



City of **HOBART**

**Memorandum:** Lord Mayor  
Deputy Lord Mayor  
Elected Members

## **Response to Question Without Notice**

### **SANDY BAY - ESCARPMENT**

**Meeting:** City Planning Committee

**Meeting date:** 28 September  
2020

**Raised by:** Councillor Harvey

#### **Question:**

Can the Director advise of the Council's risk and liabilities with regards erosion and potential landslip of the escarpment around the Derwent River foreshore at Sandy Bay?

#### **Response:**

Council may incur risk and potential liability from a vast range of sources, for example as land owner or land manager, or by administering particular types of permits under various regulatory regimes.

For the purposes of this question, I will give a brief overview from the perspective of granting planning permission pursuant to the *Land Use Planning and Approvals Act 1993*. The answer can only be given in the abstract and in general form. This response does not purport to represent exhaustive assessment and advice.

There are two primary sources of liability with respect to Council's role as Planning Authority in relation to areas subject to erosion and potential landslip. The *Hobart Interim Planning Scheme 2015* contains codes which control development in particular zones in relation to those specific issues, for example 3.0 Landslide Code and 16.0 Coastal Erosion Hazard Code.

The first potential source of liability arises from the exercise of Council's function as Planning Authority (operational function). Council must not make a decision so unreasonable that no reasonable authority could have made the decision. It should ensure that it makes decisions in consideration of relevant and probative expert

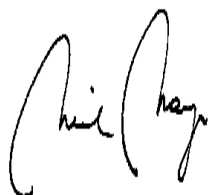
advice where appropriate, and should not take into consideration irrelevant matters. Further, it should exercise its function with reasonable skill and care.

The second potential source of liability arises from the accuracy of various maps utilized pursuant to the Codes above. Council as Planning Authority administers its planning schemes and has a major role to play in preparing and maintaining those schemes (legislative function). An issue may arise where those maps which define the parameters in which risk is managed around areas subject to erosion or landslip hazards are inaccurate, then the resultant output from those regulatory frameworks will suffer. Potentially areas which ought to be subject to specific controls may not be, or else may be subject to less stringent controls than is appropriate given the matters of fact.

That is not to say that there is an obligation for Council to impose risk mitigating controls per se, rather, that if risk mitigating controls are imposed, those controls are appropriately reviewed and administered to ensure that they are appropriately sensitive to the associated risks.

To mitigate against this risk Council should ensure that it adopts a reasonable review process in relation to its hazard mapping under the Scheme to ensure that the controls remain appropriately sensitive to the live risks at play.

*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: 10 August 2021  
File Reference: F21/353