consulted with its members via a well-attended online workshop and receiving written feedback from a majority of councils.

Our engagement work and research uncovered the following:

1. The case for DAPs needs improvement.
2. The design of the proposed DAPs framework needs improvement.
3. State engagement of local government in planning policy needs improvement.
4. Many councils remain open minded to a well-designed DAPs framework.
5. Codesign and targeting evidenced problems can generate a more widely accepted DAPs framework.
6. The real solution to planning performance lies in completing Tasmania's planning system.

Engagement in planning policy

As we have previously stated, LGAT and the entire local government sector are disappointed at the absence of consultation that led to the announcement of this policy¹. It immediately generated conflict and concern across local government, at both the technical professional and elected representative levels.

This is a shame as it was already known to LGAT that some councils were interested in exploring DAPs and other, specifically designed, alternative decision making pathways to achieve specific objectives. Creating conflict by not involving councils prior to announcement was unnecessary and prejudices the end result.

Local government is not just another player in the development space, but the primary regulator of development in Tasmania. Councils stand at the convergence point in the planning system of all the planning legislation and statutory instruments, of state and development industry players, and of communities. This makes them the primary managers and mediators of growth and change in the state and central to planning policy.

¹ LGAT [Media Release 18 July 2023](#).

Councils need the right planning tools, properly tuned, to help them do their job to the highest level and to serve and support the growth and development of their communities that collectively form Tasmania. DAPs, if specifically designed to address a clear problem, are one of these tools.

No one experiences or understands the development regulation space as closely and intimately as councils do, which makes councils best placed to assist in informing the design of the planning tools they need to do their job. Representations from councils should not be diluted as equivalent to any other, as this is not the truth of the situation and poorly reflects the depth of experience they have in delivering development outcomes. The State will consistently fail to achieve its development objectives to their fullest potential if it fails to develop its understanding of the intricacies and nuances of development issues by not properly engaging local government and enabling them to achieve success.

We advise the Tasmanian Government to understand this when it comes to reviewing the submissions from councils. Councils want growth, development, housing, and the improved living standards and wellbeing that these bring to their communities – all objectives the State also wants to achieve – but how this unfolds on the ground is complex, challenging, and specific. Their experience can help develop the right policy response, minimise conflict, and achieve effective implementation.

We recommend that the Tasmanian Government take a codesign approach from this point forward in the development of DAPs policy, matching the design of DAPs to local government, development proponent, and community needs and issues.

The case for DAPs needs improvement

A majority of councils assess that the case for DAPs need significant improvement before being developed further. Without developing this case, we risk not properly addressing real problems and causing unintended consequences. These may include skills resourcing disruptions in an already strained system, approvals slow-downs, and community backlash.

The DAPs Framework Position Paper accurately points out that *“overall, our planning system is already among the fastest, if not the fastest, in the country when it comes to determining development applications”*. Indeed, the DAPs process as currently proposed would see discretionary DA processes blow out from 42 days (currently averaging a nation leading 38-day completion time), more than double to up to 105 days when assessed by DAPs.

The Paper also shows that Tasmania's planning system already has five other development assessment panel processes in operation:

1. Combined planning scheme amendment and development permit process (LUPAA Part 3B, Division 4).
2. Major Projects (LUPAA Part 4, Division 2A).
3. Planning Appeals to the Tasmanian Civil and Administrative Tribunal (LUPAA Part 4, Division 3).
4. Major Infrastructure Projects (*Major Infrastructure Development Approval Act 1999*).
5. Projects of State Significance (*State Policies and Projects Act 1993*).

This proposal would add a **sixth** DAPs process to Tasmania's development regulation system. The need for this added complexity must be sufficiently demonstrated.

Most of all, the case for DAPs must properly target the problems it seeks to solve. One case of a development application being upheld in appeal is not sufficient rationale to trigger system change – but it can be an early indicator. A single case is an anecdote and needs to be supported by robust and specific system-level data that illustrate the problem, such:

- as the proportion of discretionary development applications that go to appeal
- the proportion of these that are upheld versus overturned
- patterns in the nature of the upheld appeals that might inform how a DAP might generate a different result
- the relative time and financial cost associated with a DAPs process rather than a regular planning authority process.

Design of the DAPs proposal needs improvement

The DAPs process currently proposed creates a new, substantially longer, and more complex development assessment process. This would undoubtedly result in more costs for development proponents. This may see proponents specifically design proposals to avoid triggering a DAP. If this results, it would demonstrate that the design of the DAPs framework is not meeting needs. We have seen this situation historically in Tasmania with the now defunct Projects of Regional Significance approval process.

The DAPs proposal removes appeal pathways, which may heighten community suspicions and foster cynical attitudes to development proposals assessed under the DAP process. It's easy to image the lobbying that would result, alienating councils and generating political tensions.

The design of the DAPs proposal seems to anticipate appeal, which indicates the proposed process would be most useful for proponents in cases where they expect appeal to occur, helping to evade the possibility of appeal. This is a very cynical approach to judicial processes. The right way for proponents to minimise the chance of appeal is to invest in positive, constructive engagement with the local community and the planning authority early in process, sustaining this engagement and incorporating feedback in design. By avoiding appeal, the DAPs process encourages proponents not to invest in public engagement and adjustment of design to feedback.

These are all indications of a substantial risk that the DAPs process as currently designed won't meet the needs of proponents, communities, and councils.

Councils are open to a DAPs framework, if well designed

The Tasmanian Government has not yet fully developed the case for DAPs, and this is clear in the Position Paper. Despite this, many councils remain open to some form of DAPs framework, if properly designed. This is an opportunity for the Tasmanian Government to develop a robust proposal.

For example, LGAT has had two relatively recent motions put forward by councils at its General Meetings that relate to DAPs and alternative decision making pathways. These are:

LGAT General Meeting March 2021, motion was lost:

That LGAT investigate the level of support among Tasmanian councils and identify the relevant considerations and options to propose an amendment of the Land Use Planning and Approvals Act 1993 to -

- a) Delete the mandatory requirement for a council to act as a planning authority for purposes of determining an application for a permit to use or develop land within its municipal area; and*
- b) Provide as an alternative, the establishment of an independent development assessment panel to determine a permit application.*

LGAT General Meeting December 2021, members resolved:

That LGAT lobby the State Government to investigate amending the Land Use Planning and Approvals Act 1993 to provide alternative mechanisms for consideration of the development applications submitted by elected members as a means to removing any perception of bias or conflict of interest.

The investigation shall provide the pros and cons of any (alternative) solutions.

Councils are clearly looking for decision making pathways that help them address problems they are experiencing. If the design of a DAPs framework is approached with the view of providing councils with the tools and assistance they need to address these problems, this would greatly improve the end product and its reception.

Build evidence of problems and codesign solutions with local government

We strongly recommend that the Tasmanian Government work with councils and planning professionals to make the case for DAPs, to better inform their design. Councils can help build the evidence of how and where problems can arise in the process. This would help build evidence of problems and their nature, helping to inform targeted solutions.

For example, we know from member motions that councils are interested in resolving the perception of a conflict of interest. Providing councils with the full discretion to refer a development application to a DAP would address this.

Planning performance results from a complete planning framework

Ultimately, councils are acutely aware of the multiple gaps and deficiencies in Tasmania's planning framework that need attention to deliver a better planning process and better development outcomes. We need:

1. Tasmanian Planning Policies completed – none exist currently
2. Regional Land Use Strategies updated – current set are very outdated
3. Non-statutory guides and supporting information – very little exists
4. Tasmanian Planning Scheme updated to reflect the above
5. Changes to the development assessment process and procedures provided by LUPAA to improve system performance

This is where real performance improvements lie in Tasmania's planning system and LGAT has outlined this in its [State Budget Priority Statement 2024-25](#). If we were to assess the completion status of Tasmania's planning system, it would quickly become apparent where we need to focus our attention.

These gaps are substantial potholes on the road to planning performance. Changing the driver, who makes the planning decisions, can only make minor differences to a small number of development applications. Filling these gaps will pave the road, improving the performance of the whole system, for all development proposals. Embarking on DAPs at this stage before our system is complete distracts attention and diverts State planning resources from the main game of completing the planning reforms, where the major performance improvements lie.

Summary

Overall, councils would strongly prefer the Tasmanian Government to approach the development of a DAPs Framework in the following way:

1. Do not divert State planning resources away from the current set of planning reforms to develop DAPs. Instead, properly resource State planning capacity to take on the DAPs work without impacting the speed of delivery for the current set of planning reforms. Accelerate current planning reforms as much as possible.
2. Build the evidence of the nature and extent of development decision making problems so that the right solutions that address these problems can be developed.
3. Enter a codesign phase for the DAPs framework in partnership with local government.
4. Keep solutions as simple as practicable, utilise existing planning processes and structures as much as possible.
5. Provide options for councils to use a DAPs process as a tool to address specific problems, such as the perception of conflicts of interest, or to deconflict / increase independence in decision-making for more contentious proposals.