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22 May 2023

Future of Local Government Review
Department of Premier and Cabinet
Via email: submissions.LGBoard@dpac.tas.gov.au

HIA submission on the *Future of Local Government Review Stage 2 – Interim Report Summary* (Councils' role in planning determinations)

Thank you for the opportunity to provide a supplementary submission to the *Future of Local Government Review – Stage 2*. Our *stage 1 submission* is attached as an annexure to this letter.

Our submission is limited to the pending stage 3 community consultation reform options 1-3 for council deed of delegation for planning decisions.

HIA welcomes inter-governmental collaboration and consultation with the residential construction industry on major policy reform that supports the development of new housing, through streamlined approval and cutting of red tape in the planning system.

Decision making and deed of delegation

For stage 3 consultation, three models of council decision delegation are proposed as follows:

“The Board is putting forward three potential reforms for further feedback in Stage 3 and wants to hear more from the community on this issue before it lands on a proposed way forward:

- *Reform 1: Remove councillors' responsibility for determining development applications entirely. All developments would be determined by council planning officers or referred to an independent panel for determination.*
- *Reform 2: Give councils a framework for the referral of development applications to an independent panel for determination.*
- *Reform 3: Provide guidelines for the consistent delegation of development applications to council staff.”*

HIA acknowledges the conflict identified for elected councillors in the role of planning (permit) authority decision making. We suggest that those who are not regular users of the planning system, do not appreciate its complexity, policy hierarchy and targeted outcomes. Therefore, there is a heightened risk of them forming an unbalanced view and achieving a fair and reasonable planning outcome.

Conversely, planning staff, whether individually or at a sub-committee level, are the most technically qualified to make balanced planning decisions that should be free from emotion and pre-conceived ideas. A complex planning system and/or a system that lacks structured guidance for users can also lead to issues of interpretation and consistency of decision making at officer level – something that HIA also addresses in this submission.

In direct response to the reforms, we prefer **option 1**, removing councillor involvement in planning decisions. However, elaborating on this, we support a **three-tiered approach** to ‘deed of delegation’ by subject matter experts (i.e. council officers) and an independent panel of experts. Such a framework for this model looks like:

1. **Tier 1:** Low risk, common, applications (with a straightforward merits assessment) – decision by Officer / Manager;
2. **Tier 2:** Mid-tier applications that introduce competing issues and require stricter merits assessment – decision by Senior Officer / Manager / Officer sub-Committee (with appeals to fall into tier 3);
3. **Tier 3:** The most complex, regionally significant applications – decision by an Independent Assessment Panel.

As categorising applications may not initially be straightforward, HIA would be happy to workshop these categories with State Government and/or LGAT as required. Implementation of such a structure must be endorsed at state level so that it becomes a legislated process that all councils are required to follow.

Council amalgamation in Tasmania among many things, will cut red tape in the planning system. HIA believes the expertise brought together from consolidating dispersed local planning officers into regionally significant hubs, will support best practice decision making.

We note the stage 1 TFLG included seeking views on decision making for “*Complex planning development applications*”. As per our previous submission, we believe there is a role for an independent expert panel in tiers 2 and 3 of our model, but it should be supported by a framework that allows locally based subject matter experts to make the majority of planning application decisions.

The role of an independent expert panel, their terms of reference and any associated assessment fees, still needs to be defined and go through rigorous public consultation.

We thank you for the opportunity to provide comment once again on deed of delegation decisions. HIA invites you to consult with us on an ongoing basis, and we would like to be kept informed on any further matters relating to the Future of Local Government Review.

Please do not hesitate to contact us if you wish to discuss the matters raised in this correspondence – Roger Cooper HIA Senior Planning Advisor (03) 9280 8230 or Stuart Collins 0418 507 377 or s.collins@hia.com.au.

Yours sincerely
HOUSING INDUSTRY ASSOCIATION LIMITED

A handwritten signature in cursive script that reads "Stuart Collins".

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1 March 2023

Future of Local Government Review
Department of Premier and Cabinet
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HIA Submission on the Future of Local Government Review Options Paper

Thank you for the opportunity to provide comment in response to the *Future of Local Government Review Options Paper* (Options Paper).

We note there was a public consultation deadline of 19 February. We apologise for the late submission but given the importance of this review and the need to seek broad feedback from relevant stakeholders, we ask that it still be considered.

This submission is not a response to all eight reforms referred to in the options paper, rather provides a range of comments on the part 5 reforms, which include some comments on the operation of the planning system.

HIA welcomes inter-governmental collaboration and consultation with the residential construction industry on major policy reform that supports the development of new housing, through streamlined approval and cutting of red tape in the planning system.

About the Housing Industry Association (HIA)

The HIA is Australia's only national industry association representing the interests of the residential building industry, including new home builders, renovators, trade contractors, land developers, related building professionals, and suppliers and manufacturers of building products.

As the voice of the residential building industry, HIA represents a membership of 60,000 across Australia. HIA members are involved in land development, detached home building, home renovations, low & medium-density housing, high-rise apartment buildings and building product manufacturing.

HIA members are comprised of a mix of residential builders, including the Housing 100 volume builders, small to medium builders and renovators, residential developers, trade contractors, major building

product manufacturers and suppliers and consultants to the industry. HIA members construct over 85 per cent of the nation's new building stock.

Background

Both directly and indirectly, housing supply in Tasmania is currently being addressed through a number of inter-related major policy reviews by the Tasmanian Government (the 'government'), including:

- *Target of 10,000 social and affordable homes by 2032*
- *Tasmanian Housing Strategy Discussion Paper*
- *30 Year Greater Hobart Plan (in collaboration with the Greater Hobart Committee)*
- *State Planning Provisions review*
- *Tasmanian Planning Policies review*
- *Medium Density Residential Development Standards / Apartment Code*
- *Draft Tasmanian Housing Bill*

HIA has provided a submission or comments in some form to all of the above. We also participate and contribute to a number of reference groups that have been established as a consequence of these reviews. While these reviews are being led by the government, it appears they are in some instances being independently pursued without an overarching assessment of their holistic effect. It is critical that members of each Policy Team collaborate together to ensure the findings are thoroughly interrogated and final recommendations lead to consistent, supportive and effective statutory policy to enable achievement of the ambitious housing growth targets in Tasmania.

HIA Economics data for 2022 shows Tasmania:

- Commenced construction of 3,125 new homes (2,805 detached and 320 multi-units)
- Completed 3,635 homes (3,483 detached houses and 152 multi-units)
- Had over \$1.15 billion dollars of residential projects in the pipeline.

This exceeded expectations of what is generally considered to be reaching a 'peak' (i.e. commencing 3,000 homes) in Tasmania. The vast majority of these are occupied privately, either by owner occupiers or through the private rental market.

HIA notes the government's target to deliver an additional 10,000 new social and affordable homes by 2032, at an average of 1,000 per year. The addition of approximately one third more homes (i.e. circa 4,000 per year) will put current supply under enormous pressure. HIA believes the government must ensure there are tangible improvements to the *planning system* and *land supply* to meet the growing demand for new housing.

HIA has provided further comments on these important deliverables in other recent submissions to the State Planning Office and through the Ministerial Housing Reference Group. Naturally, HIA welcomes further discussion and consultation with industry on removal of planning constraints.

HIA response to the Options Paper

HIA's general interpretation of the Options Paper is an identified need for reform and change, particularly when it comes to growing demands on staff resources, improving efficiencies and streamlining processes.

There is a recognition that challenges faced by most if not all 29 councils transcend their LGA boundaries with many being regionally and/or state-wide significant. HIA has held a long-term view that amalgamation of a number of Tasmania's councils along with standardisation to state-based planning schemes, will deliver many of the efficiencies and streamlined processes needed to keep pace with the new housing and economic demands being put on Tasmania.

The following are some general and specific comments in response to the part 5 reforms.

Decision making and deed of delegation

5.1 Deconflict the role of councillors and the role of planning authorities

5.1a Refer complex planning development applications to independent assessment panels appointed by the Tasmanian Government

5.1b Remove councillors' responsibility for determining development applications

5.1c Develop guidelines for the consistent delegation of development applications to council staff

HIA acknowledges the conflict identified for elected councillors in the role of planning (permit) authority decision makers. We suggest that – those who are not regular users of the planning system, do not appreciate its complexity, policy hierarchy and targeted outcomes. Therefore, they may not have a balanced view of a fair and reasonable planning outcome.

On the other hand planning staff, whether individually or at a sub-committee level, are the most technically qualified to make balanced planning decisions that should be free from emotion and pre-conceived ideas. A complex planning system and/or a system that lacks structured guidance for users can also lead to issues of interpretation and consistency of decision making at officer level – something that HIA also addresses in this submission.

While the Options Paper does not define “*complex planning development applications*”, the engage FOLG website indicates these could include:

- *“high value developments;*
- *developments in which the council or councillors have a direct interest, including developments on council land;*
- *developments in sensitive locations;*
- *developments of particular industry types; and*
- *developments with particular types of impacts.”*

We generally support the approach of these types of applications being sent to an ‘independent assessment panel’, however, there needs to be a clear definition, ideally with metrics of the applications to be included in this process.

There still may be a role for ‘development sub-committees’ at LGA level to play in making planning decisions, particularly where they replace decision delegation to elected councillors. Where LGA resources currently spread thin across 29 councils receive the benefit of amalgamations, the specialist knowledge base of these sub-committees would be significantly boosted.

Finally, there is Coordinator/Manager level to determine typical applications with the least complexity and little to no competing issues. We therefore suggest the government look at defining a **three-tiered approach** to ‘deed of delegation’ by officers / independents commensurate with the complexity of applications to be determined. This should result in structuring a clear deed of delegation model for the state for all councils to adopt.

The engage FOLG website also refers to *independent assessment determinations* being on a proponent pays model. HIA has no objection to this provided the fees set are in fairness for all levels of proponents ability to pay (i.e. public and corporate users) and government prepare a Regulatory Impact Statement for public consultation on what fees will be charged.

Reporting of regulatory functions

5.2 Greater transparency and consistency of councils’ resourcing and implementation of regulatory functions

Public-facing performance reporting on regulatory function is supported by HIA. As per the engage FOLG website “*This would help communities to understand how well their councils are exercising their regulatory responsibilities, and help councils to ‘level up’ to the standard of other similar councils.*”

We are familiar with the ‘Know Your Council’ program in Victoria, which for example, reports on the following statutory planning functions (among 59 KPIs):

- *Median number of days taken between receipt of a planning application and a decision on the application.*
- *Percentage of planning application decisions made within the regulated timeframes (i.e. VicSmart and regular).*
- *Direct cost to council of the statutory planning service per planning application received.*
- *Percentage of council planning application decisions subject to review by the Victorian Civil and Administrative Tribunal (VCAT) that were not set aside.*

This model is well intentioned and achieves its goal of providing greater transparency of local government performance to KPIs. However, mirroring such a program should be contained to a useful and relevant set of KPIs for public benefit. A RIS should be considered for its creation and ultimately as these tools are only as good as the awareness of their results, more needs to be done to promote them in the community. One example being the statutory planning results by council could be printed on their permits issued, with a comparison to state average / benchmark.

Improving regulatory process

5.3 Increase support for the implementation of regulatory processes, including support provided by the State Government

By way of background discussion, the government is acknowledging HIA's and broader industry concerns that there are currently issues with regulatory consistency, fairness and equity of decision making. This is partly blamed on a regulatory system which tries to balance discretionary outcomes with acceptable solutions and potentially lacks consistent top-down guidance for all users of the planning system – i.e. applicants, submitters, council officers, councillors, state government, TASCAT.

HIA Member case study: Parking and Sustainable Transport Code (PASTC)

As a recent example brought to our attention, not only do the application requirements for this code differ from council to council, but they can also differ from officer to officer within the same council. We were provided with an example of two adjoining sites with virtually identical features where one home was assessed as needing a PASTC assessment (planning permit application), while the other was issued with a no permit required letter. At the assessment level, some councils/officers refer only to the code while others refer to a concurrent assessment against AS/NZS 2890.1:2004 (parking facilities). As we understand, the only part of the codes that is consistent is for 'gradients', therefore council requirements may otherwise vary widely and impose significant extra cost for home owners. This ad hoc decision-making makes quoting individual jobs (in many cases that should have identical build requirements for car parking) difficult for accuracy and/or conservatively too costly for prospective clients.

In addressing an issue such as this, HIA suggests state government leadership is required in the form of preparing a set of planning practice notes (PPN) that guide all users coming into contact with the planning system about how to prepare. Here is an example of Victoria's PPN for car parking requirements and design.

With growing Tasmania's skilled workforce to contribute more resources a long term goal of government, other more immediate things can be done to improve the planning system.

HIA and the Options Paper acknowledge the commitment to planning reform being led by the State Planning Office. The above member example citing a lack of guidance for technical assessment; and the absence of a state-wide infill/medium density approval framework as another, highlights the urgency for government to improve the statutory planning tools. Not forgetting immediate tangible improvement in the efficiency of the planning system can be achieved through creating more 'no permit' pathways for low-impact urban infill.¹

HIA will continue to monitor government's planning reforms program, including offering our assistance with statutory policy reviews to improve building conditions for our members.

¹ <https://engage.futurelocal.tas.gov.au/reform-outcome-5>, 5.3 Rationale

Intergovernmental cooperation

5.4 Strengthen connections between councils' strategic planning and strategic land-use planning by working with State and Commonwealth Governments

In the Tasmanian context, it is generally acknowledged that progress is being made by the State Planning Office on planning reforms to improve strategic land use planning in Tasmania with a top down approach. HIA's observation is there is integration across the Tasmanian Housing Strategy (THS), 'City Deals' / 30 Year Greater Hobart Plan (GHP) and the Regional Land Use Strategies (RLUS).

During recent consultation, HIA has observed the integration between the RLUS and the Regional Planning Framework Discussion Paper and draft Structure Plan Guidelines consultation. While it is disappointing to read that previous attempts to integrate strategic land use planning between LGAs and state government has fallen short, HIA will continue monitoring these policy initiatives and comment where opportunities arise.

HIA made a submission to the GHP consultation in June 2022, in part highlighting the importance of such a strategy having independent oversight by a statutory planning authority. Where there is intergovernmental collaboration required, the separate parties must be held accountable in their contributions to progress. These strategies must not succumb to political derailment in the absence of cooperation and independent leadership. The same could be said for any state led project that relies on the commitment of LGAs to do the 'heavy lifting' in terms of implementation/administration (e.g. Tasmanian Housing Strategy).

Further to this, HIA highlighted in our GHP and THS submissions that the government's own authorities e.g. transport, water, environment, etc. must be given a seat at the table so all the stakeholders are on the same page moving forwards. While it seems farcical, there are examples of robust strategic land use planning strategies around the world that failed due to lack of stakeholder consultation and inclusion.

In the national context, the engage FOLG website acknowledges some barriers to the Commonwealth taking the lead on strategic land use planning projects across the country. One such example is coastal inundation from sea level rise.

HIA advocates for an overarching national response to be implemented, to provide greater consistency in all state and local government approaches. Further to this point, HIA considers that state and local governments should only implement sea level rise considerations into planning decisions which are based on national coastal hazard mapping.

Any policy influence on residential development must be based on scientific evidence to managing residential development in coastal areas. HIA has continuously lobbied for all levels of Government to only pursue practical and sensible approaches to the issue of sea level rise, and related matters – using a risk based approach. Utilising a risk based approach ensures that the response is proportionate to the threat. Therefore, it is suggested that all coastal resilience planning actions should be considered in

conjunction with using a risk based approach, that is translated into the Tasmanian Planning Schemes (TPS).

HIA Member case study: Flood- prone Hazards Areas Code

Multiple HIA members have enquired what can be done about the overlap of similar requirements between state and local government and even within local government. Citing local government's own 'flood prone area' mapping which can determine how a subdivision or development is designed, there are examples of councils asking for a flood report at both the residential subdivision stage and where planning approval is required for a single dwelling. This is highly inefficient and adds unnecessary cost to each project's bottom line. Recent quotes for flood / inundation reports are \$3,500 plus GST with a lead time of 3-4 weeks. This is despite public mapping data being available and a flood report request by council for the subdivision (of residentially zoned land). To make matters worse, after refusing to assess a single dwelling application before the flood report is provided, the flood report concludes there is no longer a flood risk as a result of creation of the subdivision.

Inconsistency of information requests and overreach of planning permit requirements are unwarranted at any time, but substantially worse in the case of residentially zoned land. As per HIA's national policy 'Truth in Zoning', governments should provide certainty though the inclusion of planning controls on residentially zoned land. For example, in applying controls at subdivision stage – all known constraints should be disclosed so when a home owner goes to build, the process is quick and seamless. This is consistent with the Options Paper referring to needing more 'no permit required' pathways.

Government may be aware of the review currently underway by the Federal Government's Department of Agriculture, Water and the Environment (AWE) in relation to the *National Climate Resilience Adaptation Strategy*. While this is a high level strategy encompassing many parts of climate change assessment, lobbying the Commonwealth to consider in this strategy using a risk based approach to preparing land subject to inundation controls from sea level rise, is one example of an aspirational intergovernmental cooperation model.

We thank you for the opportunity to provide comment at this initial stage. HIA invites you to consult with us on an ongoing basis and we would like to be kept informed on any further matters relating to the Future of Local Government Review.

Please do not hesitate to contact us if you wish to discuss matters raised in this correspondence – Roger Cooper HIA Senior Planning Advisor (03) 9280 8230 or Stuart Collins 0418 507 377 or s.collins@hia.com.au.

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