

## Strategic policy

### Compliance and Enforcement

Corporate Plan reference:	<b>Our service excellence</b> We serve our community by providing this great service
Endorsed by Council on:	9 December 2021 (OM21/124)
Manager responsible for policy:	Group Executive Customer Engagement and Planning Services

### Policy statement

Council is responsible for administering a range of laws and regulations as set out in the *Local Government Act 2009* (LGA), including Sunshine Coast Council's (Council) Local Laws and various other Federal and State legislation. These laws are typically intended to govern community life, ensuring the safety and wellbeing of the community and that harm, including environmental harm, is prevented. These laws set the standards to which all members of the community are expected to comply.

This policy outlines the framework and approach on how Council ordinarily exercises discretion when undertaking enforcement actions. While this policy is not legally binding on Council and does not confine or limit Council's discretion to take any action, it will only depart from this policy where such departure is warranted in the public interest or required by law.

The policy also provides a level of confidence that Council values those within our community who voluntarily comply with the law. This policy is supported by operational guidelines.

### Policy scope

This Policy covers compliance and enforcement activities undertaken by or on behalf of Council and applies to all Council employees responsible for the compliance and enforcement of those laws that sit within Council's jurisdiction.

### Principles

The community should have:

- a clear understanding of their rights and responsibilities under relevant legislation
- support to accomplish these responsibilities where appropriate
- an understanding of how Council will approach administration of the relevant legislation
- access to information on how Council will approach compliance and enforcement and
- Information regarding the consequences of non-compliance.

Compliance and enforcement at Council is underpinned by the following principles:

<b>Targeted</b>	Council will target our compliance and enforcement activities to prevent the most serious risk or harm and where there is evidence that adequate education mechanisms are in place to advise of compliance requirements i.e. parking signage, animal management in public spaces.
<b>Proportionate</b>	compliance and enforcement measures and responses will be proportional to the problem they seek to address and how responsible for the problem, the offender is.
<b>Consistent</b>	outcomes from our compliance and enforcement activities should be consistent and predictable. Council aims to ensure that similar circumstances, non-compliances and incidents lead to similar enforcement outcomes.
<b>Transparent</b>	procedures and standards will be enforced transparently. Information and any lessons learned will be shared and promoted.
<b>Inclusive</b>	Council will engage with the community to educate and build awareness to promote voluntary compliance with the law.

## Compliance and enforcement priorities

Council has statutory obligations for the investigation and management of unlawful activities. Council is committed to working with individuals and businesses to provide education with a goal of achieving voluntary compliance without having to resort to regulatory intervention. Enforcement and formal regulation are Council's least preferred method of achieving compliance.

There are times where formal regulation and enforcement are required, for example:

- circumstances where the risk posed to the community needs to be addressed swiftly
- legislative frameworks require certain actions (such as the issuing of a written notice)
- education and informal requests for compliance do not achieve compliance with legislation
- times where there are other education mechanisms are in place (such as adequate signage for example dog off-leash signage, prohibited conduct etc.).

Council is committed to utilising enforcement processes which are lawful, ethical, safe, fair, practical, consistent, customer focussed and responsive to individual circumstances and risk.

Managing compliance and enforcement can be costly and where possible Council will make all reasonable efforts to ensure that the cost of compliance activities is met by those responsible for non-compliance. Cost recovery for non-compliance contributes to the continual improvement activities of the compliance and enforcement program with the goal of achieving voluntary compliance across our community.

## Compliance and enforcement approach

Council's approach to its regulatory responsibilities is based on encouraging voluntary compliance and discouraging non-compliance. In honouring its responsibilities, Council uses a suite of regulatory tools, including risk based regulation, education, incentives, licensing (permits, approvals etc.), auditing and enforcement in an integrated manner. Council actively pursues partnerships with industry and the community which facilitate beneficial outcomes for the region and residents. Where enforcement action is required, Council's response will be proportionate to the severity of the non-compliance.

Enforcement actions will generally not be initiated unless the following apply:

- immediate or likely life threatening situations
- permanent or irreversible damage to the natural or built environment
- immediate risk to public health, safety or wellbeing
- persons where a pattern/repeated instances of behaviour and failure to adequately fix the problem, has been established and

- penalty infringement notices issued.

## The compliance model

The compliance model promotes the use of tailored responses to individuals in the community based on their compliance risk and attitude to compliance. Council utilises this model to assess the appropriate regulatory action to be taken from active enforcement measures at the top down to voluntary compliance and cooperation at the base.

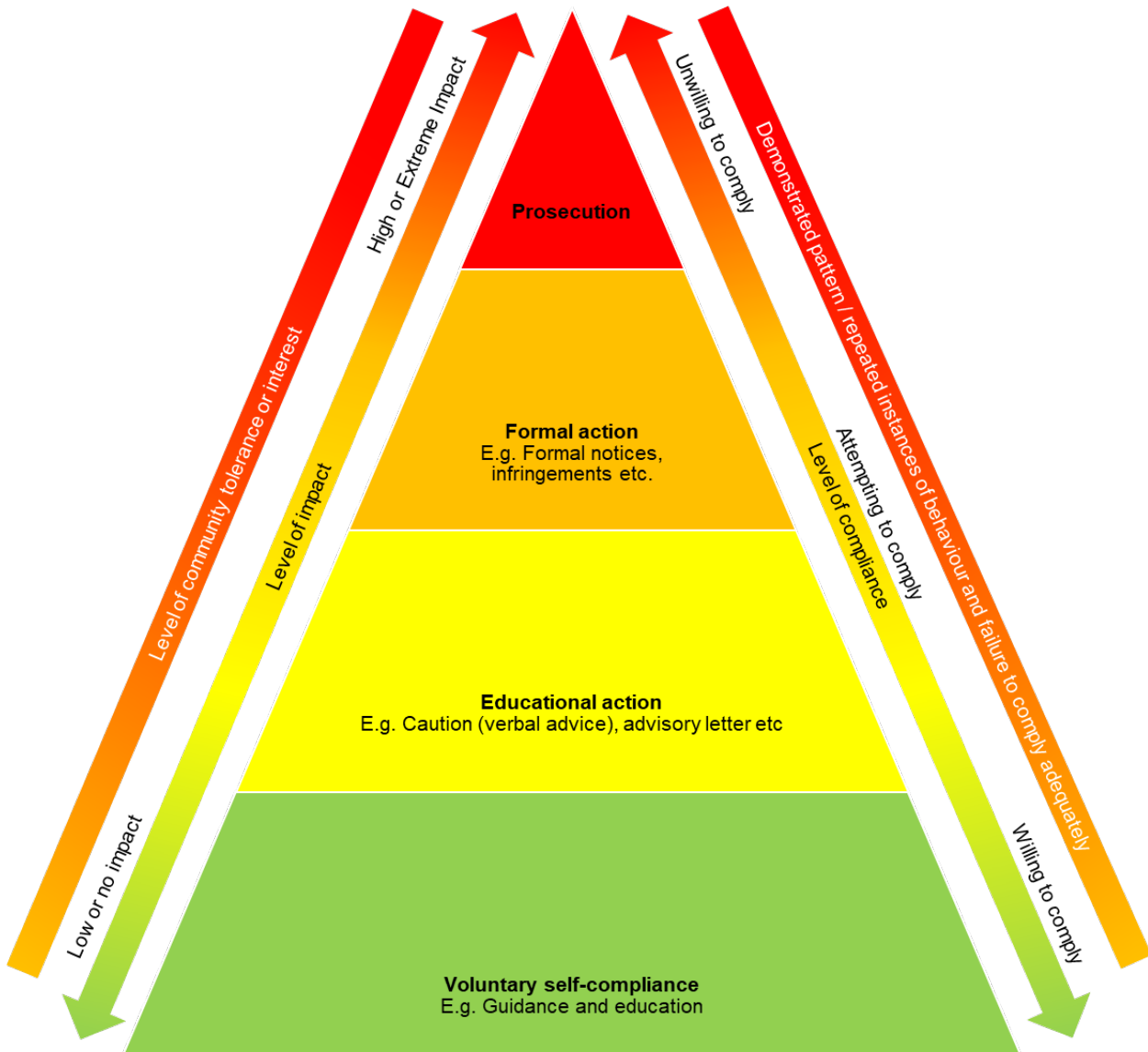


Figure 1 – Compliance model

## Risk-based regulation

Risk-based regulation works on the basis that the type of compliance action chosen will be dependent on the degree of risk, and the impact of non-compliance to the community now and into the future. Council has a duty of care to protect the community where non-compliance poses the greatest risk to the public interest. In these instances, it is expected that Council will pursue the strictest regulatory action at its disposal.

## Encouragement, engagement and education

Council assumes there are high levels of voluntary compliance with legislation across our community and are committed to ensuring that our community are aware of their compliance obligations. When non-compliance with legislation is brought to Council's attention, Council officers work under the assumption that most people want to do the right thing. Council officers will employ a variety of actions to encourage voluntary compliance and where appropriate, will actively engage

with individuals to support them in achieving compliance outcomes. This may include education, proactive patrols and other supporting activities.

## Procedural fairness

Procedural fairness is also known as 'Natural Justice'. Both terms are used interchangeably. It requires a procedurally fair hearing and an unbiased decision being made. All parties to a complaint (complainant and respondent) will be afforded procedural fairness.

Council is committed to the principles of procedural fairness which means:

- **Applying the fair hearing rule** – Council officers will give a person the opportunity to be heard before making a decision
- **The rule against bias** – Council officers will not be biased in any way that prevents them from making an objective and impartial decision.

## Reviewable decisions

Most legislation that Council enforces has a reviewable decision and/or appeal provision. The procedure for reviewable decision and/or appeals may be accessed via the relevant legislation Council is enforcing. This includes but not limited to the Queensland Ombudsman's Office, Crime and Corruption Commission and the Queensland Civil and Administrative Tribunal (QCAT).

If there is a concern regarding the process the enforcement action was administered the Council Complaints Management Process will apply. Further information can be found on Council's website.

## Roles and responsibilities

All Council officers who have a role in any compliance or enforcement activity are responsible for implementing this policy and any subsequent operational guidelines.

Managers are responsible for ensuring staff comply with policy and associated guidelines.

Councillors act in accordance with the Councillor Code of Conduct and as such do not get involved in decisions regarding enforcement matters. Councillors are able to assist constituents in raising concerns regarding compliance and enforcement matters through the appropriate channels.

## Measurement of success

The effectiveness of this Policy may be reflected by the following indicators:

- Education tools and programs delivered in response to key areas of non-compliance
- Decrease in reviewable decision applications
- Decrease in the number of referrals to external organisations
- Officer decisions upheld when subject to external review
- Increase in customer satisfaction surveys

## Definitions

**Compliance** refers to an agency, corporation or person meeting or taking steps to comply with relevant laws and regulations.

**Council** means the Sunshine Coast Regional Council.

**Council Employee** means the CEO, senior contract employees, contract employees, award employees, casual employees, part-time employees, contractors, contingent workers, agency casual and volunteers.

**Council jurisdiction** means laws that are the responsibility of the Local Government to manage and enforce. Matters that sit with other levels of government, government departments or agencies are not covered under this policy e.g. aircraft noise, neighbouring fences, criminal offences etc.

**Councillor** means a duly elected person of the Sunshine Coast Regional Council.

**Enforcement** means a range or procedures and actions taken by Council to ensure that a person or organisation complies with their statutory obligations.

**Environmental harm** means an adverse effect, or potential adverse effect (whether temporary or permanent and of whatever magnitude, duration or frequency) on an environmental value including environmental nuisance.

**Person** has the definition provided in the *Acts Interpretations Act 1954*.

**Public interest** means that the interests of the community, or a group within the community or individuals.

**Reviewable decision** means a decision that is capable of being the subject of judicial review.

**Risk** means the possibility, chance or likelihood of harm, hazard or loss to people or the environment.

**Statutory obligations** mean an obligation created under legislation.

**Unlawful activity** means any activity or work that has been or is being carried out –

- contrary to the terms or conditions of a licence, permit, registration, notice, approval, permission or other written authorisation from Council or
- without a licence, permit, registration, notice, approval, permission or other written authorisation from Council
- contrary to an environmental planning instrument that regulates the activities or work that can be carried out on particular land or
- contrary to a legislative provision

## Policy commitment

Council employees and Councillors covered in the scope of this policy consistently demonstrate and uphold the intent, objectives and principles of this policy. Nothing in this policy requires or authorises an employee of Council or Councillor to act in any way that is contrary to law. Any instances of non-compliance will be managed in accordance with any relevant codes of conduct, policies and legislation dealing with conduct and/or disciplinary action.

## Related legislation, policies, strategies and documents

All individuals engaged in dealings within the scope of this policy are required to fulfil the ethical and behavioural obligations as defined in legislation. In the event of an inconsistency between any provision of this policy and any provision of the following related legislation, policies, strategies and documents, the provisions of the related legislation, policies, strategies and documents shall prevail, unless the CEO or Council expressly waive a provision of this policy by prior agreement. For further assistance please contact the Manager of Corporate Governance.

- Administrative Action Compliance Management Process Policy
- *Anti-Discrimination Act 1991*
- Councillors Code of Conduct

- Employee Code of Conduct
- Environment and Liveability Strategy
- *Human Rights Act 2019*
- *Information Privacy Act 2009*
- *Judicial Review Act 1991*
- *Local Government Act 2009*
- *Public Records Act 2002*
- *Public Sector Ethics Act 1994*
- Queensland Ombudsman Tip and Traps for Regulators (Second Edition) 2009

Version control:

Version	Reason/ Trigger	Change (Y/N)	Endorsed/ Reviewed by	Date
1.0	Create new	N	Council	12/03/2009
1.1	Update Department Names	N	Corporate Governance	04/01/2017
1.2	Review	Y	Council	16/08/2018
1.3	Review	Y	Council	12/09/2019
2.0	Full revision	Y	Council	9/12/2021

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