



Environmental Defenders Office

Enforcing Planning Laws in lutruwita/Tasmania

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While every effort has been made to ensure the information is accurate, the EDO does not accept any responsibility for any loss or damage resulting from any error in this factsheet or use of this work.

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What is this factsheet about?

This factsheet provides information about how a person can enforce planning laws in Tasmania.

It will be useful for anyone who wants to get an understanding of the options to seek the enforcement of planning laws and permits, including through civil enforcement orders by the Tasmanian Civil and Administrative Tribunal (**TASCAT**).

Outline

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Planning schemes and permits are legally enforceable

In Tasmania, planning schemes regulate the use, development, protection, or conservation of land throughout Tasmania. They do this by requiring certain land uses and developments to have a planning permit issued by the relevant planning authority (local council) or prohibiting those uses. They also provide for the lawful continuation of existing uses, and the exemption of the need for a permit for certain developments or uses.

Under the *Land Use Planning and Approvals Act 1993* (**LUPA Act**), planning schemes are binding on all members of the community, State Government agencies and public authorities (unless specifically excepted).

This means that anyone who is using or developing land must comply with the terms of the applicable planning scheme and permits.

This factsheet outlines steps you can take if you believe that a person is not complying with the requirements of a planning scheme or permit in the development or use of land.

Does the development or use comply with planning laws?

Ask the local council for information

If you suspect that someone might be undertaking a development or use of land without appropriate permit(s) or in contravention of a permit, you can ask the local council responsible for the area where the land is situated for information about what planning scheme applies to the land and what developments or uses are permitted on the land.

NB: The local council may ask you to lodge a Right to Information application before it can provide you with certain information about particular permits that apply to land.

Read: [Factsheet – Accessing Government Information in lutruwita/Tasmania](#)

Depending on the council, you may also be able to find this information on the council's website.

Visit: [iPlan](#) or the office of the relevant council to view planning schemes that apply in Tasmania.

Visit: The Tasmanian Government has a directory of local councils on its [website](#).

Approaching the landowner or occupier

If you believe a development or use of land is not complying with a planning scheme or permit, you could also approach the land owner or occupier directly and discuss the concerns you have about the activity. You might invite the owner or occupier to provide information demonstrating that the activity or development has all the relevant permits.

Often having a direct conversation with the owner or occupier will quickly resolve issues. However, if you are not comfortable approaching the land owner or occupier directly, there are other options available to enforce planning laws.

Making a complaint to the local council

Every local council has a duty to observe and enforce the planning scheme that applies in its municipal area (see sections 48 and 63A of the LUPA Act). Councils have a range of regulatory tools that they can use to respond to non-compliance with planning laws. These tools include issuing enforcement notices, infringement notices (fines), or commencing prosecutions against people not complying with planning laws.

For these reasons, making a complaint about the use or development to the council about the development or use can be a useful way of responding to a suspected illegal development or use of land.

Civil enforcement of planning laws

If you are very concerned about the suspected non-compliance with planning laws and think you might want to take legal action if the council does not enforce their planning laws, the LUPA Act provides a formal process to commence civil enforcement action.

Notice of Suspected Contravention

If you suspect that another person has contravened a planning scheme or a planning permit, you may give a “notice of suspected contravention” to the council.

The notice of suspected contravention must:

- specify the contravention or failure to comply with the law and the land to which the contravention or failure relates;
- request the council to advise whether it is intended that charges will be laid or an infringement notice issued;
- request the council advise if, within 120 days of the notice, charges are to be laid or an infringement notice issued.

If you provide a council with a notice of suspected contravention, the council is required to investigate the matter and advise you whether any enforcement action will be taken within 120 days.

If the council formally advises you that it will not be taking any action, like issuing an infringement notice or laying charges, or otherwise fails to respond to your notice within 120 days, you may have the option of applying to the Tasmanian Civil and Administrative Tribunal (**TASCAT**) for civil enforcement orders.

Application for civil enforcement orders

A person with a “proper interest” may apply to TASCAT for civil enforcement orders under s 64 of the LUPA Act, to respond to an unlawful development or use of land.

NB: The phrase “proper interest” is not defined in the LUPA Act. While each case turns on its own facts and circumstances, the TASCAT (and its predecessor, the Resource Management and Planning Appeal Tribunal) has taken a restrictive approach in determining whether an applicant has a proper interest or not. To have a proper interest, a person needs to have more than a mere “academic” interest in the outcome of the matter. It may be persuasive if the person making the application for civil enforcement orders is directly impacted by the alleged non-compliance with the planning laws, for example, an affected neighbour.

You can only make an application for civil enforcement orders if you have given a notice of suspected contravention to the council, and the council is yet to take enforcement action or has determined that no enforcement action will be taken.

An application for civil enforcement orders must be made in writing and be in the form prescribed by TASCAT. The application must include:

- evidence of the alleged breach (e.g. photos, videos, plans, permits, affidavits/statutory declarations from witnesses etc), and that the respondent is or respondents are responsible for the breach (e.g. a copy of the land title etc);
- a list of all the owners of the land, and anyone who has an equitable interest in the land and their relevant contact details;
- an outline of the specific nature of the relief sought from TASCAT (e.g. the orders that you want TASCAT to make and the legislative provision that gives the TASCAT the power to make the orders);
- At least four copies of the application and supporting documentation.

If TASCAT determines a contravention has occurred, it may order:

- a person to refrain, either temporarily or permanently, from the act, or course of action, that constitutes the contravention;
- preclude a person from carrying out any use or development on the land to which the contravention relates;
- a person to “make good” the contravention within a specified time and in a specified manner.

Visit: Tasmanian Civil & Administrative Tribunal [website](#) has further information about the process for commencing civil enforcement proceedings.

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