

## Strategic policy

### Compliance and Enforcement Policy 2018

Corporate Plan reference:	Service Excellence 4.2 An Outstanding Organisation 5.4
Endorsed by Council on:	13 September OM/18/148
Manager responsible for policy:	Group Executive Customer Engagement & Planning Services

### Policy introduction

Council undertakes a range of compliance and enforcement activities. This policy advocates that people voluntarily comply with the law, however it is important for council to have a policy position that articulates council's approach to these activities. This policy provides:

- clear guidelines on enforcement options available to council where there has been a failure on behalf of an individual or business to comply with community and/or legislative standards
- information on how council will meet its statutory obligations to exercise compliance and enforcement actions
- details on the level of interaction and involvement between authorised persons, Councillors, businesses and individuals where compliance and enforcement activities are deemed necessary
- information on how council expects its residents and visitors to comply with the intent of the Acts, Regulations, Local Laws and Planning Scheme applicable to the region
- a platform to build community confidence in the manner in which council deals with compliance and enforcement activities and the impartiality of council's decision-making process.

The policy also acknowledges the contribution of the Queensland Ombudsman's office in providing guidance to discretion and the role of risk management, systems for effective regulation and communication with the public in its revised publication "*Tips and Traps for Regulators, Second edition October 2009*".

## Policy Purpose

Council has an obligation to discharge its statutory responsibilities where unlawful activities are identified.

The policy provides clarity as to what individuals or businesses may expect from council, if subject to enforcement action and provides a level of confidence that council's compliance and enforcement practices:

- communicate how council values those that voluntarily comply with the law
- demonstrate proportionality in decision making
- display transparency in the process of investigation and enforcement
- are open to scrutiny.

## Policy outcome

Council undertakes compliance and enforcement action in accordance with statutory obligations in a manner which:

- is transparent
- advocates voluntary compliance with the law
- is impartial
- determines the appropriate enforcement action based on the key elements outlined in the policy with a focus on education before regulation where it is appropriate.

The policy ensures that council's enforcement practices are lawful, safe, fair, practical and consistent and that council discharges its statutory obligations in the investigation and enforcement of unlawful activities.

## Policy scope

This policy applies to all compliance and enforcement activities undertaken by Council.

## Policy statement

Council is committed to education for self-compliance outcomes. Enforcement is generally the least preferred method of achieving compliance and is only applied after there has been a breakdown of negotiated outcomes between the parties or where remedial action is necessary. The following guiding principles outlines Council's general approach.

## Guiding principles

### Principles of achieving effective compliance, risk management and enforcement

Council advocates firm but fair regulation that provides positive community outcomes. The underlying principles in achieving this objective are:

- applying proportionality in the application of the law and in securing compliance
- being consistent in approach
- procedural fairness and principles of natural justice applied
- displaying transparency in what individuals and businesses may expect from council if they default
- that any enforcement action is considerate of risk.

Incidents requiring regulatory intervention may differ. In assessing the most appropriate enforcement action, authorised persons take into account:

- risk (potential to cause physical, financial, environmental or other harm and the consequences of it happening)
- cost (value of time and resources to obtain a positive and beneficial outcome)
- evidence (facts or observations presented in support of an assertion)
- behaviour (the way in which a person responds to a situation considerate of circumstance and exerting a positive demeanour)
- circumstances (facts that surround a situation or event that should be kept in mind when making a decision)
- Public interest (the outcome is considerate of the benefits offered to the entire community, or a group within the community or individuals).

Consistency and transparency are integral to council's aim of fair regulation. These values promote understanding of what is expected and what is considered in decisions on enforcement action. In addition, the principles of natural justice are followed in any investigation to ensure a fair decision is reached.

To ensure due process is followed, enforcement processes are undertaken by appropriately authorised officers, Councillors are not involved in the negotiating or resolving outcomes with aggrieved parties.

### **Voluntary compliance principles with the support of education**

Council assumes there are high levels of voluntary compliance with legislation across the community and directs its resources to investigating activities where non-compliance has been identified. All information concerning compliance protocols are documented and are available on request.

To achieve its compliance objectives, council uses a range of flexible and targeted measures, including:

- communication and education activities
- timely provision of information and advice
- persuasion
- cooperative assistance
- routine monitoring and inspection programs
- auditing
- risk management
- performance feedback
- community workshops
- access to information via the internet and other media outlets.

To encourage voluntary compliance and to assist customers, council has a range of publicly available educational materials with both targeted and general advice.

Council also advocate's voluntary compliance by working with stakeholders to tailor audit and inspection regimes (i.e. spot checks, re-visits or letters of advice).

Council regularly reviews its compliance and enforcement activities and incorporate lessons learned into the policy, operating procedures, broader compliance tools and the legislative process.

## Application

This section outlines council's approach to compliance and enforcement.

Council has a broad range of statutory instruments to assist in the:

- monitoring of compliance with conditions of any approval, licence, permit conditions
- regulation of unlawful activities
- management of development activities
- protection of public funds and resources.

All enforcement activities are carried out in accordance with the legislation and with due regard to sensitivity. Allegations of unlawful activity are acknowledged within prescribed timeframes and where necessary a report provided on what action council has taken or plans to take.

Regulatory effort is primarily directed towards activities that pose risk of significant harm to either the community or the environment. Enforcement action is primarily focused on those directly responsible for the risk and who are best placed to manage it.

### Investigation – no action

Council takes no action where an investigation identifies:

- the legislation is not applicable in the circumstances
- there is insufficient evidence
- another agency has taken action and issues of duplicity arise
- the statutory time limit has expired
- an exemption, exception or defence available under relevant legislation is clearly applicable in the circumstances
- a public interest factor(s) dictates that no action is the appropriate response.

### Informal action

In some instance, the unlawful activity has a relatively inconsequential impact, yet it is deemed remedial action is necessary. The prerequisites for issuing an informal action may include that the:

- offence was of a trivial or minor nature<sup>1</sup>
- subject has received no previous warnings concerning the unlawful activity.

Where an investigation identifies that a Prescribed Infringement Notice or prosecution action has resulted for a similar or like offence<sup>2</sup>, informal actions may include the issue of one or more of the following:

- caution (verbal advice)
- advisory letter (where advice is being confirmed)
- written request for remedial action.

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<sup>1</sup> An act which results in an inconsequential impact

<sup>2</sup> Means a previous offence involving the same or a related activity

Where remedial action is required (i.e. where there is an urgent requirement to protect community health, safety or amenity including environmental harm) council officers will clearly explain why the action is necessary and provide opportunity to discuss what is required to comply with the law, before formal enforcement action commences.

### Formal action

Where urgent action is required, enforcement tools exist to expedite an immediate and effective response, with written explanation provided about any rights of review or appeal against formal enforcement action.

Formal action may be required where the criteria for issuing informal actions are not available. Formal actions can include the issue of one or more of the following:

- verbal warning
- warning / letter
- show cause notice
- enforcement notice
- Compliance Notice
- Stop Order
- Prescribed Infringement Notice.

### Prosecution

Prosecution is an important and sometimes necessary part of an enforcement program. Council recognises that prosecution is a serious consequence and it is only pursued after full consideration of its implications and the outcomes sought.

Decisions concerning a prosecution trigger a process that elevates the status of the investigation and requires consultation between senior council officers and council's legal advisor.

As a preventative strategy to alleviate the risk of a legislative breach or inappropriate behaviour, council will consider the wider public interest where enforcement action may lead to prosecution.

Prosecutions do not commence unless there is sufficient, admissible and reliable evidence that an offence has been committed and that there is a realistic prospect of a conviction. Divisional Councillors may where it is considered necessary, be advised by a Group Executive that prosecution is pending.

If an allegation does not pass the evidential test<sup>3</sup>, (i.e. consultation between the investigator, senior council officers and council's legal advisor) no further action will be taken, regardless of how important or serious the allegation may be. Where there is sufficient evidence, a prosecution may not commence unless it is in the public interest.

Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the offender and whether, through the conviction of the offender, others may be deterred from similar failures to comply with the law.

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<sup>3</sup> Sufficiency of evidence test involves determining the existence of a prima facie case, admissibility and reliability of evidence, possible defences, competency and availability of witnesses.

Where an offence passes both the evidential and public interest test<sup>4</sup> council may prosecute in any of the following circumstances:

- the offence involves a failure to comply in full or part with the requirement of a statutory notice
- there is a history of similar offences in relation to the non-compliance with a statutory notice
- the offence has the potential for serious consequence for community health, safety, amenity or environmental harm
- there have been excessive or persistent breaches of regulatory requirements
- there has been failure to provide information without reasonable excuse or knowingly supplying false or misleading information
- there has been obstruction of council staff in carrying out their duties.

### Alternatives to prosecution

In cases where prosecution is not the most appropriate course of action other alternatives are considered (i.e. counselling/mediation, written warning, issue of a Compliance Notice, Show Cause/Enforcement Notice, Stop Order or Prescribed Infringement Notice or a combination of the above).

Council keeps a record of all directions and where necessary they can be referred to in subsequent dealings. Council may also utilise the services of other external agencies in facilitating remedial action (i.e. Community Justice Program).

### Impartiality

The Codes of Conduct for Councillors and Employees, as well as an understanding of the general principles for managing conflicts of interest, should be understood and read in conjunction with this policy.

### Working with other regulators

Council will liaise with other external agencies to minimise duplication, avoid inconsistencies and to ensure that any proceedings instituted are for the most appropriate offence for example Queensland Police Service, Building Services Authority, Department of Environment & Science and Queensland Health etc.

### Works in default

Under some legislation council may execute works in default instead of, or as well as, taking legal action. In such cases the expenses of default work may be recovered by council and can be charged against the land, or in the case of a negotiated cost, met by the defaulter on completion of the works.

Where council considers such action it will take all reasonable steps to notify and communicate extensively with the interested parties.

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<sup>4</sup> Public interest factors require assessment of the seriousness of the offence, any mitigating circumstances, age, health, special infirmity of the offender, background, culture or availability of other alternate courses of action.

Council may consider exercising its work in default power where it is legally possible, reasonably practicably and/or there is a will on behalf of the defaulter. For example, in the interest of community health, safety, amenity or environmental harm, council may consider an immediate remedy by agreement, or by seeking compliance without prosecution.

Where council takes such action, it will notify the interested parties, seek agreement where possible and carry out the works.

## Injunctions

An injunction may be sought where there are sufficient grounds and in particular where the circumstances present a potential and/or immediate threat to community health, safety, amenity, environmental harm or are causing extreme distress. Consideration at this time will be given to the possibility that council may face a damage claim in the event that the eventual prosecution is not proven.

## Enforcement decisions

In the majority of cases, decisions about the most appropriate course of enforcement action are made by authorised persons. Decisions are made following referral to operational manuals, standard operating procedures, professional judgment, legal guidelines/case law, statutory codes of practice and priorities set by council.

The role of the authorised person is to mitigate, guide, educate, encourage and enforce in order to uphold community standards and reflect the values and culture of council. The primary duty of council is to govern in the wider public interest of the community as a whole.

For serious offences (where the nature of the offence points towards prosecution or seizure), decisions about enforcement action are collaborative.

## Delegations for enforcement action

Council staff are delegated to initiate various levels of compliance and enforcement action. Council's delegation register lists those officers that have the decision-making power to issue Compliance, Show Cause, Enforcement, Stop Order and Prescribed Infringement Notices or to initiate legal proceedings.

Councillors should not involve themselves in enforcement matters being carried out by the appropriately delegated officers. Any attempt to direct a council officer may breach the Local Government Act and could compromise an investigation and/or erode community confidence in the process. Councillors may seek a briefing on any council action.

## Monitoring and review of policy

This Policy will be reviewed if there are significant changes in legislation or other circumstances which affect its effectiveness and validity.

## Reviewable decisions and complaints

Should an individual or business have a concern about an enforcement action or in the way the investigation has been managed, they may have their concerns investigated in a range of ways:

### General complaints management system

Council has a formal complaint management process which can be found on council's website [www.sunshinecoast.qld.gov.au](http://www.sunshinecoast.qld.gov.au) under:

- Council > Organisation and Governance > Council Policies > [Administrative Action Complaints Management Process](#)

### Written representation

Any person may take up their complaint with the Chief Executive Officer of council.

## Reviewable decisions and appeals

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 information will be provided to you with any enforcement documents provided by council officers.

Information and reviews of penalty infringement notices may be obtained via council's website [www.sunshinecoast.qld.gov.au](http://www.sunshinecoast.qld.gov.au) under:

- Council > Pay and Apply > [Infringement Notices and Payment](#)

## Queensland Ombudsman's Office

The core function of the Queensland Ombudsman's Office is to investigate complaints about decisions and actions of local government agencies.

The Ombudsman's office encourages persons to try to resolve their complaint with council first. Applicants should approach council and genuinely try to have the problem resolved. The Ombudsman's office advocates that applicants keep a record of their discussions with council and copies of letters or emails between the parties.

If an individual or business is not satisfied with council's response or there is undue delay in the addressing of a complaint, individuals or businesses may complain to the Queensland Ombudsman Office at [www.ombudsman.qld.gov.au](http://www.ombudsman.qld.gov.au).

## Right to information

The *Right to Information Act (2009)* provides a mechanism for accessing documents in the possession or under the control of Council. The Act seeks to enhance government accountability and promote discussion of public affairs. For further details about Right to Information processes visit council's website or the Queensland Office of the Information Commissioner at [www.oic.qld.gov.au](http://www.oic.qld.gov.au).

## Crime and Corruption Commission

If a person suspects a council officer of 'corrupt conduct', they can refer their concerns direct to council or to the Queensland Crime and Corruption Commission (CCC). For further information about the role of the CCC visit their website at [www.ccc.qld.gov.au](http://www.ccc.qld.gov.au).

## Roles and responsibilities

All council officers whose responsibility it is to manage written and verbal communication or complaints about unlawful activity are responsible for implementing these policy guidelines.

Any variance from the policy should be reported to the appropriate Manager who will address the concern and initiate remedial action as warranted.

### Managers

Managers are required to monitor the implementation of the policy by their staff and make any necessary suggestions and recommendations for improvement.

## Measurement of success

The effectiveness of the Compliance and Enforcement Policy may be reflected in:

- feedback from customer satisfaction surveys
- feedback from the Council's Corporate Governance where a matter has been reviewed internally



- feedback from the Queensland Ombudsman's Office where a matter has been referred to them for review or investigation
- feedback from the Crime and Corruptions Commission where a matter has been referred to them for review of investigation

## Definitions

**Authorised Person** means a person who is authorised by the local government under an Act, Regulation or Local Law to exercise appropriate powers under an Act, Regulation, Local Law or Planning Scheme.

**Best Community Outcomes** include one or more of the following solutions—

- all parties agree and commit to a positive outcome;
- social networks are enhanced;
- community, health and safety is not compromised;
- the built, social and environmental amenity are enhanced; and
- harm or nuisance is reduced or abated.

**Business** means the supply of goods or services wherein the proprietor requires an approval, licence or permit from the local government to operate the activity.

**Complaints Process** means a formal complaint management process, in accordance with the requirements prescribed in Part 6 of Chapter 7 of the *Local Government Act 2009*.

**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.

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

**Enforcement** means a range of 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.

**Individual Responsibility** means that the primary responsibility for compliance rests with individuals and businesses.

**Proportionality** means relating enforcement action to the risks and costs. Council will be considerate of cost, ensuring that any enforcement action is proportionate to the risk. As far as the law allows, council will take into consideration the circumstances of the concern, behaviours and risk when deciding an action.

**Prosecution** means the institution and conduct of legal proceedings against a person, organisation or corporation, as defined in Corporations Law for alleged unlawful activity.

**Public Interest** means the interests of the community as a whole, 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 a potential impact that may cause physical, financial, environmental or other harm resulting in loss of value of goods, loss of life or loss of amenity.

**Statutory Obligation** means an obligation that does not arise from a contractual relationship but is created under a law.

**Systematic approach to risk** means to identify and manage risks (i.e. identify, assess and control).

**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 (including a development 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;
- contrary to a legislative provision regulating a particular activity or work; or
- without a licence, permit, registration, (including a development permit), approval, permission or the like.

**Voluntary Compliance** generally means a person or business that manages their activity within the law and/or condition of approval, licence or permit.

## Related policies and legislation

- *Local Government Act 2009*
- Code of Conduct for Councillors
- Administrative Action Complaints Management Process Policy
- Crime and Corruption Commission (CCC)
- *Queensland Ombudsman Tips and Traps for Regulators, Second edition 2009*
- Right to Information Act (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	13/09/2018

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