



Local
Government
Association
Tasmania

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Councillor Resource Kit

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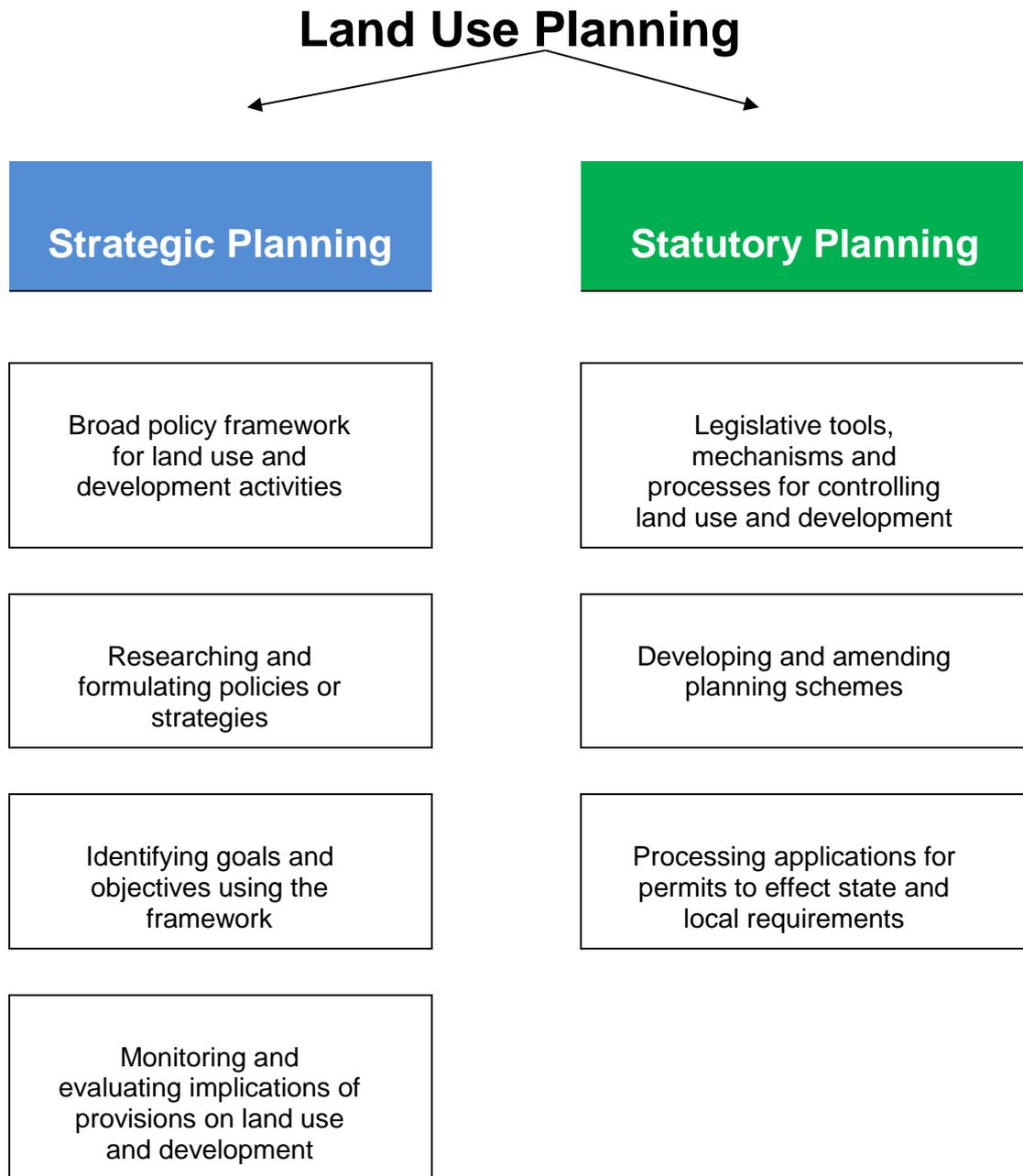


Figure 3: Strategic and statutory planning approaches⁵

For councillors, land-use planning decisions are a challenging and important responsibility. Planning decisions affect communities, the environment and quality of life and usually have long-lasting consequences. Strategic Planning is a key area where councillors can, and do, set strategic policy direction.

⁵ Derived from the LGAT Understanding Your Role in Land Use Planning: Short Course Guide 2013

The role of councillors is to represent the community in developing a vision and the future directions for the municipal area, taking account of all the information and public input. This involvement informs the local planning scheme.

This can include matters such as:

- Managing access and transport requirements;
- Planning for public safety and security;
- Protecting air, land and water quality;
- Managing coastal and rural resources; and
- Conserving natural and cultural heritage.

Consequently, land-use planning requires a lot of information and affects everyone. It is an activity that requires input from numerous trained and experienced professionals and experts and must be conducted in an open and transparent manner.

The planning scheme

Generally, planning approval is required if a person proposes to undertake development, establish a new use or change the use of land or buildings. While not all developments require a planning permit, your first contact, as a councillor, with land-use planning is likely to be a council decision on an individual development application. It is important to understand that this decision must be made in accordance with the planning scheme, and not in an arbitrary way or based on your personal feelings or the degree of lobbying received. To do so can ignore the legal requirements for development set out in the planning scheme and create uncertainty for the developer and residents alike.

Planning schemes are regulatory instruments and councillors need to understand that, once approved, a planning scheme is reactive rather than proactive. That means it guides and regulates proposals for new use or development rather than initiating them itself.

Other programs of council may initiate development, such as infrastructure works, and some of these will require approval under the planning scheme.

The council therefore needs to ensure that the planning scheme is consistent with a range of plans it may have, and vice versa.

The planning scheme comprises:

- Written requirements in respect to use and development in different zones, special areas or areas subject to an overlay; and
- Maps which show the different zones, special areas and overlays.

In late 2015, the State Government introduced changes to the *Land Use Planning and Approvals Act 1993* to provide for the introduction of the Tasmanian Planning Scheme (TPS), with the aim of delivering greater consistency in the planning rules across the State. The Tasmanian Planning Scheme will progressively replace each councils' current planning scheme as local content is developed.

The Tasmanian Planning Scheme has two main elements:

- The State Planning Provisions (SPPs); and
- The Local Provision Schedules (LPSs)

State planning provisions

The Minister for Planning is responsible under the *Land Use Planning and Approvals Act 1993* for preparing the State Planning Provisions (SPPs) or can direct the Tasmanian Planning Commission to prepare them.

The SPPs provide the state-wide consistent set of planning rules. These rules include the Tasmanian Planning Scheme's purpose and objectives, planning definitions, exemptions, use classes, and administrative provisions such as development application requirements.

The SPPs also include 23 generic zones which indicate what land use and development is appropriate for each zone such as residential, business, agriculture, utilities, environmental and recreational uses. In addition, there are a suite of 16 codes covering matters such as natural hazards, local heritage values, natural assets, parking requirements and the protection of road, railway and electricity infrastructure.

The SPPs also include the template for each council's Local Provisions Schedule. Councils will choose from the suite of zones provided in the SPPs to express their community's land use strategies through their Local Provision Schedules.

Local provisions schedule

Councils are responsible for preparing their Local Provisions Schedules (LPSs). Councils are responsible for consulting on the LPPs with their communities and other stakeholders to ensure it reflects the community's expectations.

The LPSs indicate how the State Planning Provisions will apply in each local municipal area. They contain the zone maps and overlay maps or description of places where the codes apply. They also contain local area objectives and any planning controls for unique places specific to the local area. These unique areas can be in the form of particular purpose zones, specific area plans, and site-specific qualifications.

You can find out more about the Tasmanian Planning Scheme at:

<http://planningreform.tas.gov.au/scheme>

The role of the Planning Authority

Under the *Land Use Planning and Approvals Act 1993 (LUPAA)* a council is defined as a 'planning authority.' Accordingly, once you are elected as a councillor you automatically become a member of the planning authority for your municipal area.

LUPAA does not spell out any specific differences between a council and a planning authority, nor between the roles of an individual as a councillor and as a member of a planning authority. These must be inferred from the functions required of a planning authority set out in LUPAA.

Council planning decisions that involve the exercise of discretion require public notification and are generally made at a full council meeting when representations from the public are received. However, once a planning scheme is in place, many development applications will meet prescribed standards and decisions can be made by professional planners employed by the council solely by reference to the planning scheme without the involvement of the public or elected representatives.

As a councillor, your role as part of a planning authority is quite different to that as a representative of the community. This can become particularly apparent when considering development applications which members of the community might object to, despite the proposal being allowed under the council's planning scheme. In this case, the planning scheme must be followed and enforced by the planning authority, whether or not it is politically palatable.

Because each councillor has a duty to enforce the planning scheme, irrespective of how members of the community might view the appropriateness of the planning scheme provisions, it is important that the planning scheme reflects the community's aspirations in line with the sustainable development objectives of LUPAA.

That is why there should be a strong link between a council's planning scheme and its various strategic planning documents. It is through consultation associated with the strategic planning process that community aspirations and objectives can be garnered to inform a council's planning scheme.

As members of planning authorities, councillors must act with procedural fairness and should not make public declarations of their views on particular developments until all the information and reports have been assessed.

If you believe that the planning scheme is allowing inappropriate development, then the appropriate course of action is to seek changes to the Local Provision Schedule.

There are likely to be occasions when you have no option but to approve developments that are consistent with the planning scheme even though there is considerable dissatisfaction in the community.

In such situations it is important to understand that by virtue of election to a council, you are also fulfilling a role and a responsibility placed upon you by the State's planning legislation, and therefore in carrying out that responsibility you are bound to take a broader and longer-term view of things — perhaps to the detriment of individual constituents.

Of course, if an anomaly is thrown up in this process, the council is able to pursue amendments to its Local Provision Schedule that may address similar issues in the future. However, such amendments cannot be made retrospectively

Remember: Planning is concerned with the public good, not private interests.

As a planning authority, elected councillors are stewards of the land under their

control and the time horizon for that stewardship is inter-generational, not the time to the next election.

Process for considering development applications (application for a permit)

The process will vary according to the nature of the development. Councillors largely only consider those applications which require an element of discretion in relation to the planning scheme and where representations have been made. Otherwise the decision is delegated to a planning officer.

Councillors receive a planning officer's report in relation to the development applications that they must decide. This report sets out the proposal, the relevant parts of the planning scheme, a summary of any community representations and a recommendation as to the decision the planning authority should make.

In making their decision, particularly if going against the planning officer's recommendation, the Council must give reasons for their decision and these reasons are to be recorded in the Council's minutes. Decisions and reasons must be based on the planning scheme.

Determining compliance is not as black and white as it may first seem, especially as often the planning scheme allows the exercise of discretions. When exercising a discretion, the planning report will identify what the relevant discretions are (e.g. setback from side boundary) as well as the extent of the discretion sought to be exercised.

Councils must make decisions on all types of applications within prescribed timeframes unless the applicant agrees to an extension of time, otherwise the applicant may lodge an appeal on the basis that no decision has been made. If this occurs, the council must pay all the costs of the appeal. There have been many cases where such appeals have cost councils tens of thousands of dollars. It is important that council decisions are based on the planning scheme and professional advice provided by council's expert staff.

Councillors bring to the table a complex range of matters, including social, political and economic issues, just to name a few. The role of a planning authority member, that a councillor intermittently plays, is separate to the role of councillor and confined to the objectives of LUPAA and enforcing the planning rules it establishes. This is often described in terms of wearing two hats and it is evident that the two roles can be easily blurred.

This critical distinction is not always easy to get across to the community that you represent. You are elected by the community as a local politician, who want you to represent their interests and respond to their issues. Your constituents do not always recognise that because you are a member of the council, it also bestows on you this separate role that is assuming responsibility for matters placed upon you by the State's planning legislation.

What this means for you is that there are times when you are required, indeed bound, to take a broad, long term view of things, which aligns with what your planning scheme allows, even though you may sometimes feel this is to the detriment of individual constituents. So, the fact that planning is concerned with issues of public good, not private interests, brings the importance of good governance to the fore.

Appeals against planning decisions

The [Resource Management and Planning Appeal Tribunal](#) (RMPAT) determines appeals against the decisions of a council planning authority. Many appeals are resolved by mediation, but a small percentage still progress to a full hearing.

In the case of a hearing, the RMPAT decision will be based on the provisions of the planning scheme and the interpretation of expert witnesses, eg. qualified planners or engineers, rather than councillors.

You can find out more about the RMPAT at www.rmpat.tas.gov.au

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