



CITY OF HOBART

AGENDA

City Planning Committee Meeting

Open Portion

Tuesday, 11 June 2019

at 5:00 pm

Lady Osborne Room, Town Hall

SUPPLEMENTARY ITEM

ORDER OF BUSINESS

REPORT

13. Delegation Review - Emergency Delegation 3

The General Manager reports:

“That in accordance with the provisions of Part 2 Regulation 8(6) of the *Local Government (Meeting Procedures) Regulations 2015*, these supplementary matters are submitted for the consideration of the Committee.

Pursuant to Regulation 8(6), I report that:

- (a) information in relation to the matter was provided subsequent to the distribution of the agenda;
- (b) the matter is regarded as urgent; and
- (c) advice is provided pursuant to Section 65 of the Act.”

13. Delegation Review - Emergency Delegation
File Ref: F19/71819; 17/52

Memorandum of the Manager Development Compliance and the Acting
Director City Planning of 7 June 2019.

Delegation: Council



City of **HOBART**

MEMORANDUM: CITY PLANNING COMMITTEE

Delegation Review - Emergency Delegation

Introduction

The purpose of this memorandum is to respond to a recommendation from the Risk and Audit Panel that a report be prepared for the City Planning Committee reviewing the current delegation to the General Manager, Director City Planning, Manager Development Appraisal and Senior Statutory Planner to determine applications in circumstances where the applicant has refused to grant an extension of time to enable the application to be considered at a scheduled meeting of the full Council.

Background

The *Land Use Planning and Approvals Act 1993* (the Act) vests the power to determine a development application in a planning authority. The term planning authority is defined in section 3 of the Act to mean a council.

Section 6 of the Act gives the planning authority the power to delegate any of its powers and functions under the Act to an employee of the Council. There is currently a delegation from the planning authority to the General Manager, Director City Planning, Manager Development Appraisal, Manager Planning Policy and Heritage and the Senior Statutory Planner:

to determine applications in circumstances where the applicant has refused to grant an extension of time in accordance with section 57(6)(b) and 57(6A) of the Land Use Planning and Approvals Act 1993 to enable the application to be considered at a scheduled meeting of the full Council.

Delegated Decisions

Between the period 1 January 2016 to 27 May 2019 a total of 2188 planning applications have been determined as follows:

246	By Committee or Council
1942	Under delegation

Of the 1942 applications determined under delegation, 22 applications were required to be determined under the delegation above because the applicant refused to grant an extension of time to enable the application to be considered at a scheduled meeting of the Council.

Twenty of these applications were determined by the Director City Planning, one by the Acting Director City Planning during the Directors absence and one by the Manager Development Appraisal as duly authorised delegate of the planning authority.

The need for an extension of time is not uncommon. Section 57 of the Act provides the planning authority a 42 day period to assess an application however it can take over 70 days for the requirements of the Act and Council procedures to be satisfied.

a)	Once a valid application is received, the planning authority has 21 days to determine if further information is required.	21 days
b)	Once further information is received the planning authority has 14 days to determine if the information is satisfactory	Total 35 days
c)	Application subject to publication notification for 14 days	
d)	The Mercury require 2 business days for an advertisement	Total 51 days
e)	Delegated decision maker determined following public notification	
f)	Development appraisal planner, heritage officer and development engineer completes assessment following consideration of all representations received	
g)	Report of development appraisal must be completed 7 days prior to the scheduled meeting of the City Planning Committee	Total 58 days + time to write report
h)	Committee meet 7 days after report completed;	Total 65 days + time to write report
i)	Council meets 7 days after Committee	Total 72 days + time to write report

As duly authorised delegate of the planning authority, the General Manager, Director City Planning, Manager Development Appraisal, Manager Planning Policy and Heritage and the Senior Statutory Planner must determine an application in accordance with the provisions of the Act and the relevant planning scheme. This means they will and must comply with section 51(2) of the Act which provides:

- (2) *In determining an application for a permit, a planning authority –*
- (a) *must seek to further the objectives set out in Schedule 1 and*
 - (b) *must take into consideration such of the prescribed matters as are relevant to the use or development the subject of the application; and*
 - (c) *must take into consideration the matters set out in representations relating to the application that were made during the period referred to in section 57(5) and*
 - (d) *must accept –*
 - (i) *any relevant bushfire hazard management plan, or other prescribed management plan relating to environmental hazards or natural hazards, that has been certified as acceptable by an accredited person or a State Service Agency; or*

(ii) any certificate issued by an accredited person or a State Service Agency and stating that the proposed use or development will result in an insufficient increase in risk from the environmental hazard or natural hazard to warrant any specific protection measures.

While representors may feel aggrieved that the elected members are not determining all applications, delegations are necessary for the purposes of administrative efficacy. As the decision maker, irrespective of whether it is the Council acting as planning authority or a duly authorised delegate, the same decision-making framework and considerations apply. The Act remains the source of power in the planning authority's dealing with a land use, planning or development matters.

Elected members retain the ability to call in any delegated matter, including development applications, before the matter is determined under delegated authority by either a Council committee or a Council officer, provided there is sufficient statutory time to do so.

If there is no delegation in place which enables an application to be determined by an officer where the applicant has refused to grant an extension of time, the planning authority would be unable to determine the application before the expiration of the statutory period. In accordance with section 59 of the Act, the failure of the planning authority to make a decision before the expiration of the statutory period is deemed to constitute a decision to grant a permit on conditions to be determined by the Appeal Tribunal. In accordance with section 59(5) the Council is liable to pay:

- (a) to the Appeal Tribunal an amount determined by the Appeal Tribunal as being the costs of the appeal; and*
- (b) to each other party to the appeal an amount determined by the Appeal Tribunal as being the appeal costs of that party*

The average cost of a one day appeal for a legally represented party with one witness is between \$10,000 and \$30,000.

There have been two recent matters which, because of the number of representations, would normally be considered by the City Planning Committee and Council but because the applicant refused to grant an extension of time to enable the application to be considered at a scheduled meeting of the full Council were determined under delegation, namely, an application for partial demolition, alterations, extension and partial change of use to visitor accommodation at 2 Castray Esplanade, Battery Point and an application for demolition and four multiple dwellings at 256 Brooker Avenue, North Hobart. In both cases the notification of the refusal was received close to the expiry of the period and accordingly, there was also insufficient time to organise a special meeting of the Council to enable the elected members acting as planning authority to consider the application.

Persons who made representations have expressed their frustration at not having the opportunity for their concerns to be considered by elected members. As noted above, the matters which must be considered by the planning authority under the Act, be it the full council or duly authorised delegate, remain the same. It is a mandatory consideration for the decision maker to consider the matters set out in representations relating to the application.

The process of receiving deputations at a Committee meeting is not provided for in the Act but rather is governed by the *Local Government (Meeting Procedures) Regulations 2015*. While there is nothing in the Act precluding receiving deputations, there are not a matter which must be considered pursuant to section 51 when determining an application under the Act. In accordance with Council's Meetings: Procedures and Guidelines Policy adopted 23 April 2018 the Committee Chairman has the discretion to decide whether or not a deputation is to be received.

Proposal

The delegation for officers to determine applications where the applicant has refused to grant an extension of time to enable the application to be considered at a scheduled meeting of the Council is necessary to avoid the operation of section 59 of the Act and consequential cost orders. It is therefore impossible to avoid future instances where the delegation may be necessary.

The number of times the delegation has been exercised is small. In cases where there is insufficient time for an application to be considered at a scheduled meeting of the Council, officers make all reasonable attempts to secure an extension of time for the application to be considered at a special meeting. This practice is not explicit in the delegation. The delegation could be amended to include reference to a special meeting as follows (proposed amendment underlined):

To determine applications in circumstances where the applicant has refused to grant an extension of time in accordance with section 57(6)(b) and 57(6A) of the Land Use Planning and Approvals Act 1993 to enable the application to be considered at a scheduled meeting of the full Council or a special meeting of the Council.

A note could also be included in the delegations register that all duly authorised delegates determining applications under the Act must take into account the matters in section 51 including consideration of the matters set out in representations. While this is a mandatory requirement and is the current practice of delegated decision makers, an express reference in the delegation may provide some comfort to representors that their concerns have been considered in determining the application.

RECOMMENDATION**That:**

1. ***That the delegation from the Council pursuant to Section 6(3) of the Land Use Planning and Approvals Act 1993 to the General Manager, Director City Planning, Manager Development Appraisal, the Manager Planning Policy and Heritage and the Senior Statutory Planner to determine applications in circumstances where the applicant has refused to grant an extension of time in accordance with section 57(6)(b) and 57(6A) of the Land Use Planning and Approvals Act 1993 to enable the application to be considered at a scheduled meeting of the full Council be amended to include reference to a special meeting of the Council as follows:***

To determine applications in circumstances where the applicant has refused to grant an extension of time in accordance with section 57(6)(b) and 57(6A) of the Land Use Planning and Approvals Act 1993 to enable the application to be considered at a scheduled meeting of the Council or a special meeting of the Council.

2. ***That a note be included in the delegations register that any duly authorised delegate determining applications under the Land Use Planning and Approvals Act 1993 must take in into account the matters in section 51 of the Act including consideration of the matters set out in representations.***

As signatory to this report, I certify that, pursuant to Section 55(1) of the Local Government Act 1993, I hold no interest, as referred to in Section 49 of the Local Government Act 1993, in matters contained in this report.



Kirsten Turner
**MANAGER DEVELOPMENT
COMPLIANCE**



James McIlhenny
ACTING DIRECTOR CITY PLANNING

Date: 7 June 2019
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