

General Compliance and Enforcement

Policy Owner: Governance
Person Responsible: Executive Manager Development Services;
Executive Manager Technical Services
Date of Approval: 18 August 2021
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Objective

- Ensure a consistent approach in enforcement and compliance related matters;
- Provide transparency, apply procedural fairness and natural justice for all enforcement and compliance related matters;
- Provide an educational, cooperative and collaborative process towards compliance and enforcement, aimed at encouraging compliance; and
- To guide decision making and actions by the Shire in the consistent use of enforcement options commensurate with the risk.

Scope

To assist the Shire in utilising compliance and enforcement strategies as a method to achieve legislated objectives and encourage compliance by implementing a cooperative and collaborative approach to enforcement action.

1. POLICY

1.1 INTRODUCTION

The scope of this policy is to set out the Shire's approach to compliance and enforcement related matters. The policy provides a range of prescribed compliance and enforcement options for dealing with compliance matters. The policy also aims to ensure consistency in how the Shire makes decisions on enforcement action.

2. LEGISLATION ENFORCED BY SHIRE

This Policy applies to all compliance and enforcement actions where the Shire has a regulatory responsibility under State and Local Laws.

Departments within the Shire which may enforce legislation:

Building Services	<i>Building Act 2011 and Building Regulations 2012</i> <i>Local Government Act 1995</i>
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Planning Services	<i>Local Government Act 1995 and Regulations</i> <i>Planning and Development Act 2005 and Regulations</i> <i>Local Planning Scheme No. 6</i> <i>Extractive Industries Local Law 2014</i>
Environmental Health Services	<i>Caravan Parks and Camping Grounds Act 1995 and Regulations</i> <i>Environmental Protection Act 1986 (Public Health component only)</i> <i>Environmental Protection (Noise) Regulations 1997</i> <i>Environmental Protection (Unauthorised Discharge) Regulations 2004</i> <i>Food Act 2008 and Regulations</i> <i>Health (Miscellaneous Provisions) Act 1911</i> <i>Local Government Act 1995 and Regulations</i> <i>Public Health Act 2016 and Regulations</i> <i>Health Local Law 2017</i> <i>Waste Local Law 2018</i> <i>Shire of Chittering Local Government Property and Public Places Local Law 2023</i>
Ranger Services	<i>Bushfires Act 1954 and Regulations</i> <i>Cat Act 2011 and Regulations</i> <i>Shire of Chittering Keeping and Control of Cats Local Law 2023</i> <i>Dog Act 1976 and Regulations</i> <i>Shire of Chittering Dogs Local Law 2023</i> <i>Litter Act 1979 and Regulations</i> <i>Caravan Parks and Camping Grounds Act 1995 and Regulations</i> <i>Local Government Act 1995 and Regulations</i> <i>Local Government (Miscellaneous Provisions) Act 1960</i> <i>Shire of Chittering Cemeteries Local Law 2023</i> <i>Shire of Chittering Local Government Property and Public Places Local Law 2023</i>
Emergency Services	<i>Emergency Management Act 2005 and Regulations</i> <i>Local Government Act 1995 and Regulations</i> <i>Bush Fire Brigades Local Law 2012</i>
Technical Services	<i>Local Government Act 1995 and Regulations</i> <i>Local Government (Miscellaneous Provisions) Act 1960</i> <i>Shire of Chittering Local Laws (as amended)</i> <i>Shire of Chittering Cemeteries Local Law 2023</i> <i>Shire of Chittering Local Government Property and Public Places Local Law 2023</i>

3. LODGING A COMPLAINT

Where a complaint relates to a breach in legislation for which the Shire is responsible for administering, the complaint shall be made in writing and include:

- (a) name and address, telephone number, and email address of the complainant;
- (b) address of the offending property; and
- (c) details of the alleged offence.

The Shire may consider verbal complaints received on a case by case basis and in accordance with the Compliance and Enforcement Matrix (Appendix 1).

The Shire will endeavour to keep complaints confidential, however the Shire notes that Freedom of Information applications may be made in accordance with the *Freedom of Information Act 1992* and will be assessed based on their individual merits.

4. PRINCIPLES OF COMPLIANCE AND ENFORCEMENT ACTION

The Shire is required to administer its statutory responsibilities under the applicable legislation in a transparent and fair manner in the interest of public health, safety, and amenity. Each compliance investigation undertaken by the Shire will be assessed on a case-by-case basis, and actioned according to the Compliance and Enforcement Matrix (included as an appendix) for each business unit area.

The Compliance and Enforcement Matrix is used as a guide only and an offence category can be reviewed during the investigation process.

5. COMMUNITY ENGAGEMENT

- Compliance matters will generally not be publically communicated.
- Where applicable, the Shire will work with residents, ratepayers, stakeholders and businesses to encourage compliance with relevant laws, regulations and policies.

6. PROCESS OF INVESTIGATION

- Review internal and external databases for any historical information pertaining to the complaint;
- Conduct site visits to ascertain if and what issues may be occurring;
- If a compliance matter exists, Shire staff will contact the accused to request information on matter, and provide time frames to achieve compliance; and either
- Provide extensions to time frames to achieve compliance where reasonably required; and
- Request applications for, and Notice of Determination approval and refusal audits for planning applications received; or
- Seek legal advice on pursuing the matter through formal warnings regarding prosecution; and if not resolved
- Issue prosecution notice (through legal solicitation).

7. ENFORCEMENT OPTIONS

- (a) No enforcement action taken;
- (b) Referral to an external agency or relevant authority;
- (c) Requests for retrospective development approvals (if applicable) or removal of

unauthorised developments in accordance with relevant legislation and Local Planning Scheme No.6;

- (d) Infringement notices issued under relevant legislation;
- (e) Direction notices;
- (f) Orders and notices issued under relevant legislation; or
- (g) Prosecution action; or
- (h) A combination of the above.

8. OFFENCE CATEGORIES / DEFINITIONS

Where an investigation is undertaken and it is considered that there is sufficient evidence, the Shire will take the appropriate enforcement action based on the specific circumstances of each individual case, as defined within the following offence categories:

Minor: A minor offence is a breach of legislation, which has a minimal impact on the community, a person or the environment. The breach may be able to be resolved in a relatively short timeframe without any further impact on the community or the environment once compliance has been reached.

Moderate: A moderate offence is a breach of legislation that may initially have minimal impact on the community, life, critical infrastructure, property, or the environment but if allowed to continue the impact may have a major or more significant impact on the community. The breach may initially be able to be resolved with an infringement, directions notice or order under relevant legislation.

Major: A major offence is a breach of legislation that significantly affects or risks the health and safety of the community, life, critical infrastructure, property, or the environment. It may also be

a case whether the issue cannot be resolved in a relatively short timeframe or where the alleged offender is not willing to cooperate or negotiate in order to achieve compliance and which may lead to a prosecution action.

The offence category is subject to review during the investigation process.

The Shire further notes that the enforcement actions contained in the above definitions are not exhaustive to each particular definition.

9. COMPLIANCE INVESTIGATIONS

9.1 INVESTIGATION OF COMPLAINTS (REACTIVE COMPLIANCE)

Complaints will be prioritised for investigation based upon the offence category set out in clause 8 of this policy.

Decisions on enforcement action may have regard to any or all of the following considerations:

- (a) whether there has been a failure to comply with any request, direction or notice given by the Shire;
- (b) recommendations made at the Development Assessment Unit;
- (c) whether the breach or offence was committed wilfully or unknowingly;
- (d) any mitigating or aggravating circumstances (including vexatious complainants);
- (e) any demonstrated history of non-compliance;
- (f) the length of time since the incident (including statutory time frames);
- (g) the potential short and long-term consequences of non-compliance; and
- (h) legal precedents.

The Shire may take no enforcement action after an investigation where:

- (a) having considered the nature of the non-compliance, an educative approach to preventing the matter from continuing or reoccurring is considered most appropriate;
- (b) there is insufficient evidence to prove non-compliance after reasonable attempts have been made by the Shire to investigate the matter;
- (c) the individual or entity has discontinued or removed the unauthorised development or has obtained the relevant approval(s);
- (d) having regard for the capacity of the owner or occupier of the land, it is determined that an alternative approach to achieving compliance is more appropriate; and
- (e) the matter is considered trivial in nature, or would be an unreasonable use of the Shire's resources.

The Shire understands that some complaints received in relation to compliance issues may be the result of neighbourhood disputes. The Shire may discontinue an investigation of a complaint where it can be reasonably ascertained that the complaint is unsubstantiated or pertains to a civil matter. The Shire will not provide advice in relation to civil matters.

9.2 AUDITS, PATROLS, AND CHECKS (PROACTIVE COMPLIANCE)

The Shire may carry out proactive compliance in the following manner:

- (a) carry out audits upon development approvals and refusals;
- (b) carry out yearly audits of extractive industry licencing and conditions;
- (c) investigate compliance issues observed by Shire officers during the course of daily work related activities; and
- (d) conduct proactive compliance through an annual work program.

9.3 CONCLUSION OF AN INVESTIGATION

At the conclusion of an investigation, Shire officers shall use the most appropriate action based on this policy in conjunction with the Compliance and Enforcement Matrix.

Complainants will be advised in writing of the outcome of the investigation (subject to confidentiality requirements) and the compliance matter closed.

10. ACTING ON DEFAULT OF NOTICES OR ORDERS

The Shire may undertake works as specified in the notice or order to restore the land as nearly as practicable to its condition immediately before the development started or execute that work as it directed that person. The Shire may be entitled to recover its expenses in a court of competent jurisdiction.

11. PROSECUTION ACTIONS

11.1 INITIATION OF PROCEEDINGS

The Shire may determine to instigate prosecution proceedings under an Act, Regulation or Local Law where the Shire considers that the offence warrants such action.

The Shire may consider the following when determining whether to initiate prosecution proceedings:

- (a) the seriousness and nature of the offence;
- (b) legal advice received by the Shire;
- (c) any evidence of contempt or disregard for the law;
- (d) any public health or safety impacts resulting from the offence; and
- (e) whether the prosecution is in the public interest.

11.2 WITHDRAWAL OF PROSECUTION PROCEEDINGS

The Shire may consider the following when determining whether to withdraw from prosecution proceedings:

- (a) legal advice received by the Shire; or
- (b) in the opinion of the Chief Executive Officer, an appropriate level of compliance has been achieved; or
- (c) an error of law or fact; or
- (d) the owner or occupier of the land is deceased or cannot be located.

11.3 APPEAL OF INFRINGEMENTS, NOTICES OR ORDERS

In the event that an infringement, notice or order is appealed in accordance with the relevant legislation, the Shire may be required to substantiate its actions to a court or tribunal. This may result in the infringement, notice or order being overturned, amended or subject to mediation.

12. DELEGATIONS

Refer to Register of Delegations and Sub-delegations (as amended).

Appendix 1

Environmental Health Services

The aim of the Environmental Health Services directorate is to continually improve the health, safety, welfare and quality of life of people who live in, work in or visit the Shire of Chittering. To achieve this, the Shire uses a variety of statutory powers and duties, which are enforced in an equitable, practical and consistent manner. Care is taken to help businesses and others meet their legal obligations without unnecessary expense, whilst taking firm action, including prosecution where appropriate, against those who flout the law or act irresponsibly. The list of general compliance actions within the directorate is extensive and offences are often categorised as major, however will vary at the Officers' discretion.

The Environmental Health Department contributes to the protection of public health and safety and provides a wide range of services aimed at safeguarding the environment and improving health, safety and well-being of our community. The main areas of work covered by this enforcement policy are:

- (a) Food Safety: inspection of food businesses, investigation of complaints about food and food premises, food sampling, advice and training.
- (b) Public Health: investigating food poisoning outbreaks and control of communicable disease, promoting public health initiatives, dealing with squalor and hoarder premises, private water supplies sampling.
- (c) Pollution Control: investigating complaints of statutory nuisance, dealing with contaminated land, tackling poor air quality, investigating complaints of wastewater systems.
- (d) Private Sector Housing: tackling unsatisfactory housing conditions in private rented accommodation, inspection and licensing of houses in multiple occupation, licensing of caravan parks, housing assistance towards repair and adapting homes; investigating complaints about inhabitable dwellings.
- (e) Licensing: determining and regulating various licensing and registration functions such as public buildings, alcohol, entertainment, gambling, skin penetration and hair dressers, scrap metal, roadside trading, charitable collections, lotteries, and pest control advice and treatment.

Compliance Matrix – Building Services

Offence Description	Statutory Authority	Offence Category		
		Minor	Moderate	Major
Building Compliance				
Unauthorised swimming pool or spa	Building Act s9			X
Authorised swimming pool or spa – no security barrier	Building Regs r50			X
Non-compliant pool barrier – hinges, windows	Building Regs r50	X		
Non-compliant pool barrier – non-compliant barrier (height, gates swinging in wrong direction, openings too large)	Building Regs r50			X
Unauthorised building work	Building Act s9,		X	
Unauthorised Demolition	Building Act s10			X
No Notice of Completion	Building Act s33	X		
Non-compliance applicable Building Standards – After completion	Building Act s37		X	
Non-compliance applicable Building Standards – Demolition	Building Act s38		X	
Occupying a building without Occupancy Permit	Building Act s41		X	
Non-Display or non-notification of Occupancy Permit	Building Act s42	X		
Occupation use to comply with Occupancy permit	Building Act s43		X	
Occupancy permit – General Compliance	Building Act s44		X	
Encroachments outside of works land	Building Act s76			X
Adverse impact to other land without consent	Building Act s77			X
No protection Structure on or over land without consent	Building Act s78		X	
Work not to affect party wall without consent	Building Act s79		X	

Compliance Matrix – Technical Services

Offence Description	Statutory Authority	Offence Category		
		Minor	Moderate	Major
Local Government Act 1995				
Unauthorised works within road reserve/POS	Schedule 9.1 (8)		X	
Damage public Infrastructure	Schedule 9.1 (8)		X	
Discharge stormwater into public land/Road	Schedule 9.1 (10)		X	
Wind erosion or sand drift	Schedule 9.1 (12)		X	
Cemeteries Local Law 2005				
Excessive Speed	Clause 5.4		X	
Unauthorised use – driving of vehicles	Clause 5.4	X		
Placing of rubbish and surplus materials	Clause 7.3	X		
Leaving uncompleted works in an untidy or unsafe condition	Clause 7.7	X		
Animal at large	Clause 8.1		X	
Dumping of rubbish	Clause 8.5	X		
Unauthorised advertising and or trading	Clause 8.6	X		
Disobeying sign or lawful direction	Clause 8.7	X		

Compliance Matrix – Planning Services

Offence Description	Statutory Authority	Offence Category		
		Mino	Moderate	Major
Development Compliance				
Unauthorised Land Use	LPS6		X	
Unauthorised Development – Structures	LPS6		X	
Unauthorised Development – Sea Containers	LPS6		X	
Unauthorised Commercial Vehicles	LPS6	X		
Unauthorised Fill/Excavation	LPS6		X	
Unauthorised Home Business / Occupation	LPS6	X		
Breach Development Approval Conditions			X	
Unauthorised Signage		X		
Extractive Industries:				
• No Approval	Extractive Industries Local Law			X
• Breach of conditions minor	Extractive Industries Local Law		X	
• Breach of conditions major	Extractive Industries Local Law			X
Unauthorised land use – stocking rates	LPS6	X		

Compliance Matrix – Ranger Services

Offence Description	Statutory Authority	Offence Category		
		Minor	Moderate	Major
Ranger Services				
Unregistered Dog	Dog Act S7(1)	X		
Unregistered Cat	Cat Act S5(1)	X		
Wandering Dogs – Private Property (Dog in a place without Consent)	Dog Act S33A(3)		X	
Wandering Dogs – Public (Dog not held or tethered in public place)	Dog Act S31(3)		X	
Dog Attack - Causing Physical Injury	Dog Act S33D(1)			X
Dog Attack - Causing No Physical Injury	Dog Act S33D(2A)		X	
Restricted Breed or Declared Dangerous Dog Offences	Dog Act S33E			X
Dog Causing a Nuisance by Barking	Dog Act S38(5)		X	
Collection of Stray Dogs - Community	Dog Act S29	X		
Collection of Stray Cats - Community	Cat Act S27	X		
Livestock – Wandering at Large	LG Miscellaneous Provisions Act & Local Law			X
Livestock - Trespassing	LG Miscellaneous Provisions Act		X	
Abandoned Vehicles - General	Local Government Act	X		
Abandoned Vehicles - Obstructing	Local Government Act		X	
Litter – Building Development Sites	Litter Act		X	
Litter – Illegal Dumping	Litter Act		X	
Litter – Household Rubbish	Litter Act	X		
Signage – Nuisance signs	Litter Act	X		
Unightly Properties	Local Law	X		
Illegal Camping	Local Government Act	X		
Registration Enquiries	Dog & Cat Acts	X		
Pound Transfer	Local Government Act, Dog Act, Cat Act	X		
Breach of fire safety	Bush Fire Act 1954		X	