



# Certificate of Compliance/ Existing Use Rights Fact Sheet

## What is a Certificate of Compliance and Existing Use Rights?

You may realise that your property is being used in a way that is not permitted according to the current zoning that applies to your area. In most cases, this is legal because the way the property has been used existed before the current Planning Scheme (*having existing use rights*). This means that the use of the property can continue even though the current zoning prohibits it (*seek a Certificate of Compliance*). A Certificate of Compliance states that the land has:

- an existing use or development of land which complies with the requirements of the Planning Scheme at the date of the certificate ++ (*See last page for Section in Planning and Environment Act 1987*)
- a proposed use or development (or part of a proposed use or development) of land that would comply with the requirements of the Planning Scheme at the date of the certificate +++ (*See last page for Section in Planning and Environment Act 1987*)

## How do I know if my property has existing use rights?

Existing use rights apply to the land, not the owner, and it is up to owner of the property to prove that they apply. \* (*See last page for Clause in Planning Scheme*)

It is important to note that any works to properties with existing use rights require a planning permit and must comply with current planning requirements.

According to the Baw Baw Planning Scheme, an existing use may be established in one of the following ways:

- The use was lawfully carried out before the new planning provisions took effect before 17 December 1998.
- A permit for the use had been granted immediately before the new planning provisions took effect (17 December 1998) and the use commences before the permit expires.
- A permit had been previously granted for an alternative use, one that does not comply with the current planning provisions, and use commences before the permit expires.
- A utility service provider or other private service provider that continues to use previously carried out by a government agency.
- Proof of continuous use for 15 years is established. The use cannot have ceased for a period of two years during this time. (See Proof of continuous use on page 2).



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## Proof of continuous use

Sufficient proof is required to demonstrate if the use has been carried out continuously for 15 years. Documents that are classed as sufficient proof include the following (where applicable and but not limited to):

- Detailed description of the scale and nature of the use including all business activities, operation hours, plant/machinery operation, staff/patron numbers etc.
- Scaled plan showing the location and activities for the use.
- Original copies of tax invoices and tax assessments.
- Original copies of rates notices, utility bills and insurance policies.
- Original copies of tenancy agreements and other licenses.
- Photographs with dates shown.
- Advertisements for the business with dates shown.

The documentation must be provided for each of the preceding years and clearly specify the use of the land at that time. The use must be defined specifically and not be a generic description (for example, if the existing use is “butcher shop”, then documentation referring to “retail premises” would not suffice).

## How to apply

- Complete and submit the Certificate of Compliance application form.  
For the application form refer to <https://www.bawbawshire.vic.gov.au/Plan-and-Build/Planning-permits/Application-Forms-and-Permit-Information/Your-Planning-Permit#section-6>
- Pay the prescribed fee (\$325.80)
- Provide the Certificate of Title not more than 60 days old including:
  - Plan of Subdivision
  - Registered Restrictive Covenants (if any)
  - Section 173 Agreements (if any)For the Certificate of Title refer to <https://www.landata.vic.gov.au/>



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- Detailed description of the use and evidence to support the application (see Proof of continuous use on page 2).

## Timeframes and Review of Decision

Council is required to consider the application within 30 days and either issue or refuse the certificate. An applicant may apply to the Victorian Civil and Administrative Tribunal to review the decision by Council or failure to issue the decision within the prescribed time.

## Contact and how to lodge

### Email

[planning@bawbawshire.vic.gov.au](mailto:planning@bawbawshire.vic.gov.au)

### Phone

(03) 5624 2411

### Post

Planning Department  
Baw Baw Shire Council  
PO Box 304  
Warragul, VIC 3820

### Person

Customer Service Centre  
90 Smith Street Warragul  
33 Young Street Drouin

Link to Baw Baw Planning Scheme:

<https://planning-schemes.delwp.vic.gov.au/schemes/bawbaw>

++ Section 97N (a) Planning and Environment Act 1987

+++ Section 97N (b) Planning and Environment Act 1987

\*Clause 63 Planning and Environment Act 1987