



PLANNING COMPLIANCE POLICY

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REVISION HISTORY *(Completed by Governance Officer)*

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1. PURPOSE

The purpose of this policy is to ensure East Gippsland Shire Council, meets its responsibility under the Planning and Environment Act 1987, to efficiently administer and enforce the planning scheme.

The East Gippsland Planning Scheme regulates the way land can be used and developed within the municipality. It is designed to meet community objectives such as public safety, economic advancement, environmental protection and residential amenity.

The Planning Scheme can only be effective if its requirements are complied with and appropriate action taken when necessary.

Section 98(1) of the *Local Government Act* 1989 provides that by instrument of delegation, Council may delegate to a member of staff any power, duty or function under the *Local Government Act* 1989 or any other Act, other than certain specified powers.

To allow for the efficient administration of planning compliance Council has delegated responsibility to planning officers and the Development Compliance Officer.

Planning permits contain conditions and are accompanied by plans which regulate development in some fashion or require certain things to be done.

Council's vision for the Shire is that it develops in a balanced and sustainable manner from an economic, environmental and community perspective.

Planning compliance has an important role to play in ensuring that Council's planning controls and future planning decisions are adhered to in order to achieve Council's strategic objectives.

Council is committed to effective planning compliance and the role of this document is to provide a framework for enforcement action undertaken by Council's delegated officers – that sets out the enforcement rationale, objectives, priorities and intended outcomes in achieving Council's strategic objectives and in accordance with Council's legislative requirements.

2. POLICY STATEMENT

This Policy serves to:

- Ensure that all land use and development within the East Gippsland Shire complies with the Planning & Environment Act 1987, East Gippsland Planning Scheme, planning permits and Section 173 agreements¹.
- Educate the community on the Shire's planning controls, their importance to the future image and viability of the Shire, and the place of planning compliance in ensuring compliance with the planning controls.
- Ensure that the level of planning compliance undertaken is proportionate to the nature and seriousness of the offence.
- Achieve an appropriate balance in terms of reactive and proactive compliance work to ensure that Council's strategic objectives and priorities are achieved.

¹ Refer to Definitions Section 7.

3. RESPONSIBILITY FOR IMPLEMENTATION AND COMPLIANCE

These management positions are responsible for implementation and compliance monitoring of the policy in their work areas:

Party / Parties:	Roles and responsibilities:
Director Development	To oversee the implementation of this Policy and supporting Procedures
Manager Statutory Services	To ensure awareness of and adherence to this Policy and supporting Procedures

4. SCOPE OF POLICY

This policy applies to all individuals or companies developing and using land within the East Gippsland Shire.

5. REFERENCES / ASSOCIATED DOCUMENTS

The Council Plan 2013-2017 identifies a goal that '*Land use planning delivers vibrant, connected and productive places.*' with key strategic activity 2.2 being that Council will '*work with users to enhance understanding of planning approvals processes and facilitate ease of use.*'

Relevant Legislation:

- *Planning and Environment Act 1987,*
- *Planning and Environment Regulations 1998,*
- *Subdivision Act 1988*
- *Victorian Civil and Administrative Tribunal Act 1998,*
- *Victorian Civil and Administration Rules 1998,*
- *Local Government Act 1989*

Refer to: <http://www.legislation.vic.gov.au/>

Related Procedures (internal):

- Planning Compliance Procedures

6. PRIVACY AND HUMAN RIGHTS CONSIDERATION

The disclosure of information revealed by an investigation, action/enforcement proceedings taken, is regulated by the *Information Privacy Act 2000*. It is an offence to disclose such information to a third party unless exempted under the Act.

The Planning Compliance Policy has been assessed as compliant with the obligations and objectives of the Victorian Charter of the *Human Rights Responsibilities Act 2006*.

7. DEFINITIONS AND ABBREVIATIONS

Term:	Meaning:
<i>Development Compliance Officer (D.C.O)</i>	Member of East Gippsland Shire Council (EGSC) staff responsible for ensuring adherence to all planning controls.
<i>EGSC</i>	East Gippsland Shire Council
<i>Proactive</i>	Auditing developments to ensure that planning permits / controls are adhered to.
<i>Reactive</i>	Investigating complaints regarding alleged non-compliance with the planning scheme or a planning permit, and taking appropriate action to achieve compliance.
<i>Section 173 agreement</i>	An agreement to provide for one or more conditions to be included upon the property title document, binding the current or future owner of the land to undertake or provide for certain conditions pursuant to Section 173 of the Planning and Environment Act 1987
<i>VCAT</i>	Victorian Civil and Administrative Tribunal

8. SUPPORTING PROCEDURES / GUIDELINES

8.1 Compliance Investigation Process

The identification of a potential breach of the Planning and Environment Act 1987 or the East Gippsland Planning Scheme can arise from customer contact or inspection procedure. The first stage of the compliance procedure is establishing that there has been a breach. Once the breach has been identified, the procedure emphasises compliance rather than prosecuting offenders.

There is a range of actions available to the Council in seeking compliance with regulations and permits such as:

- Advice in Writing.
- Notice to Comply.
- Infringement Notice.
- Application for an Enforcement Order.
- Prosecution at the Magistrates Court.

All complaints are acknowledged in accordance with the provisions of the East Gippsland Shire Council Citizen Response Policy. All matters are detailed in an investigation report for Council's records and perusal (if required) by more senior officers. The report contains details of the planning status of investigation, documentation of evidence if required, and the officer's recommendation as to whether further action is necessary, and in what form that action is proposed to be taken to ensure compliance with the relevant planning control.

Compliance Options

For less serious offences Council's delegated officers can do one or more of the following to ensure compliance:

- Negotiate informally with the alleged offender.
- Serve a Notice to Comply.
- Serve a Planning Infringement Notice – for less serious breaches.
- Apply to VCAT for an Enforcement Order to achieve compliance.

If the offence is of a serious nature one or more of the following options will be considered:

- Apply to VCAT for an Interim Enforcement Order – where there is a need for immediate action.
- Initiate prosecution proceedings in the Magistrates Court. This must be commenced within 12 months of the alleged offence and may be needed as a result of non-compliance with either an infringement notice or an enforcement order.
- Using Section 125 of the Planning and Environment Act to seek an injunction, usually from the Supreme Court, to restrain a person from contravening an enforcement order or planning infringement notice (legal advice must be sought).
- Apply to VCAT to cancel or amend a permit – for substantial failure to comply with conditions on a permit or material misstatement or concealment of fact in relation to the application for the permit and/or any material change of circumstances which has occurred since the grant of the permit.
- Carry out works to secure compliance with an enforcement order or interim enforcement order and recover the costs of doing so.