

HOBSONS
BAY CITY
COUNCIL



Planning Enforcement Policy

Council Adopted 12 April 2022

Acknowledgment of Country

Council acknowledges the Bunurong People of the Kulin Nation as the Traditional Owners of these municipal lands and waterways, and pay our respects to Elders past, present and emerging.

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1. Purpose

This policy applies to the enforcement of the *Planning and Environment Act 1987* (the Act) and Hobsons Bay Planning Scheme (“Planning Scheme”) and will provide a guide to 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.

2. Background

The Act and Scheme regulate land uses and developments across the Municipality. These activities are controlled by the provisions in the Planning Scheme, planning permits, Section 173 Agreements and Victorian Civil and Administrative Tribunal (VCAT) issued enforcement orders.

Section 14(a) of the Act places an obligation on Council to enforce the Act and the 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. Where breaches occur compliance and enforcement actions must be taken.

3. Scope

This Policy applies to the taking of action in relation to breaches of the Hobsons Bay Planning Scheme and related planning permits.

4. Definitions

Compliance	Is defined as the adherence to the legal requirements and obligations of an Act. Compliance is an ongoing process.
Council	Is the legislative body of a municipality or local government area.
Enforcement	Is the use of influence, authority and statutory powers under the Act to achieve or compel compliance.
Hobsons Bay Planning Scheme	The legal document approved by the Victorian Government, that outlines objectives, policies and controls for the use, development and protection of land within Hobsons Bay City Council municipality.

Magistrates Court	Is the first level of the Victorian court system and is a criminal jurisdiction that can impose criminal penalties.
Planning & Environment Act 1987	Is an Act that establishes a framework for planning the, use, development and protection of land in Victoria.
Planning Infringement Notice	Is a notice issued by Council setting out the particulars of an alleged contravention of an offence and may contain remedial actions. It is governed by the <i>Infringements Act 2006</i> with fixed but annually reviewed penalty amounts.
Planning permit	Is a legal document that gives a landowner or occupant permission to use or develop land in a certain way. It usually includes conditions and approved plans which must be complied with.
Subdivision Act 1988	Allows the division of land into two more parcels and is governed by a planning permit.
S173 Agreement	Is a legal contract between the Council and a landowner that places restrictions on how you can use the land and is placed on the title. It is made under Section 173 of the Planning and Environment Act 1987.
VCAT	Is the Victorian Civil and Administrative Tribunal and can issue enforcement orders and determines disputed planning applications in Victoria.

5. Policy and principles

When exercising Statutory Planning enforcement functions Council will have regard to this policy. Council has discretion as to when enforcement or compliance is required, and which measures are appropriate for particular situations. Such measures may be additional or to the exclusion of traditional enforcement options.

Ethics

Council enforcement and compliance officers will conduct themselves in accordance with the Hobsons Bay 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 pursue compliance and enforcement actions to their logical and proper conclusions. The Auditor General has published Guidelines ([link to guidelines](#)) that codify the expected behaviours of state government bodies when taking enforcement action which mirror the above principles.

Court and VCAT

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.

Combined matters

Where a breach of more than one piece of legislation occurs Council will pursue all breaches and may, where fair to do so, combine those actions into one matter. i.e. Where a prosecution is warranted for breaches to both the Act and Building Act, one informant will generally be appointed, and one group of charges and summons will be issued. This will allow the accused person to answer all charges in a comprehensive manner.

Publicity

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 it is deemed appropriate.

Costs

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

6. Procedural guidelines

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

Legislative Obligation

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

Cost effectiveness

The community benefit generated by Council taking action when comparing costs of possible on-going 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"), WorkSafe or Vic Roads. Council will actively cooperate with those other investigation enforcement agencies.

Prima facie breach

Council will determine if there is a prima facie breach before committing full investigational resources to gathering evidence and documenting a case.

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 or National.

Prevalence

Taking into account whether the breach can occur elsewhere in the Municipality. If the frequency of 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 an allied area.

Previous history

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

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. 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

Allows other non previously categorised factors to be considered.

7. Available Actions

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.

1. 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.

2. 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.

3. Penalty Infringement Notices

PIN's 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. PIN's may or may not contain additional measures to be undertaken to rectify the breach.

4. Prosecution in the Magistrates Court - 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 summons
- the breach causes significant environment, amenity or social impacts
- the effects cannot be easily reversed
- the breach occurred deliberately willfully or negligently
- multiple breaches are present
- obstruction of Authorized officer(s) occurred

- failure to comply with an Enforcement Order (Section 133 VCAT Act.)

Charges will be heard in the Magistrates Court of Victoria.

5. Enforcement order VCAT

An enforcement order will be sought from VCAT where a previous request to rectify the breach has not occurred, where PIN's 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. Also see **Section 3 Costs**.

6. 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.

7. 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 cancelled or amended. Also see Section 3 **Costs**.

8. 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.

9. Contempt of a VCAT Enforcement Order

Contempt of a VCAT enforcement order may be heard in either the Supreme or Magistrate's Court.

8. Action Matrix

	No impact	Slight amenity impact.	Moderate amenity temporary impact. Heritage issues	Major amenity, residual impact Heritage. Contributor y	Catastrophic amenity Heritage impact. State significance
Deliberate or willful	Moderate PIN/VCAT	Moderate PIN/VCAT	High level Court/VCAT	Immediate Court/VCAT	Immediate Court/VCAT
Negligent	Very low	Low Advice	Moderate PIN/VCAT	High level Court/VCAT	Immediate Court/VCAT
Accidental	Very low	Low Advice	Moderate PIN/VCAT	Moderate PIN/VCAT	High level Court VCAT
Inadvertent	Very low	Very low	Low Advice	Moderate PIN/VCAT	Moderate PIN/VCAT

9. Response Matrix

Action Rating	Timeframes	Response
Immediate action Court/VCAT	Officers undertake an inspection of the property on the same day or within 24hrs	Request works cease. If other powers exist in Council to stop works take relevant action. eg Building Act or Local Government Act. Immediately obtain evidence. Consider seeking interim enforcement order at VCAT. Injunction at Supreme Court. Charges and summons usually issued.
High level Court/VCAT	Officers undertake an inspection of the property within 3 days	Request works cease If other powers exist in Council to stop works take relevant action.eg Building Act or Local Government Act. Collect evidence. Charges and summons usually issued. Consider enforcement order at VCAT.
Moderate level PIN/VCAT	Officers undertake an inspection of the property within 5 days	Follow up in writing within 5 days. PIN usually issued. Charges and summons issued if PIN unpaid or works not completed.
Low level Advice	Officers undertake a desk top assessment of the matter within 10 days	On-site attendance may not be required. Can issue verbal request, emails, letters. PIN may be issued if non compliance with initial request.
Very low level	If resourcing allows	Investigate if resources allow or undertake a desk top assessment if resourcing allows. Attendance may not be required.

10. Related legislation

- Hobsons Bay Planning Scheme
- Infringements Act 2006
- Local Government Act 2020
- Planning and Environment Act 1987
- Subdivision Act 1988
- Victorian Civil and Administrative Tribunal Act 1998

11. Review date

This policy will be reviewed nine years from the date of endorsement by Council unless it is required to be updated sooner.

12. Further information

For further information concerning this policy please contact Statutory Planning team on:

Phone: 1300 179 944

Email: TownPlanning@hobsonsabay.vic.gov.au

13. Document control

Policy Name	Planning Enforcement Policy
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14. Version history

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1	12 April 2022	Council Meeting 12 April 2022