

Module 9 — Council as a Planning Authority

Narration script · Huon Valley Candidate and Councillor Knowledge Series

Slide 1 — Council as a Planning Authority (title slide)

Welcome to Module Nine of the Huon Valley Candidate and Councillor Knowledge Series.

This module is about the other hat you put on when you are elected. Under the Land Use Planning and Approvals Act 1993, a council is a planning authority — and every councillor automatically becomes a member of it. It is one of the most misunderstood parts of the role, and one of the easiest to get wrong.

Slide 2 — Before You Begin

This module is designed for prospective candidates, election candidates, councillors and community members.

You may pause at any time.

It covers what it means for a council to act as a planning authority, how that role differs from being a community representative, and where the limits of your discretion actually sit. This is general information, not legal advice.

Slide 3 — When a Council Is Not a Council

There is an old line about this: when is a council not a council? When it is a planning authority.

Under the Act, a council is a planning authority for its municipal area. You do not apply for the job, and you cannot decline it.

As a councillor, you represent the community. You weigh community views, you set direction through plans and policy, and your judgement is political in the proper sense of that word.

As a member of a planning authority, you are an impartial regulator. You apply the planning scheme. Community views count only to the extent the scheme makes them relevant. Your judgement is administrative, not political.

Same people, same room, often the same night. Different hat. Knowing which one you are wearing is most of the job.

Slide 4 — The Planning System

A quick map of the system you are operating in.

At the top sits the Resource Management and Planning System. Every function performed under the Act must further the objectives in Schedule 1. That is a legal obligation, not a preamble.

Below that sit the Tasmanian Planning Policies and the regional land use strategies.

Then the scheme. The State Planning Provisions are made by the Minister and are the same across the State: zones, codes, definitions, exemptions, administrative provisions. The Local Provisions Schedule is prepared by the council and says how those provisions apply here — zone and overlay maps, particular purpose zones, specific area plans, site-specific qualifications. Together they make up the planning scheme for your municipal area.

Slide 5 — Two Roles Inside the One Hat

Inside the planning authority role there are two distinct jobs.

The strategic job is where you shape the rules. Preparing the Local Provisions Schedule. Initiating amendments to it. Supporting or rejecting amendments that others propose. Keeping the scheme connected to Council's strategic plan, which Module Three covers.

The statutory job is where you apply the rules. Deciding individual applications against the scheme as it stands, exercising the discretions the scheme allows, and imposing the conditions it permits.

Confusing the two is the most common mistake councillors make in planning. The time to argue about what the rules should be is the strategic stage. By the time an application is in front of you, that argument is over.

Slide 6 — The Tasmanian Planning Commission

This is worth being very clear about, because it surprises people.

When it comes to changing the scheme, Council prepares and recommends. The Commission decides.

A request is made to Council, or Council initiates one itself. If Council supports it, the draft amendment goes on public exhibition. Any person may make a representation. Council considers those representations and reports to the Commission. The Commission usually holds a hearing, and then decides whether to approve the amendment.

So when Council resolves to support an amendment, it is not making law. It is sending the matter up with a recommendation. The decision is out of Council's hands — which is worth being able to explain to a community that thinks Council can simply rezone a paddock.

Slide 7 — What Reaches Council

The next surprise is how few applications you will actually see.

Section 6 allows a planning authority, by resolution, to delegate any of its functions or powers under the Act — other than the power of delegation itself — to a person employed by the authority. And despite a delegation, the planning authority may still exercise the function itself.

In practice, that means permitted applications, and discretionary applications that attracted no representations or up to two representations, are decided under delegation. That is the large majority of them.

What comes to Council is discretionary applications where three or more representations were received, any application the officer recommends be refused, anything outside the delegation, and anything the general manager chooses to refer up.

You will not see most applications. That is by design, it is lawful, and it is what allows the system to function within its statutory timeframes.

Slide 8 — The Planning Officer's Report

When a matter does come to Council, it arrives as a planning officer's report in the agenda.

It sets out the proposal and the class it falls into. The provisions of the scheme that apply. The discretions being exercised and the extent sought — a setback from a side boundary, for instance, and by how much. A summary of the representations. An assessment against each relevant standard. And a recommendation: approve with conditions, or refuse, and why.

This is qualified professional advice, and it is the foundation of a defensible decision. You are not obliged to follow it — but if you depart from it, you must be able to say why, by reference to the scheme. Module Four covers frank advice and what to do with it.

Slide 9 — Making the Decision

So the matter is before you. What governs the decision?

The decision must be based on the planning scheme. Community sentiment counts only to the extent the scheme makes it relevant — and sometimes it does, because some standards turn on amenity and impact. But it is the clause that lets it in, not the volume of the objection.

You must act with procedural fairness. Hear the matter properly before you decide it.

If you depart from the officer's recommendation, you must give reasons, and those reasons must be recorded in the minutes. They must be grounded in the scheme, not in feeling.

The plainest way to put it is this. You do not have the discretion to make a decision that does not align with the planning scheme.

Slide 10 — Lobbying and the Two Hats

Here is the scenario that catches people, drawn from the Good Governance Guide.

A councillor votes in favour of a major development that much of his community opposed. He had met constituents about it. He had chaired consultation sessions with the applicant. His constituents are furious — and he complied with the Act throughout.

What went wrong is not the vote. His constituents assumed being heard meant being followed, and nobody explained which role he was in until after the decision.

So: say which role you are in, at the time. Explain the two hats before the decision, not after it. Be careful with meetings, site visits and correspondence about live applications. And point people towards the representation process, because that is the input the Act actually recognises and requires you to consider.

You are obliged to consider your community's views. You are not permitted to decide on them.

Slide 11 — Change the Scheme, Not the Decision

Which raises the obvious question. What do you do if you think the scheme is allowing development that should not be allowed?

The answer is not to refuse an application that complies. That invites an appeal Council is likely to lose, at a cost Council will bear, and the development proceeds anyway — later, and more expensively.

The right lever is to seek a change to the Local Provisions Schedule. Initiate an amendment. Strengthen the link between the scheme and Council's strategic plan. Make the case to the Commission. And bring the community in at the strategic stage, where their input can actually shape the rules — and where it counts.

Slide 12 — An Open and Unprejudiced Mind

The Code of Conduct addresses this role directly. A councillor must bring an open and unprejudiced mind to all matters being decided in the course of the councillor's duties, including when making planning decisions as part of the council's role as a planning authority.

That has three practical consequences.

On prejudgement: do not announce a position before the report is in front of you, and do not commit your vote in advance. A mind visibly made up is a decision open to challenge.

On interests: pecuniary interests sit under Part 5 of the Local Government Act, other conflicts under the Code of Conduct. Declare before discussion begins. Planning is where these arise most often, because councillors own land and know the people who own the land next door.

And on your own applications: a councillor's personal dealings with the council, expressly including as a planning applicant, must not attract or appear to attract preferential treatment. Module Five covers this in depth.

Slide 13 — Timeframes, Appeals and Cost

Three practical realities.

First, timeframes. Council must decide within the prescribed timeframes unless the applicant agrees to an extension. If it does not, the application is deemed to be a decision to grant a permit — with the conditions determined by the Tribunal rather than by Council.

Second, appeals. The Tasmanian Civil and Administrative Tribunal determines appeals against planning authority decisions. Many are resolved by mediation. At hearing, the outcome turns on the scheme and on expert evidence from planners and engineers — not on the views of councillors.

Third, cost. Where Council fails to decide in time, it is likely to bear the costs of the appeal. There have been many cases where appeals have cost councils tens of thousands of dollars.

Delay is not a neutral option. Failing to decide is itself a decision, and it hands both the outcome and the bill to somebody else.

Slide 14 — Five Things to Remember

Five things worth remembering.

One. When you make a planning decision you are a regulator, not a representative.

Two. The planning scheme is the test — not community sentiment, and not your own view.

Three. Most applications never reach Council. That is by design, and it is lawful.

Four. If you depart from the officer's recommendation, give reasons based on the scheme, and record them.

Five. Council prepares and recommends scheme amendments. The Commission decides.

Thank you for watching.