



## Enforcement of Planning Permits



VICTORIA

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Victorian  
Auditor-General

# Enforcement of Planning Permits

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Victorian Auditor-General's Office  
*Auditing in the Public Interest*

The Hon. Robert Smith MLC  
President  
Legislative Council  
Parliament House  
Melbourne

The Hon. Jenny Lindell MP  
Speaker  
Legislative Assembly  
Parliament House  
Melbourne

Dear Presiding Officers

Under the provisions of section 16AB of the *Audit Act 1994*, I transmit my performance report on *Enforcement of Planning Permits*.

Yours faithfully



D D R PEARSON  
*Auditor-General*

13 November 2008

# Foreword

Enforcing planning permits is critical to ensuring land use and development is consistent with a council's planning scheme. In undertaking this role, councils aim to achieve the community objectives of maintaining public safety, safeguarding heritage values and enhancing community amenity.

Our report from 1999, *Land Use and Development in Victoria: The State's Planning System*, found that enforcement of planning permit conditions only consisted of responding to complaints. In addition to complaint handling, I was pleased to find that both the Hume City Council (Hume) and the City of Ballarat (Ballarat) had proactively undertaken enforcement action, although an across-the-board risk assessment would better inform the setting of enforcement priorities.

This audit stresses the importance of establishing a framework covering the enforcement rationale, objectives, priorities and intended outcomes. This should drive key decisions, such as the level of enforcement resources required, as well as the content and coverage of the performance measurement regime and continuous improvement program.

Hume's planning enforcement function was well-managed, adequately resourced and its guidelines, processes and systems were well-developed. Conversely, Ballarat had limited guidelines, processes and systems.

In some respects, the lack of documentation at Ballarat prevented a complete assessment of enforcement activity; however, onsite visits and file reviews disclosed that key aspects of compliance checking were undertaken at both councils.

Despite Ballarat's efforts to secure compliance with planning permits, the high level of continuing non-compliance is of concern.

While this audit has concentrated on Hume and Ballarat, enforcement is a critical responsibility of all councils in their role as responsible authorities. The findings and recommendations of this report are relevant across all councils even though in some cases they face different planning challenges.



D D R PEARSON  
*Auditor-General*

13 November 2008

# Contents

Foreword .....	v
1. Executive summary .....	1
1.1 Introduction.....	1
1.2 Findings.....	2
1.3 Recommendations .....	4
2. Background .....	7
2.1 Introduction.....	7
2.2 Key components of planning enforcement.....	9
2.3 Hume and Ballarat Councils.....	11
2.4 Previous reports .....	13
2.5 About the audit .....	13
3. Enforcement rationale, objectives and priority setting.....	15
3.1 There should be a clear focus and rationale for enforcement programs and these should support council’s strategic objectives .....	16
3.2 Allocation of resources should be based on a risk assessment approach .....	18
3.3 Conclusion.....	19
4. Enforcement operations .....	21
4.1 Introduction.....	22
4.2 Councils should have sufficient and trained staff to meet their enforcement objectives .....	22
4.3 Enforcement tools should promote a consistent and comprehensive approach .....	23
4.4 Enforcement activities should be undertaken in a thorough, consistent and timely manner.....	26
4.5 Conclusion.....	30
5. Performance monitoring and continuous improvement .....	33
5.1 Management should monitor enforcement activities against appropriate performance standards .....	34
5.2 Conclusion.....	37
Appendix A. Better practice example – Hume Council’s guidelines .....	39

# 1 Executive summary

## 1.1 Introduction

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A planning permit is a legal document under the *Planning and Environment Act 1987* (the Act). Where specified in a planning scheme, a planning permit must be obtained for particular uses or developments to occur on a specific parcel of land.

Planning permits are required for subdivisions, buildings, works and other matters, such as the removal of native vegetation. Planning permits differ from building permits, which relate to the method of constructing a building or development. A planning permit's commencement and completion is subject to a time limit.

Under section 14(a) of the Act, an important duty of a council that is acting as a responsible authority<sup>1</sup> is '*to efficiently administer and enforce the planning scheme*'. While council enforcement activities cover a range of areas, such as compliance with the planning scheme, this audit focused on councils' enforcement of the use and development of land as specified in planning permits, including any conditions that form part of the permit.

The audit examined the enforcement function of both Hume City Council (Hume) and City of Ballarat (Ballarat), both of which deal with a range of planning issues including:

- substantial urban growth
- urban and rural land within close proximity
- new residential development
- native vegetation protection
- heritage issues
- medium-density housing
- industrial and commercial areas that are close to residential areas.

The selection of councils with these features allowed the audit to cover a variety of enforcement issues.

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<sup>1</sup> A responsible authority manages the day-to-day administration of the local planning scheme, including enforcing planning permit conditions. Responsible authorities are usually local councils.

The audit objective was to assess how effectively Hume and Ballarat are managing the enforcement function regarding compliance with the requirements of planning permits.

This involved assessing the:

- adequacy of policies, procedures, processes and practices, as well as staffing arrangements
- level of adherence to enforcement procedures and processes by staff
- clarity, consistency and comprehensiveness of council officer documentation
- timeliness of actions taken
- adequacy of the management review and oversight of enforcement activities.

While there are different planning issues confronting councils, the planning enforcement functions should be consistently applied across all councils.

## 1.2 Findings

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### 1.2.1 Enforcement rationale, objectives and priority setting

While Hume and Ballarat have a mix of proactive and reactive enforcement activities, neither have a documented planning enforcement framework that details the rationale, objectives or intended outcomes of these activities.

Given there will always be resource and capability constraints, both Hume and Ballarat need to develop an across-the-board risk assessment approach as a basis for determining priorities when allocating resources to enforcement activities. This will also provide assurance that the areas of highest priority are identified for enforcement action.

### 1.2.2 Enforcement operations

Hume is adequately resourced to conduct its enforcement activities and officers are trained to discharge their roles. The council also has well-developed guidelines, processes and systems that assist management and staff to efficiently undertake enforcement activities, in terms of complaint handling and proactive enforcement.

Hume has a comprehensive range of enforcement-related training available to planning enforcement officers. Training priorities are identified as part of the performance management process. Officers are encouraged to build professional skills in relevant areas, such as negotiation, and conflict resolution.

Ballarat has not determined the resources it needs to deliver the enforcement function. The level of resourcing should be based on achieving the proposed enforcement framework. Its officer's training is neither adequately structured nor documented. Ballarat has limited planning enforcement guidelines, processes and systems.



Our on-site visits and file reviews confirmed that the key steps in compliance checking, including confirming the extent of non-compliance, were undertaken at both Hume and Ballarat. Hume's enforcement function was well-managed; however, Ballarat's lack of documentation about the extent of enforcement activity and the level of enforcement work performed made it difficult to assess the degree to which enforcement action was comprehensively undertaken.

The emphasis of Hume and Ballarat's enforcement activities is to attempt to achieve compliance through education and negotiation. Out of the 20 permits we examined at Hume, we found that:

- 18 per cent of conditions that had not been previously investigated were non-compliant
- 10 per cent of previously investigated conditions were non-compliant.

For Ballarat, out of the 20 permits we examined we found that:

- 22 per cent of conditions that had not been previously investigated were non-compliant
- 28 per cent of conditions previously investigated were non-compliant.

Ballarat's higher rate of non-compliance for permits that had already been previously investigated, suggests that imposing penalties at an earlier stage, needs to be considered, particularly for permit holders with a history of non-compliance.

Both Hume and Ballarat would benefit from introducing quality assurance processes to provide assurance that adequate levels of performance are being met.

### 1.2.3 Performance monitoring and continuous improvement

No statewide, uniform or better practice standards exist for the planning enforcement function.

Hume has performance reporting arrangements that monitor enforcement activities against comprehensive customer service standards and a predetermined benchmark.

Ballarat has limited performance reporting arrangements in place and while there are council-wide customer service standards, there are no standards specific to planning enforcement.

Both Hume and Ballarat have predetermined quantitative benchmarks, such as the number of investigations closed, which need to be re-evaluated in terms of rationale, resourcing and staff performance. Both councils should also consider introducing complementary qualitative benchmarks for key aspects of the enforcement process that include the level of complainant satisfaction and the adequacy of the officer's communication.

Both councils should develop additional performance measures to assess the effectiveness of their various enforcement strategies and activities.

Hume's attention to continuous improvement has led to a range of good practice improvements. The development of future continuous improvement initiatives at both Hume and Ballarat should support achieving the objectives within the proposed enforcement framework.

## 1.3 Recommendations

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### Enforcement rationale, objectives and priority setting

Hume and Ballarat should:

- develop a documented framework for enforcement action that sets out the enforcement rationale, objectives, priorities and intended outcomes. This framework should indicate how it contributes to achieving the councils' strategic objectives (**Recommendation 3.1**).
- conduct an across-the-board risk assessment of all permit categories to set enforcement priorities and resource allocation and to better address their legal obligations to administer and enforce the planning scheme under the *Planning and Environment Act 1987* (**Recommendation 3.2**).

### Enforcement operations

#### *Resourcing*

Given the limited resources devoted to the enforcement function, Ballarat should review whether:

- all the work currently undertaken by the enforcement officer is appropriate for this role
- there are sufficient resources to achieve the objectives of its planning enforcement framework (**Recommendation 4.1**).

#### *Guidelines, systems and processes*

Ballarat should establish planning enforcement guidelines, processes and systems, including for complaint handling, to facilitate:

- a consistent compliance and enforcement approach across the municipality
- the provision of information to management so they can monitor operations and make decisions on improvements and corrective action (**Recommendation 4.2**).

Hume and Ballarat should develop a system of quality assurance reviews for their planning enforcement functions to:

- demonstrate the observance of appropriate standards
- demonstrate that guidelines are being followed
- confirm that a consistent approach is being applied when enforcing qualitative permit conditions
- identify further business improvement initiatives (**Recommendation 4.3**).

- Hume and Ballarat should measure feedback from complainants regarding their level of satisfaction about key aspects of the enforcement process, including reasons for any perceived low levels of performance (**Recommendation 4.4**).
- Ballarat should review its planning permit conditions for clarity and enforceability (**Recommendation 4.5**).

## Performance monitoring and continuous improvement

Hume and Ballarat should:

- re-examine their existing benchmarks and develop a rationale for any new benchmarks linked to current staffing levels and relevant performance standards (**Recommendation 5.1**).
- establish performance measures to assess the effectiveness of their various enforcement strategies, which range from community education, to imposing penalties, in achieving compliance with planning permit conditions (**Recommendation 5.2**).
- link their continuous improvement initiatives to the objectives in their enforcement frameworks (**Recommendation 5.3**).

### ***RESPONSE by Hume City Council***

*Thank you for the copy of the proposed Report. Hume City Council agrees in principle with the recommendations of the report. Hume City Council believes that the Report will support a further strengthening of the planning enforcement role for local government into the future as well as encouraging more community interest in how enforcement can occur across a number of areas (commercial, residential, industrial, etc).*

*Once again, thank you for the co-operative approach you and your team undertook during the development of the report.*

### ***RESPONSE by City of Ballarat***

*The City of Ballarat welcomes the Victorian Auditor General's Audit Report of the Planning Enforcement function.*

*The City of Ballarat recognises that enforcement is an important aspect of the planning system. Enforcement is a highly visible function which needs to be supported by a robust framework so as to ensure that the effectiveness of resources is maximised and that the greatest level of compliance with the planning system is achieved.*

*We are pleased that this audit has identified the level of effort and output achieved with our current resources and the steps we have already taken to develop a framework and improve processes in this area. Please find below our responses to the various recommendations.*

***RESPONSE by City of Ballarat – continued***

***Recommendation 3.1***

*The City of Ballarat accepts this recommendation and recognises the importance of formalising a robust framework aligned to the council's strategic objectives in planning enforcement.*

***Recommendation 3.2***

*The City of Ballarat accepts this recommendation as an important part of the overall framework to ensure that resources are allocated strategically where the highest risk lies.*

***Recommendation 4.1***

*Although City of Ballarat agrees with this recommendation, it is believed that the newly developed planning enforcement framework and risk assessment guidelines will inform future activity in this area and associated resourcing requirements.*

***Recommendation 4.2***

*The City of Ballarat agrees that it should formalise a comprehensive set of guidelines consistent with the Planning Enforcement Officer's Guide to Enforcement.*

***Recommendation 4.3***

*The City of Ballarat recognises that a consistent approach to enforcement is important to developing the community's confidence. Accordingly we are committed to a system of quality assurance that ensures that the appropriate standards and guidelines are being followed and areas for improvement are identified.*

***Recommendation 4.4***

*The City of Ballarat acknowledges that feedback from complainants is an important measure of our effectiveness. Accordingly we will identify opportunities to capture this feedback and use it to possibly improve processes or performance management requirements.*

***Recommendation 4.5***

*The City of Ballarat agrees with the recommendation and has already commenced a review of planning conditions.*

***Recommendations 5.1 & 5.2***

*The City of Ballarat agrees that it is important to have clearly defined benchmarks in order to measure our performance in the area of planning enforcement. These benchmarks will also form part of staff's key performance indicators as measured within Ballarat's new management system My Performance @ Ballarat (MP@B).*

***Recommendation 5.3***

*The City of Ballarat accepts this recommendation.*

# 2 Background

## 2.1 Introduction

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### 2.1.1 Planning permits

A planning permit provides consent to use and develop land in a particular way. It is a legal document under the *Planning and Environment Act 1987* (the Act).

Planning permits are required for subdivisions, buildings, works and other matters such as the removal of native vegetation. A planning permit's commencement and completion is subject to a time limit. Planning permits have a different purpose to building permits which relate to the method of constructing a building or development.

In 2006–07, nearly 50 000 planning applications were lodged in Victoria<sup>1</sup>. Most of these were lodged in metropolitan Melbourne (63 per cent); about a third were lodged in rural and regional areas (37 per cent).

Under the Act, a council is designated as a 'responsible authority' and is required by law to efficiently administer and enforce the relevant planning scheme. If the planning scheme requires it, a planning permit must be obtained before a certain use or development can occur.

The Act also specifies that any person who fails to comply with a planning permit is guilty of an offence (under section 126). The Act therefore provides a number of ways of enforcing planning permits including:

- a council's authorised officers can issue a planning infringement notice where they believe an offence has been committed under section 126
- the Victorian Civil and Administrative Tribunal (VCAT) can issue an enforcement order if the use and/or development of land contravenes a condition of a permit
- council can seek legal compliance through the courts.

### 2.1.2 The importance of enforcement

Planning schemes regulate the way land can be used and developed. Generally, regulation is designed to meet community objectives, such as public safety, landscape value, heritage issues, privacy and desirable amenity for residents, visitors and business. Planning schemes are only effective if their requirements are enforced.

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<sup>1</sup> Department of Planning and Community Development, *Planning Permit Activity in Victoria 2006–07*, 2008, p.8.

Enforcement therefore aims to:

- achieve compliance (with the Act, scheme, permit condition or relevant agreement)
- prevent threatened breaches
- stop existing breaches
- punish offenders for breaches.

The Department of Planning and Community Development's *Using Victoria's Planning System* states that the main emphasis of enforcement should be obtaining compliance, rather than prosecuting offenders through the courts.

*Using Victoria's Planning System* states that enforcement should occur when:

- there is a clear breach of the Act, scheme, permit, condition or relevant agreement under section 173 of the Act
- the breach warrants enforcement, for example, where it is detrimental to the community amenity.

### 2.1.3 The enforcement officer's role

The enforcement officer's role is largely an investigative one that involves auditing and monitoring compliance and responding to complaints. Proactive enforcement includes targeted auditing of planning permits and educating permit holders. Community education may include a broad-based approach or be targeted towards at-risk businesses or industries.

Reactive enforcement includes responding to community complaints or complaints from other council business units about possible planning breaches.

The Planning Enforcement Officer's Association has issued *A Guide to Planning Enforcement in Victoria* (2007) to support enforcement officers in undertaking their role.

## 2.2 Key components of planning enforcement

While councils may be dealing with different planning issues, such as urban and rural land in close proximity and medium-density housing, there are several key components of the enforcement function that are applicable to all councils when undertaking their legislative duty to enforce and administer the planning scheme and permit requirements. These are outlined below.

**Figure 2A**  
**Key components of planning enforcement**

Enforcement framework
Risk-based approach to prioritisation
Sufficient and appropriately trained resources
Enforcement tools
Performance monitoring and reporting
Continuous improvement

### Enforcement framework

Councils need a documented enforcement framework that includes:

- clearly defined planning enforcement objectives consistent with the *Planning and Environment Act 1987* and the council's broader strategic direction
- an enforcement rationale based on the above objectives that has an appropriate mix of targeted auditing, educative programs and responding to community complaints
- a clearly defined role for planning enforcement officers, consistent with the enforcement rationale that acknowledges that for the role to be effective, there needs to be consistent communication with statutory planners
- consolidated enforcement powers outlining the relevant legislation, local laws, instruments of delegation and authorisations under which officers operate.

### Risk-based approach to prioritisation

Some Victorian councils issue more than 1 000 planning permits a year. Most of these permits contain multiple conditions that must be adhered to for the use and development of the land. Some permits also require:

- additional information to be submitted to, or endorsed by, council before the use or development of the land begins
- monitoring to ensure compliance is maintained over time.

In addition, all councils receive community complaints that relate to alleged breaches of the planning scheme or permits that they must respond to. Council's enforcement workload will therefore, almost always exceed its available resources in this area.

To assure planning enforcement resources are allocated to the areas of greatest need, councils should develop a risk-based approach that involves:

- prioritising community complaints based on risk factors, such as the capacity of the non-compliance to escalate
- assessing the risk profile of all permit categories and conditions to determine where to target proactive enforcement.

This approach will also enable enforcement priorities to be targeted towards areas:

- where non-compliance poses significant risks to the community, e.g., those involving public health and safety issues
- that have a higher likelihood of non-compliance, e.g. those areas with a history of non-compliance.

### Sufficient and appropriately trained resources

Councils should have sufficient, appropriately trained staff to effectively implement the enforcement framework. A training program covering the conduct of enforcement activities, as well as generalist skills, such as verbal and written communication, and negotiation skills should be in place to support staff.

### Enforcement tools

The publication *A Guide to Planning Enforcement in Victoria*, provides high-level guidance on:

- the types of systems and procedures needed to proactively monitor planning compliance and responding to complaints
- conducting an investigation
- enforcement options available in Victoria.

While this guide is a useful tool, councils also need to tailor their own planning enforcement guidelines, processes and systems to their particular circumstances to achieve a consistent approach to compliance and enforcement across the municipality.

The key components of planning enforcement guidelines, processes and systems should cover:

- guidance on:
  - using risk to prioritise and respond to community complaints
  - the most appropriate approach to achieve compliance
  - appropriate investigation techniques
  - the appropriate external agency such as a referral authority or council business unit to consult and collaborate with
  - responding to, and handling community complaints, including the appropriate communication mechanisms, protocols and response times required to be met by officers
- processes and systems that adequately capture and report on the progress and status of enforcement action to management, including complaints handling and proactive monitoring, so that decisions on improvements or corrective action can be made.



## Performance monitoring and reporting

Effective management oversight and review requires councils to consistently monitor and report on the performance of the planning enforcement function.

Performance should be regularly reported and monitored in terms of the following minimum number of quantitative benchmarks of an enforcement workload:

- the number of complaints to be closed each month
- whether internal timelines for responding to complaints have been met
- the length of time complaints have been outstanding and the significance of this.

In addition, measurements should also include qualitative factors, such as the professionalism of officers.

Planning enforcement benchmarks should have a clear rationale and be linked to staffing levels and relevant performance standards.

Performance information should be reviewed to identify trends in non-compliance in permit categories and to inform across-the-board risk assessment to determine future proactive enforcement priorities.

## Continuous improvement

Performance monitoring and reporting and management systems and processes should be used to identify continuous improvement initiatives. Continuous improvement activities need to:

- link to the enforcement framework, objectives and priorities
- have a clear rationale and priority relative to other planning enforcement activities
- articulate the intended outcomes of the activities
- be supported by data that is reported to management so operational effectiveness and continuous improvement initiatives can be evaluated.

## 2.3 Hume and Ballarat Councils

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Audit selected a major metropolitan council Hume City Council (Hume) and a major regional council City of Ballarat (Ballarat) for its examination. Each council deals with a range of planning issues. These include:

- substantial urban growth
- urban and rural land within close proximity
- new residential development
- native vegetation protection
- heritage issues
- medium-density housing
- industrial and commercial areas close to residential areas.

### 2.3.1 Hume

Hume has been identified as an important growth corridor in the *Melbourne 2030* strategy. It includes green wedge<sup>2</sup> areas and significant activity centres.

Hume's 503 square kilometres comprises 65 per cent rural land and 25 per cent urban land. The remaining 10 per cent is occupied by Melbourne Airport.

Hume has an estimated population of 157 000 and has a combination of rapidly growing urban centres, rural areas and townships and numerous environmentally significant assets. Hume has a strong industrial base, with car manufacturing and heavy engineering being prominent industries.

The municipality is extremely diverse, with residents from many different cultural and socioeconomic backgrounds.

#### Planning permits and planning enforcement

In 2006–07, of the 807 planning permit applications lodged, Hume issued 492 planning permits. Most applications fell into two broad categories: (1) subdivisions or (2) industry, warehouse or storage. Of all Victorian municipalities, Hume has the highest number of applications in the category *industry, warehouse or storage*<sup>3</sup>.

Three planning enforcement officers are dedicated solely to compliance and enforcement work. They conduct a mix of reactive and proactive work.

### 2.3.2 Ballarat

Ballarat is a significant regional service provider. It covers an area of 740 square kilometres and has an estimated population of close to 90 000.

Manufacturing, tourism, health and community services, education and retailing are key industries. Information technology is emerging as a significant industry within the region.

#### Planning permits and planning enforcement

In 2006–07, of the 1 007 planning permit applications lodged, Ballarat issued 693 planning permits. Most applications were for residential alterations or additions, subdivisions and advertising signs<sup>4</sup>.

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<sup>2</sup> Green wedge areas are the non-urban areas of metropolitan Melbourne that have high environmental, landscape, built or Koori heritage values. They safeguard agricultural uses and preserve rural and scenic landscapes, non-renewable resources and natural areas, including water catchments.

<sup>3</sup> *Planning Permit Activity in Victoria 2006–07*, Department of Planning and Community Development, 2008, p52.

<sup>4</sup> *Planning Permit Activity in Victoria 2006–07*, Department of Planning and Community Development, 2008, p21.

One planning enforcement officer is dedicated solely to compliance and enforcement; a second junior position is yet to be re-filled. Ballarat is considering a restructure, which will either merge the building and planning enforcement, or increase the number of planning enforcement officers.

As with Hume, compliance and enforcement operations are both reactive and proactive.

## 2.4 Previous reports

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In December 1999, an Auditor-General's report—*Land Use and Development in Victoria: The State's Planning System*—was tabled. The audit reviewed, among other things, the enforcement of planning permit activity in eight councils. It found that enforcement activities only related to responding to complaints and that regular checking of compliance with planning permit requirements was not undertaken.

In 2008 a further report—*Victoria's Planning Framework for Land Use and Development*—was tabled. This audit examined the effectiveness, economy and efficiency of Victoria's planning framework for land use and development at the whole-of-state and local levels. The 2008 report did not examine the enforcement of planning permits.

## 2.5 About the audit

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### 2.5.1 Audit objective

The audit objective was to assess how effectively local councils are managing the enforcement function regarding compliance with the requirements of planning permits. This involved assessing the:

- adequacy of policies, procedures, processes and practices, as well as staffing arrangements
- level of adherence to enforcement procedures and processes by staff
- clarity, consistency and comprehensiveness of council officer documentation
- timeliness of actions taken
- adequacy of the management review and oversight of enforcement activities.

### 2.5.2 Scope and method

The audit examined the enforcement function in Ballarat and Hume, both of which deal with a range of planning issues including:

- substantial urban growth
- urban and rural land within close proximity
- new residential development
- native vegetation protection
- heritage issues
- medium-density housing
- industrial and commercial areas that are close to residential areas.

The selection of councils that exhibited these features, maximised the differing land use and development purposes covered by planning permits, as well as introducing factors such as different levels of risk for non-compliance.

Specifically, the audit assessed how Hume and Ballarat were managing the enforcement of compliance with planning permits. To do this, we examined a sample of 20 planning permits and 20 officer investigation files at each council, conducted on-site inspections and reviewed documentation, including guidelines, policies and procedures. We also interviewed enforcement officers and senior council staff.

While the focus of this audit was examining two councils, the audit also sought to highlight improvements that would increase the effectiveness of the enforcement function across all councils.

The audit was performed in accordance with the Australian Auditing Standards applicable to performance audits, and included tests and procedures to enable audit conclusions to be reached.

### Audit assistance

We appreciate the support and assistance provided by management and staff at Hume and Ballarat.

Specialist advice and assistance to the audit team was provided by:

- Mr Trevor Budge, Senior Lecturer, La Trobe University and Adjunct Professor RMIT University
- Ms Michelle Croughan and Mr Wolfgang Haala, Planning Systems, Department of Planning and Community Development
- Ms Liz Johnstone, Municipal Association of Victoria.

### Cost of the audit

The total cost of the audit was \$270 000. This includes staff time, overheads, external advice and printing.

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# 3 Enforcement rationale, objectives and priority setting

## At a glance

### Background

- Planning enforcement activities should take place within a clearly defined framework that supports sound and transparent decision making.

### Key findings

- While Hume City Council (Hume) and City of Ballarat (Ballarat) have a mix of proactive and reactive enforcement activities, neither have a documented planning enforcement framework that details the rationale, objectives or intended outcomes of these activities.
- Given there will always be resource and capability constraints, both Ballarat and Hume need to develop an across-the-board risk assessment approach as a basis for determining priorities when allocating resources to enforcement activities. This will also provide assurance that the areas of highest priority are identified for enforcement action.

### Key recommendations

Hume and Ballarat should:

- develop a documented framework for enforcement action that sets out the enforcement rationale, objectives, priorities and intended outcomes. This framework should indicate how it contributes to achieving the councils' strategic objectives (**Recommendation 3.1**).
- conduct an across-the-board risk assessment of all permit categories to set enforcement priorities and resource allocation and to better address their legal obligations to administer and enforce the planning scheme under the *Planning and Environment Act 1987* (**Recommendation 3.2**).

## 3.1 There should be a clear focus and rationale for enforcement programs and these should support council's strategic objectives

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This part of the report focuses on elements of a high-level enforcement framework at Hume and Ballarat and covers the rationale, objectives, and prioritisation underpinning activities and the allocation of enforcement resources.

### 3.1.1 Objectives

Councils need an enforcement framework that includes a mix of proactive and reactive work and objectives that support the broader strategic direction of council.

Using a risk-based approach to allocate resources to planning enforcement will allow high-risk areas to receive the necessary attention and will enable councils to fulfil their legislative responsibility of administering and enforcing the planning scheme and the *Planning and Environment Act 1987*.

Hume's mix of reactive and proactive work is consistent with the council's high-level objectives and strategies. For example, Hume has objectives about providing a safe and pleasing business environment to attract business and encourage investment. Hume's enforcement programs target industries where non-compliance with permit conditions lessens the amenity of the area and could be seen as a disincentive for other industries to invest.

With the exception of Hume's Industrial Sector Enhancement Program (ISEP), described below, operational enforcement programs and activities are not linked to the achievement of high-level council objectives or strategies.

The objectives of Ballarat's enforcement programs and activities are not as clear, in terms of their contribution to achieving high-level council objectives.

Both Hume and Ballarat would benefit from developing an enforcement framework that sets out the councils' enforcement rationale, objectives, priorities, and intended outcomes. The frameworks should be explicit in how they contribute to achieving the councils' strategic objectives.

### 3.1.2 Enforcement rationale

#### Hume

Hume has a multifaceted approach that covers both proactive and reactive work to enforce compliance with the planning scheme and planning permit requirements. This multifaceted approach consists of the following strategies and programs:

### *Proactive work*

- Industry Precinct Enhancement Program – these audits targeted entire industry precincts for the purpose of increasing the overall amenity of gateways leading into the municipality and to attract future business.
- ISEP audits—ISEP targets industries known to have poor planning permit compliance, for example, materials recycling and car wrecking, to monitor and enforce compliance with planning permits.
- Each year, officers conduct 80 to 100 investigations, auditing compliance and educating industries about their planning permit obligations. Hume advised audit that it intends to begin follow-up audits every two years to check that compliance is maintained over time. However, at the time of the audit, this decision was not documented.
- Multi-unit development audits—Hume conducts these audits to monitor compliance with permit conditions for multi-unit developments. Officers use a three-stage checklist during construction to reduce the need for future enforcement, which is more costly and difficult to enforce.

### *Education and communication*

- In addition to Hume's website, ISEP also has an educational component that informs businesses of their obligations under the planning permit and planning scheme. Officers educate these businesses about the relevant permit conditions and explain how to achieve compliance during their on-site inspections.

### *Reactive work*

- In addition to proactive enforcement, officers investigate alleged breaches with planning schemes and permits in direct response to community complaints. On average, officers investigate 25 to 40 complaints each month. Hume has developed a planning investigations action analysis matrix where officers assess the validity of the complaint and prioritise it according to importance, scale and the capacity to escalate.
- The matrix is comprehensive and promotes rigorous analysis. Full details of the matrix are provided in Appendix A as a guide for other councils.

## Ballarat

Ballarat's one enforcement officer undertakes a range of proactive and reactive enforcement work, however; there is no documentation that outlines relevant objectives and intended outcomes, or the rationale for operational decisions and priorities.

### *Proactive work*

Ballarat undertakes the following proactive enforcement work:

- assessing compliance of permit conditions for all subdivisions before statements of compliance are issued
- assessing compliance of all multi-unit development with planning permit requirements and issuing certificates of compliance

- assessing the extent of compliance of timber harvesting plans with the planning scheme
- conducting random audits, when planning permit applicants are required to submit amended plans

There is no documentation to show why some of these areas are targeted for enforcement action relative to others.

#### *Education and communication*

- The enforcement officer runs industry education workshops to increase awareness about specific permit obligations—for example, as they relate to the bed and breakfast components of the hospitality industry or the removal of native vegetation. These areas of focus are determined by an increased trend in community complaints in certain permit categories, or based on the planning enforcement officer's professional judgement.

#### *Reactive work*

- As with Hume, Ballarat undertakes reactive work through investigating complaints from the community or from within the council.

## 3.2 Allocation of resources should be based on a risk assessment approach

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### 3.2.1 Hume

#### *Proactive enforcement*

Hume's enforcement officers use their operational knowledge and history of past non-compliance within the municipality to set priorities for proactive work, including the ISEP program and multi-unit developments.

For example, the recent decision to proactively audit compliance of new multi-unit developments was made because of a history of poor-quality housing stock within the municipality. While this reasoning appears sound, the rationale to audit this area, rather than other permit categories or conditions, was not documented. By not assessing the risk profile of other permit categories or conditions for proactive enforcement, other high-risk areas, for example car parking in childminding centres, may not be adequately scrutinised.

A systematic and documented across-the-board risk assessment of all permit categories to set enforcement priorities and better address the council's legal obligations to administer and enforce the Planning Scheme under the *Planning and Environment Act 1987* is needed. This assessment could be undertaken every two years.



### Reactive enforcement—responding to complaints

Hume has clear guidelines and protocols in place to assess the validity and significance of a community complaint, or a report of non-compliance. Those guidelines set out the appropriate course of action to address the complaint.

Complaints are first assessed to determine whether they fall within the planning enforcement unit's jurisdiction or should be referred to another department. Relevant complaints are then assessed against the planning investigations action analysis matrix, as outlined in section 3.1.2. Each risk rating is associated with a clear workflow procedure in the form of a detailed, step-by-step outline.

#### 3.2.2 Ballarat

Unlike Hume, which uses a history of non-compliance to set its proactive audit program, and a matrix to assign a risk rating for complaints and determine enforcement priorities, there is no information to enable the assessment of priority setting at Ballarat. Prioritisation of activities is at the operational discretion of the enforcement officer.

### 3.3 Conclusion

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Hume undertakes a combination of proactive and reactive enforcement work with educational activities directed at high-risk industries with a history of non-compliance. Hume's ISEP objectives are clear in terms of their consistency with the council's high-level objectives.

Ballarat also carries out proactive and reactive enforcement activities; however, their consistency with, and contribution to, achieving high-level council objectives is not as clear. Neither council has a documented enforcement framework that provides a consolidated basis for undertaking enforcement.

Both councils should use a risk-based approach to allocate resources to planning enforcement to allow for high-risk areas to receive the necessary attention and to fulfil their legislative responsibility to administer and enforce the planning scheme.

#### Recommendations

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Hume and Ballarat should:

- 3.1 develop a documented framework for enforcement action that sets out the enforcement rationale, objectives, priorities and intended outcomes. This framework should indicate how it contributes to achieving the councils' strategic objectives.
  - 3.2 conduct an across-the-board risk assessment of all permit categories to set enforcement priorities and resource allocation and to better address their legal obligations to administer and enforce the planning scheme under the *Planning and Environment Act 1987*.
-

# 4 Enforcement operations

## At a glance

### Background

Councils need enforcement tools, such as guidelines, systems and processes to assist management and staff to effectively and efficiently undertake complaint handling and proactive enforcement.

### Key findings

- Hume City Council (Hume) enforcement function is well-managed, adequately resourced and its' officers are trained appropriately. It also has well-developed guidelines, processes and systems.
- City of Ballarat (Ballarat) has not determined the resources it needs to deliver the enforcement function. Its enforcement officer's training is neither adequately structured nor documented. Ballarat has limited planning enforcement guidelines, processes and systems.
- Ballarat's lack of documentation made it difficult to assess the degree to which enforcement action was comprehensively undertaken.
- Ballarat has a higher rate of non-compliance amongst permits that had already been previously investigated. This suggests that imposing penalties at an earlier stage, needs to be considered, particularly for permit holders with a history of non-compliance.

### Key recommendations

Given the limited resources devoted to the enforcement function, Ballarat should review whether:

- all the work currently undertaken by the enforcement officer is appropriate for this role
- there are sufficient resources to achieve the objectives of its planning enforcement framework (**Recommendation 4.1**).

Ballarat should establish planning enforcement guidelines, processes and systems, including for complaint handling, to facilitate:

- a consistent compliance and enforcement approach across the municipality
- the provision of information to management so they can monitor operations and make decisions on improvements and corrective action (**Recommendation 4.2**).

## 4.1 Introduction

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This part of the report covers the adequacy of the resourcing of the enforcement function and supporting tools, as well as how effectively enforcement action is undertaken.

## 4.2 Councils should have sufficient and trained staff to meet their enforcement objectives

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Adequate and well-trained staff are required for councils to meet their legal obligation of enforcing compliance with planning permits and implementing programs that form part of the council's enforcement framework.

### 4.2.1 Hume

Over the past four years, Hume has adequately allocated resources to the planning enforcement function to meet its legislative requirements and its own strategic objectives. The council employs three full-time planning enforcement officers, one in a senior role.

The funding for planning enforcement staff increased significantly in 2004–05 and 2006–07. Hume is relatively well resourced in this area compared with many councils.

Hume's community survey, used to assess its performance, did not contain enough information to assess whether enforcement resourcing is sufficient to meet community expectations. Officers respond to 25 to 40 complaints relating to planning permit compliance each month; which suggests some level of community concern.

Hume would benefit from gauging the community's expectations more closely as this will provide a clearer picture of the extent to which current resourcing is meeting their expectations.

Hume has a comprehensive range of enforcement-related training available to planning enforcement officers. Training priorities are identified as part of the performance management process. Officers are encouraged to develop professional skills in relevant areas such as negotiation and conflict resolution.

Over the past year, Hume's three enforcement officers undertook diverse training in areas such as, negotiation and crisis intervention, and understanding the native vegetation framework.

The Planning Enforcement Officer's Association recommends that enforcement officers attend the PLANET Professional Development Program run by the Department of Planning and Community Development. This covers an introduction to the Victorian Civil and Administrative Tribunal (VCAT), planning law and cross examination techniques. All three of Hume's enforcement officers attended PLANET training last year.

## 4.2.2 Ballarat

In contrast to Hume, Ballarat has one planning enforcement officer. Although council financial data indicates that the statutory planning services business unit received a 250 per cent funding increase over the past four years, the increase was directed towards town planning rather than the planning enforcement function.

In 2005, a Best Value review of Ballarat's planning services recommended that planning enforcement 'explore an increase in resources'. The council responded by employing an additional officer who left after six months and has not been replaced.

The enforcement officer also undertakes duties such as checking permit conditions before statements of compliance for sub-divisions are issued. This is not normally part of a planning enforcement officer's role.

Audit could not determine the level of community expectation about planning permit enforcement, as Ballarat, similar to Hume, does not monitor this type of information. However, the 451 community complaints received in 2007 indicates some level of community concern in this area.

In relation to training, there is no evidence that Ballarat:

- assesses the training needs of enforcement officers
- prioritises the officers' training needs as a basis for developing the training program
- maintains a training database detailing officers' past training.

While the enforcement officer indicated that he had undertaken training in the last few years, there was no documentation to support this. We could not find evidence of a professional development plan being completed for the past three years.

## 4.3 Enforcement tools should promote a consistent and comprehensive approach

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Councils should have enforcement tools, including guidelines, systems and processes that assist management and staff to effectively and efficiently undertake enforcement activities, in terms of complaint handling and proactive enforcement.

### 4.3.1 Guidelines

#### Hume

Hume's planning enforcement guidelines include standardised processes, templates, reports and systems that assist officers to enforce compliance. The various guidelines explain:

- how to choose the appropriate method of compliance and enforcement action
- how each enforcement option should be implemented
- how to sufficiently investigate a complaint

- when officers are required to collaborate or consult with other business units and external agencies, for example with Victoria Police and the Department of Justice.

Hume's guidelines are comprehensive and easy to follow and are consistent with the *Planning Enforcement Officer's Association Guide to Enforcement*. Some were enhanced or modified to suit Hume's requirements. These guidelines include:

- PIN (planning infringement notice) serving guidelines
- Regulatory compliance matrix
- *Prostitution Control Act 1994*, guidelines
- Planning investigations enforcement action analysis matrix.

### Ballarat

Ballarat has limited guidelines for planning enforcement. Ballarat has developed a 'Planning Enforcement Procedures' document. This document gives a detailed workflow for responding to community complaints. Although proactive enforcement is briefly mentioned, it does not constitute an adequate set of planning enforcement guidelines.

Reliance is placed on general guidelines published by the Planning Enforcement Officer's Association. These guidelines need to be tailored to Ballarat's particular circumstances to assist its officers in adopting a consistent approach.

## 4.3.2 Processes and systems

Enforcement officers are expected to enforce compliance with permit requirements in line with appropriate guidelines and standards. Sound assurance processes and systems are therefore needed to confirm compliance with these guidelines and standards and that officers interpret these in a consistent way. Robust processes and systems also assist officers to monitor the level of compliance with permit requirements across various planning permit categories and industries.

Hume has developed and implemented a number of processes and systems to assist its officers achieve a consistent approach in their compliance and enforcement activities.

While Hume has a series of processes, templates and checklists in place to assist in achieving consistent operational outcomes, selective quality assurance reviews of completed cases against predetermined guidelines should be undertaken to provide:

- a quality assurance mechanism to demonstrate standards are being maintained at an acceptable level
- an opportunity to consider the introduction of further improvements.

Ballarat has a number of templates and checklists in place to promote consistent enforcement operational outcomes; however, our file review indicated that some of these key documents were not consistently used.

Ballarat does not have systems and processes in place to:

- outline the required actions to be followed when taking enforcement action
- provide management with information to monitor operations and make decisions on improvements or corrective action.

The absence of systems to monitor planning enforcement actions has resulted in Ballarat's lack of reporting to management in key areas that would provide important information about the effectiveness of the planning enforcement function.

After Ballarat establishes planning enforcement processes, systems and guidelines, it should undertake selective quality assurance reviews of completed cases against these guidelines.

### 4.3.3 Complaint handling

To manage complaints effectively, councils need to have:

- clear guidelines and protocols
- adequate communication mechanisms
- appropriate systems and processes
- the ability to respond to and resolve complaints quickly, in accordance with the relevant standards.

#### Clear guidelines and protocols

Unlike Hume, Ballarat does not have clear guidelines, protocols or processes in place to assess:

- the validity and significance of a community complaint or report of non-compliance
- the appropriate course of action to address a complaint.

Ballarat advised that it recently began capturing data about the council business unit to which a complaint is referred. The data will be used to measure performance. Ballarat has no system to identify trends in non-compliance across planning permit categories or industries. While the council advised that it analyses complaints and non-compliance trends this analysis is not documented.

#### Measuring complainant satisfaction

Neither Hume nor Ballarat has a system to capture feedback on the level of complainants' satisfaction with the enforcement process. Feedback on complaint handling, particularly identifying if there are low levels of satisfaction, would be an important input to continuous improvement activities.

#### Complaint recording and tracking

##### *Hume*

Hume has a comprehensive system in place to record, monitor and track complaints about planning permits, or more broadly, the Hume planning scheme.

Hume's recently developed electronic database (MERIT) captures whether:

- customer complaints have been responded to within required timelines
- how many cases are outstanding
- the length of time they have been outstanding
- the significance of the time overrun.

### *Ballarat*

Ballarat has no systems and processes in place to adequately:

- record and monitor complaints
- track the status of a complaint
- track the length of time that a complaint remains unresolved.

While some management reporting occurs, the following information is not provided:

- whether a complaint was internally generated by the officer or other council staff or externally generated
- whether a site visit was the result of a complaint or the enforcement officer's drive-by check
- how a complaint progresses from month to month
- which complaints were outstanding.

Ballarat has general customer service standards that apply to all service areas of council. However, we were unable to determine how these guidelines are monitored and reported on in relation to the planning enforcement function.

## 4.4 Enforcement activities should be undertaken in a thorough, consistent and timely manner

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We examined enforcement activities undertaken at Hume and Ballarat based on a review at each council of:

- 20 files that emanated from a complaint
- 10 on-site inspections of permits subject to past enforcement action
- 10 on-site inspections of permits that had not been subject to past enforcement action.

### 4.4.1 Hume

#### Checking compliance with planning permits

Both site visits and file reviews confirmed that planning enforcement officers are adequately checking compliance with planning permits. During site visits with enforcement officers it was observed that 32 out of 332, or 10 per cent, of previously investigated conditions were non-compliant. Examples of non-compliance included:

- car parking spaces not being clearly marked
- cars awaiting repairs being incorrectly stored in staff/client car parks
- landscaping plans not being submitted for council approval.

Audit noted that these breaches tended to be minor in terms of public health and safety and the industries themselves had a history of high levels of non-compliance.

To achieve better long-term compliance in these particular industries, for example, car wrecking and materials recycling, Hume is proposing a program of follow-up audits every two years.

In relation to permits that had not been previously inspected for compliance, audit found that 36 out of 201, or 18 per cent of permit conditions were non-compliant.

Examples of non-compliance included:

- landscaping plans not being submitted for council approval
- poor amenity, due to storage of inappropriate material in car parking spaces
- motor vehicles being inappropriately parked on the street or on nature strips.

Once non-compliance was detected, officers began the process of seeking compliance by writing official letters and requesting compliance be achieved through specific measures.

It was also observed that:

- all enforcement options pursued were consistent with the objective of attempting to negotiate compliance without resorting to court proceedings
- a significant proportion of permit holders perceived Council's officers as helpful, approachable and of assistance in resolving problems
- in some situations permit conditions were seen by the planning enforcement officers as unreasonable or impractical. In these circumstances, it was suggested by the officers that the permit holder apply for an amendment to the planning permit
- some permit conditions were unclear and duplicated
- permit holders displayed a significant lack of knowledge about their responsibilities relating to permit requirements and conditions
- while investigation reports focused on matters of non-compliance, the extent of the inspections and the particular permit conditions examined and confirmed during site inspections tended to be unclear in these reports.

In relation to the file review, Hume's officers generally complied with the relevant guidelines and processes in place specifically by:

- logging all complaints into the MERIT database, which automatically informed the senior planning enforcement officer
- issuing standardised letters contained within the guidelines, including penalty infringement notice letters, and letters outlining the exact breaches of permit conditions or the planning scheme
- communicating the specified timelines within which relevant parties had to apply for an amended permit or remedy any breaches with the planning scheme
- obtaining the appropriate sign-offs from the manager
- adhering to the prescribed timelines for actions to be taken, based on whether complaints were categorised as low, medium, or high level.



The file review also revealed that documenting verbal legal advice and recording the extent of site inspections performed was inconsistent across officers. In these instances, further clarification is required in the guidelines on the extent of documentation needed in investigation reports. These instances however, did not significantly detract from a generally well-managed enforcement function at Hume.

### Following up compliance

When non-compliance with the planning scheme or a planning permit is identified, Hume's officers conduct follow-up inspections until compliance is achieved. File reviews confirmed that officers were conducting and documenting these follow-up inspections until compliance was achieved. The number of follow-up inspections is included in the monthly performance reports to management.

In 2007–08, 84 follow-up inspections were completed, accounting for approximately 21 per cent of all inspections during that timeframe.

### Consistent interpretation in enforcing permit conditions

Permits can contain qualitative conditions such as:

*'The subject land must be maintained in an orderly and neat manner at all times and its appearance must not, in the opinion of the Responsible Authority, adversely affect the amenity of the locality.'*

The enforcement of these conditions can be highly subjective. Where these conditions are required, Hume should use quality assurance reviews to confirm that a consistent interpretation is being applied when enforcing these conditions.

## 4.4.2 Ballarat

### Checking compliance with planning permits

During site visits with enforcement officers it was observed that:

- 21 out of 74, or 28 per cent of conditions previously investigated due to community complaints, were non-compliant. Examples of non-compliance included:
  - amended plans or landscape plans not being submitted before the use and development of the land occurred
  - goods stored in prohibited areas.
- 16 out of 73, or 22 per cent of conditions that had not been previously investigated were non-compliant. Examples of non-compliance included:
  - required schedules not being provided to council
  - the development being altered without the written consent of the council
  - inappropriate signage being displayed.

Once non-compliance was detected, the officer began the process of seeking compliance.

The initial emphasis of Ballarat's enforcement activities is to attempt to achieve compliance through education and negotiation. However, the rates of non-compliance in permits already examined, suggest that imposing penalties at an earlier stage, needs to be considered, particularly for permit holders with a history of non-compliance.

It was also observed that:

- Permit holders perceived the officer as helpful, approachable and practical in his approach to achieving compliance.
- Some permit conditions were duplicated, unclear or not applicable to the type of use or development.
- Some permit conditions contained notes that were not enforceable.
- While investigation reports focused on matters of non-compliance, the extent of the inspections and the particular permit conditions examined and confirmed during site inspections were sometimes unclear in these reports.

### Following up compliance

The planning enforcement officer adequately followed up compliance after previous investigations. However, the extent of compliance achieved was difficult to determine as adequate details were not documented.

### Using a standardised approach

While key steps were followed in investigations such as, undertaking inspections, identifying non-compliance and issuing penalty infringement notices, the lack of guidelines contributed to inconsistent enforcement actions, specifically:

- the extent to which all site inspections performed were documented
- obtaining consent to enter a property
- documenting discussions with key parties
- attaching photographs as evidence.

In assessing qualitative permit conditions, Ballarat does not have a consistently documented approach. As with Hume, the enforcement of these conditions is highly subjective and may result in inconsistent enforcement activity, especially if different officers are involved in assessing similar qualitative conditions. As with Hume, Ballarat should use quality assurance reviews to confirm that a consistent interpretation is being applied to enforcing these conditions.

### Following up planning permits that require continued compliance

Ballarat undertakes follow-up inspections with the number reported to management on a monthly basis. However there is no program to monitor permits that require continued compliance. This may lead to:

- breaches not being identified as early as practicable without a program of regular follow-up inspections
- ongoing monitoring of conditions not being adequately scrutinised.

## 4.5 Conclusion

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Hume has a well-managed enforcement function, with sufficient and appropriately trained staff. Ballarat has only one enforcement officer to undertake many investigations and there has been little time devoted to adequately document planning inspection reports or developing guidelines, systems and processes that would assist the smooth running of the enforcement function.

Hume has devoted considerable resources to develop guidelines that assist them in determining the appropriate actions for various types of enforcement activity, such as serving a planning infringement notice or responding to a complaint. Hume has also developed systems to manage community complaints.

Both Hume and Ballarat would benefit from introducing a quality assurance process to demonstrate that standards are being met. However, in the case of Ballarat, the lack of documentation is a serious impediment to introducing an effective quality assurance regime.

Our on-site visits and file reviews confirmed that the key steps in compliance checking, including confirming the extent of non-compliance, were undertaken at both Hume and Ballarat. Ballarat's lack of documentation about the extent of enforcement activity, and the level of enforcement work performed, made it difficult to assess the degree to which enforcement action was comprehensively undertaken.

The high levels of non-compliance after the initial enforcement action at Ballarat suggest the need for imposing stronger enforcement sanctions at an earlier stage, particularly for permit holders who are repeat offenders.

### Recommendations

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#### 4.1 Ballarat should review whether:

- all the work currently undertaken by the enforcement officer is appropriate for this role
- there are sufficient resources to achieve the objectives of its planning enforcement framework.

#### 4.2 Ballarat should establish planning enforcement guidelines, processes and systems, including complaint handling, to facilitate:

- a consistent compliance and enforcement approach across the municipality
- the provision of information to management so they can monitor operations and make decisions on improvements and corrective action.

- 4.3 Hume and Ballarat should develop a system of quality assurance reviews for their planning enforcement functions to:
- demonstrate the observance of appropriate standards
  - demonstrate that guidelines are being followed
  - confirm that a consistent approach is being applied when enforcing qualitative permit conditions
  - identify further business improvement initiatives.
- 4.4 Hume and Ballarat should measure feedback from complainants regarding their level of satisfaction about key aspects of the enforcement process, including reasons for any perceived low levels of performance.
- 4.5 Ballarat should review its planning permit conditions for clarity and enforceability.
-

# 5 Performance monitoring and continuous improvement

## At a glance

### Background

Councils should have robust performance reporting arrangements in place to monitor the delivery of enforcement activities against appropriate standards and benchmarks.

### Key findings

- Hume City Council (Hume) has performance reporting arrangements that monitor enforcement activities against comprehensive customer service standards and a predetermined benchmark.
- City of Ballarat (Ballarat) has limited performance reporting arrangements in place and while there are council-wide customer service standards, there are no standards specific to planning enforcement.
- Both Hume and Ballarat have predetermined quantitative benchmarks, such as the number of investigations closed, which need to be re-evaluated in terms of rationale, resourcing and staff performance. Both councils should also consider introducing complementary qualitative benchmarks for key aspects of the enforcement process that include the level of complainant satisfaction and the adequacy of the officer's communication.
- Both councils should develop additional performance measures to assess the effectiveness of their various enforcement strategies and activities.

### Key recommendations

Hume and Ballarat should:

- re-examine their existing benchmarks and develop a rationale for any new benchmarks linked to current staffing levels and relevant performance standards **(Recommendation 5.1)**.
- establish performance measures to assess the effectiveness of their various strategies, which range from community education, to imposing penalties, in achieving compliance with planning permit conditions **(Recommendation 5.2)**.

## 5.1 Management should monitor enforcement activities against appropriate performance standards

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### 5.1.1 Standards

Standards for enforcement activities need to clearly identify the expected levels of performance to be attained. Standards can include expected levels of customer service, such as timeliness of response to complaints or professional conduct of officers when accessing properties. No statewide, uniform or better practice standards exist for the planning enforcement function.

Hume has developed its own customer service standards for the planning enforcement function. These are well-developed, clear and comprehensive and are based around responding to customers and meeting benchmarks.

#### Responding to customers' needs

Hume has a council-wide customer commitment statement called 'Service 1<sup>st</sup>' that aims to encourage responsive and reliable service to all internal and external customers. This statement includes comprehensive and clear service standards on such things as access, procedural fairness, feedback and responsiveness. While these standards mostly relate to front counter staff, they also apply to planning enforcement officers when they are responding to customer complaints and are linked to the enforcement officer's customised database for community complaints.

Ballarat has council-wide customer service standards for dealing with the community. However, these are very broad and do not contain standards specific to planning enforcement. There is no documentation to indicate whether the planning enforcement officer follows these standards or whether management monitors this.

#### Meeting investigation benchmarks

Hume has monthly and quarterly reports as part of its performance monitoring framework, which document the number of cases open and investigations closed and response times, comparative to their targets. The data is then measured against an internally agreed benchmark of closing 42 investigations each month.

Hume enforcement officers advised that this benchmark was set several years ago. It was based on an informal analysis that claimed closing 500 investigations each year was an appropriate target, given their resources. However, no documentation was available outlining how this benchmark was developed or whether it continues to be appropriate.

Ballarat's planning enforcement officer works to an informal benchmark of 660 inspections a year. Of these, 480 relate to community complaints; an average of 40 complaints inspections a month. The additional 180 relate to proactive enforcement inspections.

In 2005 and 2007 this annual target was almost met by Ballarat (431 and 451 inspections respectively). In 2006, the 379 complaints inspections fell well short of the target however there was no explanation available as to why this occurred.

Our estimate, based on a review of inspections conducted between January and July 2008, suggests that this target will be difficult to achieve in 2008. The feasibility of one enforcement officer undertaking 480 appropriately documented complaint inspections and 180 proactive inspections each year was unable to be determined.

There are no other benchmarks in place for Ballarat's planning enforcement operations.

### 5.1.2 Performance measurement and reporting

Hume has monthly performance reports that include data on the number of cases that take longer than expected. Council also documents the outcomes of enforcement action taken; for example, it collects information about the number of planning infringement notices issued as part of monthly reports to management.

Ballarat has a monthly report for management that lists the number of complaints received and closed. It contains no performance indicators or standards against which this data is measured. The council collects limited information on its compliance inspections and monitoring process.

One of the major challenges for planning enforcement is to improve the overall rate of compliance with permit conditions. Hume has acknowledged this through its proposal to introduce two year follow-up audits as part of the ISEP program to enable compliance to be maintained over time.

Additional performance reporting on the level of non-compliance with conditions after the initial inspection should be monitored and reported. This should include examining the extent to which escalation of enforcement action has resulted in greater compliance over time.

Both councils should develop additional performance measures to assess the effectiveness of their various enforcement strategies and activities.

### 5.1.3 Continuous improvement

Regular management oversight and review of enforcement activities is most effective when driven by a clear framework or program. The framework sets the rationale, intended outcomes and relative priority of identified improvement activities based on outcomes from performance measurement and quality assurance, and the degree to which they support the achievement of enforcement objectives and priorities. The framework should also identify any shortcomings through quality assurance reviews, and allow for practice reviews to be incorporated into continuous improvement activities.

From a management oversight and review perspective, Hume's attention to continuous improvement has led to a range of good practice improvements over the past five years such as:

- *Targeting industry sectors for proactive enforcement*
  - A key recommendation from the council's report on the effectiveness of its Industry Precinct Enhancement Program was to allocate resources more efficiently by auditing industry sectors, such as car wrecking, in addition to whole industry precincts. This resulted in the development of ISEP described at 3.1.2.
- *Reviewing planning permit conditions for clarity and enforceability*
  - The senior planning enforcement officer has identified that compliance and enforcement work is more effective when planning permit conditions are both clear and enforceable. The council is now reviewing its planning permit conditions for clarity and enforceability, in addition to its ongoing proactive and reactive work.
- *Creating a Strategic Compliance Group*
  - The council created a Strategic Compliance Group to build links between compliance business units and create a unified response to compliance cases that crossed legislative and business unit boundaries.
- *Creating records of VCAT and case law decisions*
  - The senior planning enforcement officer has developed a file to inform the team about important and relevant VCAT decisions and case law that are available through VCAT's website. The file contains VCAT statutory planning and planning enforcement cases, decisions, and case law that cover a broad range of planning principles and enforcement outcomes. Enforcement officers use this as a reference and guide when deciding what enforcement approach to take for similar cases.

These initiatives are worthwhile. However, it is not evident that Hume prioritises these initiatives when deciding to establish and introduce them. Clearly linking these initiatives to the achievement of enforcement objectives and priorities would enhance the rationale for allocating resources to them.



Ballarat has introduced some improvements to its enforcement function, for example, targeted education workshops, informing permit holders of requirements and their obligations. However, there is no evidence that these improvements are part of a broader continuous improvement program, or the result of a strategic assessment of key priorities and outcomes.

## 5.2 Conclusion

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Hume has customer services standards for planning enforcement, whereas Ballarat does not.

Both councils have benchmarks for completing investigations that need to be re-evaluated in terms of resourcing and performance standards. Specifically, Ballarat's benchmark does not appear to be sustainable in the light of the minimal level of resources devoted to the enforcement function.

While Hume and Ballarat provide monthly performance reports to management, their overall performance reporting would be improved by including other key result areas, such as the outcomes of enforcement action.

Hume has a proven track record in continuous improvement initiatives, and Ballarat has provided some evidence of implementing continuous improvement initiatives. However, both councils need to clearly link these initiatives to their enforcement objectives and priorities, to provide a clearer rationale for allocating resources to these particular initiatives.

### Recommendations

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Hume and Ballarat should:

- 5.1 Re-examine their existing benchmarks and develop a rationale for any new benchmarks, linked to current staffing levels and relevant performance standards.
  - 5.2 Establish performance measures to assess the effectiveness of their various strategies, which range from community education, to imposing penalties, in achieving compliance with planning permit conditions.
  - 5.3 Link their continuous improvement initiatives to the objectives in their enforcement frameworks.
-

# Appendix A.

## Better practice example – Hume Council’s guidelines

Hume City Council has developed a planning investigations action analysis matrix. The matrix is used by planning enforcement officers to assess the validity of a complaint and prioritise it according to importance, scale and capacity for escalation.

We have attached this matrix below.

### Planning Investigation’s Analysis Matrix

The Matrix has several major steps as detailed below. Officers responding to complaints or alleged breaches need to:

- Step 1: Determine the possible importance rating of the breach or complaint by selecting the Level of Importance Rating Description. Where a match is made with a description of the breach, then that Descriptor must be selected.

Level	Descriptor	Level of Importance Rating Description
A	Very high	Moderate/high cost involved and/or high impact to someone, amenity, environment, vegetation or having historical significance. Prohibited use under Hume Planning Scheme. Matter non reversible. Urgent action necessary
B	High	Moderate cost involved and or moderate impact to someone or the amenity or environment. Planning Permit required. Possible legal liability/public risk. Apiary Code
C	Medium	Some cost and or works involved with minimal impact to someone or the amenity. Breach of Planning Permit condition. Breach of Guidelines- Home Occupation, Circus & Carnivals and Signage. 173 Agreements.
D	Low	Matter reasonably able to be resolved with minimal cost and little impact to anyone.
E	Very low	Matter easy to resolve minimal cost or effort no impact to anyone

Step 2: Determine the Urgency Rating of the planning breach or complaint by selecting the likelihood of the level of the breach to escalate.

**Table 2**  
**Capacity to escalate**

Rare	Low	Possible	Certain	Actively
1	2	3	4	5

Step 3: Once a selection has been made the result is to be numerically added to the selection regarding the Scale of the Breach.

Insignificant	Minor	Moderate	Significant	Substantial
1	2	3	4	5

Step 4: Once the sum has been added choose the Rating which fits the sum and the corresponding Descriptor.

Rating	Descriptor	Level
2-3	Minor	1
4-5	Moderate	2
6-7	Significant	3
8-9	Very Significant	4
10	Extreme	5

Step 5: Locate the issue on the Enforcement Response Matrix by using both chosen Descriptors and selecting the corresponding grid.

Level of Enforcement Action Descriptor	Planning Breach Descriptor				
	Minor	Moderate	Significant	Very Significant	Extreme
	1	2	3	4	5
(A) Very High	M	H	H	H	E
(B) High	L	M	H	H	E
(C) Medium	L	M	M	H	E
(D) Low	L	L	M	H	H
(E) Very Low	L	L	M	H	H

Step 6: Identify actions to be taken.

Rating	Action	Response
E	<b>Immediate action Extreme Importance</b>	<p>One or more Officers are to attend immediately. Advice is to be confirmed by Senior Town Planner. If works are to cease contact Council solicitor for verification and have CEO or Director approval to have works cease by Internal memo. Obtain evidence diligently. Breach is to stop voluntarily and assurance obtained that it will not recommence. If required seek Interim Enforcement Order at VCAT.</p> <p>Enforcement Order or Summons must be considered.</p>
H	<b>High level of response</b>	<p>Verbal or in person contact is to be made if possible explaining breach and what is required to comply then file note written. Letter must be sent giving specific time frame not to exceed 4 weeks.</p> <p>Summons, VCAT Enforcement Order must be considered for non compliance</p>
M	<b>Moderate level of response</b>	<p>Investigation of the breach and evidence to be obtained and file note written.</p> <p>Letter must be sent indicating the breach, what is to be done and a time frame allowed.</p> <p>4 weeks pending if works are staged.</p> <p>Any further extension of time is to be in writing with an undertaking that if time frame is breached PIN or Summons issued.</p> <p>14 day letter to comply</p> <p>PIN issued</p>
L	<b>Low level of response</b>	<p>Verbal direction may be given with agreed time frame allowed up to 6 weeks to comply. file note must be written. Phone reminder to be done and file note taken. 14 day letter sent.</p> <p>PIN issued. (refer to Pin not paid)</p>

Step 7: After identifying the action and response required select from the following tables for Workflow Procedure

*Index*

*Planning Infringement Notice*

*PIN*

*Planning Infringement Notice Serving Procedure*

*PINSP*

*Senior Planning Investigations Officer*

*SPIO*

Low Level Response		Action	Timeframe
1	Inspect and give verbal direction.	Attach 11	6 weeks
2	Ring and ascertain that verbal direction has been complied with prior to conducting final inspection.	File noted	Given on 5 <sup>th</sup> week
3	Conduct inspection to determine if breach/s is still occurring. Letter to be sent indicating what outstanding breach/s remain and dates of verbal direction and phone reminder given. Warning of PIN to be issued on non compliance.	Attach 11 & 1	2 week
4	Re-inspect ascertain if breach still existing: Issue PIN as per PINSP and PIN flow chart. Matter resolved issue compliance letter	Attach 11  PINSP  PINSP Attach 16	PIN posted 6 wks PIN handed 4 wks
5	When PIN issued must follow PINSP to determine outcomes	PINSP PIN flow chart	As required
6	Summons served Plea bargain OR Signed undertaking/agreement that breach will be rectified and Council's cost paid hearing date to be deferred.	As seen appropriate by SPIO	Timeframe agreed upon
7	Inspect  If complied with and cost paid matter to be withdrawn. Matter still outstanding proceed at Court	Attach 11	
8	Court	Charges proven or dropped. Fine and cost if awarded	
9	Contact Court in relation to recovery of any Court fines	SPIO to contact	
10	Investigate that breach is no longer occurring	PIR	

Moderate Level of Response		Action	Timeframe
1	Inspect Send letter indicating breach and timeframe to resolve.	Attach 3	4 wks
2	Follow-up inspection Warning of PIN to be issued on non compliance.	Attach 4	1 wk
3	Extension of time is to be in writing. Refer to Council's agreement letter to be signed	Attach 5	<2-4 wks
4	Re-inspect ascertain if breach still existing: Issue PIN as per PINSP and PIN flow chart. Matter resolved issue compliance letter	PIR completed. PINSP PINSP Attach 16	PIN posted 6 wks PIN handed 4 wks
5	When PIN issued must follow PINSP to determine outcomes	PINSP PIN flow chart	As required
6	Summons served Plea bargain OR Signed undertaking/agreement that breach will be rectified and Council's cost paid hearing date to be deferred.	As seen appropriate by SPIO	
7	Inspect if complied with and cost paid matter to be withdrawn. Matter still outstanding proceed at Court or VCAT	PIR	
8	Court OR VCAT	Charges proven or dropped. Fine and cost if awarded or Order made	
9	Contact Court in relation to recovery of any Court fines	SPIO to contact	
10	Investigate that breach is no longer occurring	PIR	

High Level of Response		High level of response	Timeframe
1	Physical or verbal contact made followed by written confirmation.	Attach 6	No > 4wks
2	Follow-up inspection: Matter resolved Matter still in breach	PIR PINSP Attach 16 PINSP Attach 7	7 days
3	Court OR VCAT Plea bargain OR Signed undertaking/agreement that breach will be rectified and Council's cost paid hearing date to be deferred.	Charges proven or dropped. Fine and cost if awarded or Order made	
4	Contact Court in relation to recovery of any Court fines	SPIO to contact	
5	Investigate that breach is no longer occurring	PIR	
6	Court OR VCAT	Charges proven or dropped. Fine and cost if awarded or Order made	

Extreme Level of Response		Immediate action Extreme Importance	Timeframe
1	Obtain evidence for prosecution immediately	PIR Statements to be taken	No delay
2	Give direction to cease voluntarily with written undertaken to cease breach Or must undertake Interim Enforcement Order at VCAT	Seek Managers advice. Memo to CEO Attach 10  Forwarded to Solicitor as urgent	Have Interim Enforcement Order issued that day
3	Seek breach through VCAT and/or Court		ASAP





# Auditor-General's reports

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## Reports tabled during 2008–09

Report title	Date tabled
Managing Complaints Against Ticket Inspectors (2008-09:1)	July 2008
Records Management Checklist: A Tool to Improve Records Management (2008-09:2)	July 2008
Investing Smarter in Public Sector ICT: Turning Principles into Practice (2008-09:3)	July 2008
Private Practice Arrangements in Health Services (2008-09:4)	October 2008
Working with Children Check (2008-09:5)	October 2008
CASES21 (2008-09:6)	October 2008
School Buildings: Planning, Maintenance and Renewal (2008-09:7)	November 2008
Managing Acute Patient Flows (2008-09:8)	November 2008
Biosecurity Incidents: Planning and Risk Management for Livestock Diseases (2008-09:9)	November 2008

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