

## Strategic policy

### Compliance and Enforcement Policy ~~2009~~ 2018

Corporate Plan reference:	<a href="#">Service Excellence 4.2: 4.3</a> <a href="#">An Outstanding Organisation 5.4</a>
Endorsed by Council on:	<del>12 March 2009 (OM 09/071)</del>
<a href="#">Group Executive Manager</a> responsible for policy:	<del>Director <a href="#">James Ruprai</a>, <a href="#">Group Executive Customer Engagement &amp; Planning Services</a> <a href="#">Community Services</a></del>

## Policy ~~purpose~~ 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. The provides;

- ~~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; and
- ~~openly information on document~~ how council will as a requirement of meeting its statutory obligations, exercise its compliance and enforcement actions;
- ~~articulate details on~~ the level of interaction and involvement between authorised persons, Councillors, businesses and individuals where compliance and enforcement activities are deemed necessary;
- ~~provide~~ 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; and
- ~~instil 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.

~~Council will use with legislation and policy provide a full range of proactive and reactive tools in its approach to Compliance and Enforcement; namely:~~

**Proactive**

- Legislation
- Policy
- ~~Education~~ to achieve self-regulation
- ~~Incentive~~
- ~~Licensing~~
- ~~Compliance/audits~~

## 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.

## Reactive

- Investigation
- Enforcement

The Compliance and Enforcement Policy is supported by a broader compliance and enforcement structure which includes—

- standard operating manuals and procedures;
- a reviewable decision making process;
- a complaints management system;
- access to documents through [Right to Information Act \(RTI Act\)](#) Freedom of Information; and
- collaboration with the [Queensland Ombudsman's Office](#) and [relevant government departments](#).

## Policy scope

This policy applies to all compliance and enforcement activities undertaken by Council. Council has an obligation to discharge its statutory responsibilities where unlawful activities are identified. The Compliance and Enforcement Policy provides clarity as to what individuals or businesses may expect from council if subject to enforcement action.

The policy also 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; and
- are open to scrutiny.

## Policy statement

The policy provides clarity as to what individuals or businesses may expect from council, if subject to enforcement action.

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

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.

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 good decision making and administrative practices in its revised cent publication "[Tips and Traps for Regulators, Second edition November 2007 October 2009](#)".

## 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; ~~and~~
- 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 demeanor);
- circumstances (facts that surround a situation or event that should be kept in mind when making a decision); ~~and/or~~
- 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 ~~in regulating fairly~~. These values ~~assist those who are regulated to promote~~ understanding of what is expected of them and what is considered in decisions on enforcement action. ~~why council intends to take 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. In accordance with separation of powers principles and to maintain procedural fairness, protect the rights of individuals and the integrity of the process, Councillors shall not be involved themselves in negotiating and/or resolving outcomes with aggrieved parties. This role is undertaken by appropriately authorised officers.~~

### **VOLUNTARY COMPLIANCE PRINCIPLES WITH THE SUPPORT OF EDUCATION**

Council assumes there are high levels of voluntary compliance with legislation across the community and direct 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; ~~and/or~~
- access to information via the internet and other media outlets.

~~Information is available from council that To encourages voluntary compliance and to assists customers in their enquiries, council has a range of publicly available educational materials with both targeted and general advice. The methodology includes circulating or making available both targeted and general advice that define the type of risk that can arise from an activity.~~

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<sup>1</sup>

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; ~~and~~
- protection of public funds and resources.

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

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.

~~The r~~Regulatory effort is primarily directed towards ~~those whose~~ activities ~~give rise either to the most that pose risk of~~ significant harm to ~~our either the~~ community or ~~risk of serious the~~ environmental ~~harm~~. 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; ~~and~~
- a public interest factor(s) dictates that no action is the appropriate response.

### Informal action

In some instances, Where remedial action is necessary and the unlawful activity has a relatively inconsequential impact, yet it is deemed council officers clearly explain why remedial action is ~~needed~~necessary. The prerequisites for issuing an informal action may include that the:

- offence was of a trivial or minor nature; ~~and/or~~
- 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 a—

- caution (verbal advice); ~~and/or~~
- advisory letter (where advice is being confirmed); ~~and/or~~
- written request for remedial action.

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

<sup>2</sup> Means a previous offence involving the same or 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 appeal 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:~~a~~

- verbal warning;~~and/or~~
- warning/enforcement letter;~~and/or~~
- show cause notice;~~and/or~~
- enforcement notice;~~and/or~~
- Compliance Notice;~~and/or~~
- Stop Order;~~and/or~~
- 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 prosecution trigger a process that elevate the status of the investigation and requires consultation between Senior~~senior~~ Council~~council~~ Officers~~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 Director~~Director~~ that prosecution is pending.

If an allegation does not pass the evidential ~~test~~<sup>4</sup>~~test~~<sup>3</sup>, (i.e. consultation between the investigator, Senior~~senior~~ Council~~council~~ Officers~~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.

Where an offence passes both the evidential and public interest ~~test~~<sup>5</sup> ~~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;  
or

<sup>4-3</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.

<sup>5-4</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.



- there is a history of similar offences in relation to the non-compliance with a statutory notice;~~or~~
- the offence has the potential for serious consequence for community health, safety, amenity or environmental harm;~~or~~
- there ~~has~~have been excessive or persistent breaches of regulatory requirements;~~or~~
- there has been failure to provide information without reasonable excuse or knowingly supplying false or misleading information;~~or~~
- 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, ~~Environmental Protection Agency~~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 ~~takes~~ such action it will take all reasonable steps to notify and communicate extensively with the interested parties.

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 damages 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**

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

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

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

This Policy will be reviewed ~~annually or more frequently~~ 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 web-site: [www.sunshinecoast.qld.gov.au](http://www.sunshinecoast.qld.gov.au)

- [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 Decision [and Appeals](#)**

~~Most legislation that council enforces has a reviewable decision provision. The procedure for reviewable decision may be accessed via the General Complaints Management System (complaints administration process).~~

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 council's Local Law 4 (Administration) 2014 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)

- Council > Pay and Apply > Infringement Notices and Payment

<https://www.sunshinecoast.qld.gov.au/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](http://www.ombudsman.qld.gov.au) or the Queensland Office of the Information Commissioner at [www.oic.qld.gov.au](http://www.oic.qld.gov.au).

## **Freedom of Information**

The *Freedom of Information Act (1992)* provides a mechanism for persons to have access to documents in the possession or under the control of council. The *Freedom of Information Act (1992)* enhances government accountability and promotes discussion of public affairs.

The Act includes certain grounds for refusing access to documents held by council. One example being where a document is reasonably open to public access under another Act. An application for access to documents under the *Freedom of Information Act (1992)* must be made in writing and provide

provide sufficient information concerning the document requested to enable council's FOI Officers to identify the document/s; and

- be accompanied by the current application fee, unless the document to which the access is sought contains the personal affairs of the applicant.

## **Crime and Misconduct Commission**

If an individual or business suspects a council officer of misconduct, they should first refer their concerns to council. If the internal investigation is deemed unsatisfactory then the matter should be referred to the Queensland Crime and Misconduct Commission (CMC) for investigation.

## **Crime and Corruption Commission**

If a person suspects a [Council](http://www.ombudsman.qld.gov.au) officer of 'corrupt conduct', they can refer their concerns direct to [Council](http://www.ombudsman.qld.gov.au) 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).

## **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 a Compliance Notice, Show Cause Notice, Enforcement Notice, Stop Order, Prescribed Infringement Notice 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. Divisional Councillors may seek a briefing on any council action.

## **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**

~~*Appeal Process* means all council decisions including enforcement actions are reviewable where the legislation allows.~~

**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 5 of Chapter 6 of the *Local Government Act 1993*.

**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) ~~issued under the *Integrated Planning Act 1997*~~, 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 ~~issued under the~~~~
- ~~*Integrated Planning Act 1997*~~, 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 Misconduct Commission “Facing the Facts” \(CCC\)](#)
- [Queensland Ombudsman Tips and Traps for Regulators, November 2007 Second edition 2009](#)

- [Right to Information Act \(2009\)](#)

Version control:

Version	Reason/ Trigger	Change (Y/N)	Endorsed/ Reviewed by	Date
1.0	New	N	Council	12/03/2009
1.1	Update Department Names	N	Corporate Governance	04/01/2017
<u>1.2</u>	<u>Review</u>	<u>Y</u>	<u>Council</u>	<u>13/09/2018</u>
	e.g. Review			

© Sunshine Coast Regional Council 2009-current. Sunshine Coast Council™ is a registered trademark of Sunshine Coast Regional Council.

---