

# Procedure



## Compliance

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## Document Control

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## 1. Introduction

Lockyer Valley Regional Council has statutory responsibilities where unlawful activities are identified. This Compliance Procedure documents how Council generally operates to meet its statutory obligations. It also provides clarity to the community on what to expect when Council undertakes compliance action.

Council advocates for individuals and businesses to voluntarily comply with the law.

### **Purpose:**

The purpose of this Procedure is to provide an understanding of how Council generally undertakes compliance actions.

### **Scope:**

This procedure applies to compliance activities undertaken by authorised persons of Lockyer Valley Regional Council.

In commencing compliance action, Council's preference is for a proactive approach to education and cooperation wherever practical and possible.

The Code of Conduct for Councillors and Employees, as well as an understanding of the general principles for managing conflicts of interest, should be understood and read in conjunction with this procedure.

## 2. Definitions

<b>Term</b>	<b>Definition</b>
<i>Appeal Process</i>	means all Council decisions including enforcement actions are reviewable where the legislation allows.
<i>Authorised Person</i>	means a person who is authorised under an Act, Regulation or Local Law to exercise appropriate powers under an Act, Regulation or Local Law.
<i>Best Community Outcomes</i>	include one or more of the following solutions: <ul style="list-style-type: none"><li>• all parties agree and commit to a positive outcome;</li><li>• social networks are enhanced;</li><li>• community, health and safety is not compromised;</li><li>• the built, social and environmental amenity are not compromised;</li><li>• harm or nuisance is reduced or abated.</li></ul>
<i>Business</i>	means a person, sole trader, company, partnership, trust or corporation carrying out a business or profession, whether or not for profit.
<i>Complaints Process</i>	means the formal complaint management process as outlined in Council's Complaints Management Policy and Guideline.

<b>Term</b>	<b>Definition</b>
<i>Compliance Action</i>	means a range of procedures and actions taken by Council to ensure that a person or business complies with their statutory obligations.
<i>Cooperative Compliance Action</i>	means undertaking actions to resolve the non-compliance matter through mediation and negotiation (i.e. discussions, education, agreements) without issuing notices, infringement, fines or commencing prosecution.
<i>Council</i>	means the Lockyer Valley Regional Council.
<i>Councillor</i>	means a duly elected person of the Lockyer Valley Regional Council.
<i>Environmental Harm</i>	means any adverse effect, or potential adverse effect (whether temporary or permanent and of whatever magnitude, duration or frequency) on an environmental value including environmental nuisance.
<i>Fine</i>	means a sum of money required to be paid as a penalty for an offence. Fines are calculated by multiplying the value of one penalty unit by the number of penalty units prescribed for an offence.
<i>Individual</i>	means a single person rather than a group, organisation or business.
<i>Individual Responsibility</i>	means that the primary responsibility for compliance rests with individuals and businesses.
<i>Penalty Unit</i>	means a set amount of money used to work out each fine.
<i>Proportionality</i>	means relating compliance action to the risks and costs of compliance. Council will be considerate of cost, as far as the law allows and will take into consideration the circumstances of the concern, behaviours and risk when deciding upon an action.
<i>Prosecution</i>	means the institution and conduct of legal proceedings against a person or corporation, as defined in Law, for alleged unlawful activity.
<i>Public Interest</i>	means the interests of the community as a whole, or a group within the community or individuals.
<i>Regulated Compliance Action</i>	means undertaking actions through the issuing of notices (i.e. show cause notice) orders, infringements or fines, or commencing prosecution to resolve the non-compliance matter. Regulated Compliance Action is undertaken in accordance with the relevant legislative requirements.
<i>Regulation</i>	A rule or <u>directive</u> made and <u>maintained</u> by an <u>authority</u> .
<i>Review Process</i>	To evaluate whether or not a decision meets the required criteria or has been properly made.
<i>Reviewable Decision</i>	means a decision that is capable of being the subject of judicial review. A judicial review is a review under the <i>Judicial Review Act 1991</i> .

<b>Term</b>	<b>Definition</b>
<i>Risk</i>	means the potential for physical, financial, environmental or other harm resulting in loss of value of goods, loss of life or loss of amenity to occur. Risk is measured in terms of likelihood to occur and consequences of the occurrence.
<i>Statutory Obligation</i>	means an obligation that does not arise from a contractual relationship but is created under a law.
<i>Systematic approach to risk</i>	means to identify and manage risks (i.e. identify, assess and control)
<i>Unlawful activity</i>	means any activity or work that has been or is being carried out– <ul style="list-style-type: none"> <li>• contrary to the terms or conditions of a licence, permit, (including a development permit issued under the <i>Planning Act 2016</i> or now repealed planning legislation), registration, approval, permission, statutory authority or other written authorisation from Council; or</li> <li>• contrary to an environmental planning instrument that regulates the activities or work that can be carried out on particular land; or</li> <li>• contrary to a legislative provision regulating a particular activity or work; or</li> <li>• without a relevant licence, permit (including a development permit issued under the <i>Planning Act 2016</i> or now repealed planning legislation), registration, approval, permission, statutory authority, other written authorisation or the like.</li> </ul>
<i>Voluntary Compliance</i>	generally means a person or business that manages their activity within the law and/or condition of approval, licence or permit.

### 3. Compliance Principles

Council has developed the following Principles to guide Council’s compliance activities:

1. Outcomes focussed;
2. Allowance for timely and appropriate corrective actions;
3. Evidence and fact-based actions to be taken;
4. Natural justice for all parties to a compliance action;
5. Open channels of communication;
6. Balanced approach to actions which are fit for purpose to achieve a resolution;
7. Complaints triggered actions; and
8. Proactive approach to health, environmental and safety risks.

#### 3.1 Principles of Achieving Effective Compliance

Council advocates firm but fair regulation that provides positive community outcomes. The underlying principles in achieving this objective are:

- applying proportionality in the application of the law and in securing compliance;
- being consistent in approach;
- displaying transparency in what individuals and businesses may expect from Council if they are involved in a compliance action;

- that any compliance action is considerate of risk; and
- actions are based on evidence and fact.

Incidents requiring regulatory intervention may differ. In assessing the most appropriate compliance action, authorised persons take into account:

- risk (potential and likelihood to cause physical, financial, environmental or other harm and the consequences of it happening);
- opportunity and prospects for cooperative compliance action;
- cost (value of time and resources to obtain a positive and beneficial outcome);
- evidence (facts or observations presented in support of an assertion);
- circumstances (facts that surround a situation or event that should be kept in mind when making a decision);
- public interest (the outcome is considerate of the benefits to the entire community, or a group within the community or individuals); and/or
- law and jurisdiction (the objectives and intent of the relevant legislation applicable to the matter under investigation).

Consistency and transparency are integral to Council's aim in regulating fairly. These values assist stakeholders (complainants and respondents) to understand what is expected of them and why Council intends to take compliance action. In addition, the principles of natural justice are followed in any investigation to ensure a fair decision is reached.

### 3.2 Cooperative Compliance Principles

To achieve its compliance objectives, Council uses a range of flexible and targeted measures, including:

- communication and education activities;
- timely provision of information and advice;
- advocacy;
- cooperative assistance;
- routine monitoring and inspection programs;
- auditing;
- risk management;
- performance feedback;
- community workshops; and/or
- access to information via the internet and other electronic means.

Council will encourage voluntary compliance and utilise a range of information at its disposal to assist stakeholders in their enquiries.

The approach includes circulating or making available both targeted and general advice that outlines the type of risk that can arise from an activity and the implications.

Council also advocates voluntary compliance by working with stakeholders to tailor audit and inspection regimes (i.e. spot checks, re-visits or letters of advice).

Council monitors and regularly reviews its compliance activities to incorporate the learnings into the policy, procedure, operating guidelines, broader compliance tools and the legislative process.

Council will liaise with other external agencies to minimise duplication, avoid inconsistencies and to ensure that any proceedings instituted follow the relevant legislation (for example Queensland Police Service, Queensland Building and Construction Commission, Department of Environment & Science and Queensland Health etc.).

Where appropriate Council shall defer to the State or other Agencies for enforcement responsibilities.

## 4. Provisions

Council has a broad range of statutory instruments to assist in the:

- monitoring of compliance with conditions of any approval, licence, permit;
- rectification of unlawful activities;
- management of development activities; and
- protection of public funds and resources.

All compliance activities are carried out in accordance with the relevant legislation and with due regard to the circumstances of the matter. Allegations of unlawful activity are acknowledged within prescribed timeframes (where applicable) and where necessary documentation provided on what action Council has taken .

Council resources are primarily directed towards those activities that give rise either to the most significant harm to our community or risk of serious environmental harm.

Compliance action is primarily focused on those directly responsible for the risk and who are best placed to manage it.

## 5. Actions

When investigating a compliance matter, Council may undertake the following actions:

1. Investigation of suspected non-compliance
2. Determine no action required
3. Mediation
4. Formal Action
5. Prosecution
6. Injunctions

A simple guide is provided in Appendix A on the compliance process. Further detail on the process can be found below.

### 5.1 Investigation of suspected non-compliance

Council will investigate any suspected non-compliance matters. These matters may arise through either:

- **Proactive compliance** which is usually targeted and a consequence of preventative project initiatives, programmed inspections, or scheduled audits; or
- **Reactive compliance** where complaints are received by Council from the community, Councillor on behalf of the public, other government department or through officer observations.



Council encourages persons making a complaint to provide their contact details and as much documentary evidence as possible to support their concerns (e.g. diary notes, photos). The details of complainants are kept strictly confidential. While Council will action anonymous complaints, the lack of details can hamper investigation efforts and outcomes.

When investigating a suspected non-compliance, Council officers may undertake the following (but is not limited to):

- site visit
- discussion with the person/s involved
- research the property and its history
- aerial photo review
- internet searches
- liaison with other agencies

As part of the site visit or discussions with the person/s involved Council may record (via a body camera) or take photos.

Council's investigations will then inform whether further compliance action is required and if so the course of action to resolve the compliance matter.

## 5.2 Determine no action required

Council will determine to take no action where an investigation identifies:

- the legislation is not applicable in the circumstances;
- the matter is not within Council jurisdiction;
- there is insufficient evidence;
- another agency has taken action and issues of duplication arise;
- the statutory time limit has expired;
- an exemption, exception or defence available under the relevant legislation is clearly applicable in the circumstances; and/or
- public interest factor(s) dictate that no action is the appropriate response.

If no action is undertaken, where appropriate, education will be provided to ensure that the relevant person/s fully understands their responsibilities.

The complainant will be advised of the outcome of Councils investigation in a timely manner.

## 5.3 Mediation

Where an investigation identifies an area of non-compliance, Council may undertake mediation or negotiation where the unlawful activity has a relatively inconsequential impact. Should the non-compliance matter be a risk to public health and safety or serious environmental harm, Council will proceed to formal actions to resolve the non-compliance.

Council may proceed with mediation or negotiation in the following circumstances where appropriate:

- the non-compliance is of a trivial or minor nature;

- the matter is a first nuisance complaint;
- the individual or business has received no previous warnings concerning non-complying activity;
- the consequences of non-compliance will not pose significant risk;
- informal action may prove more effective than a formal approach; or
- the activity ceases.

Mediation or negotiation may include:

- meeting or phone discussion with the person/s involved;
- caution (verbal advice) or verbal warning;
- advisory letter;
- written advice; and/or
- agreed action plan to rectify the non-compliance matter.

If the non-compliance matter is resolved Council will undertake no further action. However, should the matter not be resolved, Council will proceed with commencing formal action.

Council advocates for individuals and businesses to undertake the necessary steps to achieve compliance through the mediation stage, prior to commencing formal action. Council officers will clearly explain why the action is necessary and provide an opportunity to discuss what is required to comply with the law, prior to commencing formal action.

Council will issue correspondence advising that should the matter not be resolved within a suitable timeframe, Council will be left with no option but to proceed to the issuing of a formal notice under the relevant legislation.

#### 5.4 Formal Action

Council will commence formal action where mediation has not resolved the non-compliance to the required outcome and/or where urgent action is required. Urgent action is generally required where the non-compliance matter is a risk to public health and safety or serious environmental harm.

When formal action is commenced, a number of compliance tools exist to expedite an immediate and effective response. These compliance tools include written explanation about any rights of appeal against formal compliance action. Various pieces of legislation (depending on the head of power for the non-compliance) specify the requirements Council must follow in order to:

- advise of the intention to issue a statutory notice;
- invite submissions with respect to the matter;
- order a person to do or refrain from doing an action under specified circumstances; and
- issue directions specifying how the statutory notice may be complied with.

Formal actions can include the issuing of a:

- warning/enforcement letter;
- Remedial Notice (including relevant Information Notice where required);
- Direction Notice;
- Enforcement Notice;
- Show Cause Notice;
- Public Health Order; and/or

- Penalty Infringement Notice (fine).

### 5.4.1 Penalty Infringement Notices

As part of undertaking formal action, Council may issue a Penalty Infringement Notice (PIN) for a matter of non-compliance. A PIN will require the payment of a fine for a non-compliance matter. The value of the PIN (or fine) is calculated by multiplying the value of one penalty unit by the number of penalty units set for the particular offence. The amount of a PIN depends upon the non-compliance matter. The relevant legislation for the non-compliance matter sets out the maximum amount of penalty units a PIN can be issued for the type of offence.

Generally, Council will attempt to avoid issuing a PIN through mediation and negotiation, or through issuing other notices. Where these attempts have not resolved the compliance matter, Council may proceed with issuing a PIN.

In certain circumstances, Council may proceed with commencing formal action by issuing a PIN as the first action in a non-compliance matter where urgent action is required. Urgent action is required where there is a risk to public health and safety or serious environmental harm. For example, where illegal building works such as a non-compliant pool are a safety risk.

Prior to issuing a PIN, Council will consider whether the issuing of a PIN will achieve the outcome sought and will deter future non-compliance occurring in relation to the matter.

## 5.5 Prosecution

Prosecution is an important and sometimes necessary part of ensuring compliance with relevant laws and standards, and protecting the community and environment from harm. Council recognises that the commencement of prosecution is a serious consequence and is generally pursued only after previous actions have failed and after full consideration of its implications and the outcomes sought.

Prosecutions do not commence unless urgent action is required in the public interest or there is sufficient, admissible and reliable evidence that an offence has been committed and that there is a realistic prospect of success.

If an allegation does not pass the evidential test<sup>1</sup> no further action will be taken, even where there is sufficient evidence, a prosecution may not commence unless it is in the public interest.

Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the respondent and whether, through the conviction of the respondent, others may be deterred from similar failures to comply with the law.

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<sup>1</sup> Sufficiency of Evidence test involves determining the existence of a prima facie case, admissibility and reliability of evidence, possible defences, competency and availability of witnesses.

Where an offence passes both the evidential and public interest test<sup>2</sup> Council may prosecute in any of the following circumstances:

- urgent remedial action is required in the public interest;
- the offence involves a failure to comply in full or part with the requirement of a statutory obligation or notice;
- there is a history of similar offences in relation to the non-compliance with a statutory obligation or notice;
- the offence has the potential for serious consequence to community health, safety, amenity or environmental harm;
- there has been excessive or persistent breaches of regulatory requirements;
- there has been failure to provide information without reasonable excuse or knowingly supplying false or misleading information; or
- there has been obstruction of Council staff in carrying out their duties.

Decisions concerning prosecution trigger a process that elevates the status of the investigation and requires consultation between the Group Manager, the Chief Executive Officer and Council's solicitor.

### 5.6 Injunctions

An injunction or Court Order may be sought where there are sufficient grounds, and in particular where the circumstances present a probable and/or immediate and real threat to community health, safety, amenity, environmental harm or are causing extreme distress. Consideration at this time will be given to the potential risks to Council in the event that the eventual prosecution is unsuccessful.

## 6. Works in Default – Remedial Works

Under some legislation Council may execute works in default (remedial works) instead of, or as well as, taking legal action. In such cases the expenses of default work may be recovered by Council and can be charged against the land, or, in the case of a negotiated cost, be met by the defaulter on completion of the works. Where Council takes such action, it will take all reasonable steps to notify the interested parties.

Council may also consider exercising remedial works where it is legally possible and reasonably practicable for Council to do the work. For example, in the interest of community health, safety, amenity or environmental harm, Council may consider an immediate remedy by agreement, or by seeking compliance without prosecution. Where Council takes such action, it will notify the interested parties, seek agreement where possible and carry out the works if appropriate. The cost of such works may be recovered from the defaulting party.

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<sup>2</sup> Public Interest Factors require assessment of the seriousness of the offence, any mitigating circumstances, age, and health, special infirmity of the offender, background, culture or availability of other alternate courses of action.

## 7. Compliance Decisions

In the majority of cases, decisions about the most appropriate course of compliance action are made by authorised persons or other officers of Council authorised to make those decisions.

Decisions are made following referral to legislation, local laws, policy, guidelines, operational manuals, standard operating guidelines, professional judgment, legal guidelines, statutory codes of practice and priorities set by Council.

The role of the authorised person / delegated officer is to mitigate, guide, educate and enforce compliance in order to uphold community standards and reflect the values and culture of Council in accordance with this procedure and related Compliance Policy. The primary duty of Council is to facilitate in the wider public interest of the community as a whole.

For serious offences (where the nature of the offence points towards prosecution or seizure), decisions about compliance action are collaborative.

Council officers are delegated to initiate various levels of compliance action.

## 8. Reviewable Decisions and Complaints

Should an individual or business have a concern about a compliance action or the way the investigation has been managed, they may have their concerns investigated in a range of ways:

1. Complaints Management Process;
2. Reviewable Decision;
3. Queensland Ombudsman's Office;
4. Right to Information (RTI); and/or
5. Crime and Corruption Commission.

### 8.1 Complaints Management Process

Council has adopted a Complaints Management Policy and Complaints Management Procedure which can be found on Council's website. Any person can make a complaint, in writing, in accordance with that Policy and Procedure.

### 8.2 Reviewable Decision

Most legislation that Council enforces has a reviewable decision provision that provides for review processes to be outlined in written decision notifications. Individual review processes are to be followed as outlined in the relevant notifications.

In some cases, there is also the ability for an application for judicial review to be made to the court under the *Judicial Review Act 1991* in relation to a Council decision, or failure to make a decision.

### 8.3 Queensland Ombudsman's Office

A core function of the Queensland Ombudsman's Office is to investigate complaints about decisions and actions of public agencies (including Local Governments).

The Ombudsman's Office encourages person/s to resolve their complaint with Council first. Individuals or businesses should approach Council and try in good faith to have their problem resolved. The Ombudsman's Office advocates that individuals or businesses keep a record of their discussions with Council and copies of letters or email between the parties.

If an individual or business is not satisfied with Council's response or there is undue delay in the addressing of a complaint, individuals or businesses may refer the matter to the Queensland Ombudsman Office.

### 8.4 Right to Information

The *Right to Information Act 2009* (RTI) provides a mechanism for person/s to have access to information in the possession or under the control of Council. The *Act* enhances government accountability and promotes discussion of public affairs.

The *Act* includes certain grounds for refusing access to documents held by Council where it is contrary to the public interest to give the access. An application for access to documents under the *Right to Information Act 2009* must be made in writing and:

- provide sufficient information concerning the information requested to enable Council's RTI Officers to identify the document/s; and
- be accompanied by the current application fee.

### 8.5 Crime and Corruption Commission

If an individual or business suspects a Council officer of misconduct, they should first refer their concerns to Council in accordance with the Public Interest Disclosure Policy or Complaints Management Policy for internal investigation. If the internal investigation is deemed unsatisfactory then the matter may be referred to the Queensland Crime and Corruption Commission (CCC) for investigation.

## 9. Compliance Guideline

In undertaking compliance actions as outlined in this Procedure, Council's authorised persons are supported by an internal Compliance Guideline. This Guideline includes detailed information and flow charts on the processes and actions undertaken when dealing with a non-compliance matter.

The Guideline empowers Council's authorised persons to undertake compliance in accordance with Council's Policy and Procedure and the relevant legislation. The Guideline will ensure that authorised persons undertake compliance actions in a consistent manner. The Guideline advocates for authorised persons to be solutions-focused in resolving the non-compliance matter.

## 10. Related Documents

Compliance Policy  
Compliance Guideline  
Complaints Management Policy  
Complaints Management Procedure  
*Local Government Act 2009*  
*Right to Information Act 2009*

# Appendix A – Compliance Actions Process

