

In the Matter of the Kangaroo Bay
Hotel Major Project

And

In the Matter of a Hearing under
s.60ZZE of the Land Use Planning and
Approvals Act 1993

OUTLINE OF SUBMISSION

1	Overview
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1.1	Chambroad Overseas Investment Australia Pty Ltd is the proponent, seeking a Major Project Permit (Permit) authorising what has been described in short as the Kangaroo Bay Hotel Major Project (Project).
1.2	The Project consists of the following elements: (a) 155 guest rooms, provided across 4 levels; (b) Guest amenities (wellness centre); (c) Two restaurants and a bar; (d) Four ground level commercial tenancy spaces (e.g. cafe's/restaurant/bar)); (e) Three function/conference rooms; (f) Onsite guest and public car parking; and (g) A network of publicly accessible
1.3	Following previous statutory processes, the Panel completed its Initial Assessment Report in accordance with s.60ZZA of the <i>Land Use Planning and Approvals Act 1993</i> (LUPA Act), notification has been completed and representations under s.60ZZD have been received.
1.4	The current process is a hearing in respect of the Project; LUPA Act, s.60ZZE.
1.5	At the conclusion of the hearing, and following its deliberations, the Panel is required to either grant or refuse to grant the Permit; LUPA Act, s.60ZZM.
1.6	In reaching its decision, the Panel must: (a) have regard to the matters specified in s.60ZM(6); (b) consider any representations made under s.60ZZD(1) in relation to the major project;

Filed on behalf of the Proponent, *Chambroad Overseas Investment Australia Pty Ltd*:

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- (c) consider any matters raised in hearings in relation to the major project; and
 - (d) consider all final advices; LUPA Act, s.60ZZM(1).
- 1.7 The Panel may only grant the Permit if it is satisfied that the Project is an effective and appropriate use and development of the land to which the Project relates; LUPA Act, s.60ZZM(2).
- 1.8 The Panel must also be satisfied that:
- (a) the assessment criteria in relation to the project have been satisfied;
 - (b) the project would be consistent with furthering the objectives specified in Schedule 1 ;
 - (c) the project would not be in contravention of a State Policy;
 - (d) the project would not be in contravention of the TPPs;
 - (e) the project would not be inconsistent with a regional land use strategy that applies to the land on which the project is to be situated; LUPA Act, s.60ZZM(4).¹
- 1.9 The Assessment Criteria provide essential guidance on whether the Project is an effective and appropriate use and development of the Project Site. They represent the planning matters that enable the assessment of this statutory test.²
- 1.10 These submissions are provided to address the issues and principal points in contention throughout the hearing.³
- 1.11 The detailed responses to the relevant matters are contained in the reports previously filed by and on behalf of the Proponent as set out below and we continue to rely upon that material:
- (a) Major Project Impact Statement;
 - (b) Representation 18 – Chambroad Australia
 - (c) Hearing Submissions including that dated 27 July 2026
- 1.12 The Major Project Impact Statement provides a comprehensive analysis of the Project against each of the relevant considerations in s.60ZZM(4) of the LUPA Act.
- 1.13 Matters raised within the Initial Assessment Report have been addressed by the proponent’s representation and matters arising from the Representations have been addressed by the proponent throughout the hearing, including in written form.
- 1.14 In our submission, the Panel should find that the Project is an effective and appropriate use and development of the land.

2 Preceding Process

- 2.1 The hearing is the culmination of a process commenced in August 2024, when the proponent submitted a major project proposal to the Minister; LUPA Act, s.60E.
- 2.2 The Minister declared the Project to be a major project in October 2024; s.60O
- 2.3 The Panel was established under s.60V of the LUPA Act in November 2024.
- 2.4 TasWater is a participating regulator under s.60ZB of the LUPA Act.

¹ Sub-clauses (f) and (g) omitted.

² See LUPA Act, s.60ZM(5)

³ *Kain v Glamorgan/Spring Bay Council & Ors* [1996] TASSC 28; (1996) 90 LGRA 326 at p.333

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- 2.5 Draft assessment criteria were prepared and subject to exhibition and submissions in January to February 2025; ss.60ZJ-60ZL.
- 2.6 Assessment criteria were determined in February 2025; s.60ZM.
- 2.7 Thereafter, the proponent prepared the Major Impact Assessment Statement, and the Panel prepared the Initial Assessment Report in May 2026; LUPA Act s.60ZZA
- 2.8 The Major Project has been subject to public notice under s.60ZZC of the LUPA Act and representations made under s.60ZZD.
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3 Hearing Process

- 3.1 The hearing is a hearing in relation to the Project. That hearing is permitted to relate to the representations or the Project generally; LUPA Act, s.60ZZE.
- 3.2 Notices of hearing do not disclose that the hearing is limited to a hearing in relation to the representations or the Project generally. The Proponent has proceeded on the basis that the hearing relates to both permitted facets.
- 3.3 The hearing is conducted by the Development Assessment Panel as established under s.60V of the LUPA Act.
- 3.4 S.60X governs the powers and procedures of the Panel. Key among these is that the Panel is able to determine its own procedures for the conduct of proceedings such as this hearing. Part 3 of the *Tasmanian Planning Commission Act 1997 (Commission Act)* applies.
- 3.5 While the Panel is empowered to approve procedures for the conduct of the proceedings, it is understood that none have been approved.
- 3.6 The hearing conducted by the Panel is largely an inquisitorial process. As much is clear from s.10(b) of the *Commission Act* which provides that:
- The Commission –*
- (i) *may inform itself about any matter in any way it thinks fit; and*
 - (ii) *may receive oral or written evidence; and*
 - (iii) *may consult with such persons as it thinks fit; and*
 - (iv) *is not bound to act in a formal manner; and*
 - (v) *must observe the rules of natural justice; and*
 - (vi) *is not bound by the rules of evidence.*

See also *R v Davis*⁴ which recognises that, at times, such hearings can take on elements of the adversarial tradition.

- 3.7 In accordance with ss.10(b)(ii) and 12 of the *Commission Act* the proponent relies upon the written reports provided as part of the Major Project Impact Statement, its Representation, and the further evidence at hearing.
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4 The Role of the Tasmanian Planning Scheme

- 4.1 The only witness examined on behalf of the Proponent was Mr Petrusma. Mr Petrusma is an expert in traffic and transport engineering and is properly accepted as an expert witness.
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⁴ (1999) 102 LGERA 88; [1999] TASSC 22 at [22], [27]-[29]. While the Panel process is largely inquisitorial, it can take on an adversarial character. This arises where there is direct conflict between the interests of the proponent and any representor – the proponent seeking to Permit in promotion of its own interests and a representor opposed to that outcome in defense of its own position. In this case, any elements of the hearing that take on this character are limited to those in relation to parking and access.

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- 4.2 Questions put to Mr Petrusma, and an area in dispute between the experts, concerned the calculation of car parking demand adopting Table C2.1 of the Tasmanian Planning Scheme.⁵
- 4.3 As observed by the Panel during hearing, the Assessment Criteria provide the basis for the assessment in this matter, and not the standards or provisions of the Tasmanian Planning Scheme.
- 4.4 However, the following must also be observed concerning the role and relevance of the Scheme:
- (a) Specific direction is given that the Panel may have regard to the Parking and Transport Code under the Scheme in connection with Assessment Criteria 2.1.
 - (b) Within the Parking and Transport Code, cl.C2.5.1 provides an expression of policy in respect of the supply of car parking spaces to particular uses in Tasmania. Table C2.1 provides the mechanism to be adopted which results in parking numbers being deemed to meet the reasonable needs of a use.
 - (c) In its assessment of the Project, the Panel is required to have regard to:
 - (i) The Tasmanian Planning Scheme – Clarence (**Scheme**) being the relevant planning scheme that applies to the land; and
 - (ii) If the carrying out of the Project would be inconsistent with the provisions of that Scheme, the merit of any changes to the Scheme.

These being the matters specified in s.60 ZM(6) of the LUPA Act.

- 4.5 In our submission, the Scheme provides fundamental guidance to the calculation of the number of parking spaces required and care should be exercised where the Panel is invited to find that the parking demand associated with the development is significantly greater than that which would be required in satisfaction of the Scheme.

5 Easements and Private Land

- 5.1 One issue that arises in these proceedings is that the Project Site is subject to a number of easements. Those easements take the form of a right of way in favour of the land to the south and rights of access.
- 5.2 Where rights of access exist over land, it is common to speak of the benefited and the burdened land and dominant and servient tenements. There are two separate interests in the affected land. One interest is that of the owner. The other is that of the owner or individual exercising their right of access or passage over the land.
- 5.3 Neither interest usurps the other and, for both, a need for reasonable use applies. Each of the dominant and servient parties must exercise a degree of restraint in relation to the site of the easement. Neither may exercise his or her rights in a way that unreasonably interferes with the enjoyment of the other's rights; *Hare v van Brugge*.⁶

⁵ Mr Petrusma was examined during the hearing as to the assessment of parking supply under the Scheme. To the extent necessary, we refer to *Alfeldi v Glamorgan Spring Bay Council* [2024] TASCAT 69 at [45]-[56], which provides a summary of the obligation concerning the examination of experts where submissions as to the use of their evidence are to be made.

⁶ (2013) 84 NSWLR 41; [2013] NSWCA 74 at [24]-[25].

- 5.4 When dealing with easements, a substantial interference with the right of way can be restrained. However, only reasonable access is required and not a wholly unobstructed right of access; see *Stewart v Cooper*.⁷
- 5.5 This is relevant in the context of the present proposal insofar as the right of way and right of access through the centre of the Project Site will be restricted in the available height. Such restriction is shown on the evidence to not preclude access for all relevant users.
- 5.6 Easements are private controls that apply to land, separate and independent of planning.
- 5.7 While a Permit issued in consequence of the current process would provide public controls that reflect planning policy, private controls such as easements reflect the individual wishes of owners.
- 5.8 The Council has raised the fact that the Project contemplates arrangements for access through the Project Site that are inconsistent with existing easements. In some areas, spatially, that is correct. This is not however a matter for the Panel.
- 5.9 We refer to the decision of *Gore v Central Highlands Council & Anor*⁸ which concerned an application to expand the issues in dispute in a planning appeal to include an argument as to inconsistency with a restrictive covenant under a Part 5 Agreement. That application was refused by the Tribunal on the basis that such grounds lacked merit. The Tribunal reasoned that it was possible for the Tribunal to grant a planning permit that was inconsistent with the restrictive covenant and that avenues to amend covenants arose external to the Tribunal process.
- 5.10 The same is true of the present easements and the Panel's process.

6 Day 1 – Traffic and Parking

- 6.1 Day 1 focused upon the adequacy of the proposed parking supply and functioning of the car park. This included the role of the Project Site in providing access to the land to the south, restrictions on access to some parking spaces and turning movements associated with provision of a boom-gate area, and conflict in movements between users.
- 6.2 Car parking in both number and accessibility is required, under Assessment Criteria 2.1, to meet the needs of the proposed uses.⁹

Car Parking Numbers

- 6.3 As noted above, the Scheme articulates a policy position for the calculation of car parking spaces that are deemed to meet the reasonable needs of use. It provides a starting point, not an end point.
- 6.4 Under the Scheme the following calculations apply:

⁷ [1986] TASSC 3 at [17].

⁸ [2023] TASCAT 177

⁹ Assessment Criteria 2.1:

Car parking and access is:

- (a) provided to meet the needs of the proposed uses, including adequate access for goods delivery and collection;
- (b) designed and constructed to be convenient, safe, and efficient, including associated areas for access, manoeuvring and circulation;
- (c) designed and sited to not have a significant adverse impact on the streetscape; and
- (d) designed to achieve public vehicular access and connectivity between the Marina and Kangaroo Bay Drive, within the project site;

to an acceptable level.

- (a) Between 39-78 parking spaces for the visitor accommodation use. This includes both the restaurants and bars other than the commercial tenancies as uses that are directly associated with and subservient to a 4.5-star hotel.¹⁰ The difference in number is driven by uncertainty as to the number of beds within each hotel room and an assumption by Mr Petrusma that each room will include two beds that are able to be used in different configurations.
- (b) Between 27 and 52 parking spaces for the commercial tenancies. The difference in number is driven by the application of different rates for a café tenancy as compared to a restaurant tenancy.
- (c) 47 parking spaces for the function centre.

6.5 This results in a total demand of between 107-177 parking spaces.

6.6 It is agreed between the experts, Mr Petrusma and Ms Ramm, that the hotel guests would require 39 parking spaces.

6.7 Differences in approaches to the calculation of demand mean that it is not possible to offer direct comparison in relation to the food and beverage aspects of the Project. Mr Petrusma has calculated a demand for 79 spaces including the hotel restaurants within this equation. He could not identify any difference in parking demand between café and restaurant uses.

6.8 Parking demand associated with the function centre is expected to fluctuate depending on the size of the different events and ranges between 42-123 spaces.

6.9 In respect of parking associated with all food and beverage, and the function centre uses, except for the largest use of function spaces, Ms Ramm's assessment of parking demand is approximately ½ that of Mr Petrusma.

6.10 Mr Petrusma and Ms Ramm adopt different approaches to the role of mode share in reducing parking demand associated with the Project and different assumptions concerning the capacity for aspects of the Project to serve the existing users of the immediate area. In short, Mr Petrusma discounts parking demand to a limited extent to reflect a 70% mode share for private vehicles in line with broader transport data and advises that this approach includes the extent to which the uses will serve existing users in the area as opposed to drawing in new patronage.

6.11 Ms Ramm places greater weight on these factors as reducing parking demand and recommends operational requirements to ensure that large functions are managed to reflect reliance upon public transport such as the ferry service for daytime functions and buses for large evening events.

6.12 The experts generally agreed that, during the week, there is limited parking available in the immediate area which could be relied upon where additional demand arises that exceeds the parking supply on the Project Site. This extends to Saturdays. Spare supply is available during the evening and on Sundays.

6.13 In our submission, the proposed parking supply meets the reasonable needs of the use.

6.14 Ms Ramm's approach reflects the direction of the Project and the Project Site in encouraging alternate modes of transport¹¹ through providing a reduced parking supply. This is consistent with the location of the proposal in the built-up and highly pedestrianised Bellerive/Kangaroo Bay environment and the accessibility of the site to public transport, most importantly including the ferry terminal.

¹⁰ See Planning Compliance Statement at 2.1.3

¹¹ Assessment Criteria 2.2(b).

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- 6.15 It is acknowledged that large functions will need to be managed to ensure appropriate reliance upon public transport (i.e. ferry service) or private bus services. However, while these form part of the mix of uses, they will not be daily occurrences. Parking supply should not be calculated to reflect these absolute peaks.
 - 6.16 Turning then the design and operation of the proposed car park. A revised parking plan has been prepared.
 - 6.17 This provides 89 parking spaces and increases the proportion of parking spaces that are generally accessible for users of the Site (i.e. not located behind a gated area).
 - 6.18 Of the 89 parking spaces, 50 are generally accessible. This is a shortfall of 30 spaces when measured against the lower end of the parking rates for non-hotel uses as derived from the Tasmanian Planning Scheme. In our submission, it is this lower end of the range that is appropriate because it reflects the fact that there is no material difference between the parking required for a café as opposed to a restaurant use.
 - 6.19 The shortfall is appropriate when considered alongside the Assessment Criteria of encouraging alternate modes of transport.
 - 6.20 In the event that the Panel considers that there is a shortfall in parking supplied that presents a challenge to the capacity of the parking supply to meet the reasonable needs of the use, then we submit that it is appropriate to manage that shortfall by way of a condition that requires a financial contribution to enable the Council to supply the parking offsite to the benefit of the development. A suitable project has been identified on the adjoining Site.
 - 6.21 In our submission, reflecting the extent of any shortfall, the importance of encouraging alternative modes of transport and the available parking in the proposed facility adjoining the Site, any contribution should be limited to in the order of 20 spaces.

Passage through the Car Park

- 6.22 Other concerns raised relate to the potential for conflict between users of the access through to the Marina, parking vehicles, pedestrians and bikes within the car park and loading movements.
- 6.23 In our submission, the car park continues to meet the Assessment Criteria.
- 6.24 As identified by Ms Ramm, as a car park it will appear as such to users who will drive to the conditions. It is a low-speed environment. Pedestrian and recreational cycling movements are diverted to the edge of the site around the foreshore using the proposed shared path. This will become the primary passage through the Project Site. Some users will still utilise access through the car park, though not at high volumes.
- 6.25 Passage through the car park by cyclists is not intended to facilitate high-speed travel and the design treatment, without a dedicated cycleway through this area, is intended to dissuade such use without preventing transit.

Use of Loading Bays

- 6.26 Use of the loading bay can be managed operationally, though it is anticipated that the timing of collections and deliveries will be outside of peak periods to avoid disruption to guests which will reduce the likelihood of conflict arising.

7 Day 2 (morning) – Visual and Landscape Effects

- 7.1 Day 2 focused on the proposed built form of the Project.

- 7.2 Mr Butcher has provided an overview of his assessment methodology to assist in understanding how one uses the visual impact assessment to analyse the bulk, scale and form of the Project in its context. An overall appreciation for how the Project will sit within this context is then to be understood from overlaying an understanding of how the materials and landscaping will integrate the built form into its surrounds.
- 7.3 The built form is experienced differently as one moves through the area. Individual static representations of that built form should be used as a tool to guide the assessment of the overall experience of the building, though cannot be used in isolation from that broader understanding.
- 7.4 Representors presented their personal opinions on how the Project will impact their experiences of the environment, including how the Project is experienced from their homes.
- 7.5 It is not doubted that the Project introduces a new built form into the environment. It is a change from the status quo.
- 7.6 It is not doubted that the most affected residential receivers are the two residents on Cambridge Road. One of those representors attended the hearing and addressed the panel concerning the impact from their home.
- 7.7 A significant personal impact for one of the representors is undoubtedly that the Project will replace their current view of Mount Wellington/kunanyi and the timtumili minanya/River Derwent. This is however a borrowed view over private land that has long been planned for development. There is no right to a view; *Lardner & Ors v Mornington Peninsula SC*.¹² It is acknowledged that views form part of the amenity of the affected dwelling. The Assessment Criteria have not called for an assessment of impacts upon amenity.
- 7.8 Views from the public domain have significantly informed the design of the Project. While the building will present as a new element and interrupt such views from discrete locations, when viewed by people moving around and through both the area and the Site, visual connection to timtumili minanya/River Derwent and kunanyi/Mount Wellington is maintained and enhanced.
- 7.9 The proposed built form is required to be assessed under the Assessment Criteria. The key criterion relevant to the representors' concern is likely that under 1.3(a) which requires that the design achieve a scale and height appropriate to the existing and desired future character of the surrounding area and landscape.¹³
- 7.10 Criterion 1.2(b) may also be considered which seeks siting to achieve lower and lightweight/visually permeable structures closer to the waterfront.¹⁴

¹² [2003] VCAT 238.

¹³ 1.3 Built Form and Architectural Design

The design of the proposed development is to achieve a scale and height appropriate to the existing or desired future character of the surrounding area and landscape setting.

The scale, height and architectural design of the proposed development is to:

- (a) allow for a visual connection with the timtumili minanya/River Derwent and kunanyi/Mount Wellington; and
 - (b) respond and relate to the waterside location and maritime activities, being reflected in the colours and materials of the built and spatial form;
- to an acceptable level.

¹⁴ 1.2 Context and Landscape

The proposed development is to:

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- 7.11 It is submitted that the Project satisfies the above criteria.
- 7.12 We continue to rely upon the written analysis. However, during the hearing the Council introduced the relevance of the approved development upon Kangaroo Drive. Though introduced by the Council for a different purpose, the approved development provides further context for the future character of the area.
- 7.13 The approved development form includes 4-storey construction located to the north of the Project Site.
- 7.14 Questions raised by the Panel during the hearing related to the Project response to 1.2(b) to provide lower and lightweight/visually permeable structures closer to the waterfront.
- 7.15 In our submission, the Project responds to this criterion by setting the building back from the water's edge, with the structures offered in this space being those that facilitate public access and viewing of the waterfront.
- 7.16 The main building itself is then both physically and visually permeable in the manner discussed in the supporting reports, with glass facades further aiding in the satisfaction of this criterion.

8 Day 2 (afternoon) – Public Space and Cycling Paths

- 8.1 The afternoon session involved consideration of the landscaping and design approach for the public realm.
- 8.2 Two significant focuses arose, both relating to the adequacy of cycle paths through the Project Site.
- 8.3 The approach of the proponent has been to provide a 3.5m shared path around the waterfront, consistent with the adjacent developed cycleway.
- 8.4 A 3.5m path is appropriate, having regard to the desire not to encourage high speed travel through the Project Site.
- 8.5 Council has expressed a preference for a 4m wide shared path and draws attention to the Cycling Infrastructure Guidelines. CI.4.3.8 of the Guideline identifies a preferred width of 4m for shared paths.
- 8.6 In our submission, the proposed 3.5m pathway is sufficient for the intended recreational users of the path. It is not an environment in which high speed cycling activity is encouraged. The design of the path is directed to this end.
- 8.7 A cycling path through the centre of the Project Site is retained and may be adopted by cyclists seeking a direct route from the adjoining land to Kangaroo Bay Drive. Such cyclists may choose to use the 2m footpath provided or the parking circulation roadway (i.e. driveway through the Project Site).

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- (a) be of a design that responds and contributes to its context and the surrounding landscape through articulation, siting, materials, and colours;
 - (b) be sited to give effect to the design principles of the Kangaroo Bay UDS having lower and lightweight/visually permeable structures closer to the waterfront; and
 - (c) provide physically and visually clear pedestrian connections between Kangaroo Bay Drive and the Village, consistent with the intent of the Kangaroo Bay UDS;
- to an acceptable level.

- 8.8 In recognition of the nature of the users, and the intended use of this facility, it is not proposed that a dedicated shared or cycle path is provided. Access through the Project Site in this location is facilitated but not encouraged.

9 Day 3 (morning) – Aboriginal Heritage

- 9.1 Day 3 commenced with a presentation from Mr Hellawell summarising the response to the Project to cultural heritage considerations; Assessment Criterion 4.1.
- 9.2 The Project is recognised to be sited on reclaimed land that does not represent the original foreshore or waterfront for the area.
- 9.3 The approach has been one founded on community consultation and which recognises the cultural landscape in which the Project Site sits.
- 9.4 We rely upon the approach as articulated by Mr Hellawell and set out in the proponent's representation. To secure those commitments, a condition has been proposed to enable the development of a cultural heritage engagement and implementation plan and for the outcomes of that plan to then inform the further development of the landscape and signage plans.
- 9.5 Mr Hellawell further identified a suggestion that had arisen for cultural practices to be implemented as early as construction phases, and this has led to the construction management plan likewise linking to this.

10 Day 3 (morning) – Hazards

- 10.1 A detailed discussion of the hazards was facilitated through the hearing. This included coastal hazards, stormwater/flooding and fire.
- 10.2 Matters of a technical nature were raised in the representations, particularly that from the Council. These matters have been addressed in the Representation provided on behalf of the Proponent. No further issue was taken by the Council at the hearing.
- 10.3 The Proponent also made Mr Pitt from Noise Vibration Consulting available. This facilitated a discussion of the noise impacts associated with the Project. Noise impacts are relevant under Assessment Criterion 1.1 which requires that significant adverse effects on amenity are avoided or minimised.¹⁵
- 10.4 The design of the Project is such that noise emissions are shielded by the built form and all have been comprehensively tested. The result is that the only potential for an impact that may meet the threshold of being significant is that associated with guests leaving late night functions.
- 10.5 While perhaps cliché, no Permit constitutes a right to pollute¹⁶ and the ongoing operation of the Project Site can be managed in the unlikely event that unanticipated adverse impacts arise.
- 10.6 In our submission, all noise impacts associated with the Project, not already addressed through design, are able to be addressed through operational controls. Conditions have been proposed to facilitate this with the onus placed on the operator to ensure ongoing compliance.

¹⁵ We proceed on the basis that minimising impacts does not require their elimination but instead that such impacts are reduced to an acceptable level. A contextual assessment is required.

¹⁶ *Gard v Gibsons Ltd* [2004] TASSC 108; (2004) 138 LGERA 157; (2004) 13 Tas R 169.

11 Day 3 (afternoon) – Activation

- 11.1 Mr Gartrell addressed the Panel on the Project response to Assessment Criterion 1.1 and how activation of publicly accessible spaces on the Site was achieved.
- 11.2 It is observed that it is the proposed use that is required to provide for activation. The use is wholistically described as a hotel and is directed to achieve a 4.5-star rating and thus offers facilities consistent with this.
- 11.3 Looking at the proposed use in a more finely grained detail, the use comprises various components, with activation of public areas to be facilitated through the provision of public facilities. These include passive measures such as boardwalks, viewing platforms, seats and similar recreational space along the water's edge and within the Green Plaza, interconnectivity with adjoining recreational tracks along the foreshore, and connectivity with new commercial uses to invite the public into the area.
- 11.4 The uses within the commercial tenancies provide an element of activation.
- 11.5 The evidence of Mr Gartrell is that the proposed uses comprise an appropriate mix to deliver the necessary activation to the area.
- 11.6 The Panel has enquired as to the potential for other uses, such as retail. The Proponent supports the inclusion of alternate uses and has provided a draft condition to facilitate this if it is required by the Panel.

12 Day 3 (afternoon) – Procedural and Economics

- 12.1 Discussion of procedural elements principally focused upon the representation from the Council.
- 12.2 Detailed submissions were made to facilitate discussion at the time to alleviate the need for written submissions.
- 12.3 Insofar as this session was further scheduled to address economic considerations, a representative of the Office of Coordinator General attended the session. Indication was given that the representor rests on the content of the representation.
- 12.4 Economic considerations are not made relevant by the Assessment Criteria. The only relevance of such matters is the extent to which the Panel is required to be satisfied that the Project would be consistent with furthering the objectives in Schedule 1 of the LUPA Act, which includes the facilitation of economic development.

13 Irrelevant matters

- 13.1 Representors raised issue with:
- (a) the adequacy of consultation;
 - (b) current proceedings in the Supreme Court concerning a dispute as to ownership/contractual performance; and
 - (c) delay in development of the Site.
- 13.2 Each of these matters is irrelevant to the statutory task under s.60ZZM of the LUPA Act.
- 13.3 Criticisms made of the proponent's expert concerning undertaking noise studies were raised during the hearing. These were not further addressed by the proponent on advice by the Panel during hearing.

14 Conditions

14.1 The Proponent has delivered conditions that are developed in response to the Panel's and Council's feedback. In the absence of having seen any response from the Council, submissions will be made orally to the extent that they are required.

14.2 We raise the following points in relation to the submissions as filed.

14.3 The draft conditions are proposed in accordance with the formulation for validity from McHugh J in *Planning Commission (WA) v Temwood Holdings Pty Ltd (Temwood)*:¹⁷

A condition attached to a grant of planning permission will not be valid therefore unless:

1. *The condition is for a planning purpose and not for any ulterior purpose. A planning purpose is one that implements a planning policy whose scope is ascertained by reference to the legislation that confers planning functions on the authority, not by reference to some preconceived general notion of what constitutes planning.*
2. *The condition reasonably and fairly relates to the development permitted.*
3. *The condition is not so unreasonable that no reasonable planning authority could have imposed it.*

14.4 As further stated in *Reid v Western Australian Planning Commission*:¹⁸

Those principles require the establishment of a connection or relationship between the planning purpose for which the condition has been imposed, and the likely or possible consequences of the proposed subdivision. That connection or relationship must be established as a matter of fact. A relevant connection or relationship will not be established merely because the application for subdivision approval provides an opportunity or occasion to impose a condition in the furtherance of a proper planning purpose. Rather, the relevant connection or relationship must be between the planning purpose to be served by the condition and the likely or possible consequences of the proposed subdivision - such as a need for public open space, or a foreshore reserve, or improved road access as a consequence of residential subdivision and development.

14.5 While that case involved subdivision, the same principle applies for other forms of development.

14.6 In the present case, conditions formerly proposed by the Council and removed from the draft we have provided do not meet this test. For example:

- (a) The Project does not propose works within the Road Reserve and therefore a condition regulating such work is not reasonably related to the development.
- (b) Evidence has not established that noise emissions associated with bin collection or other commercial vehicle movements gives rise to an unreasonable impact, in fact the opposite is true, and therefore a condition regulating the timing of such movements lacks proper foundation.
- (c) No proper planning purpose is identified which would give rise to the need for a Terrestrial and Avian natural values assessment, indeed the Assessment Criteria do not make such matters relevant.

¹⁷ [2004] HCA 63; 221 CLR 30 at [57].

¹⁸ [2016] WASCA 181 at [37].

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- 14.7 We seek to specifically address conditions concerning the creation of easements and cash in lieu of parking as matters raised by the Panel.

Easements

- 14.8 It was suggested during the hearing that the Panel could impose a condition requiring the creation of easements over areas of the Project Site intended for public access.
- 14.9 We have found no authority to suggest that such a condition would be precluded.
- 14.10 However, the creation of an easement in gross (i.e. a right of access over the shared path and boardwalk/through the Project Site) and a right of way (i.e. in favour of the adjoining land) would each require consent from the Council.¹⁹
- 14.11 In the absence of subdivision, an easement is created by Transfer between a Dominant and Servient Tenement. A Transfer to be held in gross, is largely the same.
- 14.12 Both instances require the 'Transferee' and the 'Transferor' to sign a certification on the Transfer form, either as a self-represented party or through their representative subscriber.
- 14.13 Prior to 1 September 2026, a Transfer between a Dominant and Servient Tenement requires production of both titles, a transfer in gross would only require production of the Servient Tenement title. Following the removal of Certificates of Title (from 1 September 2026), the production of title process will no longer be relevant.
- 14.14 Council's representation suggests that their participation in this process may not be forthcoming.
- 14.15 The draft conditions propose a suite of conditions that are aimed at facilitating public access over and use of the Project Site in the nominated areas. These conditions are drafted in the alternative to the imposition of a requirement for new easements.
- 14.16 If the Panel prefers provision for an easement, an alternate form of the condition is provided to facilitate this.

Cash in lieu of parking

- 14.17 It is open to the Panel to require a contribution towards the development of off-site parking facilities if it is found that there is a shortfall in parking and this is appropriately remedied through such a contribution towards public facilities.
- 14.18 In imposing such a condition, the Panel must not rely upon the Council Car Parking Policy as a source of power,²⁰ however, may find that the approach articulated by the policy represents an appropriate methodology for the calculation of any contribution.
- 14.19 *DOMA Pty Ltd v The City of Hobart*²¹ is often cited as authority for the validity of conditions requiring a contribution towards a shortfall in parking. It was discussed during the hearing to some extent. DOMA is not a case of general application, it being concerned with a claim seeking repayment after the fact and offering 3 judgments with 3 different sets of reasoning. However, it does provide some useful guidance and stands for the proposition that it is necessary to identify the area to be benefited by the contribution sought such that the necessary nexus between the contribution and its expenditure can be drawn. This is consistent with the second limb from the test articulated in *Temwood*. A level of generality is permissible.

¹⁹ It is understood that the Council is to become the owner of the land to the south.

²⁰ *Van Beelan v Kingborough Council* [2010] TASRMAT 245.

²¹ [1983] Tas R 132.

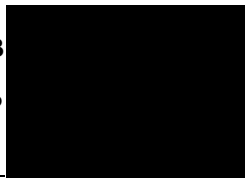
- 14.20 In some cases, it may be necessary to identify a particular project towards which funds are to be expended and costs may be calculated. Such considerations affect the third limb from the test articulated in Temwood.
- 14.21 In this case, no particular project is identified and, in the alternative, the Council points to its policy as a fair basis upon which the costs for future development are apportioned. It is open to the Panel to adopt this approach.

15 Conclusion

- 15.1 The Major Project Impact Statement provides a comprehensive analysis of the Project against each of the relevant considerations in s.60ZZM(4) of the LUPA Act.
- 15.2 Matters raised within the Initial Assessment Report have been addressed by the proponent's representation. Matters arising from the Representations and as raised by the Panel have been addressed by the proponent throughout the hearing, including in written form.
- 15.3 In our submission the Panel should find that the Project is an effective and appropriate use and development of the land.
- 15.4 To a significant degree the Assessment Criteria inform this assessment.²² These are coupled with the remaining considerations under s.60ZZM(4) of the LUPA Act.
- 15.5 The Project represents a successful planned outcome for the Project Site that delivers a hotel consistent with the long-standing vision for the area.
- 15.6 In our submission, the statutory criteria should be found to be satisfied and a permit granted enabling the Project to proceed.

Dated this 24th day of August 2026.

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²²

See LUPA Act, s.60ZM(5).