Preventing delays in development assessment timeframes

Position Paper

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Table of Contents

1.0 Introduction

The Tasmanian Government is committed to delivering an improved planning system. It is actively considering ways to reduce unnecessary delays for decisions on development applications.

The process for assessing development applications allows for councils (acting as planning authorities) to request additional information from the applicant under section 54 of the *Land Use Planning and Approvals Act 1993* (the Act). Additional information may be required to determine compliance with the requirements in the Tasmanian Planning Scheme (the TPS). A request for additional information results in the statutory assessment timeframe being paused until the required information has been provided to the satisfaction of the council. This is often referred to as stopping the assessment 'clock'.

Anecdotal concerns have raised that development applications assessments can be unnecessarily delayed due to additional information requests. The purpose of this Position Paper is to explore the issues and identify potential options to improve the process for managing additional information requests, to avoid unnecessary delays. The Position Paper considers all development applications, not just those related to housing, to better understand the range of issues that may contribute to slowing the development assessment process. This will allow tailored improvements to be made to the planning system.

The Position Paper outlines the existing legislative framework for certain development assessment processes that could contribute to delays or cause confusion with determining statutory assessment timeframes, including where the assessment 'clock' stops when the applicant receives a request for additional information. The Position Paper has target questions to help guide the consultation outcomes to identify the extent of the issue and possible solutions.

Submissions received in response to the Position Paper will be analysed by the State Planning Office (the SPO) with recommendations for action presented to the Minister for Housing and Planning for consideration.

2.0 Glossary

The following acronyms and abbreviations are used in this Position Paper:

The Act	*Land Use Planning and Approvals Act 1993*
EPA	Environment Protection Authority
SPO	State Planning Office
SPPs	State Planning Provisions
TasCAT	Tasmanian Civil and Administrative Tribunal
TPS	Tasmanian Planning Scheme

3.0 Legislative framework

Councils are ‘planning authorities’ under the Act with defined roles and responsibilities in determining permit applications for use and development (development applications) within its municipal area in accordance with the provisions contained within Part 4, Divisions 1 and 2 of the Act.

Section 48 of the Act requires that:

> *“where a planning scheme is in force, the planning authority must, within the ambit of its power, observe, and enforce the observance of, that planning scheme in respect of all use and development undertaken within the areas to which the planning scheme relates”*

When a planning authority receives a valid development application it is bound to assess it in accordance with the Act which establishes timeframes for certain tasks to be performed.

The Act requires that an application for a discretionary development is determined within 42 calendar days and 28 calendar days for a permitted development. Longer assessment timeframes apply for applications involving State Heritage listed properties or level 2 activities under the *Environmental Management and Pollution Control Act 1994* that are subject to assessment by the Environment Protection Authority (EPA).

To undertake an assessment of a development application and to fulfil its obligations under section 48 of the Act, a planning authority may ask the applicant for additional information.

The following sections of the Position Paper identify parts of the development application process related to additional information requests, particularly steps in the process or issues that could contribute to confusion regarding the commencement, stopping, recommencement and conclusion of the statutory assessment ‘clock’.

3.1 Receipt of a valid development application

A person proposing a use or development, that requires approval under the TPS, must submit a development application to the relevant planning authority. The planning authority is obliged to accept the application if it is a ‘valid’ application and it includes a declaration that the applicant has:

- notified the owner of the intention to make the application, if they are not the owner; or
- obtained the written permission of the owner if it relates to Crown land or council-owned land[1].

[1] See section 51(1AB) of the Act

Section 51(1AC) of the Act specifies that a 'valid' application is one "*that contains all relevant information required by the planning scheme applying to the land that is the subject of the application."*

Section 51A(3) of the Act outlines that the assessment timeframe commences on the day that the fee is paid for a valid application.

The application requirements for the TPS are specified under clause 6.1 of the State Planning Provisions (the SPPs). This includes a list of information that must accompany an application at clause 6.1.2 and other information at clause 6.1.3 that the planning authority may require depending on the nature of the use and development proposed in the application. A copy of the application requirements in clause 6.1 of the SPPs is provided in Attachment 1.

Determining that a development application is 'valid', along with the payment of fees, is important as this is the point when the statutory assessment timeframe (i.e. the assessment clock) commences.

Clause 6.1.2[2] was drafted with the intention of specifying the relevant information that was required to make a 'valid' application for the purposes section 51(1AC) of the Act. Clause 6.1.2 of the TPS states that:

> *An application must include:*
>
> *(a) a signed application form;*
>
> *(b) any written permission and declaration of notification required under s.52 of the Act and, if any document is signed by the delegate, a copy of the delegation;*
>
> *(c) details of the location of the proposed use or development;*
>
> *(d) a copy of the current certificate of title for all land to which the permit sought is to relate, including the title plan; and*
>
> *(e) a full description of the proposed use or development.*

Clause 6.1.3 of the TPS then specifies the information that the planning authority may require to allow it to assess compliance with the requirements (e.g. the relevant use and development standards) of the planning scheme. Section 54 of the Act specifically allows the planning authority to request additional information for the purposes of clause 6.1.3 of the TPS.

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[2] Clause 6.1.2 in the TPS is based on clause 8.1.2 in Planning Directive No. 1 which was contained in all interim planning schemes prior to the TPS coming into effect. Clause 8.1.2

It is in the applicant's best interests to provide all information that may be required in accordance with clause 6.1.3 of the TPS. It reduces the likelihood of an additional information requests during the assessment process. However, it was not intended as a measure of a 'valid' application.

Different interpretations for determining when a development application is 'valid' leads to uncertainty and inconsistency within the planning system. It could contribute to confusion regarding the commencement of assessment timeframes and the use of additional information request process under section 54 of the Act.

Suggestions have been made that clause 6.1.2 of the SPPs could be amended to clarify that it specifies the "relevant information required by the planning scheme" to be a valid application for the purposes of section 51(1AC) of the Act.

The following consultation questions seek to explore opportunities for improving determination of a valid application.

CONSULTATION QUESTIONS:

1) **Could improvements be made to the Act to help clarify the requirements for a 'valid' application? For example, could section 51A of the Act be improved to clarify the process for the payment of fees and the commencement of the statutory assessment timeframe?**

2) **Should clause 6.1.2 of the SPPs be amended to clarify that it specifies the minimum requirements for a 'valid' application for the purposes of the Act?**

3) **Is further guidance required on what an application must include to be a 'valid' application? If so, what guidance information would assist?**

4) **Are there any other improvements that could be made to the Application Requirements in clause 6.1 of the SPPs that could assist with the assessment process?**

3.2 Statutory assessment timeframes

Once a planning authority has received a valid application, and the fees have been paid, the statutory assessment clock commences. The assessment timeframe is 28 calendar days for the assessment of a permitted application[3] or 42 calendar days for a discretionary application[4]. The timeframes for discretionary applications involving a State heritage listed property may be extended to 56 days if the Tasmanian Heritage Council requires more time to consider the application. Applications that are assessed by the EPA as Level 2 activities have longer assessment timeframes.

[3] In accordance with section 58 of the Act.
[4] In accordance with section 57 of the Act.

Section 51A of the Act outlines the process for a planning authority demanding the payment of fees and the commencement of the statutory assessment clock. This section was included in the Act in 2020 to help clarify the commencement of the assessment process. A copy of section 51A of the Act is provided at Attachment 2.

There are various timeframes expressed in the Act that relate to the statutory assessment timeframes, including in other legislation related to TasWater, the Tasmanian Heritage Council, and the EPA. Some timeframes are expressed in calendar days and others as business days. Section 29 of the *Acts Interpretation Act 1931* also has requirements for calculating timeframes specified in legislation, including when the specified timeframe ends on a Sunday or public holiday.

Unless an extension of time has been sought and agreed between the applicant and the planning authority prior to the expiry date, an application that is not determined within the relevant assessment timeframe is subject to section 59 of the Act. Section 59(1) of the Act states that in these circumstances an application is "deemed to constitute a decision to grant a permit on conditions to be determined by the Appeal Tribunal" (Tasmanian Civil and Administrative Tribunal (TasCAT)),

The planning authority must within 7 days of the expiry of the statutory period give notice to the applicant, the Heritage Council (if involved), and any person who made a representation, that it has failed to determine the development application within the required timeframe. The applicant may apply to TasCAT to have the application determined. However, the planning authority can still make a decision on the development application at any time before an applicant applies to TasCAT.

If TasCAT is required to determine the application, they can either:

- grant a permit with or without conditions; or
- refuse to grant a permit if it is a discretionary application.

While Section 59(1) of the Act nominally states that a failure to determine an application within the statutory timeframe is a deemed approval, this is not entirely the case. TasCAT will consider the application afresh and may refuse a discretionary application.

Other functions of the assessment process must take place in accordance with the timeframes provided under the Act. Because a failure to perform these functions within certain timeframes has consequences for both the applicant and planning authority, knowing what day the assessment clock is at is critical to both parties.

The following consultation questions will help to understand how the assessment clock is managed and the way that that information is made available to the applicant. This will assist to identify issues and provide opportunity for potential improvement and consistencies across councils.

CONSULTATION QUESTIONS:

5) **What mechanisms do councils use to monitor the development application assessment 'clock' to ensure it is performing its statutory functions in accordance with the Act?**

6) **Can you identify situations where the applicant and the council have disagreed regarding assessment timeframe?**

7) **Are there any other improvements that could be made to the development application process that would make managing the assessment timeframes easier and more transparent?**

3.3 Request for additional information

Section 54 of the Act allows the planning authority to request additional information from the applicant where the application lacks the necessary information for the planning authority to undertake an assessment against the provisions of the planning scheme. A copy of section 54 of the Act is provided in Attachment 3 for information.

A request for further information must be made in writing to the applicant within 21 calendar days for a discretionary application, or 14 calendar days for a permitted application, from the day on which the planning authority receives an application. TasWater, the Tasmanian Heritage Council and the EPA may also request additional information via the planning authority within the specified timeframes.

The assessment clock stops from the date the applicant is notified of the request for additional information and does not recommence until the planning authority is satisfied that the request has been met. There are no limits on the number of additional information requests that can be made. However, only those requests that are made within the first 21 or 14 calendar days, respectively, for discretionary and permitted applications, result in the assessment clock stopping.

Section 54(3) of the Act requires that within eight business days of receiving a response to an additional information request, the planning authority must notify the applicant that the information provided does not satisfy the planning authority's request and that the applicant is to provide the additional information as requested. It is noted that there is no equivalent provision to notify the applicant that the additional information request has been satisfied. There is also no statutory requirement that the planning authority advise the applicant of the date that the assessment clock has recommenced.

A notification under section 54(3) of the Act often involves explaining why the planning authority is not satisfied with the information and clarification around what matters remain outstanding.

Section 54(2A) of the Act allows for the applicant to appeal a request for additional information. Where TasCAT determines that the planning authority ought to have been

satisfied with the information provided by the applicant, the assessment clock recommences 7 days after that determination.

The Act provides the framework for requesting additional information including a set process, the scope of what can be requested and a process for testing the request through TasCAT.

The following matters are fundamental considerations of the assessment process.

- The planning authority is bound to apply the planning scheme.
- In applying the planning scheme, the planning authority needs to have enough information to undertake an assessment of a development application in accordance with the planning scheme.
- It is the responsibility of the applicant to provide the planning authority with the necessary information to allow it to assess the development application in accordance with the planning scheme.
- The development application lapses if the applicant does not respond to the additional information request within 2 years, unless a longer timeframe has been agreed.
- If the planning authority makes a decision on application without the necessary information to make an informed assessment against the planning scheme, the planning authority runs the risk of its decision being difficult to defend in the event of an appeal to TasCAT.

There has been anecdotal evidence of misuse or criticism of the process that has caused frustration and delays. These matters include:

- Time delays caused by stopping the ‘clock’ are a result of applicants failing to provide the necessary information to a level of detail required by the planning authority to undertake an assessment against the relevant planning scheme provisions;
- Disagreement over the level of detail in the information required by the planning authority;
- Concerns with a planning authority making, or a perception of, multiple requests for additional information within the required timeframe;
- Planning authorities are asking for additional information outside the specified timeframe;
- Applicants are confusing the planning authority providing clarification of additional information already requested with a request for the provision of new information;

- Planning authorities are asking for additional information outside of what is required by the planning scheme;
- Requests for additional information is being used by the planning authority to unreasonably stall the determination of development applications;
- The planning authority should advise the applicant when the request for additional information has been satisfied, and the assessment clock has recommenced;
- The process already allows for checks and balances through the ability for an applicant to appeal an additional information request; and
- Appealing additional information requests are costly and add further delays.

The matters raised above identify an underlying tension between the requirements of the planning authority and expectations of applicants.

The following consultation questions are seeking examples where the process may have been misused to help establish the scope and extent of the issue. Comments are also invited on ways to improve efficiencies with requests for additional information and whether that could be achieved through legislation or providing education and advice to the sector.

CONSULTATION QUESTIONS:

8) Can you provide any examples where you believe the additional information process has been misused?

9) Is there scope to improve the process for a review of an additional information request or a response to an additional information request? If so, can you suggest how this might occur?

10) Should there be a limit on the number of additional information requests that can be made during the first 21 days and 14 days, respectively, for discretionary and permitted applications?

11) Is further clarity required between the additional information requests that can be made by the planning authority and that from TasWater, the Tasmanian Heritage Council, or the EPA?

12) Do councils collect data on the number of additional information requests that could be provided through a centralised data collection service use as the Council Consolidated Data Collection service?

13) Are there any other measures that could be adopted to improve the process for requesting and responding to additional information requests?

4.0 Next Steps

Responses on the targeted questions for consultation are welcomed, and on any other matters raised in this Position Paper or related to the additional information requests and the development application assessment process.

Written submissions addressing the consultation questions and any related matters are invited until 8 May 2026 by email to the State Planning Office: haveyoursay@stateplanning.tas.gov.au

Submission received on the Position Paper will provide evidence of the issues that will be further analysed. This will help provide a greater understanding of where the pressure points are in the system and what can be done to address them.

Attachment 1 – Clause 6.1 of the State Planning Provisions

6.1 Application Requirements

6.1.1 An application must be made for any use or development for which a permit is required under this planning scheme.

6.1.2 An application must include:

(a) a signed application form;

(b) any written permission and declaration of notification required under s.52 of the Act and, if any document is signed by the delegate, a copy of the delegation;

(c) details of the location of the proposed use or development;

(d) a copy of the current certificate of title for all land to which the permit sought is to relate, including the title plan; and

(e) a full description of the proposed use or development.

6.1.3 In addition to the information that is required by clause 6.1.2, a planning authority may, in order to enable it to consider an application, require such further or additional information as the planning authority considers necessary to satisfy it that the proposed use or development will comply with any relevant standards and purpose statements in the zone, codes or a specific area plan, applicable to the use or development including:

(a) any schedule of easements if listed in the folio of the title and appear on the plan, where applicable;

(b) a site analysis and site plan at a scale acceptable to the planning authority showing, where applicable:

(i) the existing and proposed use(s) on the site;

(ii) the boundaries and dimensions of the site;

(iii) topography including contours showing AHD levels and major site features;

(iv) natural drainage lines, watercourses and wetlands on or adjacent to the site;

(v) soil type;

(vi) vegetation types and distribution including any known threatened species, and trees and vegetation to be removed;

(vii) the location and capacity and connection point of any existing services and proposed services;

(viii) the location of easements on the site or connected to the site;

(ix) existing pedestrian and vehicle access to the site;

(x) the location of existing and proposed buildings on the site;

(xi) the location of existing adjoining properties, adjacent buildings and their uses;

(xii) any natural hazards that may affect use or development on the site;

(xiii) proposed roads, driveways, parking areas and footpaths within the site;

(xiv) any proposed open space, common space, or facilities on the site; and

(xv) proposed subdivision lot boundaries;

(c) where it is proposed to erect buildings, a detailed layout plan of the proposed buildings with dimensions at a scale of 1:100 or 1:200 as required by the planning authority showing, where applicable:

(i) the internal layout of each building on the site;

(ii) the private open space for each dwelling;

(iii) external storage spaces;

(iv) parking space location and layout;

(v) major elevations of every building to be erected;

(vi) the relationship of the elevations to existing ground level, showing any proposed cut or fill;

(vii) shadow diagrams of the proposed buildings and adjacent structures demonstrating the extent of shading of adjacent private open spaces and external windows of buildings on adjacent sites; and

(viii) materials and colours to be used on roofs and external walls.

Attachment 2 – Section 51A of the *Land Use Planning and Approvals Act 1993*

51A. Fees payable for application

(1) In this section –

relevant legislative instrument means –

(a) this Act or the Local Government Act 1993 ; or

(b) a regulation made under this Act or a by-law or regulation made under the Local Government Act 1993 ;

valid application for a permit means an application for a permit that is, in accordance with section 51(1AC) , a valid application for a permit for the purposes of section 51(1AB) .

(2) Despite section 86 , a planning authority is not entitled –

(a) to refuse to take an action in relation to determining whether or not an application for a permit is valid; or

(b) to refuse to accept a valid application for a permit –

on the ground that a fee, under a relevant legislative instrument, for an application for a permit has not been paid, unless –

(c) the planning authority has, before, or within 4 business days after, the day on which a person lodges, or attempts to lodge, with the planning authority, the application for the permit, demanded the payment of the fee; and

(d) the fee has not been paid within the 21-day period after the day on which the demand is made.

(3) If –

(a) the planning authority has demanded payment of a fee, under a relevant legislative instrument, for an application for a permit before, or within 4 business days after, the day on which a person lodges, or attempts to lodge, with the planning authority, the application for the permit; and

(b) the fee has been paid within the 21-day period after the day on which the demand is made –

the application, if it is a valid application, is taken for the purposes of this Act to have been received on the day on which the fee is paid.

(4) If the planning authority has not demanded payment of a fee, under a relevant legislative instrument, for an application for a permit before, or within 4 business days after, the day on which a person lodges, or attempts to lodge, with the planning authority, the application for the permit –

(a) the planning authority, despite section 86 , is not entitled to refuse to take any action in relation to the application for the permit; and

(b) the application, if it is a valid application, is taken for the purposes of this Act to have been received on the fifth business day after the day which the person lodges, or attempts to lodge, with the planning authority, the application for the permit.

Attachment 3 – Section 54 of the *Land Use Planning and Approvals Act 1993*

54. Additional information

(1) A planning authority that receives an application for a permit (other than a permit referred to in section 40T) may –

(a) if the permit sought is a discretionary permit, by notice in writing served on the applicant within the period of 21 days from the day on which it receives the application; or

(b) if the permit sought is not a discretionary permit, by notice in writing served on the applicant within the period of 14 days from the day on which it receives the application –

require the applicant to provide it with additional information before it considers the application.

(1A) If the period specified in subsection (1) includes any days on which the office of the planning authority is closed during normal business hours in that part of the State where the land subject to the application for a permit is situated, that period is to be extended by the number of those days.

(2) If the planning authority requires the applicant to provide it with additional information, the relevant period referred to in section 57(6)(b) or 58(2) does not run while the request for information has not been answered to the satisfaction of the planning authority.

(2AA) If additional information is not provided, in accordance with a request under subsection (1) , within 2 years, or a longer period agreed to by the applicant and the planning authority, after the request is made, the application for a permit, to which the request relates, lapses.

(2A) If the Appeals Tribunal determines that –

(a) a planning authority had, in good faith, required an applicant under subsection (1) or (3) to provide the authority with additional information; but

(b) the planning authority ought to have been satisfied with the information provided to the planning authority by the applicant before the requirement was served on the applicant –

the relevant period referred to in section 57(6)(b) or 58(2) does not run for the period beginning on the day on which the requirement was served on the applicant and ending at the end of the day that is 7 clear days after the day on which the determination was made by the Appeals Tribunal.

(3) The planning authority must, within 8 business days from the day it receives the additional information under subsection (1) , notify the applicant if the request for information has not been answered to its satisfaction and in that notification require the applicant to provide it with the additional information.

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