

4 December 2019

Local Government Division
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Local Government (General) Amendment Regulations 2019

Thank you for providing the Local Government Association of Tasmania (LGAT) with an opportunity to make a submission on the draft *Local Government (General) Amendment Regulations 2019* (draft amendments). LGAT has consulted with the sector for comment. Where a Council has made a direct submission to this process, any omission of specific comments made by that Council in LGAT's submission should not be viewed as lack of support on that matter.

LGAT is incorporated under the *Local Government Act 1993* and is the representative body and advocate for Local Government in Tasmania. LGAT works to:

- Protect the interests and rights of councils,
- Promote the efficient operation of Local Government; and
- Foster strategic and beneficial relationships.

Councils issue a certificate under Section 337 of the *Local Government Act 1993* to make prospective owners of a property aware of what may be outstanding on the property. There has been a substantial change in context, technology and publicly available information since the current Section 337 provision came into force in 2005. Councils, therefore, have been calling for a review of the certificate for quite some time.

The draft amendments are as a result of a motion at our July 2019 General Meeting:

That the Local Government Association of Tasmania lobby the Tasmanian Government for:

1. *Urgent review of the 337 certificate form under Schedule 5 of the Local Government (General) Regulations 2015 to address the following omissions from current regulatory regimes that impact the subject lands:*

- a) *Land Use Planning and Approvals Act 1993 – codes (such as landslip), Specific Area Plans, local provisions, applications for a new planning scheme (including the Tasmanian Planning Scheme), and applications for amendments to local provisions under the Tasmanian Planning Scheme.*
 - b) *Building Act 2016 – submitted form 80's for low risk building work, whether any natural hazard considerations affect the lands, Question 31 (a) add a new section (iii) asking about onsite waste waters systems approved prior to the Plumbing Regulations 1994, and Questions 38-40 be revised to ask whether notifiable building work has been completed and to provide details regardless of the answer.*
2. *Revisions to the Property Agents and Land Transactions Act 2016 to consider:*
- a) *Requiring a 337 certificate prior to listing of a property and making it available as part of the sale process; and*
 - b) *Seeking full disclosure for properties as part of the listing process rather than the current process.*

The draft amendments, except for items in relation to the *Property Agents and Land Transactions Act 2016*, are reasonably consistent with the motion. Councils, in particular, feel that the prescribed planning and development questions have been brought appropriately in line with recent changes to the Tasmanian Planning System, including changes to the *Land Use Planning and Approvals Act 1993* (LUPAA). However, the same cannot be said for the *Building Act 2016* where there is also a failure to recognise that the proposed changes come with a significant resource impost. Each of these will be discussed in greater detail below.

Building Act 2016

Feedback from the sector has indicated significant concerns with the proposed expanded extent of the questions in relation to building and plumbing approvals. Under the current regulations, the questions only relate to building and plumbing permits issued since 1994. There is no information explaining why this existing requirement has been substantially expanded by the inclusion of clause 33B or what it is intended to achieve.

The issues that have been raised can be grouped as follows:

Relevance The proposed clause 33B requires the General Manager to provide information for building and plumbing approvals dating back to 1962, are approvals from potentially as far back as over 55 years ago still relevant?

Purpose Clause 33B requires councils to provide advice in relation to permits and completions issued under historic legislation. Concerns have been raised that in the situation where an outstanding issue exists from historic completions or legislative

requirements, a council may not have the legal ability to have owners retrospectively apply for rectification.

Legislative Consistency Consent to carry out building and plumbing work under the former *Local Government Act 1962* and *Building Regulations 1965/1978* was through an approval process. In contrast, consent to carry out building and plumbing work under the *Local Government (Building and Miscellaneous Provisions) Act 1993* and the former *Building Act 2000* and current *Building Act 2016* was, and is still, carried out through a permit process. Whether consents issued prior to 1994 have been given ‘status’ under subsequent legislation is therefore unclear.

Community Impact The proposed amendment requires the General Manager to provide information on approvals that have not previously been reported on. Properties, in many cases, will have changed hands a number of times since 1962. This means that current landowners may find themselves in a situation where a certificate identifies that no approvals had been obtained by owners many years before them – a purchaser may decline to proceed to completion as a result.

Accessibility and Liability Permits and approvals under repealed Acts and Regulations are typically stored off-site and are not easily accessible to councils. The limited availability of this information increases administrative costs, as well as the potential for errors – records from this time tend to relate to a very different legislative and practice regime when it came to how buildings were constructed and inspected, for example.

In summary, the proposed Clause 33B is strongly opposed by the sector and should be removed from the draft amendment.

Resource Implications

Resourcing implications were another commonly raised concern by councils. Feedback from assessing officers is that the administrative time to research property file records as required to satisfactorily answer the questions in the current regulations is exhaustive and that the fee charged is insufficient for the amount of time required now. The current fee, in other words, is not proportionate to the work involved in providing a certificate. The introduction of new and expanded questions will increase this disproportionality.

The amendments, for example, will require a change in internal council processes to enable the information to be collated and provided, some of this will be resource intensive and will heighten the risk to councils. It is suggested that an increase of at least 25% in the fee for 337 requests would be appropriate given the proposed changes. The

timeframes for obtaining a 337 certificate may also need to be reviewed as many councils will need to analyse and retrieve records from offsite (long-term storage) in order to meet the requirements of the proposed amendments.

We acknowledge that there has been an increased expectation upon councils as a repository of information for purchasers of land, hence the increased content, length and complexity of questions. However, it should be noted that much of the information that is provided can be accessed freely and easily by the public on theLIST and related websites.

While the sector is generally accepting of the majority of the draft amendments (with a couple of exceptions as highlighted above) in the interim, it is suggested that a more holistic review of council land information certificates be undertaken to address several of the other concerns raised (i.e. that the certificate is too broad, asks too many questions, is highly resource intensive and places far too much onus on councils).

In summary, we recommend that:

1. The requirement to provide advice in relation to permits/completions issued under historic legislation be excluded for the approval of building and plumbing work;
2. The prescribed fee for 337 certificates be increased to reflect the increased resource (time and monetary) implications for councils; and
3. A wholesale review of council land information certificates be included as part of the Local Government Act review.

See Appendix 1 for additional specific comments.

If you have any questions or would like further information, please do not hesitate to contact Katrena Stephenson on (03) 6146 3740 or Katrena.Stephenson@lgat.tas.gov.au.

Yours sincerely



Katrena Stephenson
Chief Executive Officer

Appendix 1

Table 1. Additional specific comments made by a small handful of councils

Reference	Comment
33A – Septic Tank Licence	<p>The proposed wording in the draft amendment is limited to those septic tank systems which have had a licence issued, this is not what was being sought by the motion. The motion states that ‘Question 31 (a) add a new section (iii) asking about onsite waste waters systems approved prior to the Plumbing Regulations 1994’ so that councils can comment on approvals which pre-dated 1994.</p> <p>Given that standards and requirements for on-site wastewater management systems have changed significantly over time, it is important to be clear on the expectation, impact and process of reporting on approvals from up to over 55 years ago.</p>
49 – Relevant Hazard Areas	<p>This item is not considered to be required by some councils, as this information will be provided under item 13 in the planning section. Another council, however, suggested that it would be beneficial to specify each hazard referred to in the item to ensure everyone is clear on what is being asked (rather than having to cross reference the Regulations).</p>
13a(ii) – Code Overlay Maps	<p>There is difficulty in knowing which of the Codes will be applicable, as this often will depend on the nature of any future use or development. It may be easier at the point of a council issuing a 337 Certificate to say that all the Codes apply and to simply provide a list which includes a sentence along the lines of the following: ‘Until any use or development application is undertaken the relevance or compliance with the codes cannot be ascertained’.</p> <p>The draft provisions only require the identification of code overlays or code lists, sites that are not included in these sources, but that council is aware of, could be</p>

	<p>missed. Therefore, it is suggested that an additional note be included to encourage people to refer to council to see if any other matters that may not be mapped in an overlay to a code (e.g. flood prone areas, potentially contaminated land, attenuation areas) exist.</p>
<p>13d – State Planning Provisions</p>	<p>This is simply too broad and relates to processes which are outside of the council’s control and decision making. It creates an unreasonable administrative burden for a council to review advice from the Planning Commission as to whether or not a proposal indeed impacts upon land.</p> <p>Several councils noted that they are unaware of any protocols to enable them to have knowledge of amendments to the State Planning Provisions.</p> <p>If this change occurs, there will need to be an effective mechanism in place for the State Government to notify councils about amendments in a timely manner.</p>
<p>38-40</p>	<p>An ambiguity has been identified wherein each question contains two distinct matters which are however conjunct; namely, whether a certificate of likely compliance has been received and whether a certificate of completion has not been issued. It is suggested that these questions be split between each circumstance so that it is clear to purchasers in instances where works (building, plumbing, and demolition) have been otherwise approved but may not have completion.</p>
<p>Other</p>	<p>We are aware of a number of inconsistencies between how (and in what detail) various councils answer questions within the 337, for example, the level of detail required when asked to ‘provide particulars’.</p> <p>It would be useful for the Local Government Division to produce guidelines in relation to how each question should be answered so that purchasers are adequately informed and capable of making decisions as such.</p>