Submission to the

Planning Taskforce

Review of the
Land Use Planning and
Approvals Act

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Introduction

The Local Government Association of Tasmania (LGAT, the Association) is the representative body of Local Government in Tasmania. Established in 1911, the LGAT is incorporated under the *Local Government Act 1993.*

The objectives of the Association are:-

- To promote the efficient administration and operation of Local Government in the State of Tasmania;
- To watch over and protect the interests, rights and privileges of municipal Councils in the State of Tasmania;
- To foster and promote relationships between Local Government in the State of Tasmania with both the Government of Tasmania and the Government of the Commonwealth of Australia;
- To represent the interests of the members of the Association generally, and in such particular matters as may be referred to the Association by its members; and
- To provide such support services to the members of the Association as the Association may by resolution in meeting determine.

Comments

Thank you for the opportunity to provide comment upon the proposed amendments to LUPAA. You have previously received an outline of concerns raised by councils during a teleconference among council planners and there have been some individual exchanges with officers on specific concerns. These matters now form the basis of the submission from the Local Government Association of Tasmania together with some more technical comments that have been received.

With the change to the Interim Planning Scheme process there are a number of concerns raised and suggestions made.

In general terms Local Government acknowledges the merits of seeking to truncate the present IPS process utilising the S30J provisions to allow a capacity for representations while not expending significant resources and time on perfecting a process that will be almost immediately replaced by a single planning scheme. While representors will not have the opportunity to attend hearings, there is an ability to make written submissions and many matters to be dealt with as a consequence. It should be noted that not all councils necessarily agree that hearings shouldn't be held but the broad perspective is to ensure that surety and certainty is provided within the system and resources are expended on achieving the proposed single planning scheme outcome as early as possible.

However, in relation to adopting the S30J process, there is a need for clear and timely advice to the public about the implications, particularly for those that have made representations and, indeed, those that were contemplating making representations. There is a need for the amendment process to capture those representations that are more than translational issues/errors but which have merit (as agreed by planning authority and TPC) so that they don't have to make an application for an amendment and have an opportunity for a hearing (changes suggested to S30J and S30K)

While there appears to be an opportunity for the Tasmanian Planning Commission (TPC), with the agreement of the Minister, to make consequential amendments, to resolve errors and reduce ambiguity, etc it is felt that there should be a mechanism for the TPC to discuss matters with the administrators of the scheme prior to making changes. This could be achieved via S30K (4) to provide greater direction to the TPC.

Although the S30J process allows for the TPC to consider changes to the IPS based on written submissions, there is the opportunity for a person to apply for an amendment or for the TPC to request an amendment S30(5) but with regard to rezoning/amendments councils have little or no voice which could be problematic in the context of opportunistic representations. It is considered that there needs to be a stronger link to councils otherwise the relative merits of a particular action may not be taken into full account.

There is a reference to the Minister and Commission having the power to make decisions on the basis that the public interest is not compromised, There are no criteria or is no guidance as to what may constitute the public interest and it is felt that there should be some reference within the legislation to such matters.

The inclusion of a penalty under S33B and 43EA is of concern. There is a significant inequity in the legislation relating to councils' ability to meet timeframes. Councils are now facing monetary penalties in the event that they fail to meet certain timelines but no such discipline is placed on the TPC. There appears no provision for an extension of time. 28 days are presently provided to request further information regarding an amendment request (including under S43) and the proponent has 14 days to request the TPC to review that request. The TPC can ask council to provide any material relevant to the RFI request and this must be provided to the Commission within 7 days or the penalty is a fine not exceeding 100 penalty units. The S33B(3) section carries a similar provision. While it is likely that councils can meet the timelines, the introduction of a penalty is considered harsh and without merit.

If there are to be timeframes , particularly where penalties are applied, they need to be constrained to the information linked to the application. An amendment to S33B(3)5 along the lines of "or longer as agreed by the TPC".

In relation to S20 (3) (a) there were concerns raised in the last submission that if the damage or destruction is a result of a natural hazard, allowing development to be rebuilt doesn't necessarily address the hazard – particularly hazards such as landslip, flooding. The amendments work if planning provisions are unchanged over that period but if they have

changed then there should be a requirement to apply assessment criteria. There are also drafting matters, clarifying language which needs to be addressed. It is understood from the

clarification provided post the submission that in relation to this matter all planning scheme requirements would need to be met in the context of the rebuild. This is considered a satisfactory arrangement.

Initially, there were some concerns that the timeframes for the S30J report were too tight and there needed to be the ability for the TPC to grant an extension (eg in the face of a large number or complex representations). This has been adequately clarified in subsequent advice that provision does exist for the TPC to grant such an extension of time.

In relation to S33(3) – amendment to a planning scheme, concerns were raised in relation to having negotiate extensions with the proponent of the change – it was felt the TPC could be arbiter.

Critically, the timeframes associated with permitted use are of significant concern. There is a general view that it would be helpful to limit the 21 days to residential as there are significant classes of development under the IPS processes that will now be deemed permitted or have permitted pathways. It is considered that there will be a dramatic rise in the volume of projects that fall within this category with the introduction of the IPS. As discussed with the Minister at the post Taskforce meeting, the preference would be to extend the period for permitted activities to 28 days under the IPS process and then seek to reduce this to 21 days under the new single planning scheme. This would ensure that the commitments under the SPS were met but would also provide the capacity for the increased number of permitted activities to be dealt with in a timely manner while still having the capacity to address discretionary applications in the workflow arrangements of councils. In the event that the timeframe is maintained at 21 days, the effect will simply be to shift the resources to permitted activity and create lags on discretionary activity which may otherwise have been able to be dealt with more quickly.

You will recall at the Taskforce Meeting it was suggested that some examples may be helpful to demonstrate the complexities associated with specific projects. I have attached a document that seeks to provide some indication of the types of projects that could be contemplated under the new arrangements.

Also under S51 which references an application is to be in a form approved by the Commission, if the Commission is intending to be the authority to “approve” application forms it likely intends to standardise the various permit application forms used by differing councils. However:

- it would be good if the Commission consulted with Councils before bringing in any standard application form;
- It should be understood that from the moment this provision becomes legislation that all existing application forms will not be “approved” and therefore invalid. The Commission must have an approved form in place prior to this provision coming into effect; and

- Will the form extend to requirements for submission such as plans, their contents (scale, north point, etc), other submission details (studies, shadow diagrams, hours of operation, materials, etc like ours) or will it simply be an application form.
- What about our environmental supplement? Will the form cover this?

These are technical matters but unless dealt with administratively prior to the legislation taking effect, could disrupt all the streamlining intended under these amendments.

It has also come to my attention in recent days that under the Gas Act 2000 council is required to refer any permitted application for any property wholly or partly within a gas pipeline planning corridor to TasGas for its review and application of conditions if warranted. Council is required to give TasGas 14 days in which to respond. Last week Glenorchy Council received advice of the declaration of a major new gas pipeline planning corridor running through the length of its main urban areas that will affect several hundred properties. It would appear eminently sensible for the legislation to give 28 days to those permitted developments where this referral is also required. While likely not within the purview of this present amendment process, it may very well be the case that this Act should be amended to align with the proposed changes to LUPAA.