



CITY OF HOBART

AGENDA

Community, Culture and Events Committee Meeting

Open Portion

Thursday, 25 February 2021

at 5:30 pm
via Zoom

SUPPLEMENTARY ITEM

ORDER OF BUSINESS

10. LOCAL GOVERNMENT ASSOCIATION OF TASMANIA GENERAL
MEETING MOTIONS..... 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.”

**10. Local Government Association of Tasmania General Meeting
Motions
File Ref: F21/14533**

Memorandum of the General Manager of 24 February 2021 and attachments.

Delegation: Council



City of **HOBART**

MEMORANDUM: COMMUNITY, CULTURE AND EVENTS COMMITTEE

Local Government Association of Tasmania General Meeting Motions

The purpose of this memorandum is to consider the Council's position on a range of motions to be discussed at the Local Government Association of Tasmania's (LGAT) General Meeting on 12 March 2021.

In considering the motions to the LGAT General Meeting, the Council has the opportunity to influence local government policy for the betterment of its community.

The General Meeting scheduled for 12 March 2021 will consider a number of motions put forward by member councils.

This memorandum provides a recommended position for the Council to take on two of these motions as shown at **Attachment A**.

Background information can be found at **Attachment B**.

RECOMMENDATION

That:

- 1. In accordance with Attachment A to this report, the Council endorse the motions recommended for support, to be considered at the Local Government Association of Tasmania General Meeting to be held on Friday 12 March 2021.**
- 2. The two motions relating to Gaming be considered by the Council at its meeting on 9 March 2021.**

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.

N D Heath

GENERAL MANAGER

Date: 24 February 2021

File Reference: F21/14533

Attachment A: LGAT motions recommended ↓

Attachment B: Background information ↓

Future Gaming Legislation Exposure Draft
Council Glenorchy City

Decision Sought

That Local Government calls on the Tasmanian Government to honour the commitment (given at the Premier's Local Government Council on 6 November 2019) for a five-week consultation period on the draft legislation to amend the *Gaming Control Act 1993* to give effect to the Future Gaming Market Policy, when released.

Supported

This motion is **supported** acknowledging the Tasmanian Government's commitment for a five week consultation period; the necessity for councillors and council officers to have time to fully review the draft future gaming bill in order to provide a considered response if required; and noting the City of Hobart's own Community Engagement principle of allowing sufficient time for effective involvement.

Deferral of Draft Future Gaming Bill
Council Glenorchy City

Decision Sought

That the Tasmanian Government defers the release of the legislation to amend the *Gaming Control Act 1993* to give effect to the Future Gaming Market Policy for consultation until the latest information relating to gambling in Tasmania is made available, including:

- a) The release of the fifth Social and Economic Impact Study; and
- b) Social and economic modelling used to develop the Future of Gaming in Tasmania policy.

Supported

This motion is **supported** acknowledging that the Future Gaming Market regulatory model is a major restructure of the gaming industry that will have impact on businesses and community within the City of Hobart. It is important that all current, relevant data and information is utilised in the development of this model.

It is noted that as the Social and Economic Impact Study of Gambling (SEIS) report provides an analysis of key trends in gambling and gambling prevalence, consideration of this current information into the future gaming market would be appropriate.

It would considered appropriate that any submissions be based on all relevant data and social and economic modelling be made publically available for this purpose.



**Motions received from Councils -To be Tabled at the
LGAT General Meeting
12 March 2021**

The three motions below have been received and will be considered at the 12 March 2021 General Meeting. They are being provided in advance of the Agenda papers to allow for council discussion and ensure relevant debate at the Meeting.

Planning Authorities

Council **Burnie City**

Decision Sought

That the 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.**

Background Comments:

The parliament of Tasmania has legislated in the *Land Use Planning and Approvals Act 1993* that the council elected under the Local Government Act 1993 must also serve as the planning authority for its municipal area.

The requirement is a continuation of a similar arrangement dating from the early 1960's under which a local council had responsibility for how the land within a municipal area is to be used and developed.

The key responsibilities of a planning authority under the Act are to –

- a) prepare and maintain a planning scheme for the municipal area; and
- b) take all reasonable steps within the ambit of its power to enforce the observance of that planning scheme in respect of all use or development undertaken within the municipal area, including to determine an application to use and develop land if a permit is required.

The planning authority role is mandatory; and is entirely separate from the function of a council under the *Local Government Act 1993*.

While a Council may exercise its authority as a planning authority through a committee of the council, and may delegate powers and functions to an employee, it cannot ignore, abandon or surrender the role, or devolve responsibility in whole or part to any person or body external to the Council.

The powers and functions of a planning authority require actions and decisions with potential to materially affect the rights and interests of others; and which may generate an intersection of conflicting views and opinion.

The requirement on a council to act as a planning authority has long caused conflict and confusion.

There is a general and long-standing disquiet within Tasmanian councils over the confusion, conflict, and complexity of the “two hats” requirement inherent dual statutory functions.

There is an almost irresolvable tension between the general responsibilities of a council as the representatives of community and its role as a planning authority.

The former requires a council is to provide for peace, order and good governance, and to promote and represent the health, safety, welfare and best interests of the community.

The latter imposes considerable limitations on the ability to act as a council because of the duty on a planning authority to remain neutral, and to set aside matters of importance to the community if irrelevant to the considerations and decision instructed by the planning scheme.

As a planning authority, a council is required to –

- a) understand complex issues and to consider the validity of detailed planning applications within the 5-day period following provision of an agenda and a Council meeting
- b) make the decision directed by the planning scheme and explained in the qualified advice provide by Council officers unless there are valid reasons to move for an alternate decision
- c) set aside and have no regard to views and opinions of the community that are not directly relevant to the applicable requirements of the planning scheme

It is appropriate to test the desire of local government to continue in the role of a planning authority with a responsibility to make decisions on permit applications, and to explore use of independent assessment panels to assess and decide permit applications

Other Australian jurisdictions have recognised the struggle experienced by local government when required to separate the role as people’s representative from that of an independent arbitrator of compliance to a strict set of planning rules.

Several State jurisdictions currently operate a form of independent assessment panel which act as an alternative to the local council for decisions on land use permits.

There are also many overseas models, including some systems where the local council has no involvement in assessment or determination of a permit application.

While there are variations in administrative arrangements and scope of practice for assessment panels, underlying objectives typically include to increase probity and accountability, safeguard against corruption or misconduct, and to lead to better planning outcomes.

Significantly, the use of an independent panel can free a council to focus on planning strategy, and will provide a freedom to make representations and to advocate for its community on any aspect of a proposal.

Most States where independent panels are available have prescribed the matters that must come before a panel are to include - significant or technically complex permit applications; projects that may have a high economic, environmental and social value or impact; proposals within a specific locality or of a particular kind; public housing and State agency proposals; applications made by the council; and matters likely to attract significant public interest, opposing views and opinions, or controversy.

Some systems allow a council discretion to refer other kinds of application for decision by a panel.

Panels generally comprise a chair with a legal or public administration background and two or more specialist members; and may include a local government and/or community representative to provide local knowledge and perspective.

The use of an assessment panel does not deprive or change a council's responsibility and involvement in land use planning strategy and policy, or in the preparation of a local planning scheme.

The proposed investigation would examine the various models currently used in other jurisdictions; consider the scope of permit matters that must or may be referred; and the necessary membership and administrative arrangements.

A decision by LGAT member councils to support introduction of system of independent assessment and decision panels requires amendment to the *Land Use Planning and Approvals Act 1993*.

A persuasive argument to State government will require support from the local government sector to forego or modify what is currently an almost an exclusive power, and to devolve that power in whole or part to an external body of experts.

The ultimate decision required in this Motion is who do we represent as elected members of a council?

It is relatively easy to appreciate the "2-hat" analogy, but in reality we only wear one – the hat that represents the residents of our municipal area and requires we look after their well-being and to support their right to question, challenge and be championed by their representatives.

This is not always easy or possible when acting as a planning authority.

It is appropriate for the LGAT to investigate the level of support, and to examine options for how a panel would be structured and operate.

The matter should be further considered by LGAT members on completion of the investigation and before any decision to make a formal approach to government.

Future Gaming Legislation Exposure Draft
Council Glenorchy City**Decision Sought**

That Local Government calls on the Tasmanian Government to honour the commitment (given at the Premier's Local Government Council on 6 November 2019) for a five-week consultation period on the draft legislation to amend the *Gaming Control Act 1993* to give effect to the Future Gaming Market Policy, when released.

Background Comments

In 2018, the Tasmanian Government announced its policy for the future of the Tasmanian gaming market, providing an overview of how the Tasmanian gaming industry will be restructured.

In 2020, the Department of Treasury and Finance released a public consultation paper, the Future of Gaming in Tasmania, which provided detail of the Future Gaming Market regulatory model that will implement this policy from 1 July 2023.

The original timeline was for the exposure draft of the *Gaming Control Amendment (Future Gaming Market) Bill 2020 (draft future gaming bill)* to be released on 27 April 2020 with the closing date for comment on the draft on 8 May 2020. The review was deferred due to the impacts of the COVID-19 pandemic. It anticipated that the draft future gaming bill will be now be released for comment in 2021.

Under the new regulatory model, licences for casinos, keno and hotels and clubs would be distributed for up to 20 years, with further changes to the regulatory model unlikely until 2043.

While Glenorchy City Council and other councils and stakeholders have had an opportunity to comment on the public consultation paper, it will be very important for councillors and council officers to have time to fully review the draft future gaming bill when it is released and have enough time to respond.

As noted, the original timetable set for the consultation period for the bill was 10 working days. It is anticipated that this will also be the case when the draft bill is released in 2021.

LGAT previously had a Statewide Partnership Agreement with the Tasmanian Government in relation to timeframes for consultation on issues relevant to local government.

Although the agreement has expired, the issue was discussed at the Premier's Local Government Council meeting on 6 September 2019, with the minutes recording the following:

*"The Premier noted that, although the Statewide Partnership Agreement between the State Government and the local government sector has expired, the Government continues, as a matter of protocol, to observe the five-week consultation period contained in that Agreement. This was welcomed by LGAT. The Premier noted he would be asking the Secretary of DPAC to write to other agency heads reminding them of the minimum five-week period."*¹

¹ Premier's Local Government Council minutes from 6 September 2019, Department of Premier and Cabinet website

The motion therefore seeks LGAT's support in calling for the State Government to honour the agreement in relation to the consultation period of the draft bill to allow an appropriate time for a detailed review and preparation of submissions.

The proposed changes to the legislation will have an impact on any local government area which has electronic gaming machines, particularly for single operators of hotels and clubs. Regardless of whether councils support or oppose the legislation, it is important to understand the changes and the possible effects on their communities.

Deferral of Draft Future Gaming Bill
Council Glenorchy City

Decision Sought

That the Tasmanian Government defers the release of the legislation to amend the *Gaming Control Act 1993* to give effect to the Future Gaming Market Policy for consultation until the latest information relating to gambling in Tasmania is made available, including:

- a) The release of the fifth Social and Economic Impact Study; and**
- b) Social and economic modelling used to develop the Future of Gaming in Tasmania policy.**

Background Comments

The Future Gaming Market regulatory model proposed by the State Government is a major restructure of the gaming industry. Given its significance, it is important that information used to develop the model, as well as up-to-date information on the sector, is made available to all stakeholders.

The *Gaming Control Act 1993* requires that an independent review of the social and economic impact of gaming in Tasmania be conducted every three years. The Social and Economic Impact Study of Gambling in Tasmania (**SEIS**) provides an analysis of key trends in gambling and a gambling prevalence study. This is a key study that is tabled in each House of Parliament after completion.

The fifth SEIS is currently underway (submissions closed in October 2020) and is expected to be completed by the second quarter of 2021. It is possible that the draft future gaming bill will be released, and a decision made in Parliament, prior to the results of the SEIS being made available.

Given the importance of the SEIS and the fact that the Future Gaming legislation exposure draft was postponed due to the impacts of the COVID-19 pandemic, being able to review the SEIS and any recommendations made in that report prior to commenting on the Future Gaming legislation exposure draft is critical.

Submissions to the Future of Gaming in Tasmania could be made based on the information publicly available at the time in the Tasmanian Government's Future Gaming consultation paper. The

consultation paper provided details of the proposed changes to the regulatory model but did not provide any social or economic modelling used by the State Government to develop its proposal.

It is essential for councils and other stakeholders to have access to this modelling information if they are to add value to the next stage of the consultation process and gain a clearer picture of how changes will impact individual municipalities.

The request to defer the Future Gaming legislation until the release of the SEIS and the provision of the social or economic modelling would not impact the Tasmanian Government's proposed legislation commencement date of July 2023.