

Title	Planning Appeals and Enforcement
Council Resolution	Item 13 (13 April 2016) as per Council Minutes
Responsible Directorate	City, Services and Infrastructure
Due for Review	12 April 2020
Strategic Plan Reference	<p><u><i>Glenorchy City Council Strategic Plan 2013-18 (Interim)</i></u></p> <p>Strategic plan intent: Valuing our environment.</p> <p>Objective 3.2: Create liveable built environments and sustainably manage our natural and built environments.</p> <p>Strategy 3.2.2: Deliver services that sustainably manage our natural environments.</p> <p>Strategy 3.2.3: Deliver services that create sustainable and liveable built environments.</p> <p>Strategic plan intent: Leading our community</p> <p>Objective 4.1: Manage our resources to achieve community outcomes.</p> <p>Strategy 4.1.2: Ensure Council is open and transparent in its communication and dealings with our communities.</p>
ECM	Council Policies

PURPOSE

This policy provides principles to ensure that when acting as the Glenorchy Planning Authority, Council's procedures for dealing with appeals and enforcement issues are fair, consistent and in the public interest.

SCOPE

This policy applies to:

- the hearing and determination of appeals against planning decisions made under the *Land Use Planning and Approvals Act 1993* (LUPAA);
- compliance and enforcement matters under Section 63 of LUPAA; and
- the hearing and determination of appeals against enforcement action taken under Section 65C of LUPAA.

STATUTORY REQUIREMENTS

Schedule 1 of LUPAA contains the objectives of this Act, and related legislation in the suite of those that make up the Resource Management and Planning System of Tasmania.

Acts	<ul style="list-style-type: none"> • <i>Land Use Planning and Approvals Act 1993</i> (LUPAA) • <i>Resource Management Planning Appeal Tribunal Act 1993</i> • <i>Right to Information Act 2009</i>
Regulations	<ul style="list-style-type: none"> • <i>Land Use Planning and Approvals Regulations 2014</i>
Australian/International Standards	Not Applicable

DEFINITIONS

<p>Glenorchy Planning Authority (GPA).</p>	<p>A Committee of Council formed pursuant to Section 23 of <i>Local Government Act 1993</i> that has full delegation to determine those land use planning matters listed on the Glenorchy Planning Authority meeting agenda. The GPA is governed by its own Terms of Reference as amended from time to time.</p>
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POLICY STATEMENT

1. Council supports the role of the Resource Management and Planning Appeal Tribunal as an independent appeal body and does not seek to discourage appeals against Council decisions in accordance with statutory rights.
2. Council supports the independence and flexibility of the Tribunal provided by the current legislation. Council will not seek to criticise or challenge decisions of the Tribunal unless it is of the opinion that the Tribunal has erred in law.
3. Council will endeavour to achieve a negotiated or mediated settlement of planning disputes or differences prior to determination of planning applications and lodgement of planning appeals. Where possible, negotiation and mediation will also be sought in the planning appeal process to ensure the timely and cost-effective resolution of disputes.
4. Council will take all reasonable steps to ensure that appropriate delegations and procedures are in place to reduce time delays in dealing with matters at planning appeal.
5. In acknowledgment of ethical considerations, Council will not require representation by an officer at a planning appeal where Council's position is contrary to the professional opinion of the officer. Council accepts and supports the ethical responsibility of its officers to state professional opinions without fear or favour.
6. Council will not generally seek to be represented by a legal practitioner at planning appeals, unless in the circumstances the result of the appeal is likely to be determined by legal interpretation or argument.
7. Subject to the *Right to Information Act 2009*, Council will accede to any lawful request by the Tribunal to provide information to the Tribunal or other parties to an appeal.
8. Council will seek appeal costs against another party where, in its opinion, Council's costs have been unreasonably increased by the actions of that party.
9. Any enforcement procedures instituted by Council under section 63(3) of LUPAA will be reported to the Glenorchy Planning Authority. A decision to take such enforcement action will only be made on the following basis:
 - a) all reasonable attempts have been made to achieve compliance by discussion and negotiation;
 - b) the non-compliance is sufficiently serious to justify enforcement proceedings and it is in the public interest to do so;
 - c) enforcement action is equitable and consistent with principles of fairness and natural justice;
 - d) there is sufficient evidence available to provide a reasonable chance of success in enforcement proceedings.
 - e) the cost of enforcement will not, of itself, deter Council from taking enforcement action.
 - f) the potential for liability under section 63A of LUPAA has been considered.

- g) Council officers will advise any party bringing a complaint to Council that an application for orders may still be made by a party, other than the Tasmanian Planning Commission or the Glenorchy Planning Authority under section 64 of LUPAA, to the Resource Management and Planning Appeals Tribunal.

BACKGROUND

Planning Appeals

The Resource Management and Planning Appeal Tribunal is established under the *Resource Management and Planning Appeal Tribunal Act 1993* to:

- hear and determine appeals against planning decisions made under LUPAA; and
- determine enforcement applications brought to it under section 64 of LUPAA; and
- hear and determine appeals against enforcement action taken under section 65C of LUPAA.

Planning Authority appearances before the Tribunal have major implications for the implementation of Glenorchy's Planning Schemes and raise a range of issues relating to ethical considerations, equity, natural justice and accountable and cost-effective decision-making.

Enforcement of Planning Scheme provisions

Policy principles need to be established to ensure that Council procedures for dealing with appeals and enforcement issues are fair, consistent and in the public interest.

Changes made to LUPAA came into effect on 1 February 2015 and modifies the manner in which a planning authority and third parties may seek to enforce compliance to a planning scheme, or permit.