
PLANNING AND ENVIRONMENT ENFORCEMENT POLICY

INTENT

To establish guidelines that promote a consistent approach to the enforcement of legislation and Local Laws by authorised officers working within Council's Planning and Environment unit.

SCOPE

This policy applies to all enforcement action initiated by authorised officers working within Council's Planning and Environment unit.

POLICY STATEMENT

Background

Cook Shire Council (Council) has a number of local laws regulating activities within the Cook Shire local government area. Council also has a statutory responsibility to administer and enforce legislation where this responsibility has been devolved to local government by the State of Queensland. It is Council's preference that individuals comply with the law in a manner that is voluntary and recognises that adequate and effective education and awareness campaigns are necessary to achieve this goal. However, in circumstances where compliance with various statutes cannot be achieved voluntarily Council officers may be required to initiate enforcement action.

Governance

Authorised officers working within Council's Planning and Environment unit are primarily responsible for enforcing local laws and legislation in accordance with this policy. The Manager, Planning and Environment, is tasked with overseeing the enforcement of local laws and legislation and the operation of this policy.

Enforcement Principles

The use of enforcement action carries a high risk of causing grievance amongst community members. There is also the potential for individuals to perceive enforcement action as being unfairly targeted. To minimise this risk and in keeping with Council's values the use of enforcement action will be:

- proportional to the offence being committed;
- consistent with historical precedent;
- transparent in application;
- impartially applied across the community.

To ensure these enforcement principles are followed Council will employ appropriately qualified and experienced personnel and provide training (e.g. formal compliance qualifications, Code of Conduct etc.) where required.

Policy Aims

The aim of this policy is to outline, in broad terms, the:

- purpose of enforcement action;
- various types of enforcement actions used by Council;
- circumstances to be considered when determining what specific enforcement action will be applied.

A list of the local laws and legislation covered by this policy are detailed in the "References, Legislation and Guidelines" section at the end of this policy.

Purpose of enforcement action

It is recognised that in most cases individuals are aware of their legal obligations and choose to comply voluntarily. As voluntary compliance is of reduced cost to Council (both financially and in terms of Council's community standing) various measures are actively used to secure this outcome. These include communication and awareness activities, attendance by personnel at community meetings and workshops, monitoring and inspection programs, public consultation processes and ready access to information through Council's website and other media.

Despite high levels of voluntary compliance within our community it will be necessary in limited circumstances to utilise enforcement action to influence behaviour or activities deemed to be unlawful. This is primarily because Council, as a government agency with legislative responsibilities, is obliged to exercise its statutory powers once made aware that unlawful activities are occurring. Of equivalent importance is the fact that local laws and legislation have been drafted to achieve specific outcomes by, for example, increasing community safety, enhancing local amenity and protecting environmental values. In many cases unlawful activities conflict with these outcomes and by consequence violate the community standards that Council is obligated to uphold.

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In addition to preventing or stopping unlawful activities it is recognised that enforcement action acts as a wider deterrent. By enforcing local laws and legislation Council raises awareness of legislative requirements and is able to convey to the community that conduct and activities deemed unacceptable will be dealt with as they occur. It is also of potential comfort to residents affected or disturbed by unlawful conduct or activities by providing them with a degree of confidence that Council will act on their behalf if able to do so.

Enforcement strategies used by Council

Various types of enforcement action are available to Council when seeking to prevent or stop unlawful activity. It is Council’s aim to ensure that the method of enforcement action taken is commensurate with the unlawful activity subject to this action. For the purposes of this policy enforcement action has been classified into three broad hierarchical categories being informal action, formal action and prosecution. Examples of the various types of enforcement actions and the circumstances in which they would be considered appropriate are listed below.

Informal action

In many circumstances unlawful activity identified by Council has a minimal impact on community safety and amenity however enforcement action is deemed necessary to effect compliance. Situations where informal action may be considered appropriate include instances where:

- the consequences of a breach are trivial in nature, have minimal or no impact on the community and can be readily rectified;
- it can be reasonably concluded that the subject was unaware they were in breach of local laws or legislation;
- the breach is evidently the result of an oversight;
- the subject of the proposed action has received no previous warnings or communication from Council related to the unlawful activity.

Examples of informal action that may be applied in the above circumstances include:

- a verbal caution; or
- a letter of advice detailing the breach, associated legislation and measures that may be taken to achieve compliance.

In cases where informal action is used it must be made clear to the recipient that a failure to heed the verbal caution or letter of advice will result in Council pursuing formal action and the types of action this may include.

Formal action

In some circumstances it will be necessary for Council to make use of enforcement tools designed to expedite a result immediately or by a predetermined date. Most commonly this will take the form of written notices detailing the consequences of non-compliance that may include financial penalties or remedial action being undertaken by Council on a cost recovery

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basis. Situations where formal action may be considered appropriate include instances where evidence of a breach is incontrovertible, the subject of the action ought reasonably to know that they are in breach of local laws or legislation and:

- the unlawful activity may pose a threat to community health and safety or may detrimentally affect community amenity; or
- the unlawful activity is indicative of a pattern of non-compliance; or
- the unlawful activity may result in increased financial expense to Council or other parties if not immediately ceased.

Formal action that may be applied in one or more of the above circumstances include the following:

- formal letter of warning;
- show cause notice;
- compliance notice;
- biosecurity order;
- enforcement order;
- stop work order.

In addition to the above Council has the capacity under local laws and legislation to issue a Penalty Infringement Notice (PIN). As a PIN imposes a direct financial penalty on the person or company responsible for an unlawful activity it should only be used subsequent to other informal or formal enforcement actions. Exceptions to this principle would be circumstances where the issue of a PIN is considered necessary to accomplish immediate compliance where an unlawful activity threatens or has already compromised public safety. As a PIN may be contested before a magistrate it is incumbent upon the authorised officer issuing the PIN to ensure that sufficient evidence has been gathered to defend the matter in a court.

Prosecution

Although a least preferred approach to compliance, prosecution is an enforcement action that may be pursued by Council in rare circumstances. Prosecution represents a serious escalation in enforcement activities, places a potentially excessive financial burden on both Council and the party being prosecuted, and requires the collection of a substantial body of evidence. As such, any decision to initiate prosecution must not be made without full consideration of the implications, potential outcomes and brief of evidence by ELT and a legal advisor.

Given the seriousness of prosecution this course of action should only be pursued in specific circumstances. Examples of such circumstances would include:

- where intentional and/or wilful non-compliance by an individual or company has occurred despite documented warnings being issued by Council with regard to a specific issue;

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- where there is a history of repeated non-compliance by an individual or company in relation to various past matters;
- instances where non-compliance has resulted in harm or death to a person or persons;
- where an unlawful activity poses a risk to community safety and/or amenity and ELT has determined that conviction of an offender will stop the offending conduct and may deter others.

Complaints process

Complaints received by Council that call in to question the validity of enforcement action or the conduct of authorised officers when applying action will be resolved in accordance with Council's *Administrative Action Complaints Management Process and Policy*.

KEY RESPONSIBILITIES

RESPONSIBLE OFFICER	RESPONSIBILITY
Manager Planning and Environment	Oversees the enforcement activities of Council's Planning and Environment authorised officers in accordance with this policy.
Planning and Environment authorised officers	Ensure that all enforcement activities are conducted consistently and in accordance with this policy.

REFERENCES, LEGISLATION AND GUIDELINES

Local Laws

Local Law No. 1 (Administration) 2016

Subordinate Local Law No.1 (Administration) 2016

Local Law No. 2 (Animal Management) 2016

Subordinate Local Law No. 2 (Animal Management) 2016

Local Law No. 3 (Community and Environment Management) 2016

Subordinate Local Law No.3 (Community and Environment Management) 2016

Local Law No. 4 (Local Government Controlled Areas, Facilities and Roads) 2016

Subordinate Local Law No. 4 (Local Government Controlled Areas, Facilities and Roads) 2016

Local Law No. 5 (Parking) 2016

Subordinate Local Law No. 5 (Parking) 2016

Local Law No. 6 (Waste Management) 2018

Legislation

Biosecurity Act 2014

Building Act 1975

Environmental Protection Act 1994

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Food Act 2006
Local Government Act 2009
Local Government Regulation 2012
Planning Act 2016
Plumbing and Drainage Act 2018
Public Health Act 2005
Public Health (Infection Control for Personal Appearances Services) Act 2003
State Penalties Enforcement Act 1999
Stock Route Management Act 2002
Transport Operations (Road Use Management) Act 1995
Waste Reduction and Recycling Act 2011

RELATED DOCUMENTS

Administrative Action Complaints Management Policy
 Administrative Action Complaints Management Process

IMPLEMENTATION/COMMUNICATION

Upon adoption by Council, policy will be published on Council’s website. The requirements of the policy will be conveyed to Authorised Officers through team discussions and on the job training.

APPROVED BY

Council Resolution 2023/99

REVIEW

SPONSOR:	Director Organisational Business Services
OFFICER RESPONSIBLE FOR REVIEW:	Manager Planning and Environment
ADOPTION DATE:	July 2020
REVIEW DATE:	May 2026

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THIS POLICY IS TO REMAIN IN FORCE UNTIL OTHERWISE DETERMINED BY COUNCIL

AMENDMENT HISTORY

VERSION	AMENDMENT DETAILS	AMENDMENT DATE	APPROVAL
1.0	New policy	14 July 2020	Council resolution 2020/187
2.0	Review – updates to related documents and legislation references	23 May 2023	Council resolution 2023/99

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