

# PLANNING COMPLIANCE PROCEDURES

<b>Date approved:</b>	09/05/2017	<b>Date procedure will take effect:</b>	09/05/2017	<b>Date of Next Review:</b>	May 2021
<b>Approved by:</b>	Director Development				
<b>Policy / Procedure Owner title:</b>	Manager Statutory Services				
<b>Author:</b>	Development Compliance Officer				
<b>Responsible Business Unit:</b>	Statutory Services				
<b>Supporting documents (policy associated with this procedure, forms etc.):</b>	Planning Compliance Policy – Council Policy				
<b>References and Legislation:</b>	<i>Planning and Environment Act 1987</i>				
<b>Audience:</b>	Internal				
<b>Expiry date of procedure (if applicable):</b>	Not applicable				

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## 1 Introduction / Background

1. East Gippsland Shire Council, acting as the responsible authority under the Planning and Environment Act 1987, has a duty to efficiently administer and enforce the planning scheme.

## 2 Scope / Purpose

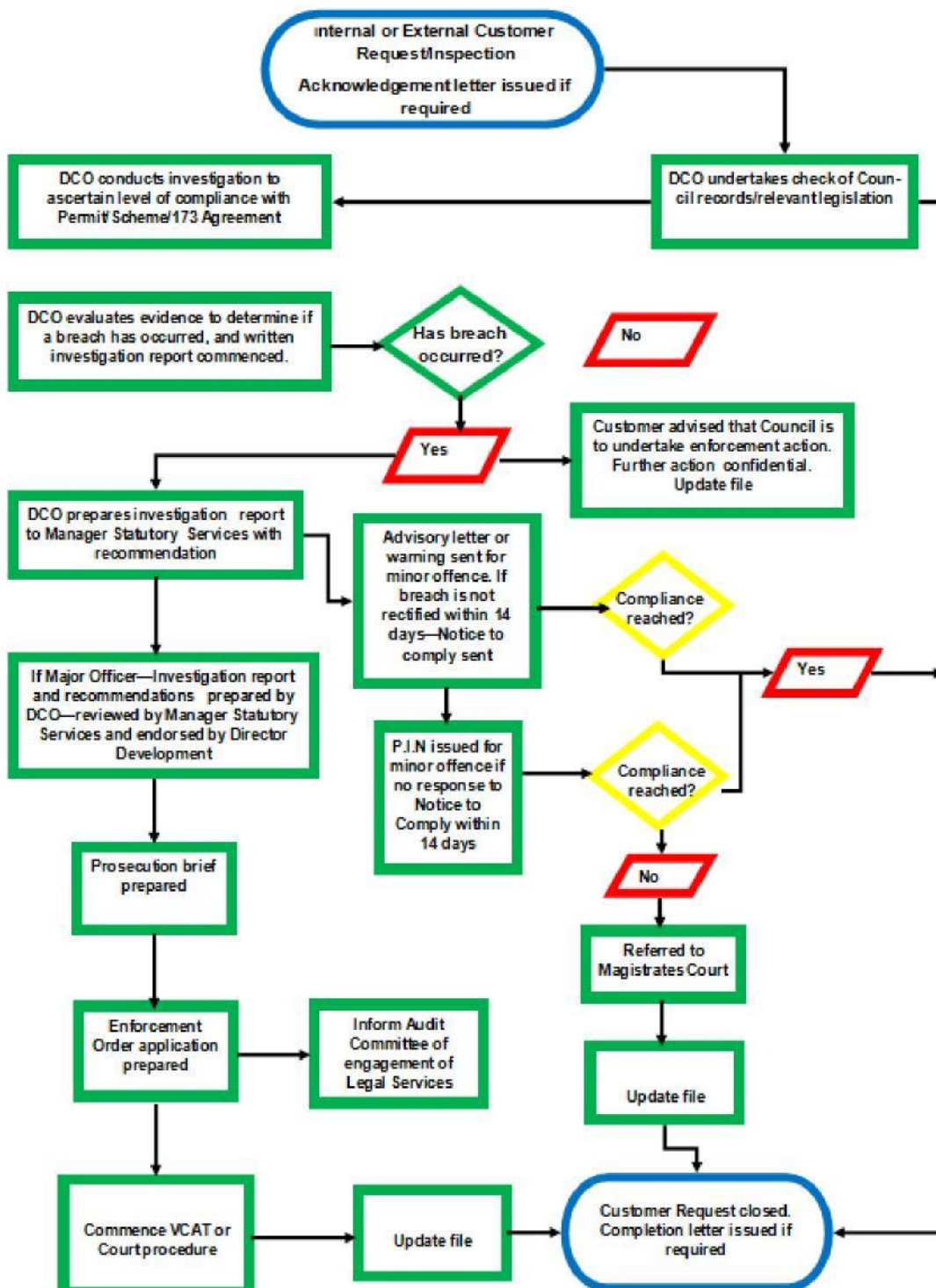
1. These procedures have been developed to ensure consistency in the application of the Planning Compliance Policy.
2. These procedures apply to all Council staff authorised under delegation from Council to enforce the provisions of the Planning and Environment Act and associated regulations.

## 3 Definitions and Abbreviations

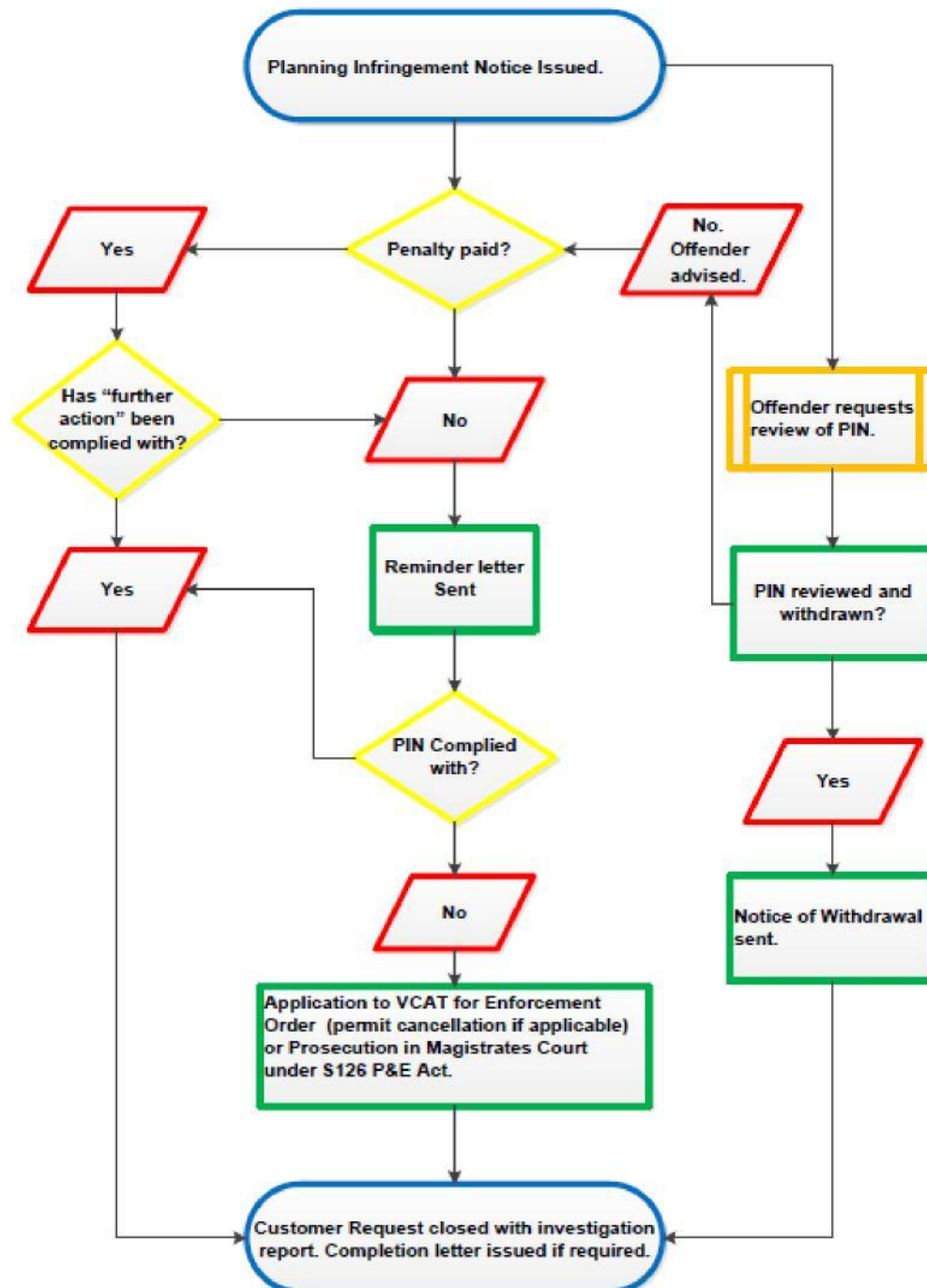
Word/Term	Definition (with examples if required)
<b>Development Compliance Officer (D.C.O.)</b>	Member of East Gippsland Shire Council (EGSC) staff responsible for ensuring adherence to all planning controls.
<b>EGSC</b>	East Gippsland Shire Council
<b>P.I.N.</b>	Planning Infringement Notice
<b>Proactive</b>	Auditing developments to ensure that planning permits / controls are adhered to.
<b>Reactive</b>	Investigating complaints regarding alleged non-compliance with the planning scheme or a planning permit, and taking appropriate action to achieve compliance.
<b>Section 173 agreement</b>	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
<b>VCAT</b>	Victorian Civil and Administrative Tribunal

## 4 Flowchart

### Flow Chart 1 : Compliance Procedure



## Flow Chart 2: Infringement Notice Procedure



## 5 Instructions

### Compliance Procedures

Depending on the nature and seriousness of the issue, Council can do one or more of the following to ensure compliance:

- Negotiate informally with the alleged offender.
- Serve an official warning – either a letter or Notice to Comply.
- Serve a Planning Infringement Notice – usually for less serious breaches.
- Apply to VCAT for an Enforcement Order to achieve compliance.
- 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 to follow up 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.

In the majority of cases, it is expected that compliance will be achieved either following the officer inspection of the site or the serving of an official warning. Where non-compliance continues, and generally following further warnings – either a planning infringement notice will be issued (for minor offences), or an application will be made to VCAT (for more serious offences) for rectification.

On occasion, prosecution proceedings will be initiated in the Magistrates Court, generally for non-payment of an infringement notice, or for offences that may not be remedied by an enforcement order application to VCAT.

The Development Compliance Officer(s) may direct compliance procedures to be undertaken on behalf of Council where there is a breach of;

- the Planning and Environment Act 1987
- a planning permit
- Section 173 agreement
- the provisions of the East Gippsland Planning Scheme, or
- the provisions of the Subdivision Act 1988.

When undertaking an inspection, the Officer will obtain the owners/occupiers consent to enter the site. If consent is not given, or the circumstances indicate that consent will not be given, the officer will give notice of entry under Section 134 of the Planning and Environment Act 1987.

Flow Chart 1 (Refer Section 4) provides an overview of the compliance procedure.

## **Inspection Procedure**

Inspections are potentially part of all procedures undertaken by the Development Compliance Officers.

The correct entry to land procedure as prescribed by Division 3 – (Powers of Entry) of the Planning and Environment Act must be observed to prevent any evidence obtained from being ruled inadmissible (and possibly the inspection to being ruled illegal).

If officers suspect that by virtue of the alleged breach, or from past experience, that the owner/occupier may be irate or aggressive – then two officers must inspect the site.

Appropriate office staff must be advised of the site's location and requested to place a telephone call in the event that the officers are late in returning to the office. Officers must be accompanied by the Police for any inspection where it is known or suspected that the owner/occupier may become violent.

## **Planning Infringement Notice Procedure**

A planning infringement notice is used to deal with less serious breaches of the planning controls.

A Development Compliance Officer may make a decision to serve an infringement notice in accordance with the procedure as outlined in Flow Chart 2 (Refer Section 4).

## **Withdrawal of Planning Infringement Notice**

A planning infringement notice is issued following an extensive and rigorous process which establishes a breach of planning controls and follows formal and informal negotiations with the alleged offender.

Part 2 Division 3 of the Infringements Act 2006 sets out the process by which an internal review and withdrawal of an Infringement Notice must take place.

A planning infringement notice may only be withdrawn in accordance with these provisions.

## **Prosecution Procedure**

The following procedure applies to both a VCAT Enforcement Order application and Magistrates Court action, whichever is applicable, to address the more serious breaches of planning controls.

Where circumstances require immediate action in regard to a breach of the East Gippsland Planning Scheme, Council may apply for an Interim Enforcement Order (IEO) under Section 120 of the Planning and Environment Act 1987. An application for an IEO will not be made without the consent of the Manager Statutory Services following discussions with Council's solicitors.

The following "Enforcement Order Process" and "Magistrates Court Process" shall be followed if the matters are to be prosecuted by Council Officers.

## Enforcement Order Process

The following process should generally be followed in making an 'Application for Enforcement Order' at VCAT:

1. Memorandum to Manager Statutory Services advising of intention to make an application for enforcement order.
2. Once approved, enforcement order application is to be completed in accordance with requirements, including clearly detailing nature of non-compliance and what remedial action is being sought to address the breach.
3. Location maps to be attached to the EO application indicating site location and proximity of complainant's site to the subject site. Once the EO has been completed it must be endorsed by Manager Statutory Services before lodgment.
4. Raise a cheque request payable to VCAT for payment of the application.
5. Land Title and/or Company Searches are to be conducted for the subject site.
6. The following information is to accompany the application:
  - Cover letter stating the contents of the EO.
  - Application fee.
  - Statement pursuant to Section 141 of the Planning and Environment Act 1987.
  - List of persons who may be adversely affected by the alleged contraventions.
  - List of any other persons who may be adversely affected if the order is made.
  - Zone and Overlay maps and provisions applicable to the site.
  - Approved permit and plans (if applicable).
  - VCAT Practice Note 2 - 'Information'.
  - Land Title and/or Company documents.
  - All related documents i.e. D.C.O. affidavit, investigation report including photographs and any relevant evidence to be used, notices issued etc.
  - Section 173 Agreement (if applicable).
7. After the application has been lodged with VCAT, Council will receive directions from VCAT to send the following information to involved parties:
  - VCAT (A) supplementary information.
  - VCAT (B) statement of service of documents.
8. The following duplicated information is to go to all affected parties and the owners of the subject site.

All information which has been sent to VCAT including:

  - Statement of Service.
  - VCAT (A) supplementary information.
  - VCAT (B) statement of service of documents.
9. A copy of all above-mentioned documentation to be forwarded to Council's solicitor for their reference and appropriate action.

## Magistrates Court Process

The following process will generally be followed when initiating prosecution proceedings at the Magistrates Court:

1. Memo to Manager Statutory Services advising of proposed Magistrates Court action. Manager Statutory Services to inform Director Development.
  
2. Once approved, Contents Checklist to be filled out including:
  - Planning Enforcement Officer's Investigation Report;
    - i. Interview with Suspect/Admissions
    - ii. Witness Statements
    - iii. Sketch of Property
    - iv. Photographs.
  - Title Search;
    - i. Certified Copy
    - ii. Measurements verified against property title.
  - Certified Extract from Rate Records
  - Company Search
  - Certified Copy of Planning Permit/s, 173 Agreement/s and Endorsed Plan/s
  - Extract of Planning Scheme
  - Extract of Planning Scheme maps etc.
  - Copies of Other Relevant Documents;
    - i. Planning Permits Applications/VCAT Decisions
    - ii. Letters, File Notes, "Notices".
  - Instrument of Appointment and Authorisation
  - Certificate of Summary Conviction
  - Out of Pocket Expenses
  - Brief of Evidence

If the matter is to be prosecuted by Council's solicitors, prepare a brief of evidence and attach all above-mentioned documentation and forward to Council's solicitors for further action.

Charge and summons to be issued by Council's solicitors and served.



## 6 Roles and Responsibilities

Relevant officer:	Roles and responsibilities:
Executive Group	Ensure all managers are aware of their responsibilities and comply with the Policy and these Procedures.
Manager Statutory Services	Ensure all staff and legal representatives are aware of their responsibilities and comply with the Policy and these Procedures.
Development Compliance Officer	To receive, investigate and initiate compliance procedures in accordance with Planning Compliance Policy and Procedures
Customer Service / Information Management Staff	To receive, document and disseminate complaints or requests for compliance with the Planning Compliance Policy in a timely manner.

All staff have an obligation to report occurrences of non-compliance with Council policy/protocol/procedure. Incidents of non-compliance should be reported immediately to the Director responsible for this Procedure, the Policy Owner or the Administration Unit.

Where non-compliance has been identified the matter will be investigated by internal review and where applicable further action taken in accordance with Council's Disciplinary Procedures Policy.

## 7 Version Control Table

Version Control	Date Effective	Approved by	Amendment
1	07/05/2013	Director Development and Council (with Planning Compliance Policy)	Original
2	06/06/2017	Director Development and Council (with Planning Compliance Policy)	Amended