



## Law of the Land: Supplementary information

It is a landowner's responsibility to comply with the law, and to understand what that requires of you. The NRM South / EDO Tasmania workshop series, *Law of the Land*, offered an overview of key obligations. Some further information is set out below.

Where you're not clear about your obligations, it is important to seek clarification – whether by contacting Council or the relevant government department, reading some of the information resources available, or asking EDO Tasmania for advice.

### PLANNING

#### The Planning Reform Process – what next?

The State Planning Provisions (**SPPs**) have now been declared and formally took effect on 2 March 2017. These set the standard rules for various zones across Tasmania, and form the first part of what will become the Tasmanian Planning Scheme.

You can download the State Planning Provisions from the [Department of Justice website](#).

The next stage is for all local councils to prepare a Local Provisions Schedule (**LPS**) to implement the SPPs. The LPS will have three main roles:

- Allocating zones to all land within the municipality;
- Providing mapping to support the application of Codes (e.g. mapping of priority vegetation, waterways, flood prone areas, erosion prone areas etc.);
- Identifying any areas where departure from the standard, Statewide rules is appropriate – this may be achieved through Specific Area Plans, Particular Purpose Zones or Site-Specific Qualifications.

Many Councils intend to release an informal draft LPS for initial public comment before commencing the formal, statutory consultation. Contact your local council to ask whether they will be undertaking informal preliminary consultation.

A formal draft LPS must be advertised and available for public comment for at least 60 days. Any person can make a representation during that period, disputing the zone that has been assigned to their property or the accuracy of mapping, requesting site-specific qualifications or making other general comments about the operation of the LPS.

**Please note:** any comments made in relation to the informal draft LPS will **not** be treated as a representation. You will need to make comments in relation to the formal draft LPS (even if they are identical to your earlier comments) in order for your representation to give you a right to appear at a hearing.

The Tasmanian Planning Commission will then hold a hearing to review the draft LPS, any comments made by the public and any responses from Council. Anyone who makes a representation will be invited to appear at the hearing to discuss their concerns.

The Tasmanian Planning Commission will declare the LPS (with or without modifications), or require the local council to make significant changes and re-advertise. Once the LPS is declared, the full Tasmanian Planning Scheme (SPPs + LPS) will take effect for the relevant municipality.

A detailed guide to the process for assessment and approval of the LPS is [available here](#).

**Please note:** Until the Tasmanian Planning Scheme is declared for your municipality, the interim scheme will continue to apply to all planning and development proposals.

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### What happens to land currently zoned Environmental Living Zone under the Tasmanian Planning Scheme?

Particularly in rural or semi-rural areas, one of the most significant changes from the current interim planning schemes to the Tasmanian Planning Scheme is that the Environmental Living Zone will no longer be available.

As part of the process of developing the LPS, Councils will need to decide whether land that is currently zoned Environmental Living should be zoned Rural Living, Rural, Agriculture or Landscape Conservation.

Each of those potential zones has different rules regarding lot sizes, development standards and permitted uses. You can read the zones rules [here](#).

If you are concerned about how your property will be zoned under the LPS, contact your council to discuss. Keep an eye on the public notices in the newspaper for details of opportunities to comment on the draft LPS and make a representation setting out why you think a particular zone is the most appropriate for your land.

## WATER MANAGEMENT

### Are there restrictions on how I can use water stored on my property?

#### What is a watercourse?

As discussed, the definition of watercourse is very broad:

*a river, creek or other natural stream of water (whether modified or not) flowing in a defined channel, or between banks, notwithstanding that the flow may be intermittent or seasonal or the banks not clearly or sharply defined, and includes –*

- (a) a dam that collects water flowing in any such stream; and*
- (b) a lake through which water flows; and*
- (c) a channel into which the water of any such stream has been diverted; and*
- (d) part of any such stream; and*
- (da) the floodplain of any such stream*

Watercourse does not include a drainage depression that only "serves to relieve upper land of excess water in times of major precipitation." That is, you do not create a "watercourse" by digging an overflow channel as part of flood mitigation works.

Watercourses are mapped on the LIST and in Council planning scheme maps associated with the Waterways Code.

#### Riparian rights

Riparian users include owners or tenants of the following properties:

- Land with a watercourse running through it or on its boundary;
- Land with a crown reserve not more than 20m wide separating the land from a watercourse; or
- Land with a crown reserve more than 20m wide separating the land from a watercourse, if the owner / tenant has consent from Crown Land Services to take water from the watercourse.

Riparian users can take water, with a water licence, for the following purposes:

- domestic purposes (up to 440L per dwelling per day, or 100L per occupant where there is no dwelling on the property);
- irrigating a household garden (up to 0.6L per day/m<sup>2</sup>, not exceeding 1,500L a day);

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- stock watering (up to the maximum amounts set out below – **please note:** these refer to domestic stock, kept for your own purposes. To water stock grown commercially, a water licence will be required);
- firefighting.

With permission from an authorised officer, you can take up to 7 days' worth of water each week and store the water in a dam or tank (r.4, *Water Management Regulations 2009*).

These limits are not guaranteed in all circumstances – despite the allowable volumes, if taking that amount of water would cause environmental harm, be beyond your “reasonable requirements”, or detrimentally affect downstream users' ability to meet their needs, you will not be able to take the full volume that would otherwise be allowed.

During drought conditions, the Minister may also publish a notice imposing further restrictions on the volume of water that can be taken under riparian rights.

### Stock watering limits under Riparian Rights

- |  |                                       |
|--|---------------------------------------|
| ▪ <b>Cattle:</b> 90L a day / head      | ▪ <b>Horses:</b> 45L a day / head     |
| ▪ <b>Sheep:</b> 8.5L a day / head      | ▪ <b>Goats:</b> 8.5L a day / head     |
| ▪ <b>Pigs:</b> 20L a day / head        | ▪ <b>Chickens:</b> 3L a day / 10 head |
| ▪ <b>Turkeys:</b> 5.5L a day / 10 head |                                       |

### Surface water runoff

Currently, unless a water management plan<sup>1</sup> provides otherwise, an owner or occupier can take “dispersed surface water” from their land for any purpose (s.48(4), *Water Management Act 1999*). Dispersed surface water includes water flowing across property following rainfall, or rising naturally from underground (i.e. natural springs), and surface water captured in a dam storage (assuming that the dam is lawfully constructed).

Restrictions on the volume or purpose can be imposed by regulations, but to date none have been introduced.

As with riparian water, surface water cannot be taken in volumes that would lead to environmental harm, and restrictions may be imposed during drought periods. For details of current restrictions on the use of irrigation water, [click here](#).

### Groundwater

Unless the land is within a declared Groundwater Area<sup>2</sup>, an owner or occupier of land can take and use groundwater from the land for any purpose without a water licence (s.48(4A), *Water Management Act 1999*). Volumes are not currently limited, but future water management plans may introduce restrictions on both volumes and licence requirements.

As with riparian water, you are not entitled to take groundwater in volumes that would lead to environmental harm, and restrictions may be imposed during drought periods.

While no licence is currently required to take or use the water, some approval requirements apply to how a bore is drilled. Details of these requirements are set out below.

### Dam storage

At the workshop, we discussed the process for applying for a dam permit to build a farm dam, and situations in which a permit would not be required. A range of fact sheets and resources

<sup>1</sup> Please note, there are no current water management plans for catchments in the Huon Valley or Kingborough municipalities.

<sup>2</sup> Currently, the only Groundwater Area is in the Sassafraz catchment area.

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prepared by DPIPWE in relation to dam assessments are [available here](#). Dam works permits relate only to the construction and maintenance of dams, and do not authorise the taking of water to fill the dam.

Where an off-stream dam has been lawfully constructed, and is spring fed or collects water only through rainfall / surface water runoff, a water licence is not required and there are no restrictions on the use of the water (subject only to not causing environmental harm or nuisance to neighbouring properties).

For on-stream dams, or off-stream dams filled by pumping or diverting water from a watercourse, a water licence and allocation will be required. If you have a licence to take water *into* the dam, you do not need a separate licence to take water *from* the dam, but must comply with any licence conditions when taking the water.

If you have an existing water licence for your property, but later construct a new dam, you may be able to apply to vary the existing licence, rather than apply for a separate licence to fill the new dam.

The licence will generally set out:

- The watercourse from which the water can be taken
- The approved allocation (that is, how much you can take)
- The surety level for the allocation (that is, how reliably you can expect to be able to access your full allocation)
- Any other conditions that the Minister considers appropriate. These conditions can include:
  - Restrictions on where the water can be used
  - Restrictions on the purposes for which the water can be used
  - Requirements to construct or upgrade a dam before the water is taken (usually, for safety reasons)
  - Any other conditions necessary to minimise or manage environmental risks, such as rising water tables, waterlogging, salinity, erosion, degradation of water quality or destabilisation of creek banks (s.58, *Water Management Act 1999*).

It is an offence not to comply with the conditions of a water licence, so make sure you read the licence carefully to understand any restrictions. If unsatisfied, or if your farming practices change, you can apply to DPIPWE to vary the conditions of a water licence to allow for higher volumes of water to be taken, or to remove or alter restrictions on the uses to which the water can be put.

As with all the water rights referred to above, restrictions may be imposed in times of drought. For details of current restrictions on the use of irrigation water, [click here](#).

### **Conveying water via a watercourse**

If you need to release water from an on-stream dam, to be collected at a point further along the watercourse (whether for your own use, or to sell water to a downstream neighbour), you will need a Watercourse Authority. Similarly, if you want to access water from an upstream neighbour's storage, you will need a Watercourse Authority.

The Watercourse Authority provides permission to both the person releasing stored water from their dam into a watercourse *and* to the person located downstream who wishes to take the water from the watercourse (whether directly or to pump into their own storage), using the one approval process.

Applications for a Watercourse Authority are made to DPIPWE, and must be accompanied by a Watercourse Conveyance Agreement between all interested parties.

More information about Watercourse Authorities is [available here](#).

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### How can I access groundwater on my property?

While a licence is not required to take groundwater from your property, the physical works required to access the water generally involve "well works", defined as:

*an excavation undertaken to give access to groundwater, any other works undertaken to repair or modify the structure of a well or any works undertaken to plug, backfill, seal or decommission a well.*

Unless an exemption applies (see below), you will need the following before undertaking well works:

- a **Well Works Permit**; and
- a licensed Well Driller

After a well is constructed, you will need to submit details to DPIPWE so that they have a record of groundwater access points. If a well / bore already exists on your property, you are responsible for ensuring that it is properly maintained.

For more information regarding construction and maintenance responsibilities, [click here](#).

### Exemptions

Well works permits are not required for bores used for groundwater sampling, maintenance of existing wells (not including major modifications, repositioning or making the well more than 1.5m deeper) or urgent works reasonably required to prevent deterioration or waste of groundwater, or to prevent injuries or safeguard property.

While a well works permit is required for bores drilled less than 3m below natural surface level, the work can be undertaken without a well driller's licence. Any deeper drilling must only be undertaken by a licensed driller.

For more information about well permits (including a list of licensed drillers), go to the [DPIPWE website](#).

## FARMING OPERATIONS

### If my farm is next to a certified organic farm, can I use 1080?

There are no specific restrictions imposed on the use of 1080 poison on properties adjoining or adjacent to organic farms. However, when considering whether to issue a permit to lay 1080 baits, DPIPWE must be satisfied that a landowner has tried / considered all alternative approaches to pest management (such as fencing, netting and shooting) and those options are not practicable – DPIPWE may apply a higher standard regarding the impracticality of alternatives where a certified organic farm may be affected, and may impose conditions on the permit to minimise the impacts.

There is always a risk that organic farmers may claim damages for loss of income resulting from contamination from a neighbouring property. While laying 1080 baits strictly in accordance with a permit will generally provide a defence to such a claim, it is strongly recommended that any farmers in the vicinity of organic farms discuss their plans with the organic farmers in advance and identify any alternatives or conditions that will help reduce the risk to the organic farm.

Before laying 1080 baits, landowners must give at least 7 days' written notice to all other landowners within 500m. In some circumstances (including, for example, where the property is in the vicinity of an organic farm), DPIPWE may require notice to be given over a greater distance. Upon receiving notification, the owner of an organic farm may contact DPIPWE or the person intending to lay 1080 baits and raise concerns about the proposal. This is a further opportunity to discuss options to avoid or minimise the impacts on the organic farmers. Biosecurity Tasmania is also available to provide advice to concerned neighbours regarding potential threats to pets, stock, people and environmental effects relating to the 1080 use.

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When spraying agricultural chemicals, it is an offence to allow spray drift to “adversely affect” plants, stock, water, soil or agricultural produce. Plants etc will be “adversely affected” where they exhibit chemical residues above prescribed levels – these levels do not currently distinguish between organic and non-organic produce, however caution is strongly advised when spraying near an organic farm to avoid or minimise the risk of spray drift.

### Can I shoot stray animals on my property?

Dog owners have an obligation to keep their dog “under effective control”. If a dog is not under effective control and attacks or bites any person or animal, the owner will be liable to a fine of up to **\$3,260**. Similarly, cat owners are generally required to microchip, desex and effectively confine their pets.

Under both the *Dog Control Act 2000* and the *Cat Management Act 2009*,

- A person carrying on primary production relating to livestock on rural land or any other person acting under his or her authority may trap, seize or humanely destroy any cat or dog found at large (that is, without its owner or otherwise uncontrolled) on that land.
    - A person will be carrying out “primary production relating to livestock on rural land” if they are undertaking:
      - the management, breeding, transportation and supply of live animals for the production of primary produce (including any animal part or other food);
      - meat processing; or
      - dairy primary production, dairy processing or carrying on a dairy transport business
- on land that is “not within any city or town”. Livestock includes alpacas, buffalo, camels, cattle, donkeys, deer, emus, goats, horses, llamas, ostriches, pigs, poultry, sheep.
- Any person may restrain or destroy a dog if the person sees the dog attacking another animal.
  - Any person may also trap, seize or humanely destroy a cat found a private land (even if not used for “primary production”) that is more than one kilometre from any place genuinely used as a place of residence, or on private reserved land and land subject to a conservation covenant.

If you shoot a dog on your property, you must do so humanely and must notify the General Manager of the Council within 14 days (including returning any registration tags, so that the owner of the dog can be notified).

If you shoot a cat on your property, you must ensure that its remains are “buried, burned or otherwise suitably disposed of” within a reasonable time.

Where you know the owner of the dog or cat, you should exhaust all efforts to manage the animal (such as requesting the owner to keep their pet confined, restraining the animal and returning it to the owner, taking the cat to a cat management facility) before shooting.

Please note, there are provisions in older legislation, such as the *Police Offences Act 1935*, prohibiting killing another person’s animal. However, the more recent, specific provisions under the *Dog Control Act 2000* allowing dogs to be killed will prevail over these general offences. Provided the shooting complies with the *Dog Control Act 2000*, the shooting will be authorised.

For more information about this issue, go to:

- [The Law and Cat Trapping](#) (Kingborough Council)
- [Dog Control Act resources](#) (Dept of Premier and Cabinet, Local Government branch)

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### What restrictions apply to shooting near dwellings and roads?

Under s.113 of the *Firearms Act 1996*, it is an offence to discharge a firearm within 250m of a dwelling, without the consent of the occupier. Fines of up to \$8,150 apply, or a term of imprisonment up to 2 years.

It is also an offence to discharge a firearm from, into or over a public place, unless the person has a licence that specifically authorises it. "Public place" includes any place that the public has access to, including public roads and reserves. So, unless you have a licence that explicitly authorises you to shoot on a particular road, you cannot discharge a firearm onto the road (even if you are not on the road when you fire the shot).

Under the *Wildlife (General) Regulations 2010*, it is an offence to discharge a firearm from, or within 10m of, a conveyance (vehicle, vessel, aircraft, trailer) for the purpose of taking partly protected, protected or specially protected wildlife (e.g brushtail possums, pademelons, wild deer). However, it is not an offence if the shooter has written consent from DPI/PWE to shoot from or near the vehicle (this may be included as a condition of a licence, or be set out in a letter).

## FENCING

### Is a planning permit required for fencing?

Under most Tasmanian planning schemes, a permit is not required to build or remove the following fences:

- Side and rear boundary fences up to 2.1m high (above natural ground level), unless adjoining a public road or reserve or within 4.5m of the property frontage
- Any other boundary fence, up to 1.2m high
- Retaining walls, set back at least 1.5m from a boundary and which result in a difference in ground level of less than 1m
- Any fencing of agricultural land (no height restriction)

*"Agricultural land" includes land currently in agricultural use, or with the potential for agricultural use, that has not been zoned or developed for another use or would not be unduly restricted for agricultural use by its size, shape and proximity to adjoining non-agricultural uses.*

*"Agricultural use" means use of land for propagating, cultivating or harvesting plants or for keeping and breeding of animals, excluding pets*

- Fencing for the protection of wetlands and watercourses (no height restriction)
- Temporary fencing for events, construction or public safety.

These exemptions will not apply where the fence will:

- be located in a heritage precinct (unless the fencing is for agricultural or watercourse protection purposes),
- be located within 30m of a wetland or watercourse
- involve the removal of threatened vegetation.

Where the fence is not exempt, check the Planning Scheme for height and design criteria.

### Who is responsible for building and maintaining fences along riparian Crown reserves?

The *Boundary Fences Act 1908* does not apply to unoccupied Crown land or public reserves. This means that the Crown is not required to contribute to the cost of erecting or maintaining boundary fences between a private property and a Crown reserve. This does not prevent a

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farmer from erecting a boundary fence (for example, to prevent stock damaging the reserve), but will prevent the farmer seeking a contribution from the Crown.

Where a fence is erected by the Crown on a public reserve, it is an offence to remove or damage that fence.

A planning permit will not be required for boundary fences adjoining a public reserve that do not exceed 1.2m, or any fences on agricultural land or designed for the protection of wetlands and watercourses (however, check your local planning scheme – some restrictions may apply to fences within 30m of the watercourse).

Landcare grants may be available to assist farmers with the cost of erecting and maintaining fences to protect the natural values of adjoining reserves. For information about these grants, go to [http://www.landcaretas.org.au/tas\\_landcare\\_fund](http://www.landcaretas.org.au/tas_landcare_fund)

### PUBLIC LAND

#### Can I use Crown land between my property and a waterway?

Where a Crown riparian reserve exists, an authority is required to:

- Use or occupy the reserve
- Keep or water stock on the reserve
- Take any wood, gravel, shells, soil, stones etc from the reserve
- Light a fire on the reserve (see s.46 of the *Crown Lands Act 1976*)

A landowner can apply for a lease or licence to use the Crown land for any of those purposes. If no lease or licence has been granted, a Crown Lands officer can remove a user from the reserve and remove any structures that have been unlawfully erected on the site.

If the riparian reserve is designated as a 'public reserve', a Crown Lands officer or police officer can seize any stock that is in the public reserve and likely to injure or disturb flora and fauna within the reserve (for example, cattle trampling burrowing crayfish habitat). This power does not apply to stock that are authorised to be on the reserve under a lease or licence.

#### What rules apply to road reserves dividing rural land?

Many rural properties have road reserves marked on the title, even though the road is not formed (and may never be formed). While they are not public roads, road reserves remain as Crown land, and use or development on the road requires a licence from Crown Land Services, or an easement over the land.

If the Crown intends to open the road, it will need to take steps to proclaim the road under the *Roads and Jetties Act 1935* and the *Highways Act 1951*.

For more information about licences for shared access to road reserves, visit the [Crown Land's website](#).

You can also [apply to Crown Land Services](#) to purchase unused road reserves and adhere them to your title.

#### What obligations do forest operators have to neighbours?

Forestry operations must be carried out in accordance with the *Forest Practices Code 2015* and the terms of any Forest Practices Plan. [Click here](#) to find out more information about these requirements.

Many forest operators are also signatories to the [Good Neighbour Charter](#), which recognises the importance of being respectful of the impact that their operations have on adjoining land – including spreading weeds, noise, dust, traffic impacts and increased fire risk.

DPIPWE and the Parks and Wildlife Service have also signed a [Good Neighbour Charter](#) to manage the impact of their activities in reserve areas on neighbouring landowners.

### CONSERVATION ISSUES

#### How are habitat corridors protected?

Habitat corridors provide connectivity between breeding, feeding and roosting areas for native species. Maintaining connectivity is important to ensure that populations continue to survive across their habitat range.

Under the Huon Valley Interim Planning Scheme, development within mapped Biodiversity Protection Areas will be subject to more rigorous assessment. These mapped areas, and the restriction on vegetation loss within them, can provide protection for habitat corridors.

The parks and reserves system is also important for the protection of habitat corridors, as is voluntary conservation mechanisms adopted on private land (see below).

In 2012, the Commonwealth Government released a [National Wildlife Corridors Plan](#) to promote the development of a broader network of wildlife corridors across each State. Little has been done to progress the national agenda.

#### What options are there for conservation on private land?

There are a number of options available to protect the natural values of private land:

- Apply to join the government's [Private Land Conservation Program](#) – this may include entering a conservation covenant (which will be registered on your land title and may provide some financial assistance for maintenance of the land), a management agreement or recognising your property as a Land for Wildlife site.
- Contact the [Tasmanian Land Conservancy](#) to see if they are interested in purchasing the land, or assisting you to enter into conservation arrangements
- Place a [restrictive covenant](#) on your property. This will be recorded on the title and bind future owners, but can be removed with the consent of the Land Titles Office
- Request that the Minister consider declaring the land to be a private sanctuary or private nature reserve under the *Nature Conservation Act 2002*.
- Entering into a Part 5 agreement with the planning authority under the *Land Use Planning and Approvals Act 1993*.

Each of these options provide different restrictions and different levels of financial and technical support to manage private land. Some of these options will also require you to provide an assessment of the values of your property – contact the relevant programme to discuss what information you will need to provide to get them interested in helping to protect your land.

[Click here](#) for an overview of some of the pros and cons of various private land conservation options.