

Procedure



REGIONAL COUNCIL

Compliance

December 2023

Document Control

This page will be re-issued every time amendments are made to controlled documents. Amended documents will have their revision status and issue date updated accordingly.

Version	Clause(s)	Changes	Author	Issue Date
0		Draft	Planning Officer	October 2020
1		Reviewed	Governance & Property	December 2020
2	Various	Reviewed and updated	Planning Officer	December 2023
3		Reviewed	Governance	December 2023
4		Approved Council	(Res: 20-24/0994)	December 2023



Contents

- 1. Introduction 1
- 2. Definitions 1
- 3. Compliance Principles 3
 - 3.1 Principles of Achieving Effective Compliance..... 3
 - 3.2 Cooperative Compliance Principles..... 4
- 4. Compliance Actions..... 5
 - 4.1 Investigation of Suspected Non-compliance 5
 - 4.2 Determining Whether Compliance Action is Required 6
 - 4.3 Cooperative Compliance Action 6
 - 4.4 Formal Compliance Action 7
 - 4.5 Prosecution..... 7
 - 4.6 Injunctions 8
- 5. Works in Default – Remedial Works 8
- 6. Compliance Decisions 9
- 7. Reviewable Decisions and Complaints..... 9
 - 7.1 Complaints Management Process..... 9
 - 7.2 Reviewable Decision..... 9
 - 7.3 Queensland Ombudsman’s Office..... 10
 - 7.4 Right to Information..... 10
 - 7.5 Crime and Corruption Commission 10
- 8. Human Rights 10
- 9. Related Documents..... 11
- Appendix A – Compliance Action Process 12

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.

Purpose:

The purpose of this procedure is to outline how Council will generally undertake Compliance Action.

Scope:

This procedure applies to Compliance Action undertaken by Authorised Persons of Lockyer Valley Regional Council.

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

Term	Definition
<i>Appeal Process</i>	A statutory process outlined under the relevant legislation whereby a person can request a decision by Council to be reviewed.
<i>Authorised Person</i>	A person who is authorised under an Act, Regulation or Local Law to exercise appropriate powers under an Act, Regulation or Local Law.
<i>Complaints Process</i>	The formal complaint management process as outlined in Council's Complaints Management Policy and Complaints Management Procedure.
<i>Compliance Action</i>	A range of actions taken by Council to ensure that a person complies with their statutory obligations.
<i>Compliance Process</i>	The process of undertaking Compliance Action. Refer to Appendix A for a simple guide.
<i>Cooperative Compliance Action</i>	Actions to resolve the non-compliance matter through mediation and negotiation (i.e. discussions, education, agreements) without issuing notices, infringement, penalty infringement notices or commencing prosecution.
<i>Council</i>	The Lockyer Valley Regional Council, including Authorised Persons and Officers of Council.
<i>Councillor</i>	A duly elected person of the Lockyer Valley Regional Council.
<i>Environmental Harm</i>	Has the meaning given in the <i>Environmental Protection Act 1994</i> .
<i>Formal Compliance Action</i>	Undertaking actions through the issuing of notices (e.g. show cause notice, enforcement notice, compliance notice, orders, penalty infringement notices) or commencing prosecution to resolve a matter of non-compliance. Formal Compliance Action is undertaken in accordance with the relevant legislative requirements, if required.

Term	Definition
<i>Natural Justice</i>	Providing a person who might be adversely affected by an administrative decision with a fair hearing before the decision is made.
<i>Non-compliance</i>	Failure or refusal to comply, as with a statutory obligation (e.g. law, regulation), whether intentional or not.
<i>Penalty Infringement Notice (PIN)</i>	An infringement notice issued under the <i>State Penalties Enforcement Act 1999</i> for an offence mentioned in Schedule 1 of the Act, and requiring the payment of a fine as determined by the number of penalty units mentioned in Schedule 1 of the Act.
<i>Penalty Unit</i>	Has the meaning given in the <i>Penalties and Sentences Act 1992</i> .
<i>Person</i>	<p>A person is a human being, but in legal terms it can also refer to:</p> <ul style="list-style-type: none"> • Firms • Labour organizations • Partnerships • Associations • Corporations <p>A legal person is a human or non-human entity that is treated as a person for limited legal purposes. Legal persons can sue and be sued, own property, and enter into contracts.</p>
<i>Positive Community Outcomes</i>	<p>One or more of the following outcome:</p> <ul style="list-style-type: none"> • all parties agree and commit to a positive outcome; • social networks are enhanced; • community, health and safety are not compromised; • the built, social and environmental amenity is not compromised; • harm or nuisance is reduced or abated.
<i>Proportionality</i>	Relating compliance action to the risks and costs of compliance. Council may 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>	The institution and conduct of legal proceedings in a court of competent jurisdiction against a person for alleged unlawful activity.
<i>Formal Compliance Action</i>	Undertaking actions through the issuing of notices (e.g. show cause notice, enforcement notice, compliance notice, orders, penalty infringement notices) or commencing prosecution to resolve a matter of non-compliance. Formal Compliance Action is undertaken in accordance with the relevant legislative requirements, if required.
<i>Respondent</i>	A person who Council commences an investigation of suspected non-compliance or Compliance Action against.
<i>Review Process</i>	A legislated process to evaluate whether or not a decision made by Council meets the required process and has been properly made.
<i>Reviewable Decision</i>	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> .

Term	Definition
<i>Risk</i>	The potential for physical, financial, environmental or other harm to result in loss of value of goods, loss of life or loss of amenity. Risk is measured in terms of likelihood to occur and consequences of the occurrence.
<i>Statutory Obligation</i>	An obligation that does not arise from a contractual relationship but is created under a law.
<i>Unlawful activity</i>	Action, activity, work or the like that has been, or is being, carried out or occurs that contravenes an Act, Regulation, Local Law or other legislation. This includes but is not limited to: <ul style="list-style-type: none"> • contrary to the terms or conditions of a licence, permit, registration, approval, permission, statutory authority or other written authorisation from Council; or • contrary to an instrument that regulates the activities or work; or • contrary to a legislative provision regulating a particular activity or work; or • without a relevant licence, permit, registration, approval, permission, statutory authority, other written authorisation or the like; or • failure to comply offences.
<i>Voluntary Compliance</i>	Generally means a person/s manages their activity within the law and/or conditions of approval, licence or permit.

3. Compliance Principles

Council has developed the following principles to guide Council's Compliance Actions:

- be outcome focussed;
- in the first instance and where appropriate, seek a cooperative approach to achieving an outcome to rectify non-compliance; and
- include formal enforcement measures (e.g. giving of show cause and enforcement notices, giving of Penalty Infringement Notices (PINs), commencing prosecution) where necessary in the first instance or where a cooperative approach is unsuccessful.

3.1 Principles of Achieving Effective Compliance

Council advocates firm but fair Compliance Action 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 relative to the type of offence;
- displaying transparency in what persons may expect from Council if they are involved in a Compliance Action;
- Compliance Action is considerate of risk, for example matters non-compliance where there is a risk to public health and safety or a risk of serious environmental harm will be prioritised; and
- Compliance Action is based on evidence and fact.

Whilst Council endeavours to have a consistent approach to Compliance Action, incidents requiring regulatory intervention may differ. In assessing the most appropriate Compliance Action, Authorised Persons must take into account:

- risk;
- opportunity and prospects for Cooperative Compliance Action;
- evidence that non-compliance is occurring;
- the facts and circumstances;
- the public interest; and/or
- the law and jurisdiction, including the objectives and intent of the relevant legislation.

Consistency and transparency are integral to fair Compliance Action. 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 for Voluntary Compliance by working with stakeholders to tailor audit and inspection regimes (i.e. spot checks, re-visits, letters of advice).

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

Where reasonable, Council will liaise with external agencies to achieve compliance with the relevant legislation (for example the Queensland Police Service, Queensland Building and Construction Commission, Department of Environment and Science and Queensland Health).

Where Council is not the delegated or devolved authority for the Compliance Action, instances of non-compliance will be referred to the relevant State or other Agency for enforcement.

4. Compliance Actions

Following investigation of a suspected or alleged matter of non-compliance, Council may undertake one or more of the following Compliance Actions:

1. Determine no action is required; or
2. Cooperative Compliance Action; and/or
3. Formal Compliance Action.

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

During an investigation of a complaint, Council will endeavour to keep complainants regularly updated. However, depending on the nature of the non-compliance, achieving compliance may be a long process.

Council officers may only undertake Compliance Action where they have the appropriate delegation or are an Authorised Person for that specific purpose under the relevant legislation. The Code of Conduct requires employees to ensure they have the appropriate delegation prior to undertaking an action on behalf of Council or the Chief Executive Officer.

4.1 Investigation of Suspected Non-compliance

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

- **Proactive Compliance Action:** usually targeted and a consequence of preventative project initiatives, programmed inspections, or scheduled audits; or
- **Reactive Compliance Action:** usually a consequence of a complaint raised by a member of the community, a Councillor on behalf of a member of the community, a government department or through officer observation.

Council may undertake Proactive Compliance Action, including community engagement initiatives, to increase awareness about the importance of compliance.

Council encourages complainants to provide their name and 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 may hamper investigation efforts and outcomes.

When investigating a suspected non-compliance, the actions Council officers may undertake include, but are not limited to:

- a site visit;
- discussion with the person/s involved;
- researching the property and its history including reviewing aerial photograph;
- internet searches; and
- liaising with other agencies, if appropriate.

Council officers may record (e.g. via a body camera, audio recording) site visits and discussions or take photographs as permitted under the relevant legislation.

Council's investigations will inform whether Compliance Action is required and, if so, the course of action appropriate to resolve the non-compliance.

4.2 Determining Whether Compliance Action is Required

Council will take no Compliance Action where it is found that:

- the legislation is not applicable in the circumstances;
- the matter is not within Council's jurisdiction;
- there is insufficient evidence;
- another agency has taken action and issues of duplication arise;
- the statutory time limit has expired;
- the complaint is of a frivolous or vexatious nature;
- 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 Compliance Action is taken, where appropriate education may be provided to ensure that the relevant person/s fully understands their responsibilities.

Where a matter is not within Council's jurisdiction, the complainant will be referred to the relevant agency (e.g. Queensland State Government).

The complainant will be advised of the outcome of Council's investigations.

4.3 Cooperative Compliance Action

Council may proceed with Cooperative Compliance Action in the following circumstances, where appropriate:

- the non-compliance is of a trivial or minor nature;
- this is the first complaint received in relation to this non-compliance;
- the person/s has received no previous warnings concerning non-compliance;
- the consequences of non-compliance will not pose significant risk;
- Cooperative Compliance Action may prove more effective than Formal Compliance Action; or
- the activity ceases.

Should the non-compliance be a risk to public health and safety or serious environmental harm, Council will proceed to Formal Compliance Action to resolve the non-compliance.

Cooperative Compliance Action may include:

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

Should the matter not be resolved, or a further offence is committed, Council will commence Formal Compliance Action.

Council advocates for persons to undertake the necessary steps to achieve compliance through the mediation stage, prior to commencing Formal Compliance Action. Council officers will clearly explain why Compliance Action is necessary and provide an opportunity to discuss what is required to comply with the law, prior to commencing Formal Compliance Action. However, there are certain instances where Formal Compliance Action will immediately commence without Cooperative Compliance Action.

Council may issue correspondence advising that should the matter not be resolved within a suitable timeframe, Formal Compliance Action, including prosecution, will commence if necessary.

4.4 Formal Compliance Action

Council may commence Formal Compliance 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 is a risk to public health and safety or environmental harm.

When Formal Compliance Action is commenced, a number of compliance tools exist to expedite an immediate and effective response.

Formal Compliance Actions may include, but is not limited to, the issuing of a:

- Direction Notice;
- Show Cause Notice;
- Enforcement Notice;
- Public Health Order;
- Compliance Notice and Information Notice; and/or
- Penalty Infringement Notice (fine).

Formal Compliance Action may also include the seizing of animals or goods, and commencing prosecution.

Council officers may only undertake Formal Compliance Action where they have the delegation or are an Authorised Person for that specific purpose under the relevant legislation. The Code of Conduct requires employees to ensure they have the appropriate delegation prior to undertaking an action on behalf of Council or the Chief Executive Officer.

4.4.1 Penalty Infringement Notices

Formal Compliance Action may include issuing a Penalty Infringement Notice (PIN) for an offence under an act or local law.

Where urgent action is required, Council may immediately proceed to issue a PIN. Urgent action is required where there is a risk to public health and safety or environmental harm. For example, a non-compliant swimming pool fence poses 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.

4.5 Prosecution

Prosecution is an important and sometimes necessary part of ensuring compliance with relevant laws and protecting the community and environment from harm. Council recognises that the commencement of

prosecution is a serious consequence and is generally pursued after full consideration of its implications and the outcomes sought.

If there is insufficient evidence available, no further Compliance 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, prior history 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.

Council may commence prosecution in any of the following circumstances:

- urgent remedial action is required in the public interest;
- the offence has the potential for serious consequence to community health, safety, amenity or environmental harm;
- the offence involves a failure to comply in full or in part with the requirement of a statutory obligation or notice;
- there is a history of similar offences in relation to non-compliance with a statutory obligation or notice;
- there have 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.

The decision to commence prosecution is to be made only after consultation with relevant Authorised Persons.

4.6 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. Consideration will be given to the potential risk to Council in the event the prosecution is unsuccessful.

5. Works in Default – Remedial Works

Under some legislation, Council may execute works in default (remedial works) instead of, or as well as, taking Compliance Action. In such cases the expenses of remedial 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, all reasonable steps will be taken to notify the interested parties.

Council may also consider undertaking 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, enter and clear action, or by seeking compliance without prosecution.

6. Compliance Decisions

In the majority of cases, decisions about the most appropriate course of Compliance Action are made by the relevant Authorised Persons or delegated officer.

Decisions are made following referral to and consideration of 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 an Authorised Person 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.

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.

7. Reviewable Decisions and Complaints

Should a person have a concern about Compliance Action taken by Council or the way an investigation has been managed, they may have their concerns investigated in a range of ways:

1. Council's Complaints Management Process;
2. Requesting a Review of a Decision;
3. Through the Queensland Ombudsman's Office;
4. Making an application for Right to Information (RTI); and/or
5. Through the Crime and Corruption Commission.

7.1 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. The Complaints Management Policy and Complaints Management Procedure outline Council's Administrative Action Complaint process.

7.2 Reviewable Decision

Most legislation that Council enforces provides for a formal review processes where a person can request Council's decision to be reviewed. The review process will be outlined in the written notification of Council's decision. Individual review processes are to be followed as outlined in the relevant legislation.

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* or Queensland Civil and Administration Tribunal (QCAT) in relation to a Council decision, or failure to make a decision.

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

If a person is not satisfied with Council's response, or there is undue delay in addressing a complaint, the person may refer the matter to the Queensland Ombudsman's Office.

7.4 Right to Information

The *Right to Information Act 2009* provides a mechanism to request 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 allows Council to refuse requests for access to documents held by Council where it would be contrary to the public interest to give the access.

An application under the *Right to Information Act 2009* must be made in writing and:

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

7.5 Crime and Corruption Commission

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

8. Human Rights

Council is committed to respecting, protecting and promoting human rights. Council has an obligation under the *Human Rights Act 2019* to give proper consideration to human rights when making a decision, and to act and make decisions in a way that is compatible with human rights. To the extent that an act or decision under this policy may engage human rights, Council will have regard to the *Human Rights Act 2019* in undertaking the act or making the decision.

9. Related Documents

Local Government Act 2009

Right to Information Act 2009

Compliance Policy

Complaints Management Policy

Complaints Management Procedure

Appendix A – Compliance Action Process

