

COMPLIANCE & ENFORCEMENT OF PLANNING CONTROLS

Overview

Under Tasmanian planning laws, there are a range of enforcement measures available to ensure compliance with planning requirements. These include infringement notices, enforcement notices, civil enforcement proceedings, fines and court orders. These measures can be used against both individuals and corporations.

Local councils, acting as planning authorities, are primarily responsible for enforcing compliance with planning laws. Under the *Land Use Planning and Approvals Act 1993* (the Act), an authorised officer acting on behalf of a planning authority may issue an infringement notice or an enforcement notice for non-compliance with planning laws. Alternatively, the planning authority may determine that prosecution for non-compliance is warranted.

If the responsible planning authority determines not to take enforcement action, then Civil enforcement provisions enable a person with a proper interest to seek certain orders from the Resource Management and Planning Appeal Tribunal.

Enforcement by planning authorities

AUTHORISED OFFICERS

Police officers, and the General Manager of each local council, are authorised officers for the purposes of the enforcement of planning requirements under the Act.

The Act also provides for the General Manager of each local council to appoint an authorised officer for the municipal area.

Authorised officers are given certain powers in order to investigate and obtain evidence of potential instances of non-compliance and for the issuing of notices.

INFRINGEMENT NOTICES

Where an authorised officer reasonably believes a person has committed an infringement offence, then under section 65A of the Act, they may issue an infringement notice and serve it on that person

Infringement offences are prescribed under the *Land Use Planning and Approvals Regulations 2014* and include undertaking use or development that is contrary to a State Policy or planning scheme, impeding or

obstructing the execution of a planning scheme, or breaching a condition or restriction on a planning permit.

ENFORCEMENT NOTICES

Where an authorised officer reasonably believes that a person has committed, is committing, or is about to commit certain offences, then under section 65B of the Act, they may issue and serve a notice of intention to issue an enforcement notice. These offences include undertaking use or development that is contrary to a State Policy or planning scheme, impeding or obstructing the execution of a planning scheme, or breaching a condition or restriction on a planning permit.

Where a notice of intention is issued, the respondent has a minimum of 14 days to make a representation in relation to the alleged offence.

Section 65C of the Act provides that an authorised officer may issue and serve an enforcement notice on a person if a notice of intention has been served, the period for representations from the respondent has expired, and the authorised officer has considered any representations from the respondent.

However, an enforcement notice may be issued without a notice of intent having first been issued, if the authorised officer considers it is urgently required to prevent an offence that could cause damage to the property of another person, or if remedial actions are likely to be difficult or expensive to undertake.

An enforcement notice may require the person on whom it is served to do a range of things, including:

- cease to commit the offence (e.g. cease the offending use or development);
- take action to remedy the offence;
- take all reasonable steps to ensure compliance with the planning scheme or planning permit conditions;
- stop carrying out the use or development on the land for a specified period;
- demolish, remove or restore any buildings or works on the land;
- do, or not do, something to ensure compliance with the planning scheme or planning permit.

It is an offence to contravene the requirements of an enforcement notice, and the penalty will be determined through the Magistrates Court. However, any person who is served with an enforcement notice may appeal to the Resource Management and Planning Appeal Tribunal.

PROSECUTIONS

Planning authorities may commence prosecution action through the Magistrates Court against persons who have undertaken, or are undertaking, use or development that is contrary to a planning scheme or in

breach of a condition or restriction on a planning permit.

The court may impose fines of up to 500 penalty units on persons convicted of an offence, with further fines possible for continuing offences. The court may also order the person convicted of the offence to:

- pay the reasonable costs incurred by the planning authority investigating and prosecuting the offence;
- carry out work, within a specified period, to ensure the use or development is in accordance with the relevant planning scheme, planning permit or determination.

If the person does not carry out the required work within the specified period, the court may order the work to be carried out by the planning authority at the cost of the convicted person.

CANCELLATION OF PERMITS

Sections 65F and 65G of the Act provide for a planning authority to cancel a planning permit that is currently in force.

An authorised officer may issue and serve a notice of intention to cancel a permit if they reasonably believe that:

- the owner or occupier has failed to comply with an enforcement notice; or
- a permit would not have been granted, or would have been granted

with different conditions, if the applicant had not misrepresented or concealed material facts in relation to an application for a permit.

Where a notice of intention is issued, the respondent has a minimum of 14 days to make representations in relation to the proposal to cancel the permit.

After considering the representations of the respondent, the planning authority may issue and serve a notice of cancellation of permit on the owner or occupier. A notice of cancellation must specify the permit to which it relates and give adequate information on the grounds on which the planning permit is cancelled.

Any person who is served with a notice of cancellation of permit may appeal to the Resource Management and Planning Appeal Tribunal.

CIVIL ENFORCEMENT

Suspected Contravention

Under section 63B of the Act, any person who suspects that another person has contravened, or is likely to contravene, a State Policy, a planning scheme, or a condition or restriction on a planning permit may give notice (a 'notice of suspected contravention') to the relevant planning authority.

The planning authority is required to investigate the matters outlined in the notice of suspected contravention and, within 120 days, advise the person who sent the notice of its determination, and what action

has been taken. The planning authority may determine to:

- lay charges in relation to the contravention;
- issue an infringement notice or enforcement notice in relation to the contravention; or
- take no enforcement action.

Civil Enforcement Proceedings

A person with a proper interest¹, may commence civil enforcement proceedings through the Resource Management and Planning Appeal Tribunal in relation to a person who contravenes, or is likely to contravene, a State Policy, a planning scheme, or a condition or restriction on a planning permit. However, an application to commence these proceedings may only be made after the person has given a notice of suspected contravention to the planning authority, and the planning authority:

- has determined to take no enforcement action; or
- is yet to undertake any enforcement action.

Under section 64(3) of the Act, if the Resource Management and Planning Appeal Tribunal determines a contravention has occurred, they may order:

- the person to refrain, either temporarily or permanently, from the

act or course of action that relates to the contravention;

- preclude, for a specified period, the carrying out of any use or development on the land which the contravention relates; or
- make good the contravention within a specified period.

Further information on the procedures for civil enforcement proceedings can found in *Practice Direction 14: Civil Enforcement Proceedings* on the Resource Management and Planning Appeal Tribunal’s website at www.rmpat.tas.gov.au.

Where do I find the Act?

A copy of the Act is also available on the Tasmanian Legislation Online website at: <https://www.legislation.tas.gov.au/>.

Enquiries

Any enquiries can be directed to the Planning Policy Unit within the Department of Justice at Planning.Unit@justice.tas.gov.au or by telephoning (03) 6166 1429.

June 2019

¹ The Resource Management and Planning Appeal Tribunal will determine whether a person has a ‘proper interest’ in the matter.