

# 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.*