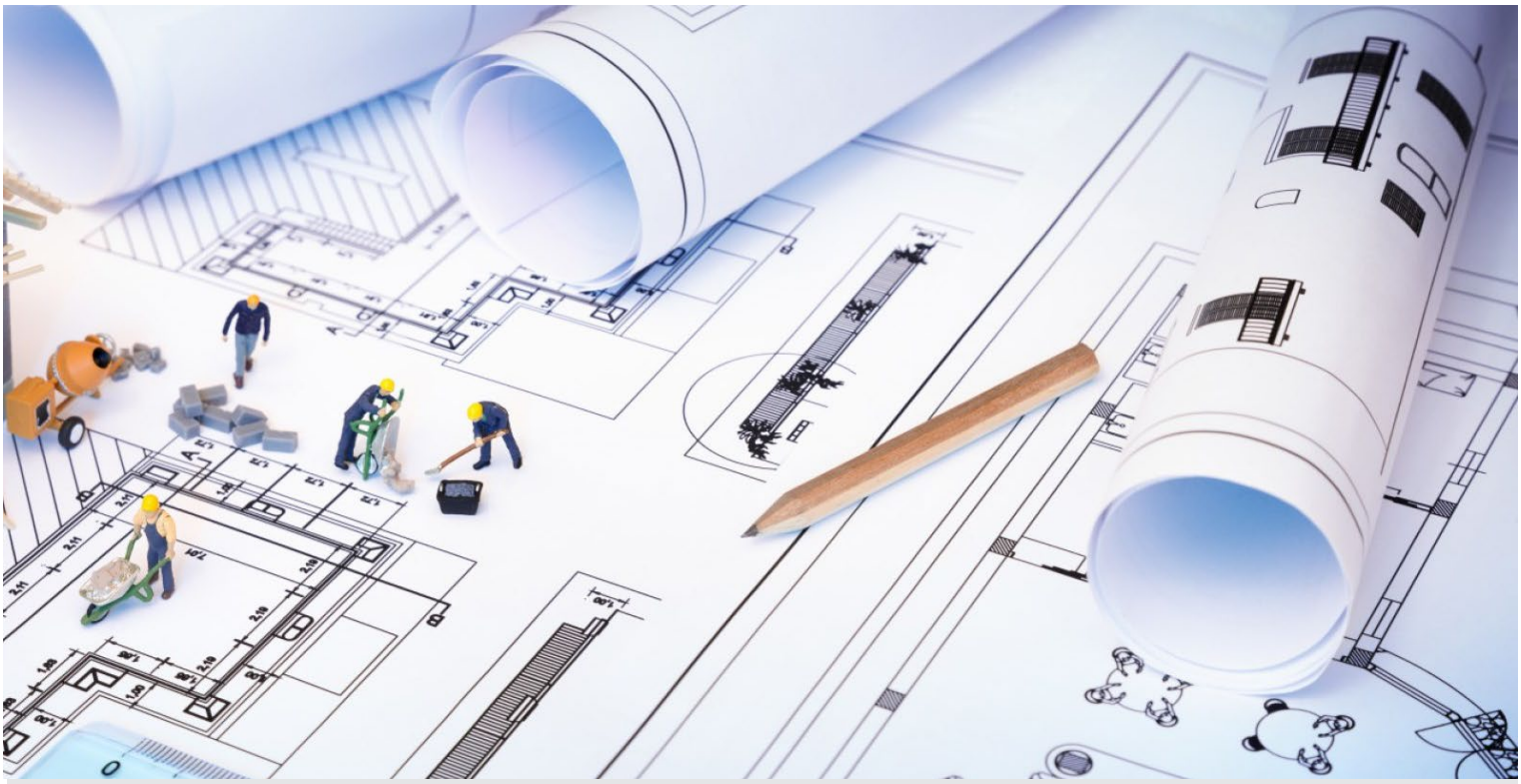


Draft Land Use Planning and Approvals Amendment (Taking Effect of Permit) Bill 2026

Background Report for Consultation

November 2026

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1. Introduction

Decisions of the courts or Tribunals can, from time to time, influence the interpretation of legislation. Where those decisions establish a legal meaning that is inconsistent with the intended policy outcome, the legislation ought to be reviewed and updated in a timely manner. The present circumstances warrant such a review.

The draft Land Use Planning and Approvals Amendment (Taking Effect of Permit) Bill 2026 (the draft Bill) proposes to amend the *Land Use Planning and Approvals Act 1993* (LUPA Act).

The draft Bill is in response to a Magistrate's ruling on *DPP v Recycal Pty Ltd* [2026] TASMC 02[1] (the Magistrate's decision) on the interpretation of section 53(4) of the LUPA Act that a planning permit is not in effect until all approvals associated with the proposed use and development have been granted.

This is problematic if one of the required approvals for the use or development cannot be granted until after the development is constructed, and the development cannot be started without the required approvals to give effect to the permit.

The purpose of the draft Bill is to clarify the legislation in relation to the taking effect of a planning permit when other approvals are required that are relevant to the proposed use and development specified in the planning permit.

This report discusses the Magistrate's ruling and its implications for the planning system. It is intended to provide context to help with understanding the draft Bill and to inform those wishing to make submissions during the consultation process.

In reviewing the Magistrate's decision, it was observed that the LUPA Act contains a similar policy anomaly for the commencement of a planning permit that is subject to a condition requiring the execution of a Part 5 Agreement. Specifically, sections 53(6) and 42C(1)(d) of the LUPA Act states that a permit requiring a Part 5 Agreement does not take effect until that agreement has been executed. As a result, the permit cannot take effect until the agreement is executed, while the obligation to execute the agreement cannot arise until the permit has taken effect.

[1] https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/tas/TASMC/2026/2.html

2. Glossary

The following acronyms or abbreviations and used in the report:

Draft Land Use Planning and Approvals Amendment (Taking Effect of Permit) Bill 2026 (consultation version)	Draft Bill
Land Use Planning and Approvals Act 1993	LUPA Act
Local Provisions Schedule	LPS
State Planning Office	SPO
State Planning Provisions	SPPs
Tasmanian Planning Provisions	TPPs
Tasmanian Planning Scheme	TPS

3. Background to the draft Bill

The Director of Public Prosecution on behalf of the Environmental Protection Authority filed a complaint in the Launceston Magistrates Court against Recycal Pty Ltd regarding (among other matters) charges for the contravention of planning permit conditions.

Recycal Pty Ltd pleaded not guilty to the charges with the matter proceeding to hearing. The basis for their argument was that they could not be found guilty of contravening their permit because the permit had never taken effect under section 53(4) of the LUPA Act because they had not obtained every approval anticipated by section 53(4).

Section 53(4) of the Act states:

> *Where any other approvals under this Act or any other Act are required for the proposed use or development to which the permit relates, the permit does not take effect until all those approvals have been granted.*

Recycal's permit was for intensification of a scrap metal recycling operation and the development of a retaining wall and large shed for processing waste. The shed was never developed and therefore did not obtain a building or plumbing permit as required by the *Building Act 2016.* Recycal argued that because these approvals are required for the development to which the permit relates, and have not been obtained, that the whole permit has not taken effect and therefore they are not bound by any of its conditions.

While not previously subject to legal proceedings, section 53(4) of the LUPA Act has traditionally been interpreted as ensuring that use or development does not commence until all required approvals have been secured.,.

On 26 June 2026, the Magistrate made a ruling supporting Recycal's argument that section 53(4) of the LUPA Act means that if another approval is required for a use or development, the permit, as a whole, does not take effect.

The ruling has significant implications for the operation of planning permits and the broader planning system. The magnitude of the issue can be illustrated by considering a use and development that requires building and plumbing approvals under the *Building Act 2016*. Some of those approvals can only be obtained after construction has been completed, such as an occupancy permit under the *Building Act 2016* or the approval of a final plan of subdivision under the *Local Government (Building and Miscellaneous Provisions) Act 1993*. However, under the interpretation adopted in the ruling, the planning permit does not take effect until all relevant approvals have been obtained, thereby preventing construction from commencing in the first place.

This ruling also has significant implications for existing permits. Works that were undertaken in the belief that they were authorised by a planning permit may now be susceptible to challenge on the basis that the permit was never in force, as all approvals required for the use or development had not been obtained.

More broadly, the Magistrate's interpretation of section s53(4) of the LUPA Act introduces legal uncertainties into the operation of the planning system and gives rise too potentially significant unintended consequences. The draft Bill proposes to address these uncertainties by giving effect to a permit while allowing other approvals to be obtained.

The issue is not confined to ordinary planning permits. It also has implications for permits issued in combination with a Local Provisions Schedule amendment (under s42C of the LUPA Act) and major project permits (under s60ZZS of the LUPA Act).

Similarly, sections 42C(1)(d) and 53(6) of the LUPA Act state that a permit requiring a Part 5 Agreement[2] does not take effect until that agreement has been executed. This creates an anomaly because the condition requiring the agreement does not take effect until the permit itself becomes operative. Consequently, the condition cannot legally require or inform the agreement before its execution, creating uncertainty in the operation of the permit and increasing the risk of legal challenge.

Section 60ZZS(4) of the LUPA Act adopts a similar approach for major project permits that require a Part 5 Agreement. However, sections 60ZZS(4), (5) and (6) empower the Tasmanian Planning Commission to bring a permit into effect where it is satisfied that the proponent has taken all reasonable steps to execute the agreement.

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[2] Part 5 of the LUPA Act provides for agreements (Part 5 Agreements) to be executed for a broad range of matters related to the prohibition, restriction, regulation of, or conditions applying to, use or development. They may also relate to bonds and guarantees, or payments and contributions for infrastructure.

4. The draft Bill in detail

The draft Bill proposes to address these issues by removing any link between the planning permit taking effect and either the:

- need to obtain other approvals other than the planning permit; or
- execution of a Part 5 Agreement.

To provide clarity, the draft Bill includes a section acknowledging that additional approvals may be required for a use or development. However, the commencement of a planning permit will not affect the requirement to obtain those approvals.

The draft Bill proposes to repeal provisions that require a Part 5 Agreement to be executed before a permit can take effect, with the exception of section 60ZZS(4) of the LUPA Act, which applies to major project permits. The permit itself should outline any specific requirements, such as a use or development not commencing before the execution of an agreement. It has been determined that section 60ZZS(4) should be reconsidered as part of a broader review of the major projects process, noting that no current major project permits require a Part 5 Agreement.

Finally, the draft Bill inserts savings provisions after section 87H of the LUPA Act to ensure that there is no uncertainty regarding the status of existing permits affected by the amendments outlined above. The provisions clarify that such permits are taken to be in effect, irrespective of whether all approvals required under the LUPA Act or any other Act in relation to the authorised use or development have been obtained.

Text proposed for deletion from the LUPA Act is shown in ~~strikethrough~~ and proposed insertions are shown as <u>underlined</u> text below.

1. Amending section 42(C), when a permit that relates to an LPS amendment takes effect, by deleting paragraphs (c) and (d) from subsection (1) and insert a new subsection (1A) as shown below:

    (1) If the Commission, under section 42B(1), grants a permit, or confirms a decision of a planning authority to grant a permit, the permit takes effect on whichever is the latest of the following dates:

        (a) the date on which the Commission decides under section 40Q to approve the draft amendment of an LPS to which the permit relates;

        (b) a date specified in the permit~~:~~.

        ~~(c) if any other approvals under this Act or another Act are required for proposed use or development to which the permit relates – the date on which all those approvals have been obtained;~~

        ~~(d) if under the permit an agreement is required to be entered into – the date on which the agreement is executed.~~

    <u>(1A) For the avoidance of doubt, the taking effect of a permit under subsection (1) does not affect –</u>

(a) any requirement under this Act or another Act to obtain an approval, however described, in relation to the use or development to which the permit relates; or

(b) any requirement under the permit, including a requirement to enter into an agreement.

2. Amending section 53, when does a permit take effect, by deleting subsections 4 and 6 and substituting subsection 4 with alternate text as shown below, including other incidental modifications:

~~(4) Where any other approvals under this Act or any other Act are required for the proposed use or development to which the permit relates, the permit does not take effect until all those approvals have been granted.~~

(4) For the avoidance of doubt, the taking effect of a permit under this section does not affect –

(a) any requirement under this Act or another Act to obtain an approval, however described, in relation to the use or development to which the permit relates; or

(b) any requirement under the permit, including a requirement to enter into an agreement.

~~(6) If under a permit an agreement is required to be entered into, the permit does not take effect until the day the agreement is executed.~~

3. Amending section 60ZZS, when a major project permit takes effect, by deleting subsection (3) and substituting with alternative text as shown below:

~~(3) If any other approvals (however described) under this Act or another Act are required for the proposed use or development to which a major project permit relates, the major project permit does not take effect until all those approvals have been granted.~~

(3) The taking effect of a major project permit under this section does not affect any requirement under this Act or another Act to obtain an approval, however described, in relation to the use or development to which the permit relates.

4. Inserting savings and transitional provisions after section 87H of the Act for the purpose of clarifying the effect of existing permits.

5. Next Steps

A copy of the draft Bill is available for viewing and download on the Planning in Tasmania website at www.stateplanning.tas.gov.au/have-your-say/consultations/lupaa-amendments

The draft Bill will be on consultation from **Monday, 16 November 2026** to **5pm Friday, 15 January 2027**. Submissions are invited during that time and can be emailed to haveyoursay@stateplanning.tas.gov.au.

Or by Post:

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Following the consultation period the submissions will be reviewed with the issues raised and may inform modifications to the draft Bill prior to being tabled in Parliament early 2027.

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