



City of **HOBART**

Enquiries to: Office of the CEO

☎: 03 6238 2727

✉: ceo@hobartcity.com.au

Our Ref: 14/140

29 November 2023

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

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

To Whom it May Concern,

I write to thank you for the opportunity to comment on the draft *Land Use Planning and Approvals (Development Assessment Panel) Amendment Bill 2024* that has been developed.

The City of Hobart submission reiterates the City's position that statutory planning functions must remain with local councils as they are better placed to understand local issues and the potential planning impacts on a community.

Please do not hesitate to contact my office should you have any questions or queries.

Yours sincerely,

(Jacqui Allen)
ACTING CHIEF EXECUTIVE OFFICER

City *of* HOBART

Response to Development Assessment Panel (DAP) Framework

About the City of **HOBART**

The City of Hobart is the local government body covering the central metropolitan area of Lutruwita/Tasmania's capital city Nipaluna/Hobart.

The present-day council entity was legislated in 1852 with the role of Lord Mayor created in 1934.

As enshrined in legislation, the key function of local government is:

- To provide for the health, safety and welfare of the community;
- To represent the interests of the community; and
- To provide for the municipal area's peace, order and good government.

The City of Hobart delivers a range of services to over 56,000 residents and employs over 550 staff.

The Role of Local **Government**

The City of Hobart is responsible for statutory planning within the city. As the Planning Authority, it has responsibility for directing strategic planning and establishing, interpreting, revising and enforcing the local planning scheme.

Introduction

Responsible planning has always been vital to the sustainability of safe, healthy, and secure urban environments. Tasmania's population is growing, and, with more people, the planning profession must increasingly deal with complex issues.

The City of Hobart's Community Vision and Capital City Strategic Plan identifies the importance of Hobart keeping a strong sense of place and identity even as the city changes. The City of Hobart – in collaboration with communities and stakeholders – is best-placed to implement city shaping activities and precinct improvements.

The City of Hobart holds the view that statutory planning functions must remain with local councils. While the City recognises that the current council planning application and approval process could and should be improved to increase housing supply, local councils understand local issues and the potential planning impacts on a community in a way that other tiers of government do not. Beyond bringing knowledge of the local area and relevant policies to the decision-making process, Local Government elected members have an important role in reflecting the aspirations of local communities. And in the City of Hobart, the majority of developments proceeding through the local council planning process unimpeded, with a 98% approval rate.

The City of Hobart disagrees with the assumption that the introduction of a DAP will quash controversy, and that community pressure and political pressure detracts from desirable planning outcomes.

More broadly, this shift in decision making represented by the proposed framework raises issues associated with the fundamental and interrelated principles of why and how we should do planning and what problem based, or topic-based issues can and should be addressed through planning.

The City of Hobart is currently undertaking a comprehensive work program of strategic planning to establish a robust and contemporary strategic framework from which to direct future growth and development. To date, this has involved the recent adoption of the Central Hobart Plan and the commencement of Neighbourhood (Structure) Plans for North Hobart and Mount Nelson & Sandy Bay.

It is envisaged that this strategic framework will provide the necessary impetus for both Council initiated and proponent led planning scheme amendments to proceed, for sufficiently justified sustainable development outcomes to be realised.

To this end, Council provides the following commentary in response to the following questions posed in the Position Paper:

Key issues

Consultation issue 1: Types of development applications suitable for referral to a DAP for determination

What types of development applications are problematic, or perceived to be problematic, for Councils to determine and would therefore benefit from being determined by a DAP?		
<i>Options</i>		<i>CoH Response</i>
i	Applications for social and affordable housing which often attract considerable opposition within the local community based on social stigma rather than planning matters;	Social housing proposals tend to generate a high number of representations and at the City of Hobart, this means that those proposals are usually considered by the Planning Committee. Representations often raise non-planning grounds, which some perceive as a resistance to this type of development close to their existing housing. Despite this, the Elected Members have made decisions on this type of development by following officer recommendations.
ii	Critical infrastructure;	There are no issues with applications for critical infrastructure or Council applications and while this is another category of applications where the community tend to raise non-planning issues, again, all decisions in this context have been robust at the City of Hobart. Council works hard to ensure that the Council as applicant is making an application that meets the planning scheme and there is no reason to either approve or refuse any application against officer recommendation. Introducing a DAP into this scenario would just add red tape for no benefit.
iii	Applications where the Council is the applicant and the decision maker;	
iv	Applications where Councillors express a conflict of interest in a matter and a quorum to make a decision cannot be reached;	The inability to reach a quorum due to conflict of interest is not an issue for the City of Hobart.
v	Contentious applications where Councillors may wish to act as elected representatives supporting the views of their constituents which might be at odds with their role as a member of a planning authority;	Elected Members are aware before they are elected that they will undertake the role of planning authority and are required to do so without regard to their political preferences. They receive adequate training on the difference and are supported during the decision-making process by Council officers. The Supreme Court of Tasmania has recognised that when carrying out its role as

		planning authority, Elected Members are entitled to have strong views and are able to engage with the community about applications; so long as they retain an open mind and consider the application properly. In doing so, the Supreme Court has confirmed that these dual roles are feasible and has provided guidance on the requirements of Elected Members.
vi	Where an applicant considers there is bias, or perceived bias, on the part of a Council or Councillors;	Due to the subjective nature of the applicant considering bias or perceived bias, this trigger would be open to misuse and would add significant uncertainty and ambiguity to planning processes.
vii	Complex applications where the Council may not have access to appropriate skills or resources;	The City of Hobart has sufficient resources to properly assess and determine applications. It is accepted that this is not necessarily the same for all councils throughout Tasmania. However, the difficulty is not necessarily in the decision-making part of the process; the challenge is often having sufficiently experienced staff or consultants to carry out the request for information process and assess an application to make a recommendation to the decision maker. The introduction of a DAP would not solve this issue. It is not considered that a particular cost of works is necessarily aligned with the most controversial applications and the City of Hobart does not support this being a basis for referral to a DAP. Applicants are able to use the major projects process where appropriate so that their application is separately assessed.
viii	Application over a certain value;	
ix	Other?	Any involvement of the Minister to make referrals or to resolve any dispute between the planning authority and applicant as to whether an application should be referred is opposed. This would politicise planning and is highly inappropriate.
Who should be allowed to nominate referral of a development application to a DAP for determination?		
Options		CoH Response
i	Applicant	The planning authority must either refer an application to a DAP or consent to this occurring, otherwise, this leaves the planning process open to “forum
ii	Applicant with consent of the planning authority	

iii	Planning authority	shopping” if the applicant would prefer not to have the decision made by the planning authority for some reason.
iv	Planning authority with consent of the applicant	
v	Minister	
Given the need for a referral of an application to a DAP might not be known until an application has progressed through certain stages of consideration (such as those set out in a) above) have been carried out, is it reasonable to have a range of referral points?		
Options		CoH Response
i	At the beginning for prescribed proposals;	Yes
ii	Following consultation where it is identified that the proposal is especially contentious;	
iii	At the approval stage, where it is identified that Councillors are conflicted.	

Consultation issue 2: Provision of an enhanced role for the minister to direct a council to initiate a planning scheme amendment under certain circumstances

<i>Options</i>	<i>CoH Response</i>
Under what circumstances should the Minister have a power to direct the initiation of a planning scheme amendment by a Council?	In principle, Council recognises the long-established legislative role of local government acting as a Planning Authority, with responsibility for directing strategic planning and establishing, interpreting, revising and enforcing the local planning scheme.
Is it appropriate for the Minister to exercise that power where the Council has refused a request from an applicant and its decision has been reviewed by the Tasmanian Planning Commission?	Notwithstanding this, Council acknowledges the existing power of the Minister to direct a planning authority to prepare a draft amendment under section 40C of the Land Use Planning and Approvals Act 1993. Council is reluctant for these powers to be expanded, except in the most prudent manner.
Are there any other threshold tests or criteria that might justify a direction being given, such as it aligns to a changes regional land use strategy, it is identified to support a key growth strategy or it would maximise available or planned infrastructure provision?	<p>For the strategic planning process to remain firmly embedded with the principles of integrity and transparency, the proposed changes must ensure that the onus is firmly reinforced upon the proponent to comprehensively justify the strategic necessity of any amendment.</p> <p>For example, if the Minister’s role is enhanced as proposed, the proponent of any amendment would have to demonstrate its consistency with the relevant sections of:</p> <ul style="list-style-type: none"> • any endorsed land use strategy • any adopted Structure Plan • the applicable Regional Land Use Strategy • the Tasmanian Planning Policies • the State Planning Provisions • the Local Provision Schedule <p>It would also be incumbent upon the proponent to provide any technical studies that are required to adequately demonstrate the necessity for such an amendment.</p>

It is noteworthy that this position paper does not address the huge cost implications that would have to be borne by Council in preparing and processing additional planning scheme amendments should the proposed changes be enacted.

As it stands, Council is currently under enormous pressure to meet its strategic planning obligations through its transition to the Tasmanian Planning Scheme.

The City of Hobart is not alone in operating in the fiscally constrained environment of the local government sector. Furthermore, this proposal highlights the broader issue of the increasing trend towards cost shifting from State to Local Government that is being manifest in planning jurisdictions across the country.

This resourcing issue could be resolved by either the State Government or the proponent of any scheme amendment being made wholly responsible for funding the work associated with any scheme amendments that would result from this proposal.

Consultation issue 3: i. Incorporating local knowledge in DAP decision making; ii. DAP framework to complement existing processes and avoid duplication of administrative processes

To allow DAP determined applications to be informed by local knowledge, should a Council continue to be:	
Options	CoH Response
the primary contact for applicants;	Yes
engage in pre-lodgement discussions;	
receive applications and check for validity;	
review application and request additional information if required;	
assess the application against the planning scheme requirements and make recommendations to the DAP.	
Is the current s43A (former provisions of the Act) and s40T of the Act processes for referral of a development application to the Commission, initial assessment by Council and hearing procedures suitable for being adapted and used in the proposed DAP framework?	
CoH Response	
These applications are very rare and are not considered to be problematic. It is not clear how the introduction of a DAP framework in this context would be beneficial. Reference is made to the City's response to Issue 2, above, with the concern on the ability for the Minister to become involved in strategic planning issues.	

Consultation issue 4: Resolving issues associated with requests for, and responses to, further information

Should a framework for DAP determined development applications adopt a process to review further information requests similar to the requirements of section 40A and 40V of LUPAA?

CoH Response

No. This process is very rarely used and it is hard to see the benefit of having this as a DAP process rather than a TASCAT process.

Are there any changes that could be made to the Act or planning scheme to improve requests for, and responses to, additional information?

CoH Response

1. The timeframes are unclear if the application is reviewed and is considered to satisfy the request for information (RFI). Our interpretation is that we must restart the clock on the day the application has been received if it is satisfactory. However, if we have taken 8 business days to assess (as the legislation suggests that we can) then we lose that time from the assessment clock. 42 days sounds like a long time but if we take 21 days to issue an RFI and then lose 8 days assessing that information, plus preparation of the advertising process and advertising itself (14 days), we're already over the 42 days and there is insufficient time to assess the application. There is rarely enough time to get an application onto a planning authority meeting agenda within 42 days (noting there are statutory timeframes for agenda publication etc); extensions of time are routinely required to be provided by an applicant to do so, often with frustration on their part. Given this, we suggest that the wording in ss.60(4) & (5) should be replicated in s.54 to provide clarity.
2. Expand the days which are not counted to all days in which the planning authority office is closed i.e. remove the words "during normal business hours in that part of the State where the land subject to the application for a permit is situated". The City of Hobart often closes between Christmas and New Year. At a time when our staff are trying to relax and enjoy the festive season like others, they are under enormous pressure with days removed from the clock.
3. To address the confusing mix of calendar and business days throughout the *Land Use Planning and Approvals Act 1993* (LUPAA), it is proposed that all timeframes in LUPAA be business days and that the term "business days" is defined to exclude any day that the planning authority office is closed. Note in particular that the statutory advertising period is extended in s.57(5AA) when the planning authority office is closed but the overall assessment clock is not extended, which only places greater

pressure on officers to carry out their assessment and does not allow for sensible breaks particularly over the Christmas period.

4. Clarify whether the 14 / 21 day clock stops if the overall assessment clock is stopped. Our current interpretation is that the RFI clock continues regardless of the overall clock being stopped.
5. Clarify the status of RFIs sent before the application becomes valid. We often send a letter which says “this application is not valid but when it becomes valid then you need to provide the following further information...”. We currently treat an application as having the clock stopped at the moment it becomes valid in this circumstance, due to subsection (2) but this scenario doesn’t necessarily sit well with the other subsections.
6. Clarify the status of applications which are not valid and sit with us without becoming valid. These can sit in our system for years since they are not valid applications and are not captured by the lapsing provision in s.54.
7. Clarify the circumstances in which the applicant can insist that despite the RFI not being satisfied that they would like the application assessed anyway (likely to be a refusal).
8. The lapsing subsection operates where there have been efforts to meet an RFI but those efforts are not satisfactory. Rather than a two-year limit, we suggest adding 6 months from the date that further information was provided to the planning authority. The “agreement” requirement is quite hard to track when many applications are at RFI status.
9. While restrictive timeframes may seem like a good approach, in practice this can lead to sub-optimal outcomes. For example, the restrictive timeframes can incentivise the planning authority to issue an RFI to stop the clock as soon as possible. In some cases, a planning authority might issue multiple RFIs while different referral officers do their assessments, noting that the RFI clock is understood to not stop despite the overall clock being stopped when the first RFI is issued. While this allows the planning authority time to have discussions with the applicant, feedback from applicants suggests that they would prefer to have less RFIs and more up-front discussions. The current timeframes do not allow for this constructive approach at the outset, causing frustration.
10. There is an inconsistency with the RFI process for TasWater and Tasmanian Heritage Council (THC). The THC process is clear and preferred. The TasWater process relies on the Council’s ability to issue an RFI via s.54, which is unsatisfactory in the case of a mistakenly late referral to TasWater.

11. There is no RFI process for planning permit amendments in s.56. If we are not satisfied with the application, the only option is to refuse the application within the statutory time period. There should be a process replicated elsewhere in LUPAA to ask for further information and to stop the clock during the period that this information has not been provided.

Consultation issue 5: Appeal rights and assessment timeframes for DAP determined applications

Is it reasonable that decisions on DAP determined applications are not subject to TasCAT appeals where the TPC holds hearings and provides all parties the opportunity to make submissions and test evidence?

CoH Response

The consideration of an application by TasCAT is completely different to the role of planning authority:

- A planning application has an assessment report; an appeal has a statement of evidence which has usually been reviewed and considered by a legal team to ensure that the evidence is sufficiently detailed.
- A planning application is assessed on the papers, although the City of Hobart does allow 5 minutes for a deputation from an applicant. In contrast, a planning appeal allows for detailed cross-examination of witnesses which may go for days.
- A planning application is summarised in a planning report by the City of Hobart, which gives an overview of the planning scheme provisions and an assessment of the application against those provisions. An appeal allows for detailed legal submissions, with a legal lens cast over the issues in dispute.
- A planning application involves consideration of all discretions under the planning scheme. An appeal will only focus on those which are in dispute.
- A planning authority must consider representations; an appeal is focused on the issues raised by the parties and does not continue to take into account the views of non-parties.

To suggest that a DAP would replace the ability to appeal does not reflect the significant differences between the two processes. If it is suggested that the processes for a TASCAT appeal are incorporated into a DAP decision, then the timeframes which are separately suggested are wildly insufficient and there will be substantial additional cost to prepare such applications. This will mean that developers will have to pay significant additional fees to ensure that local councils are not disadvantaged by this process. This would also mean that representors must prepare much more significant and costly submissions in support or opposing an application if appeal rights were to be removed or compromised.

The City of Hobart considers that the TASCAT appeal process is highly valuable and allows an applicant to make amendments to its application which are not available in the context of the application made to the planning authority. This significant change occurred when the Supreme Court handed down the decision in October 2020: *Tomaszewski v Hobart City Council* [2020] TASSC 48. Applicants are no longer able to amend their applications, which causes frustration. This has not been addressed by the State Government. This is

the sort of issue which could be raised and resolved through a working group with representatives from the state government, local government and others.

Allowing parties to appeal is a vital part of the planning process and enables the community to ensure that their concerns have been properly considered. However, the City of Hobart would support limiting third party appeal rights to only those grounds which would impact them.

Given the integrated nature of the assessment, what are reasonable timeframes for DAP determined applications?

CoH Response

There are a number of issues that render the timetable proposed in the discussion paper as impractical.

First, it is unrealistic to think that an application could be referred to a DAP by the planning authority within 7 days as suggested in the discussion paper.

This power is unlikely to be delegated to officers and the expectation that the mechanics of Elected Members making a well-informed decision (report written / agenda completed / meeting held) could be completed in a 7-day window is in no way feasible. This is even more evident when considering the statutory timeframes for publishing agendas.

Second, the proposed timetable includes an assessment report before advertising – this undermines the role that representations play in responding to an application.

Consultation issue 6: Roles of the planning authority post DAP determination of a development application

Should the planning authority remain the custodian of planning permits and be required to issue permits in accordance with a direction from a DAP?

CoH Response

Yes. There is no reason to differentiate between permits issued by different bodies. Councils already issue permits in accordance with directions from TASCAT. It is important Council has a full record of all permits issued as they are relevant for consideration of building and plumbing permits.

Is it appropriate for planning permits associated with a DAP determined application to be enforced the Council?

CoH Response

Yes, provided officers have input to drafting conditions to ensure they are appropriately drafted and enforceable and provided that referral bodies such as TasWater and Tasmania Heritage Council remain responsible for enforcement of their own conditions.

Is it appropriate for minor amendments (in accordance with s56 of LUPAA) to DAP determined permits to be made by the planning authority?

CoH Response

Yes. S56 amendments are generally delegated to council officers in the City of Hobart. Councils have power to determine s56 amendments of TASCAT permits subject to limitations. There is no reason to differentiate between permits issued by different bodies.