

Existing Use Rights Checklist

Clause 63 of the Ballarat Planning Scheme allows for the establishment of existing use rights. Existing use rights apply to the land, not the owner, and it is up to the owner of the property to prove that they apply.

An existing use right is established if any of the following applies:

- The use was lawfully carried out immediately before 29 July 1999.
- A permit for the use had been granted immediately before 29 July 1999 and the use commences before the permit expires.
- A permit for the use has been granted under Clause 63.08 and the use commences before the permit expires.
- Proof of continuous use for 15 years is established under Clause 63.11.

If you are seeking to establish an existing use right by demonstrating a **continuous** use for 15 years or more, you must demonstrate that the use has not ceased for a period of more than two years, or has not stopped for two or more periods which together total two years in any period of three years.

To confirm whether existing use rights apply, an application for a Certificate of Compliance must be submitted. An application must be supported by a **combination** of the documentation detailed below that will form evidence to support your application. The evidence submitted must be clear and convincing.

- Completed application form (available on Council's website) and payment of the prescribed fee
- Certificate of title (including plan of subdivision and copies of any agreements or restrictions registered on title).
- A detailed description of the scale/nature of the use, including processes carried out, any plant/machinery installed and hours during which the use has been carried out.
- A scaled plan detailing the location of the use and any processes carried out, consistent with the written description detailed above.
- Building and/or planning permits for any buildings, structures etc, along with any certificate of occupancy/final inspection.
- Copies of leases or licences (tenancy lease, mining lease, agricultural lease etc)
- Utility and/or insurance records.
- Receipts evidencing purchases made from suppliers over the preceding 15 years, to demonstrate operation of the business.
- Invoices for a range of dates throughout the 15 year period evidencing that the use/business has been in operation.
- Statutory declarations (seek advice from a solicitor as to how this should be set out) made by persons who have direct knowledge of the use and who can verify:
 - The precise nature of the use undertaken on the land (statements must be specific about the use).
 - The continuous use of the land for 15 years.
- Aerial photographs of the subject site and surrounds.

Note: Given the complexities of the controls contained in the Ballarat Planning Scheme, before lodging an application for a Certificate of Compliance you should make an appointment to meet with a Planning Officer by contacting (03) 5320 5640.