



COMPLIANCE AND ENFORCEMENT POLICY

Policy Number C64
Council Meeting Date 24 June 2020
Next Review Date 24 June 2024

1. POLICY OBJECTIVE

The *Compliance and Enforcement Policy C64* (the Policy) provides a rationale and framework for an equitable, transparent and consistent approach to compliance activities undertaken by the South Gippsland Shire Council (Council), so that the community can be assured that standards are met.

2. POLICY SCOPE

Council is responsible for administering a wide range of legislation providing for the safety, health and amenity of the community. Council has a responsibility to assist the community understanding and conforming to the legislation along with encouraging greater rates of compliance.

This Policy applies to the management of unlawful activity, within the Shire of South Gippsland, regarding:

- Building Control
- Control of Animals
- Fire Prevention
- Food Safety
- Litter Management
- Local Laws
- Parking Control
- Planning
- Public and Environmental Health

3. POLICY PRINCIPLES – COMPLIANCE AND ENFORCEMENT IN SOUTH GIPPSLAND

3.1 Main Principles of Council's Compliance and Enforcement Program:

1. Education
Council will use various means of education to increase the community's awareness of Council administered and enforced legislation they are required to conform to and discourage future breaches.
2. Compliance
Council will provide community members with appropriate time to rectify breaches. It is recognised consideration must be given to the level of risk to the community or any compliance time and actions mandated by the relevant legislation.



3. Enforcement

Council will take enforcement action where the required health, safety or amenity objectives of the relevant legislation are not being achieved and/or within an appropriate time.

3.2 The Policy Aims to:

1. Ensure that Council's compliance and enforcement functions are fair, consistent and without bias, in accordance with legislation;
2. Assist Council's Officers to respond promptly, consistently and effectively to complaints of unlawful activity, and undertake proactive investigation of unlawful activity, in accordance with the relevant legislation;
3. Ensure that the level of compliance and enforcement action undertaken is proportionate to the nature and seriousness of the offence;
4. Provide information for all stakeholders about Council's position in relation to compliance and enforcement of legislation, including the circumstances which will be considered when assessing different compliance and enforcement options; and
5. Ensure that Council Officers exercise their discretion in relation to unlawful activity in an appropriate manner and that Council's resources to deal with unlawful activity are appropriately allocated and, in a manner, consistent with the public interest.
6. Provide guidance to Council Officers to ensure all compliance and enforcement matters are brought to a timely resolution within the scope of Council resources.

3.3 Investigating Complaints

All complaints to Council regarding unlawful activity will be reviewed to determine whether the matter requires investigation. Council may also undertake proactive investigation of unlawful activity.

Priority will be given to matters where there is an imminent threat to health, life or property.

Further enquiries or investigations may not be appropriate where:

1. The matter has already been investigated and resolved or it has been determined that no further action will be taken in the absence of new information;
2. Council has no power in relation to the matter or is otherwise not the appropriate authority to investigate the matter. In relation to such matters it may be appropriate for Council to bring the matter to the attention of the appropriate regulatory authority or the relevant private building surveyor where appropriate;
3. The activity is identified as being lawful without the need for an investigation; or
4. Such enquiries or investigations would be contrary to the public interest or policy considerations.



When considering whether a complaint or issue warrants investigation Council Officers may consider a range of factors including:

- a. Is the activity having a significant detrimental effect on the environment or a risk to public safety?
- b. Is the complaint premature?
- c. Is the complaint trivial, vexatious or impractical?
On the basis of the information available, is the activity permissible without consent or approval?
- d. If the activity is permissible with consent/approval, is there a consent/approval in place and have conditions of consent/approval been complied with? Or has an application been lodged to regularise the matter?
- e. Have there been previous complaints about the subject matter, person or organisation?
- f. Does the complaint have special significance in relation to existing compliance enforcement priorities?
- g. Given the particular circumstances of the complaint, are there significant resource implications in relation to any investigation and any subsequent compliance and enforcement action?
- h. What is the severity of the impact on the amenity of the community?
- i. Overall, is it in the public interest to investigate the complaint?

Where a decision is made to not investigate a complaint, this decision should be recorded by the responsible officer together with reasons for the decision. The complainant should be advised of the decision.

3.4 Taking Compliance and Enforcement Action

After conducting an investigation and determining that there is sufficient evidence to determine that an offence has occurred beyond reasonable doubt, Council Officers should consider all relevant circumstances of the individual case to determine whether to take compliance and enforcement action and the level of action that is appropriate.

The circumstances for consideration to determine whether and, if so, what compliance and enforcement action (including prosecution) is appropriate and in the public interest include:

1. The seriousness of the breach, including whether the breach is merely a technical breach of low impact level;
2. When the unlawful activity was carried out and for how long, including whether the breach is continuing;
3. The harm or potential harm to the environment or public health, safety or amenity caused by the unlawful activity;
4. The need for general and specific deterrence;
5. Whether the breach can be easily remedied;
6. Any particular circumstances of hardship affecting the person who is the subject of the complaint;
7. Any mitigating or aggravating circumstances;



8. Any prior warnings that have been issued to the person or previous action taken against the person;
9. Whether any requisite consent/approval would have been granted if it was sought;
10. Whether the person in breach shows or has shown contrition;
11. The degree of culpability of the alleged offender;
12. Whether an educative approach would be more appropriate than a coercive approach;
13. The costs and benefits of taking formal compliance and enforcement action as opposed to taking informal or no action;
14. The prospects of success if the proposed action were challenged in court;
15. What action would be proportionate and reasonable;
16. Any precedent which may be set by not taking compliance and enforcement action;
17. The availability and efficacy of any alternatives to prosecution;
18. Whether the offender had been dealt with previously by non-prosecutorial means;
19. Whether the breach is a continuing or second offence.

Compliance and enforcement action (including prosecution) will not be undertaken for an improper purpose and will not be influenced by:

- a. Any matter that would constitute unlawful discrimination against a person;
- b. Personal empathy or antipathy towards a person; and
- c. Political affiliations or any other association.

3.5 Options for dealing with confirmed cases of unlawful activities

Council will endeavour to use the most appropriate action based on the individual circumstances of each case.

Where an investigation has been undertaken and it is considered that there is sufficient evidence to determine that an offence has occurred beyond reasonable doubt, a number of approaches may be considered for dealing with the incident. These may be subject to, among other things, the powers provided under the governing legislation. The approaches which Council may consider when taking action include, but are not limited to:

1. No action
2. Referral to an appropriate external compliance and enforcement body
3. Verbal warning
4. Written warning, including formal caution
5. Seek voluntary compliance in order to regularise the matter (e.g. through undertakings)
6. Issuing of Notices and Orders
7. Infringement Notices
8. Criminal proceedings in the Magistrates Court
9. Application for Orders in the Magistrates Court
10. Application for Orders in Victorian Civil and Administrative Tribunal (VCAT)



11. Council undertaking the requisite work and recovering the cost of doing so.

Where appropriate, some offences may require more than one of the above actions to be undertaken. Consideration should be given to the impact on Council resources when determining the most appropriate actions to bring the matter to a timely resolution.

All decisions to take compliance and enforcement action (including all decisions to commence civil proceedings or prosecution) shall be made in accordance with the relevant delegations and appointments. Despite an Council Officer's recommendation that action be taken, prosecutions or other proceedings (i.e. VCAT) must not be commenced by Council unless the Director responsible for enforcing the legislation is of the opinion that it is appropriate to do so having regard to the matters above. This requirement does not apply to a procedural prosecution such as failing to comply with a Council direction, notice or order or failing to pay an infringement notice. In this instance the decision to prosecute is to be approved by the Manager responsible for enforcing the legislation.

4. RISK ASSESSMENT

This Policy:

1. Will minimise both reputational and financial risks;
2. Enhance openness and transparency; and
3. Assist in avoiding possible breaches of the *Local Government Act 2020*, Staff Code of Conduct and other Council policies.

5. ROLES AND RESPONSIBILITIES STATEMENT

5.1 Responsibilities

Council staff who deal with unlawful activity are responsible for implementing this Policy. Relevant Council Officers are to be given appropriate delegations in relation to unlawful activity.

All complaints alleging unlawful activity shall be logged in Council's electronic records system as soon as practicable upon receipt and directed to the responsible Officer within Council.

Council Officers responsible for the investigation of a matter shall keep a full and complete record of their actions, including reasons for decisions made in relation to an investigation.

Council or its Officers generally have discretion whether or not to investigate or take action and, if so, how to do so.

5.2 Privacy

The disclosure of information revealed by an investigation, action/enforcement proceedings taken, is regulated by the *Information Privacy Act 2000*. It is an



offence to disclose such information to a third party unless exempted under the Act.

5.3 Human Rights Consideration

The Policy has been assessed as compliant with the obligations and objectives of the Victorian Charter of the *Human Rights Responsibilities Act 2006*.

POLICY OWNERSHIP			
Directorate		<i>Development Services - Regulatory Services</i>	
SUPPORTING INFORMATION			
Legislative Provisions		<i>Building Act 1993 Country Fire Authority Act 1958 Domestic Animals Act 1994 Environment Protection Act 1970 Food Act 1984 Human Rights Responsibilities Act 2006 Impounding of Livestock Act 1994 Information Privacy Act 2000 Infringements Act 2006 Local Government Act 2020 Planning and Environment Act 1987 Public Health and Wellbeing Act 2008 Residential Tenancies Act 1997 Road Safety Act 1986 Road Management Act 2004 Summary Offences Act 1966</i>	
Council Supporting Documents		<i>Staff Code of Conduct CE20 South Gippsland Shire Council General Local Law 2014 South Gippsland Shire Council Plan 2017-2021</i>	
File Number		<i>TRIM Ref# D4288020</i>	
DEFINITIONS			
Unlawful activity		<i>Unlawful activity is any activity, action or work that has been or is being carried out contrary to a legislative provision regulating that particular matter.</i>	
REVISION HISTORY			
Policy Review		<i>In accordance with Council's policy review process, this policy will be reviewed and adopted on a 4-year cycle unless required earlier under legislation.</i>	
Version	Approved	Approval Date Range	Sections Modified
1.0	<i>Ordinary Council Meeting</i>	<i>25 February 2015</i>	<i>New Policy</i>
1.1	<i>Ordinary Council Meeting</i>	<i>26 June 2015</i>	<i>Amendment</i>
1.2	<i>Council Meeting</i>	<i>24 June 2020</i>	<i>Review and Amendments</i>