



CITY OF HOBART

AGENDA

City Planning Committee Meeting

Open Portion

Monday, 1 March 2021

at 5:00 pm

Council Chamber, Town Hall

SUPPLEMENTARY ITEM

ORDER OF BUSINESS

REPORTS

- 12 Local Government Association of Tasmania General Meeting Motion
- Planning Authorities..... 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.”

**12 Local Government Association of Tasmania General Meeting Motion
- Planning Authorities
File Ref: F21/16876**

Memorandum of the Director City Planning of 26 February 2021 and attachment.

Delegation: Council



City of **HOBART**

MEMORANDUM: CITY PLANNING COMMITTEE

Local Government Association of Tasmania General Meeting Motion - Planning Authorities

Introduction

The Burnie City Council has put forward the following notice of motion to be considered by the Local Government Association of Tasmania (LGAT) at the 12 March 2021 General Meeting.

The Council's position on this motion is being sought to allow the Lord Mayor to vote accordingly on the matter.

The motion states:

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.

The background comments on the motion is included in **Attachment A** and sets out the challenges for elected members with managing both its role as planning authority, and as a community advocate. It is recognized as one of the more difficult positions elected members need to take, the one that requires them to set aside their advocacy role and to determine planning applications on the basis of the planning controls under which an application must be determined against.

The background also acknowledges the use of independent development assessment panels in other jurisdictions partly in response to the above challenges.

The motion is seeking an understanding of the level of support for, and an examination of the options for how a planning panel entity would be structured and operated.

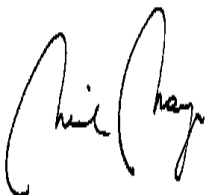
The support or otherwise of such a motion is fundamentally a policy position for the Council, however, before the LGAT undertook any investigation as to the structure and how the panel would be operated it would be informative for elected members to more fully understand the merits and pitfalls of models that have been adopted in other jurisdictions. This would at least provide critical analysis of the threshold question as to whether elected members were supportive or not to relinquish such planning powers. Once this threshold question was resolved and if ultimately supported then further time and effort could be directed to options for an amendment of the *Land Use Planning and Approvals Act 1993*.

RECOMMENDATION

That:

- 1. The Council determines its support or otherwise for the motion contained in Attachment A to be considered at the Local Government Association of Tasmania general meeting to be held 12 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.



Neil Noye

DIRECTOR CITY PLANNING

Date: 26 February 2021
File Reference: F21/16876

Attachment A: LGAT Proposed Motion ↴ 

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

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 |d |
| b) | provide as an alternative, the establishment of an independent development assessment panel to determine a permit application. |p |

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) _____ u
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) _____ m
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) _____ s
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.