

Policy Type	Corporate
Function	Governance
Policy Owner	Director Corporate and Community Services
Policy Contact	Manager Environmental and Health Services
Effective Date	13 December 2022

Purpose

The purpose of the policy is to assist Council staff to act promptly, consistently and effectively in response to regulatory matters including allegations of unlawful activity and to ensure that:

- Council exercises its regulatory functions consistently and without bias;
- Council regulatory functions are exercised proactively;
- Council responds promptly and effectively to allegations of unlawful activity;
- the rules of procedural fairness are applied when making decisions that concern regulatory matters;
- enforcement action is proportionate to the offence in each case;
- there are 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;
- there is widespread understanding of the Council's approach to enforcement, including the circumstances which will be taken into account when assessing different enforcement options;
- Council allocates its limited resources in the most appropriate manner consistent with the public interest, its policy objectives and current regulatory issues.

Scope

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

Objectives

The aim of this policy is to establish clear guidelines for the exercise of Council's powers in dealing with regulatory matters, requests or complaints regarding unlawful activity. It provides practical guidance on:

- Council's responsibility with respect to actioning unlawful activities;
- how Council staff are to assess complaints of unlawful activity to determine if they require further investigation;
- enforcement action available to Council for dealing with unlawful activity;
- how to decide whether enforcement action is warranted;
- the process to be used in deciding which type of enforcement action is appropriate in the circumstances.

Policy Statement

Background

Council is responsible for enforcing a variety of laws that are designed to protect public infrastructure, public health and safety and the environment.

Enforcement activities include but are not limited to:

- patrolling streets and public places;

- inspecting licensed or approved premises and activities whether on a routine basis or on a random basis;
- regulation of development activity;
- regulation of environmental nuisance;
- regulation of roads, footpaths and parking;
- compliance matters in the keeping of animals;
- regulation of food safety and accommodation;
- responding to enquiries and complaints.

This policy outlines the Council's broad approach to enforcement and provides a framework that promotes understanding of the manner in which enforcement activities are undertaken.

The policy is supported by Operational Standards that comply with the policy guidelines.

In the exercise of Council's regulatory functions, it is required to act in the public interest rather than the private interest of individuals.

Key Principles

Council staff will carry out their enforcement related work with regard to the following principles.

Proportionality

Council's enforcement action is in the overall public interest. This requires a proportional response. A proportional response means that Council's actions will be scaled to the seriousness of the breach. Council recognises that most individuals want to comply with the law and will assist compliance by being open and helpful offering information, advice and providing the chance to discuss compliance problems.

Attention will be focused on those whose activities give rise to the most serious risks. Generally, the Council will endeavour to minimise the costs to the person or body infringing the law by enforcing the minimum action necessary to secure compliance. Prosecution will generally be used as a last resort, or for high impact or continuous serious offences.

Consistency

Council will take a similar approach in similar cases to achieve similar outcomes. While decisions on enforcement require the use of professional judgement and discretion to assess varying circumstances, officers will:

- follow standard operating procedures wherever possible;
- ensure fair, equitable and non-discriminatory treatment; and
- record any deviation from standard operating procedures and the reasons.

Transparency

Council will be open and transparent about the manner in which it undertakes enforcement activities and the laws it enforces. It will be open about what is expected from those on whom the law places a duty (duty holders). In educating the community at large and dealing with duty holders, Council will make a clear distinction between what is legally required; if codes of practice apply; and what is desirable but not compulsory.

When remedial action is needed Council will explain clearly and in plain language why the action is necessary. Where practicable, it will give notice of its intent to commence formal action. It will point out what action is required to achieve compliance and the timeframe for undertaking that action. Advice will be provided on the process for seeking a review of, or how to appeal against that decision.

Complainants will be advised generically of what action has been taken noting that privacy issues prevent full disclosure of what action has been taken.

Fairness

Council officers are to act in good faith at all times and ensure that the principles of procedural fairness and natural justice are adhered to. This may include, but is not limited to:

- providing information on the substance of the complaint to the alleged offender;
- providing an opportunity for a person whose interests may be affected by a decision to present their case to the Council. This may not be appropriate in all circumstances, such as cases where urgent/public safety action is required;
- considering any submission put forward by the affected persons;
- making reasonable enquiries or investigations before making a decision.

Impartiality

Council officers are to make decisions based on credible evidence and in accordance with statutory obligations. Decisions must be free of bias or conflicts of interests in accordance with the Council's Code of Conduct.

Respect

Council officers are to treat other staff and the public with respect at all times.

Record Keeping

All notifications of unlawful activity, whether by telephone, email, letter or attendance at Council offices, will be logged as a Customer Request in Council's electronic systems as soon as practical upon receipt.

Details of all instances of unlawful activity identified by officers in the course of their duties will also be logged as a Customer Request.

Council officers responsible for the investigation of a matter will keep full and complete records of their actions within the relevant Customer Request. Such records include all decisions and the reasons for such decisions.

Classification of the breach – low, medium, high

After the above factors have been considered, an alleged unlawful activity may be classified by the investigating officer as being of low, medium or high significance. This classification will guide the Council's choice of the appropriate enforcement action to be taken in the circumstances. The investigating officer will make determinations on the level of significance with reference to:

- facts and circumstances of the case;
- peer review;
- supervisor support; and
- legal advice where appropriate.

Enforcement Actions

Council has a broad range of statutory instruments to assist in addressing unlawful activities. Enforcement actions may be grouped as follows:

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 instances, the unlawful activity has a relatively inconsequential impact, yet it is deemed remedial action is necessary. The offence may be of a trivial or minor nature or the alleged offender has received no previous warnings concerning the unlawful activity. Informal actions may take an educational approach and include the issue of one or more of the following:

- verbal caution;
- advisory letter, such as a First and Final Notice;
- written request for remedial action.

The circumstances in which informal action may be appropriate include:

- the act or omission is not serious enough to warrant formal action;
- the duty holder's past history reasonably suggests that informal action will secure compliance;
- confidence in the individual/other body is high;
- the consequences of non-compliance will not pose a significant risk; and
- where it may prove more effective than a formal approach.

Formal Action

Where more formal action is required, including where the issue has not been addressed following Informal Action, enforcement tools exist to expedite an immediate and effective response, with written explanation about any rights of review or appeal against formal enforcement action. Formal actions can include the issue of one or more of the following:

- Warning letter;
- Legislative notices such as:
 - Show cause notice
 - Enforcement notice
 - Compliance notice
 - Stop order
 - Penalty infringement notice (PIN)

Generally, only in circumstances such as a threat to life or immediate threat to public health or safety will a legislative notice be made without giving notice of intention. In these circumstances immediate compliance to resolve a situation can be required.

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.

Prosecutions should not commence unless it is in the public interest and passes the sufficiency of evidence test and there is a realistic prospect of a conviction, i.e. determining the existence of a prima facie case, admissibility and reliability of evidence, possible defences, competency and availability of witnesses.

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, Council may prosecute in any of the following circumstances:

- A flagrant breach of the law such that public health, safety and welfare have been put at risk.
- Serious environmental harm.
- The alleged breach is too serious or the risks too great to be dealt with by means of an infringement notice, if available.
- A failure to correct an identified serious problem after having been given reasonable opportunity to do so.
- A failure to comply with the requirements of a legislative notice.
- An established and recorded history of similar offences.
- An unwillingness, on the part of the individual or other body, to prevent a recurrence of the problem.
- 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.
- As a means to deter certain types of inappropriate behaviour or unlawful activity.

Which Enforcement Action?

Appendix 1 outlines a decision-making matrix that provides guidance on the use of enforcement actions dependent on the classification of the breach. Appendix 1 also provides an explanation of the risk parameters.

Where a breach is considered frivolous, vexatious or trivial in nature or where taking action may prejudice other action, no enforcement action will be taken. Where enforcement action is not taken, education may be provided to ensure the person fully understands their responsibilities.

Other

Injunctions

In instances of serious non-compliance with legislation and where efforts to resolve that non-compliance have proven ineffective, the Council may seek an injunction requiring a person not to breach, or to cease breaching, a statute. Decisions on whether to seek an injunction shall be made at the discretion of the Chief Executive Officer.

Recovery of Legal Costs

The Council will seek to recover its fair and reasonable costs in all matters where costs are recoverable, either by a charge on the land, consent or by order of the Court. The Council will also seek to recover any penalty imposed by the Court.

Rectification Works

Where Council successfully prosecutes an offender or the offender does not comply with a compliance notice, the Council may complete the rectification works to achieve compliance if the:

- person responsible for the non-compliance has not completed the required work within the specified timeframe; and
- relevant legislation enables the Council to complete the rectification work.

Where Council completes rectification work to achieve compliance, the Council shall seek to recover the costs in accordance with the relevant legislation.

Delegations

Council staff are delegated to initiate the various levels of investigation, compliance and enforcement action.

Authorised Persons

Only employees who are competent by training, qualification and/or experience will be appointed by the CEO to take enforcement actions. These employees also have an understanding of Council's policies, procedures, culture and their Instruments of Appointments. Such employees must ensure currency of any relevant training or qualifications to maintain this authorisation.

Exceptions

Nil.

Risk Management

Managing risk is achieved through the systematic application of policies, procedures and practices to identify, analyse, evaluate, treat, monitor and communicate risk.

This policy is intended to improve the consistency of the application and enforcement of the exercise of Council's powers in dealing with regulatory matters. An enforcement regime that is too lax may lead to undesired consequences such as: setting an expectation in the community or contributing to the creation of safety problems. Similarly, an enforcement regime that is too tough and can also lead to undesired consequences such as: an additional drain on staff and council resources in defending decisions; or promoting an image problem for Council.

A consistent approach to the exercise of Council's enforcement powers supported by the Council itself should reduce the number of undesired consequences or risks.

Legislation

Council has the authority to take regulatory action under its Local Laws and a number of Queensland Acts and Regulations including, but not limited to:

Animal Management (Cats and Dogs) Act 2008

Biosecurity Act 2014

Building Act 1975

Environmental Protection Act 1994

Food Act 2006

Local Government Act 2009

Planning Act 2016

Plumbing and Drainage Act 2018

Public Health (Infection Control for Personal Appearance Services) Act 2003

Public Health Act 2005

Waste Reduction and Recycling Act 2011

Water Supply (Safety and Reliability) Act 2008

Definitions and Abbreviations

Procedural fairness means the procedures used by a decision-maker, rather than the actual outcome reached. It requires that a fair and proper procedure be used when making a decision. Specifically, the rules of procedural fairness require:

- a hearing appropriate to the circumstances;
- lack of bias;
- evidence to support a decision; and
- inquiry into matters in dispute.

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

- contrary to the terms and conditions of a development permit, approval, permit or license;
- without a required development permit, approval, permit of license;
- contrary to any local government act that regulates the activities or work that can be carried out on particular land in relation to which Council is the appropriate regulatory authority;
- contrary to any local law.

Related Documents

Reference Number	Document Title
ECM 1068863	Burdekin Shire Council Code of Conduct for Workers
GOV-POL-0017	Complaints Management Policy
To Be Developed	Compliance and Enforcement Operational Standard
GOV-POL-0012	Enterprise Risk Management Policy
ECM 1490274	Enterprise Risk Management Framework

Document History and Version Control

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APPENDIX 1 – ENFORCEMENT ACTION DECISION MATRIX

LIKELIHOOD OF APPROPRIATE BEHAVIOUR / WILLINGNESS AND CAPACITY TO BEHAVE APPROPRIATELY		CONSEQUENCES		
		Level 1 (Low/no harm)	Level 2 (Minor or temporary harm)	Level 3 (Severe harm)
	Category A (High level of compliance expected)	Verbal caution Advisory letter Written request for remedial action	Warning letter	Show cause notice Enforcement notice Compliance notice Stop order PIN
	Category B (Uncertain level of compliance expected)	Warning letter	Show cause notice Enforcement notice Compliance notice Stop order PIN	Stop order PIN
	Category C (Low level of compliance expected)	Show cause notice Enforcement notice Compliance notice Stop order PIN	Stop order Prosecution	PIN Prosecution

If a repeat offender (2 or 3 complaints within a 12 month period), enforcement may commence at Level 2 or 3.