

COUNCIL POLICY

Planning Compliance

Contents

1. Purpose.....	3
2. Scope.....	3
3. Policy details.....	3
3.1 Background.....	3
3.2 Enforcement Action.....	4
3.3 Compliance Principles.....	4
3.4 Ethics.....	4
3.5 Compliance Priorities.....	4
3.6 Combined Matters.....	5
3.7 Publicity.....	5
3.8 Costs.....	5
3.9 Enforcement Factors.....	5
3.10 Types of Action.....	7
3.11 Planning Enforcement Risk Matrix.....	9
4. Roles and responsibilities.....	10
5. Human Rights Charter compatibility.....	11
6. Supporting documents.....	11
7. Definitions and abbreviations.....	11
8. Approval.....	12

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REVISION RECORD

MANDATORY – Use 1.0, 2.0 for adopted / approved versions and 1.1, 1.2 for drafts or revisions without change.

Date	Version	Revision description
14/7/2021	1.1	First Draft
26/10/2021	1.2	Incorporating Feedback from Internal Feedback

1. Purpose

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

3. Policy details**3.1 BACKGROUND**

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.

3.2 ENFORCEMENT ACTION

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:

- verbal or written advice
- warnings
- 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

3.3 COMPLIANCE PRINCIPLES

When exercising enforcement functions, Council will have regard to this policy. Council has discretion as to when enforcement is required to secure compliance and which measures are appropriate for particular situations.

3.4 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. The Auditor General has published expected behaviours of councils when undertaking planning enforcement action.

3.5 COMPLIANCE PRIORITIES

Where an incident 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.

3.6 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.

3.7 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.

3.8 COSTS

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

3.9 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 close until other information, if any, comes forward and then matter maybe re-opened.

- Seriousness of the incident
 - 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 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 experience, qualifications or registrations in a related or similar area.
- Previous history
 - Previous conduct of the person 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.

3.10 TYPES OF ACTION

Council has a number of tools available to resolve breaches. Initially, minor breaches will be resolved informally, and more significant matters may result in prosecution in the Magistrates Court or an interim enforcement order through VCAT. In ascending order, the available actions are as listed.

➤ Negotiation of compliance

In matters of minor or no amenity impact and no community concern it may be determined that verbal or emailed advice or agreements by letter will resolve the issue.

➤ Official warnings

May be issued at the officer's discretion in matters where there are minor amenity effects and no possibility of medium term or greater impacts. If a second or subsequent warning is issued for the same matter then it could be escalated to an infringement.

➤ Planning Infringement Notices (PIN)

PINs can be issued where previous requests have not been actioned or the issue causes amenity impacts on others or is of a medium impact and effect but can be reversed or is temporary. PINs may or may not contain additional measures to be undertaken to rectify the breach.

➤ Prosecution - Charges and Summons

Charges and summons may be issued where:

- a PIN remains unpaid or remediation actions unresolved. The original offence is the subject of the charges and summon
- the breach causes significant environment, amenity or social impacts
- the effects cannot be easily reversed
- the breach occurred deliberately, wilfully or negligently
- multiple breaches are present
- obstruction of Authorised officer(s) occurred
- failure to comply with an Enforcement Order in accordance with Section 133 of the VCAT Act

➤ Enforcement order through VCAT

An enforcement order will be sought from VCAT where a previous request to rectify the breach has not occurred, where PINs have been paid but remediation actions have not resolved the issue, or a prosecution has been undertaken however the breach remains.

An enforcement order is not punitive and is seen as a compliance measure.

In matters where a risk of serious amenity or long-term impacts may be realised, an interim enforcement order will be sought from VCAT.

➤ Breach of VCAT order

Council may carry out work to rectify any non-compliance and recover its costs of the action. The issue must be causing serious amenity detriment and all other actions must have been either explored and disregarded or taken and found to be ineffective.

➤ Cancel or amend a planning permit

Where there has been substantial and ongoing non-compliance with conditions of a planning permit, Council may apply to VCAT to request the permit be revoked or amended.

➤ Supreme Court County Court Injunction

The issue must be causing or is likely to cause serious amenity detriment and all other actions must have been either explored and disregarded or taken and found to be ineffective.

3.11 PLANNING ENFORCEMENT RISK MATRIX

The following compliance matrix will be used to set investigative priorities and used as guidance by compliance staff.

No.	Item	Risk Matrix	Description
1	Landscaping	M L L	<ul style="list-style-type: none"> No landscaping Landscape maintenance required Landscaping sub standard
2	Car spaces	H M M L	<ul style="list-style-type: none"> No Delineation Majority of storage in car spaces Unable to use areas designated for parking Minor storage in frontage
3	Endorsed plans	H	<ul style="list-style-type: none"> Where condition requires endorsed plans prior/before works/ development etc
4	Before development or works or demolition permit condition	H M M M	<ul style="list-style-type: none"> Before development commences a Section 173 agreement is required and has not been undertaken Before development commences etc, etc, Before demolition or development commences Before development/works commences/Tree Protection Zones/measures in place.
5	Development not in compliance	H H H M M M M L L	<ul style="list-style-type: none"> Height of building at frame stage Slab height Set back Breach of Construction Management Plan (CMP) Breach of permit condition that was requested by objectors/neighbouring properties Overlooking/window screening Minor variation to plan Minor breach of permit condition
5	Bees	H M	<ul style="list-style-type: none"> Hive causing public threat to safety (refer to Environmental Health Team) Apiary code of practice non-compliance
6	Heritage Site	H H H H	<ul style="list-style-type: none"> Breach of permit condition Activity unsure Demolition occurring without a planning permit. Installation of utility services/sheds/outbuildings
7	Amenity	M M	<ul style="list-style-type: none"> Noise, fumes, odour, dust emissions, waste, vibrations etc (If commercial premises, refer to EPA), Breach of permit condition
8	Signage	H M M M	<ul style="list-style-type: none"> Offensive signage Prohibited signage Offsite promotional signage (size) Signage requiring permit

		L	<ul style="list-style-type: none"> Bunting/banners
		L	<ul style="list-style-type: none"> Promotional signage
	Brothels	H	<ul style="list-style-type: none"> No permit - refer to Police
		H	<ul style="list-style-type: none"> Illegal use - refer to Police
		H	<ul style="list-style-type: none"> Email - LED-SICU-OIC@police.vic.gov.au
		H	<ul style="list-style-type: none"> Legal brothel breaching permit conditions
9	Home Occupations	H	<ul style="list-style-type: none"> Safety concern
		M	<ul style="list-style-type: none"> All matters.
10	Vehicle repairs	H	<ul style="list-style-type: none"> Spray painting (refer to EH)
		M	<ul style="list-style-type: none"> Vehicle panel beating
		M	<ul style="list-style-type: none"> Mechanical repairs
		L	<ul style="list-style-type: none"> Car sales
11	Planning permit required for	H	<ul style="list-style-type: none"> Use
		H	<ul style="list-style-type: none"> Development
		H	<ul style="list-style-type: none"> Building & works
		H	<ul style="list-style-type: none"> Change of use
14	Vegetation	H	<ul style="list-style-type: none"> Removal of native vegetation.
		H	<ul style="list-style-type: none"> Lopping of native vegetation
		H	<ul style="list-style-type: none"> Removal or lopping of a tree protected by planning permit/Local Law.
15	Land Use	H	<ul style="list-style-type: none"> Boarding House (Building dept lead agency)
		M	<ul style="list-style-type: none"> Education Centre/Kindergarten
		L	<ul style="list-style-type: none"> Place of assembly

Planning Enforcement Response Guide

Low (L)	60 days plus
Medium (M)	28 days
High (H)	Immediate Response

4. Roles and responsibilities

The following positions are responsible for

Responsibility	Role / Position
Manager Building and Amenity	Oversee delivery of compliance outcomes
Coordinator Compliance	Undertake compliance in accordance with this policy

5. Human Rights Charter compatibility

This policy has been assessed as being compatible with the *Charter of Human Rights and Responsibilities Act 2006 [Vic]*.

6. Supporting documents

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

Related Legislation

- *Planning and Environment Act 1987*
- *Alpine Planning Scheme*
- *Infringements Act 2006*
- *Victorian Civil and Administrative Tribunal Act 1998*

Related Guidelines, Operational Directives or Policies

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

Related Procedures

- Alpine Shire Code of Conduct

7. Definitions and abbreviations

Term	Meaning
EPA	Environment Protection Authority
PIN	Planning Infringement Notice
VCAT	Victorian Civil and Administrative Tribunal
Section 173	An agreement pursuant to Section 173 of The Act

8. Approval

THE COMMON SEAL OF THE
ALPINE SHIRE COUNCIL was
hereunto affixed this 9 day of November
2021
in the presence of:

Ron Janas
COUNCILLOR

R. Janas
SIGNATURE

Charlie Vincent
COUNCILLOR

[Signature]
SIGNATURE

Charlie Bird
CHIEF EXECUTIVE OFFICER

[Signature]
SIGNATURE