EAST GIPPSLAND
SHIRE COUNCIL

Development Compliance Policy

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1. Purpose

This policy outlines East Gippsland Shire Council's (Council's) approach to enforcement of the *Planning and Environment Act 1987* (the Act) and the East Gippsland Planning Scheme (Planning Scheme).

2. Scope

This policy applies to all authorised officers of Council under the *Planning and Environment Act* 1987 as it relates to the East Gippsland Planning Scheme.

3. Context

This policy is to ratify Council's planning enforcement decision making. It sets out the principles, criteria and measures that Council will use to enforce provisions of the Act and the Planning Scheme.

The Scheme and Act regulate land uses and developments across the municipality. These activities are controlled by the provisions in the Planning Scheme, the statutory planning process including the imposition of conditions on permits, and Victorian Civil and Administrative Tribunal (VCAT) enforcement orders.

Section 14 (a) of the Act places an obligation on Council to efficiently administer and enforce the Planning Scheme. On occasion, landowners, occupiers or people using the land fail to obtain appropriate planning approvals or fail to abide by the conditions of planning permits or provisions of the Planning Scheme. Compliance is mandatory and when breaches do occur, compliance and enforcement action must be taken.

4. Statement

4.1 Principles of Council Planning Enforcement

The aim of all enforcement action is to achieve compliance. The method by which compliance is achieved will be by one or a combination of the following:

- Compliance Advice via verbal or written notice
- Official Warning Notice
- Planning infringement notices (PIN)
- Prosecution heard in the Magistrates Court of Victoria
- Enforcement orders obtained from VCAT
- Section 173 agreements
- Injunctions granted in the Supreme Court of Victoria

4.2 Compliance Principles

4.2.1 Proportionality

A proportionate response means that enforcement will be scaled to the seriousness of the Planning Scheme breach.

Council recognises that most individuals want to comply with the law and will assist compliance by being open and helpful. It can be appropriate for an officer to offer informal advice and provide a chance to discuss compliance problems.

Attention will be focused on those whose activities give rise to the most serious risks, or where potential hazards are least well controlled. Depending on the seriousness and persistence of the breach, Council will minimise the costs to the person infringing the law by enforcing the minimum action necessary to secure future compliance.

Prosecution will generally be used as a last resort, or for serious or blatant offences. Prosecutions may be necessary when a problem or hazard is serious, or prevalent in the community, and prosecution will tend to deter people from breaching the law.

4.2.2 Consistency

Council will take a similar approach in similar cases to achieve similar outcomes. While decisions on enforcement require the use of professional judgement and discretion to assess varying circumstances, officers will:

Follow procedures and standard operating procedures wherever possible;
- Ensure fair, equitable and non-discriminatory treatment; and
- Record any deviation from standard operating procedures and their reasons.

4.2.3 Transparency

Council will be open and transparent about the manner in which it undertakes enforcement activities and the laws it enforces. Council officers will be clear and open about what is expected from those on whom the law places a duty (duty holders).

In educating the community at large and dealing with duty holders, Council will make a clear distinction between what is legally required and what is desirable but not compulsory. Staff will be open to discussing potential and actual breaches, before, during and after enforcement decisions have been taken.

When remedial action is needed, officers will explain clearly and in plain language why the action is necessary. Where practicable, officers will give notice of intent to commence formal action. Officers will identify what action is required to achieve compliance and the timeframe for undertaking that action. Where they exist, advice will be provided on statutory review rights and the process for seeking a review of (or appeal against) that decision.

Where it is not practical to give notice, Officers will record why this is so.

Complainants may be advised of what action has been taken and why that action has been taken, however this is on a case by case basis and typically reserved for more significant cases.

Private or confidential information received by Council during the course of investigations will be handled and protected according to Privacy and Data Protection Act 2014. In particular, complainants may be informed of rudimentary updates, however not provided with detailed information. Council officers may be unable to disclose personal information regarding the duty holder, or aspects of their personal circumstances that may have influenced Council's enforcement decision.

Council recognises that there is sometimes a public interest in enforcement action, and that publicising enforcement action plays an important role in helping the community and duty holders to understand the role of Council, and the purpose and consequences of breaches of the law. However, in providing information to media outlets, Council will also consider:

- Whether the release of information will jeopardise or hinder other enforcement activities, and
- Whether Council has incomplete information, or is still investigating a report (for example, when the investigation may be ongoing), and
- Whether Council is aware of circumstances particular to the complainant, duty holder or others involved that mean partial disclosure of information will mislead or give a distorted picture of the facts.

In these circumstances, it will often be appropriate for Council to make no public comment.

4.3 Ethics

Council's planning and compliance officers will conduct themselves in accordance with the Council's Employee Code of Conduct. Enforcement and compliance activities will be conducted lawfully, respectfully, diligently, honestly, consistently, ethically and in line with natural justice principles.

Council will act as the model litigant and will secure compliance by pursuing enforcement actions to their logical and proper conclusions.

4.4 Compliance Priorities

In all instances Council will attempt to lead all parties to a compliant resolution before taking formal Enforcement action. Where an offence warrants a PIN and an enforcement order at VCAT, the PIN will be issued first.

Where an incident warrants prosecution in the Magistrates Court and a VCAT enforcement order, Council will usually commence the Magistrate Court action first.

4.5 Combined matters

Where a breach of more than one law occurs, for example a Planning Offence, Local law Offence and a Building offence where Council decides to pursue all breaches in a Court then Council will combine those actions into one Court hearing and generally one person will be nominated as the informant to the Court. This will allow the accused party to answer all charges at the same time.

4.6 Publicity

The use of social media plays an important tool in achieving compliance as it operates as a deterrent to non-compliance. Where Council deems it necessary for the benefit for the wider community, Council will publish the outcomes of enforcement and compliance activities either generally or as a report to specific professional associations and on its corporate website where such publication is deemed beneficial.

At no time should any such publication occur if it is considered it may be harmful to a defendant and will not occur until after all matters have been lawfully heard before a Court or Tribunal of competent jurisdiction. The Chief Executive Officer is authorised to make the decision to publicise.

4.7 Costs

Council will seek the appropriate orders to recover its full costs in undertaking compliance or enforcement actions.

4.8 Enforcement Factors

In determining the course of action to be taken, Council will take into consideration the following factors:

- The obligation to achieve compliance with the provisions of the Planning Scheme as reflected in the Planning and Environment Act 1987.

Cost effectiveness:

- The community benefit generated by Council taking action when comparing costs of possible ongoing or increasing non compliances.

Choosing the most appropriate enforcement path:

- Council will determine the most effective action applicable to the incident. The remedy may reside with other areas of Council such as, Local Laws, Building, Environmental Health or external bodies such as Victoria Police, Environment Protection Authority (EPA) or VicRoads. Council will actively cooperate with those other investigation enforcement agencies.

Sufficient evidence to support a breach:

- Before considering whether Council will commit to undertaking a full investigation it will first establish if there is, on the information available, likely sufficient evidence to support a breach by way of a preliminary investigation.
- If there is sufficient evidence then council may continue with the investigation, if there is not then the matter may be pended or closed until further additional information, if any, comes forward and then matter maybe re-opened.

Seriousness of the incident:

- The extent of the alleged breach will be considered in terms of damage to the environment level of amenity impact, such as to, neighbours, locality, municipality, State-wide or National.

Prevalence:

- Taking into account whether the breach can occur elsewhere in the municipality. If the frequency of similar incidents is not decreasing, the level of compliance/enforcement actions may be increased.

Deterrence:

- Consider whether the taking of action will likely decrease the frequency or severity of similar breaches by that person or business or others across the municipality.

Intention:

- Take into account whether the breach was accidental, negligent, deliberate, wilful or unavoidable.

Foreseeability of the breach:

- The contribution of any management system to the breach. The person's or business's experience, qualifications or registrations in a related or similar area.

Previous history:

- Previous conduct of the person or business in other non-compliances with any other areas of Council or with other councils.

History of previous actions for similar breaches:

- The previous actions taken for similar incidents will be reviewed prior to determining the appropriate action for the current issue. If the frequency or severity of incidents is not decreasing, the level of compliance/enforcement actions may be increased.

Level of Council or community concern:

- Consideration will be given to the detrimental or positive impact on Council's reputation by the taking or not taking of action.

Incorporated body or natural person:

- Whether the breach was caused by an incorporated body or a natural person. Company Directors may have actions taken against them where it is likely they could have prevented the breach. Council will actively explore the availability of any statutory due diligence defences.

Deeming provisions:

- The owner of a property is deemed to have committed all offences that have occurred on their property. Section 126 of the Act deems the owner responsible for all breaches that occur on the property. Council may choose not to rely on this deeming provision and institute legal proceedings against another or alternative party if appropriate to do so. Council may take action against all parties that are found to have contributed to the breach occurring.

Level of cooperation:

- The level of cooperation and rectification actions taken will be considered. If cooperation is not given the level of enforcement action may be increased to the next level. The making of a retrospective planning application seeking to remedy the breach is not considered as cooperation, i.e. was cooperation provided at the first instance, was the breach self-reported, were rectification works undertaken without direction or was a planning amendment sought.

Other aggravating or mitigating circumstances:

- Dependent on the prevailing circumstances these will be assessed on a case-by-case basis.

4.9 Objectives of Planning Compliance

This policy aims to outline the preferred methodology in directing matters towards compliant outcomes rather than prosecution.

- Ensure that the level of enforcement action undertaken is proportionate to the nature and seriousness of the offence.
- Ensure that Development Compliance Officers (DCO) exercise their discretion in relation to breaches in an appropriate manner and that Council's resources deal with breaches appropriately and in a manner consistent with the public interest.
- Promote the positive role of Council in reaching successful outcomes on non-compliance/s associated with breaches of its legislative framework, including through proactive enforcement programs;
- Ensure an effective complaint handling system that reflects the needs, expectation and rights of complainants, community and authorised officers.

Planning compliance aims to:

- Rectify non-compliances that have an impact on the community.
- Educate the community by informing respondents of non-compliances and proactively auditing strategically selected planning permits.
- Reduce risk to Council, community and environment as a result of any breach.
- Increase the publics' confidence in Council.

The enforcement of breaches outlined above includes discretion in how the DCO exercises their functions. This discretion includes how we prioritise and allocate our resources, how enforcement decisions are made and what actions are taken.

4.10 Enforcement Options

Council has a number of tools available to resolve breaches. Initially, minor breaches will be resolved informally, and more significant matters may result in more significant actions such as formal written warnings, PIN's or prosecution in the Magistrates Court or an interim enforcement order through VCAT.

4.10.1 No Action

No action will be taken when, after investigation, no breaches are identified. It may also be appropriate to take no action when:

- The complaint is vexatious or the breach is trivial in nature,
- The alleged offence is outside Council's jurisdiction,
- The alleged offence is outside Council's area of authority,
- Taking action may prejudice other investigations or Council activities, or,
- Upon assessment, any enforcement action is otherwise not in the public interest.

4.10.2 Informal Action

Informal action to achieve compliance with laws that may include:

- Offering verbal advice,
- Referral of matter to appropriate agency,
- Informal written advice.

Advice from officers will be given clearly and simply and (where appropriate) will be confirmed in writing.

The circumstances in which informal action may be appropriate include:

- Where the act, offence or omission is not serious enough to warrant formal action,
- Where the duty holder's past history reasonably suggests that informal action will secure compliance,
- Where confidence in the duty holder is high,
- Where the consequences of non-compliance will not pose a significant risk; or
- Where informal action may prove more effective than a formal approach.

Where formal action is not possible, but it would be beneficial in a wider public safety context to urge a particular outcome, such action will be taken by a senior officer of Council and the reasons for this will be recorded by the relevant staff member. The recipient will be made aware that the requested actions are not legally enforceable.

4.10.3 Mediation

In some circumstances, it may be appropriate for Council to facilitate mediation between affected parties. Mediation may be appropriate where, after investigation, an officer determines that the problems being complained of are incapable of resolution through other formal or informal means.

The use of mediation services may also be appropriate where an aggrieved individual has no wish to pursue action to resolve a complaint by legal means. Circumstances that may be suitable for mediation may include where complaints relate to minor losses of amenity by the conduct of one person towards another.

Mediation will not be suitable:

- Where any participant is concerned for their personal safety because of the conduct of another participant, or
- Where either party is not willing to participate in mediation, or
- Where non-compliance exposes a person or property to unacceptable risk of injury or harm, or
- Where the non-compliance is not of a minor nature.

4.10.4 Formal Action

Service of Orders and Directions

Sometimes, legislation will specify the procedures that Councils must follow, in order to:

- Advise of the intention to issue an Order,
- Invite submissions with respect to the matter,
- Order a duty holder to do or refrain from doing a thing under specified circumstances; and/or
- Issue directions specifying how the Order may be complied with.

Council Officers will use their experience, professional judgement and discretion to assess the variables relating to each matter under consideration, including the reasonableness of the actions required by an Order/direction and the timeframe to comply.

Only in circumstances such as a threat to life or immediate threat to public health or safety will an Order be made without giving notice of intention. In these circumstances, immediate compliance to resolve a situation may be required.

In most cases the person or business receiving the Order has a right of review or appeal (usually to a court, tribunal other statutory body) if the Order is considered unreasonable. If an Order is served for which a review is possible, Council will advise the recipient in writing of the right to review at the time of serving the Order.

Where there is evidence that an offence has been committed, Council may issue a PIN or commence a prosecution in addition to serving an Order. This will only be done where it is determined that the circumstances justify taking both steps.

4.10.5 Enforcement response timeline

Milestone	Target timeframes
Initial response	Respond to customer and review report within 2 days
Open case file	Within 7 days where required
Commence investigation	Within 14 days where appropriate

5. Roles and Responsibilities

The following teams or positions have direct and/or supporting responsibilities associated with this Policy:

Position	Roles and Responsibilities
General Manager Planning and Projects **General Manager Place and Community**	To ensure community awareness of this Policy and oversee its implementation.
Manager Planning and Development	Oversees delivery of compliance outcomes
Statutory Planning Coordinator	Provides subject matter expertise on statutory planning, environmental planning and general planning principles
Development Compliance Officer	Undertake compliance investigations in accordance with this policy and related procedures

6. Definitions and abbreviations

Term	Meaning
Action Officer	Member of East Gippsland Shire Council staff responsible for answering or responding to a request for information.
Community	People who live in East Gippsland; People and organisations who are ratepayers in East Gippsland; and People and organisations who conduct activities in East Gippsland.
Contractor	Person or company engaged to undertake works for Council, including service providers / service partners.
Council	East Gippsland Shire Council.
Councillor	A person who has been elected to the office of "Councillor" of East Gippsland Shire Council.
Council Officer	A current member of East Gippsland Shire Council staff with the authority to engage in activities on behalf of Council.
DCO	Development Compliance Officer
EPA	Environment Protection Authority
PIN	Penalty Infringement Notice
Responsible Officer	The staff member of East Gippsland Shire Council who has responsibility for the general area/subject matter to which a record pertains.
Section 173	An agreement pursuant to Section 173 of The Act
Shire	The geographic area of East Gippsland Shire Council.
Staff	All staff engaged by East Gippsland Shire Council, including all full-time, part-time, and casual employees, labour hire agency staff and contractors.
VCAT	Victorian Civil and Administrative Tribunal

7. Human Rights

Council is committed to upholding the Human Rights principles as outlined in the *Charter of Human Rights and Responsibilities Act* 2006 (the Charter). This Policy has been assessed as compliant with the obligations and objectives of the Charter.

8. Gender Equality

This Policy has considered the *Gender Equality Act* 2020 in its preparation and has been assessed as not requiring an Equity Impact Assessment (EIA).

9. Risk Reference

This Policy is implemented as a control to mitigate risks in the following categories:

Risk Category	✓	Risk Category	✓
Community	✓	Governance and Reputation	✓
Financial	✓	Environment	✓
People and Property	✓	Service Delivery and Projects	

10. References and Supporting Documents

This policy should be read in conjunction with all other relevant, Council policies and procedures, as well as relevant legislative requirements.

10.1 Related Legislation

- *Planning and Environment Act 1987*
- *East Gippsland Planning Scheme*
- *Infringements Act 2006*
- *Local Government Act 1989*
- *Local Government Act 2020*
- *Privacy and Data Protection Act 2014*
- *Victorian Civil and Administrative Tribunal Act 1998*

10.2 Related Guidelines, Operational Directives or Policies

- Victorian Auditor General's report on Enforcement of Planning Permits

10.3 Related Procedures

- East Gippsland Shire Code of Conduct
- East Gippsland Shire Development Compliant Procedure - 2026

11. Review and Revision History

Version Number	Date Approved	Approved By	Review Summary
1	7 May 2013	Council	
2	6 June 2017	Council	
3	21 July 2026	Council Council ft	Policy name change to align with role Update to template Major review and update

11.1 Administrative Updates

Minor amendments to this document may be required from time to time. Where amendments do not materially alter the intent of a document, they will be made administratively and approved by the Document Owner.

11.2 Document Control Disclaimer

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