



**CITY OF
BALLARAT**

Ballarat Planning Scheme Compliance and Enforcement Policy

**Planning and Development
(Statutory Planning & Building)**

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1 DOCUMENT CONTROL INFORMATION

DOCUMENT CONTROL

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2 POLICY STATEMENT

Legislative Context:

Under the City of Ballarat Planning Scheme a planning permit is required prior to the commencement of numerous new uses and construction/demolition of structures. In some instances land owners or operators fail to get the appropriate approval and Council receives complaints. In other instances the new use or works are noted during routine inspections by Council officers. This policy outlines the approach Council will take in dealing with these situations.

The policy also applies when Council undertakes inspections to check that conditions of planning permits that have been issued have been met.

Under Section 14(a) of the Planning and Environment Act Council must *efficiently administer and enforce the planning scheme*.

Environmental & Social Context:

Council receives numerous complaints and concerns each week about uses or works. Customers seek clarification on whether the activity has approval of Council and if so, if the particular action is being undertaken in accordance with the approval. Callers are often motivated to make this contact due to negative impacts they are experiencing. Council takes these concerns seriously and will investigate each one, and respond back to the customer.

Policy goal

In all cases Council's goal is achieve compliance with the planning scheme, and any related planning permit. Options available for compliance are discussed in Section 6 of the policy together with an initial response time for investigations. The use of enforcement processes will be made where it becomes evident that voluntary compliance is unlikely to be successful in a timeframe satisfactory to Council.

3 OWNER

The owner of this policy is the Chief Executive Officer.
All enquiries regarding this policy should be initially directed to the Manager Planning and Building.

4 APPLICABILITY

The policy applies to:

- all customer inquiries regarding the legitimacy of a use and/or works on a site within the municipality;
- observations arising from normal business of Council officers;
- all compliance checks for permits issued within the municipality.

5 DEFINITIONS

Definitions are as per the Planning and Environment Act and the City of Ballarat Planning Scheme.

6 PROCEDURE AND GUIDANCE NOTES

- 6.1 The Diagram in Appendix 1 outlines the process for responding to complaints, observations and/or permit auditing.
- 6.2 As outlined above Council's goal is to achieve compliance with the planning scheme and consequently Council will take all reasonable steps to achieve compliance on a voluntary basis unless there is evidence that such an approach is unlikely to succeed in a timeframe appropriate for the impact of the situation.
- 6.3 Where enforcement is pursued it may be through the following mechanisms:

- Negotiating compliance – for less serious breaches with limited amenity impacts on other properties
- Official warnings – for breaches where there are impacts on others but ready options to resolve the breach
- Planning Infringement notices – where a more serious breach has occurred, or a lack of demonstrated intent to resolve or there are previous offences and the matter is unlikely to be resolved by a warning the offender pays a fine for the offence as well as takes actions to resolve the breach of the planning provisions
- Enforcement orders – for serious breaches of the planning scheme or ongoing breaches Council may apply to VCAT for enforcement
- Other jurisdictions – referral of matters to the Magistrates Court, County Court, other agencies for prosecution on a planning scheme breach.

6.4 In determining the path forward on enforcement Council will give consideration to the following factors:

- the knowledge of the alleged offender as to the consequences of their actions;
- the degree of care taken by the alleged offender to ensure they did not commit an offence;
- the age, maturity, intelligence, physical health, mental health or special disability or infirmity of the alleged offender, to the extent that it may legitimately impact on their ability to comply;
- the alleged offender's circumstances and background, including culture and language ability;
- the openness, honesty and cooperation demonstrated by the alleged offender;
- the contrition demonstrated by the alleged offender;
- any mitigating or aggravating circumstances;
- the culpability of the alleged offender and role played by other parties that may have contributed to the offence;
- the age, duration and magnitude of the offence;
- the extent of offences that may have been committed;
- the proportionality of the selected enforcement option so that the action will not be unduly harsh or oppressive in relation to the offence and its impact;
- the prevalence of the alleged offence within the industry and any need for a deterrent effect;
- the difficulty and resources required to be expended by the Authority in investigating and proving the offence;
- the efficiency and cost to Council of the compliance and enforcement option that is used;
- is the enforcement action required to achieve the objectives of the Act;
- whether or not the enforcement action would be perceived as counterproductive for example, by bringing the law into disrepute;
- whether or not the alleged offence is of considerable general public concern;
- the necessity to maintain public confidence in the enforcement of the Planning Scheme; and
- the existence of any risk to public health and the nature and extent of that risk; and the need to protect residents.

6.5 The compliance function is normally carried out in a reactive manner by responding to complaints from various sources.

- 6.6 Council prefers all complaints to be in writing, although verbal complaints will be recorded and investigated providing the name and contact details of the complainant are provided. All possible measures will be taken to protect the identity of the complainant in the process and Council will advise a complainant when it becomes necessary for their details to be provided to any other party [which may arise if a matter escalates to VCAT or an alternate jurisdiction].
- 6.7 Trivial or technical breaches causing no harm should not attract enforcement action, but negotiations over remedial action should not delay enforcement where it is appropriate.
- 6.8 The Council will endeavour to ensure that resources are targeted effectively to make certain an efficient investigation of alleged breaches of planning control within a framework of 'prioritised' enforcement problems. The risk matrix attached to this policy, in Appendix 2 will be used as a guide to establishing the priority for investigation and the response time for initial action. It should be noted that due to the diverse outcomes that might arise from the initial investigations, Council cannot accurately advise any party on the likely timeframe to resolve a compliance matter but will commit to regularly informing those raising the concern on progress with investigations.
- 6.9 Compliance should play an important role in relation to the development control function and should be directed to achieving higher quality outcomes in the built environment. Council is committed to being proactive in its approach, undertaking compliance audit initiatives involving (where appropriate) a range of regulatory services which address local stakeholder concerns and secure environmental improvement.
- 6.10 Planning policies can only be effective if the decisions and conditions imposed through the planning scheme are complied with. Therefore Council Authority will monitor development implementation to ensure that it is within the terms of the approved application and conditions. The misuse of land through neglect, which causes nuisance, or is subject to unauthorised uses, will also be monitored. Where problems are created which cannot be resolved by negotiation and agreement the Council will use its legal powers to resolve them.
- 6.11 Other approvals and jurisdictions
In some instances, it may be found that enforcement through the planning system is not the most timely or cost effective means of securing compliance. In such cases Council will refer the matter to either other areas of the organisation [ie Environmental Health or Local Laws] or external agencies [ie the Environmental Protection Agency] to resolve the complaint. In these situations the planning staff will actively support and assist the actions of the alternate agency in resolving the matter.
- 6.12 Enforcement Procedures
The Statutory Planning Unit will prepare and regularly review its procedures for planning compliance and enforcement at least every four years to ensure that these processes reflect best practice in this area. Copies of the procedures will be available upon request from the Manager Statutory Planning & Building

7 COMPLIANCE RESPONSIBILITIES

The Manager Planning and Building is responsible for all aspects of compliance within this policy. Enforcement actions will require the appropriate approvals as outlined in Council's delegations schedule from time to time.

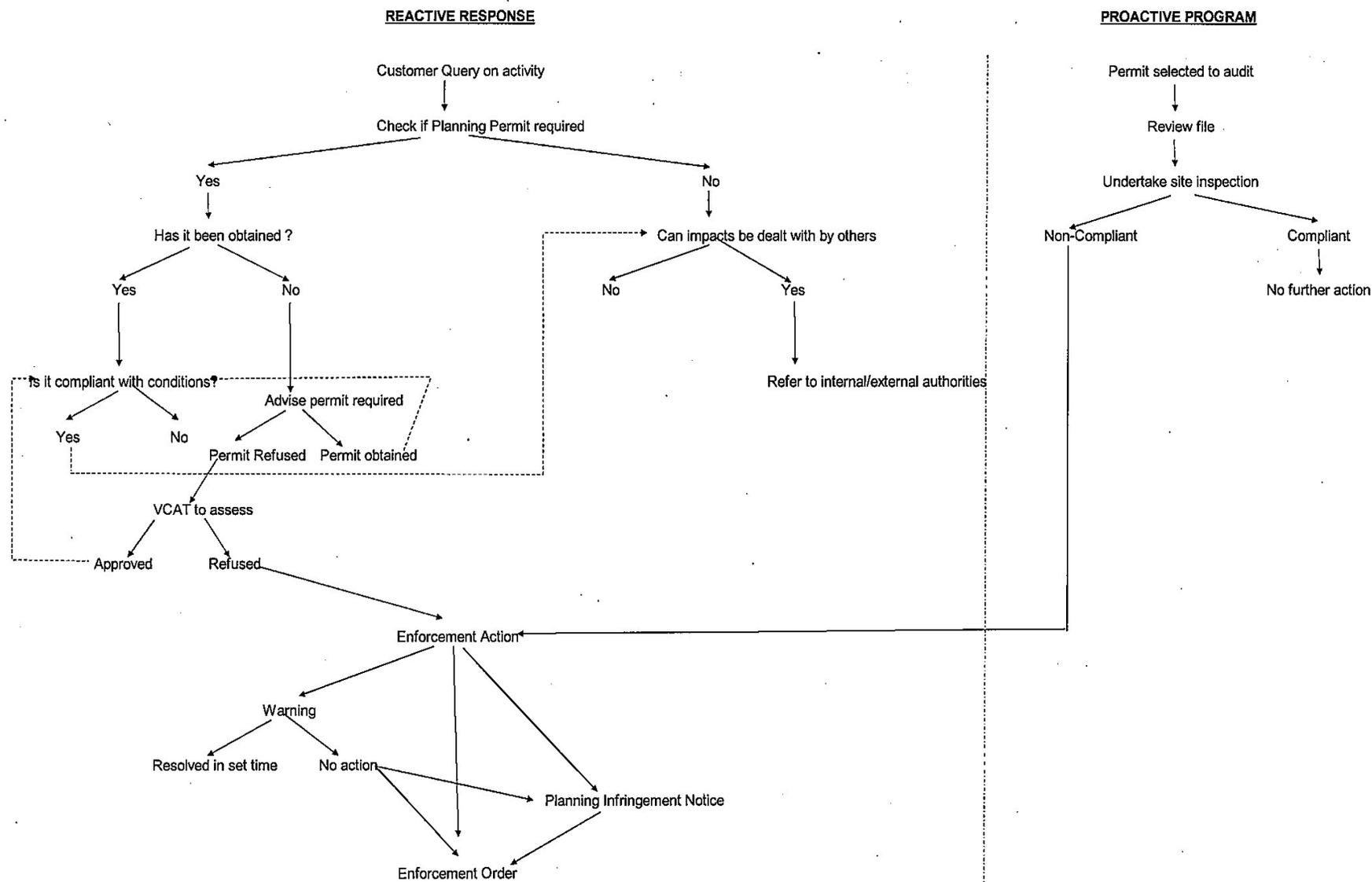
8 CHARTER OF HUMAN RIGHTS COMPLIANCE

It is considered that this policy does not impact on any human rights identified in the Charter of Human Rights Act 2007 as Section 6.4 of this policy requires Council to consider Human Rights issues in its compliance processes and responses.

9 REFERENCES AND RELATED POLICIES

	Include - Name, Reference and location of reference
Acts	Planning and Environment Act, 1987 Victorian Charter of Human Rights and Responsibilities Act, 2006 VCAT Act Infringements Act
Regulations	
Codes of Practice	<i>Good Practice guide: Ombudsman Victoria's guide to complaint handling for Victorian public sector agencies, Nov 2007</i> <i>A guide to Planning enforcement in Victoria May 2007</i>
Guidance notes	Victorian Auditor General's Report <i>Enforcement of planning permits</i> November 2008
Australian Standards	<i>AS ISO 10002-2006 Customer standard-guidelines for complaints handling in organisations</i>
Related Policies	Ballarat City Council Planning Scheme Policy for Council consideration of Planning Applications, 2009 Policy for Consultation Conference, 2009 Policy for Advertising Planning Applications, 2009 Policy for Solar Panels in Heritage area, 2009 Policy for VC 53, 2009

**APPENDIX 1 –
DIAGRAM OF THE PROCESS FOR RESPONDING TO COMPLAINTS AND PERMIT AUDITING**



**APPENDIX 2 –
RISK MATRIX FOR PLANNING COMPLAINTS AND RESPONSE STANDARDS**

The table below seeks to highlight common complaints and how they will be prioritised for investigation and enforcement. Where complaints relate to activities not covered in the table, staff will look at the closest related complaint type and assign a risk level.

Initial response standards are as follows:

PRIORITY	Response within
Very High	1 business day
High	2 business days
Medium	5 business days
Low	10 business days

It should be noted that it is difficult to definitively establish a timeline for completion of investigations due to the numerous variable in any given situation. Council will establish timelines for actions and keep all parties informed of these as the investigation progresses.

ENFORCEMENT RISK MATRIX

	ASSIGNED RISK			
	Low	Medium	High	Very High
RESIDENTIAL COMPLAINTS				
Use for non-residential purposes		Adjoining RZ	All other cases	In a HO
Demolition or extension		All other cases	In a DDO, VPO or ESO	In a HO or SLO
Keeping of animals	All other cases	Where amenity impacts on adjoining neighbours	Where likely to cause health or safety risk	
Other matters		All		
COMMERCIAL COMPLAINTS				
Hours of activity	All			
Dust, noise or other amenity impact		Adjoining RZ	All other cases	In a HO
Construction or change in use	All other cases	Where amenity impacts on adjoining neighbours		In a HO or where likely to cause health or safety risk
Brothel, gaming or nightclub		All		
Parking or loading/unloading	All other cases	Where amenity impacts on adjoining neighbours	Where likely to cause health or safety risk	
Signage or landscaping	All other cases	Where amenity impacts on adjoining neighbours	Where likely to cause health or safety risk	
Other matters		All		
INDUSTRIAL COMPLAINTS				
Hours of activity		All		
Dust, noise or other amenity impact		Adjoining RZ	All other cases	
Construction or change in use	All other cases	Where amenity impacts on adjoining neighbours		Where likely to cause health or safety risk
Parking or loading/unloading	All other cases	Where amenity impacts on adjoining neighbours	Where likely to cause health or safety risk	
Signage or landscaping	All other cases	Where amenity impacts on adjoining neighbours	Where likely to cause health or safety risk	
Other matters		All		
VEGETATION COMPLAINTS				
Removal from public land			All other cases	In a HO or on other register
Removal from private land			All other cases	In a HO or on other register