

Compliance and Enforcement Policy

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Responsible Officer	Manager Development and Governance	Date Approved:	25/01/2023
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Author:	Senior Compliance Officer	Commencement:	25/01/2023

1. PURPOSE

This document sets out Council's policy in respect of investigating and enforcing offences in relation to laws administered by Council to ensure that its education, compliance and enforcement activities are consistent with the local government principles in section 4 of the *Local Government Act 2009* which are:

- (a) transparent and effective processes, and decision-making in the public interest;
- (b) sustainable development and management of assets and manufacture, and delivery of effective services;
- (c) democratic representation, social inclusion and meaningful community engagement;
- (d) good governance of, and by, local government; and
- (e) ethical and legal behaviour of Councillors and local government employees.

The primary objective of the policy is to maximise voluntary compliance with laws administered by Council via a framework for consistent decision making which includes:

- (a) education, to promote public awareness of the laws it administers and enforces;
- (b) compliance, which is achieved by audits and inspections to ensure activities undertaken comply with the law or are rectified to ensure compliance;
- (c) enforcement, which is achieved by undertaking enforcement action where appropriate to the nature of an offence to:
 - (i) remedy a contravention of a law;
 - (ii) impose a penalty or punishment for the contravention of a law.

When undertaking education, compliance or enforcement actions, Council will ensure that its actions are:

- (a) proportionate, in that action undertaken is proportionate to the level of risk and seriousness of the breach;
- (b) transparent, in that:

- (i) action taken is fair and impartial;
- (ii) the reasons why decisions are made are recorded;
- (c) consistent, in that:
 - (i) action is taken consistently to build public trust and encourage reports about possible unlawful activity;
 - (ii) decisions made comply with the principles in this policy unless there are demonstrated sufficient grounds to support a departure from those principles.

Where education, compliance or enforcement actions are required, Council will seek to ensure that its actions result in the quickest, lowest cost and fair resolution of a matter in the public interest.

Detailed guidelines for undertaking education, compliance and enforcement actions are contained in Council's relevant Education, Compliance and Enforcement Manual.

Where Council determines to depart from this policy, the reasons for that departure are to be recorded in the Council decision.

This policy may be amended by a further resolution of Council.

2. SCOPE

This policy applies to all Councillors and employees of Council.

3. POLICY STATEMENT

Sources of knowledge of alleged unlawful activity

- 3.1 Council receives information about alleged unlawful activity from many sources including members of the public, other government agencies, inspections by Council employees and Councillor referrals.
- 3.2 All reports of alleged unlawful activity are to be logged in Council's electronic customer request system and actioned in a timely manner by the relevant branch of Council.
- 3.3 Council will send an acknowledgement to a member of the public who brings an alleged unlawful activity to the Council's knowledge unless that person has advised that they wish to remain anonymous.
- 3.4 Council will not usually advise the member of the public of the outcome of any investigation carried out by the Council unless that person advises that they wish to be advised of the outcome. In this case, the Council will advise the member of the public of the outcome of the investigation subject to any information privacy principles which prevent this from occurring.

Investigating alleged unlawful activity

- 3.5 The purpose of an investigation into an alleged unlawful activity is to:
- (a) Determine the cause of the activity;
 - (b) determine if the activity involves a contravention of a law;
 - (c) gather evidence to the required standard to support any enforcement action which might be undertaken
- 3.6 Not all reports of alleged unlawful activity will require investigation. Prior to carrying out an investigation, Council officers will undertake a desktop assessment to determine whether an investigation is warranted.
- 3.7 Factors relevant to the Council not carrying out an investigation are:
- (a) there is insufficient information about the alleged unlawful activity and there is no ability to obtain further information, for example because the initial complaint was anonymous;
 - (b) the alleged unlawful activity is lawful, for example a development approval for the activity has been given by Council;
 - (c) Council does not have jurisdiction in relation to the alleged unlawful activity, in which case the Council will refer the matter to the relevant authority which holds jurisdiction;
 - (d) the alleged unlawful activity has previously been investigated by the Council and there is no new material evidence which would be likely to lead to a different determination by the Council in respect of the matter;
 - (e) the matter the subject of a complaint involves a civil dispute between parties which does not involve the Council;
 - (f) the complaint is frivolous or vexatious;
 - (g) any other relevant matter.
- 3.8 If Council decides to not investigate an alleged unlawful activity it will record this decision on the case file together with the reasons for making the decision.

Decision to take education, compliance or enforcement action

- 3.9 If an investigation has been carried out and Council holds the view that an unlawful activity has occurred or is occurring, Council will determine whether education, compliance or enforcement action should be taken.
- 3.10 In determining whether to take education, compliance or enforcement action, the Council will consider and balance the following matters in the public interest:
- (a) whether the activity occurred without the alleged offender's knowledge or consent;
 - (b) whether the activity was committed with intent or was a genuine mistake;
 - (c) whether education or a formal warning would be likely to result in compliance;

- (d) whether prior warnings or instructions have been given to the alleged offender;
- (e) whether the alleged offender is a repeat offender;
- (f) whether the alleged offender has demonstrated contrition and is assisting with the resolution of the matter;
- (g) the extent or severity of the activity and whether it is continuing;
- (h) the harm or potential harm caused by the activity;
- (i) the seriousness of the breach;
- (j) the time that has elapsed since the occurrence of the activity;
- (k) whether the alleged offender could not, by reasonable diligence have prevented the activity;
- (l) the costs and benefits of education, compliance or enforcement action;
- (m) the prospects of successfully prosecuting the breach based on the available evidence;
- (n) any other relevant matter.

3.11 If there is actual or potential harm to the environment or the life, health or safety of the community, Council will determine whether to take education, compliance or enforcement action commensurate with the applicable risk.

Method of education, compliance and enforcement action

3.12 If Council determines that education, compliance or enforcement action is appropriate, the Council has a range of actions that it can take which are detailed in the relevant Education, Compliance and Enforcement Manual. The available actions include:

- (a) providing information or advice;
- (b) compliance letter;
- (c) penalty infringement notice;
- (d) show cause notice;
- (e) enforcement notice;
- (f) complaint and summons in the Magistrates Court;
- (g) declaration in the Planning and Environment Court;
- (h) enforcement order in the Planning and Environment Court.

3.13 In accordance with Council's *Enterprise Risk Management Policy*, Council will conduct a risk assessment in respect of an unlawful activity to determine the appropriate education, compliance or

enforcement action to take. Whilst the appropriate response may vary, Council will usually respond to the assessed level of risk by undertaking education, compliance or enforcement action as follows:

Level of risk	Education, compliance or enforcement action
Very Low	<ul style="list-style-type: none"> Provide information or advice to the alleged offender to educate them about the offence to ensure it does not reoccur.
Low	<ul style="list-style-type: none"> Issue a compliance / advice letter. If the unlawful activity is not rectified, issue a show cause notice and if necessary, an enforcement notice.
Moderate	<ul style="list-style-type: none"> Issue a penalty infringement notice if an applicable offence under the <i>State Penalties Enforcement Regulation 2014</i> (Qld). Issue a show cause notice and if necessary, an enforcement notice if not an applicable offence under the <i>State Penalties Enforcement Regulation 2014</i> (Qld).
High	<ul style="list-style-type: none"> Issue a complaint and summons in the Magistrates Court for matters not involving a development offence under the <i>Planning Act 2016</i> (Qld). Issue a complaint and summons in the Magistrates Court or seek a declaration and enforcement order in the Planning and Environment Court for matters involving a development offence under the <i>Planning Act 2016</i> (Qld).
Very high	<ul style="list-style-type: none"> Issue a complaint and summons in the Magistrates Court for matters not involving a development offence under the <i>Planning Act 2016</i> (Qld). Issue a complaint and summons in the Magistrates Court or seek a declaration and enforcement order in the Planning and Environment Court for matters involving a development offence under the <i>Planning Act 2016</i> (Qld). If necessary, seek an injunction to prevent future or continuing unlawful activity.

3.14 Council will determine the level of risk associated with an unlawful activity by assessing it against the following criteria:

Level of risk	Applicable criteria
Very Low	<ul style="list-style-type: none"> No or insignificant breach has occurred. No risk to the environment or life, health or safety. May be easily rectified.

Level of risk	Applicable criteria
Low	<ul style="list-style-type: none"> ▪ Minor breach has occurred. ▪ No or insignificant risk to the environment or life, health or safety. ▪ May be easily rectified.
Moderate	<ul style="list-style-type: none"> ▪ Material breach has occurred. ▪ Material risk to the environment or life, health or safety. ▪ Likely to be rectified without Court order.
High	<ul style="list-style-type: none"> ▪ Material breach has occurred. ▪ Serious risk to the environment or life, health or safety. ▪ Requires court orders to rectify breach or impose a sanction.
Very high	<ul style="list-style-type: none"> ▪ Material breach has occurred. ▪ Serious risk to the environment or life, health or safety. ▪ Requires court orders to rectify breach or impose a sanction. ▪ Requires urgent interlocutory injunction to restrain activity.

3.15 Education, compliance and enforcement action will be undertaken in accordance with Council's delegations. If no relevant delegation exists, a decision whether to undertake education, compliance or enforcement action will be made by the Council by resolution at a Council meeting.

3.16 Any alleged unlawful activity involving a high or very high risk will be referred to the Manager Development and Governance or the relevant Department's Director for advice prior to education, compliance or enforcement action being undertaken. In the event that the Manager Development and Governance and the relevant Director are not available, the matter is to be referred to the Chief Executive Officer.

Commencing legal proceedings

3.17 The Council will be guided by legal advice in deciding whether to commence legal proceedings and will consider the following:

- (a) *Whether there is sufficient evidence to establish a case to the required standard of proof* - The Council considers the decision to take legal proceedings as a serious matter, and as such will only initiate and continue proceedings once it has been established that there is admissible, substantial and reliable evidence to the required standard of proof which is:
 - (i) beyond a reasonable doubt, for a complaint and summons in the Magistrates Court; and
 - (ii) the balance of probabilities, for a declaration and enforcement order in the Planning and Environment Court.
- (b) Whether there is a reasonable prospect of success before the relevant court - Given

the expense of legal proceedings, the Council will not take legal proceedings unless there is a reasonable prospect of success before a court. In making this assessment, the Council will consider the availability, competence and credibility of witnesses, the admissibility of the evidence, all possible defences and any other factors which could affect the likelihood of a successful outcome.

- (c) Whether the public interest warrants legal action being pursued - The principal consideration in deciding whether to commence legal proceedings is whether to do so is in the public interest. The Council should therefore consider the following factors when deciding to commence legal proceedings:
- (i) the availability of any alternatives to legal proceedings;
 - (ii) whether an urgent resolution is required;
 - (iii) the possible length and expense of the legal proceedings;
 - (iv) any possible counter-productive outcomes of the legal proceedings;
 - (v) what orders may be made by the Court in the event of a successful outcome;
 - (vi) whether the legal proceedings would be unduly harsh or oppressive.

Role of Councillors in enforcement

- 3.18 Councillors should encourage members of the public to report alleged unlawful activity to the Council.
- 3.19 Where an alleged unlawful activity is brought to a Councillor's knowledge, the Councillor should report the matter to the Council's customer service team so that it is logged in the Council's electronic case management system.
- 3.20 Councillors should ensure that any communications with Council employees in relation to an alleged unlawful activity complies with Council's Acceptable Request Guidelines.

4. REPORTING

No additional reporting is required

5. DEFINITIONS

Chief Executive Officer means a person who holds an appointment as Chief Executive Officer of the Council under section 194 of the *Local Government Act 2009* (Qld). This includes a person acting in this position.

Council means the Mareeba Shire Council.

Councillors means all Councillors, including the Mayor, of the Council.

Manager Development and Governance means the Manager Development and Governance of the Council.

6. RELATED DOCUMENTS AND REFERENCES

Compliance and Enforcement Manual (MSC) – to include any associated sub manuals
Enterprise Risk Management Policy (MSC)
Local Government Act 2009 (Qld)
Planning Act 2016 (Qld)
State Penalties Enforcement Regulation 2014 (Qld)

7. REVIEW

It is the responsibility of the Manager Development and Governance to monitor the adequacy of this policy and implement and approve appropriate changes. This policy will be formally reviewed every four (4) years or as required by Council.