



Blackall-Tambo Regional Council

Compliance and Enforcement Policy **Consultation Draft**

1. FOUNDATIONS OF THE BLACKALL-TAMBO REGIONAL COUNCIL REGULATORY FRAMEWORK

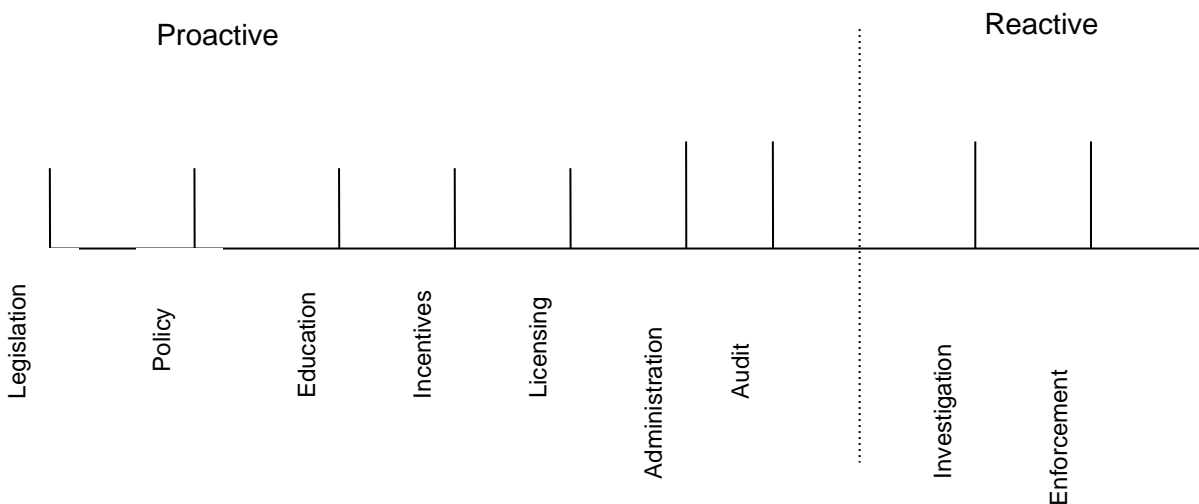
The vehicle to create a regulatory framework is legislation. A regulatory framework will often consist of a main Act together with a range of subordinate regulations. Policies developed by Council to support the Act provide guidance to the community and its delegated officers.

This Compliance and Enforcement Policy advocates voluntary compliance with the law and provides clear guidelines on how the Blackall Tambo Blackall Tambo Regional Council will exercise its enforcement actions under the various Acts, Regulations, Local Laws and Planning Scheme where required.

This policy is supported by a broader compliance and enforcement structure which includes—

- a corporate investigative manual;
- a reviewable decision-making process;
- a complaints management system;
- access to documents through Freedom of Information; and
- collaboration with the Queensland Ombudsman’s Office.

Investigation and enforcement are a **last resort** following the breakdown of negotiated outcomes. Council supports the regulatory framework illustrated diagrammatically below¹



¹ ICTES Diploma Government (Investigations) 2007



2. DEFINITIONS

Appeal Process means all Council decisions including enforcement actions are reviewable where the legislation allows.

Authorised Person means a person who is authorised by the local government under an Act, Regulation or Local Law to exercise the powers of an authorised person under a local law or a local government Act.

Best Community Outcomes are solutions where—

- all parties agree and commit to an outcome;
- social networks are enhanced;
- community, health, and safety are not compromised;
- the built, social, and environmental amenity are enhanced; or
- harm or nuisance is reduced or abated.

Business means the supply of goods or services wherein the proprietor requires an approval, licence or permit from the local government to operate the activity.

Complaints Process means a formal general complaint management process, in accordance with the requirements prescribed in Part 5 of Chapter 6 of the *Local Government Act 1993*.

Compliance refers to an agency, corporation, or person meeting or taking steps to comply with relevant laws and regulations.

Council means the Blackall-Tambo Regional Council. **Enforcement** means a range of procedures and actions taken by the Blackall-Tambo Regional Council to ensure that a person or organisation failing to comply with a law or regulation observe and comply with their statutory obligations.

Environmental Harm means an adverse effect, or potential adverse effect (whether temporary or permanent and of whatever magnitude, duration, or frequency) on an environmental value and includes environmental nuisance.

Individual Responsibility means that the primary responsibility for compliance rests with individuals and business.

Officer is an employee of Council, whether employed on a permanent, temporary, or casual basis and includes staff employed by others but working at Council (i.e. tradespersons, contractors etc.).

Proportionality means relating enforcement action to the risks and costs.” The council will be considerate of cost, ensuring that any enforcement action is proportionate to the risks. As far as the law allows, Council will take into consideration the circumstances of the concern, behaviours and risk when deciding an action.

Prosecution means the institution and conduct of legal proceedings against a person, organisation or corporation as defined in the *Corporations Law* for alleged unlawful activity.

Public Interest means the interests of the community, or a group within the community or individuals.

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Reviewable Decision means a decision capable of being the subject of judicial review.

Risk means a systematic approach to identify and manage risks (i.e. identify, assess and control).

Statutory Obligation means an obligation that does not arise from a contractual relationship but is created under a law.

Unlawful activity means any activity or work that has been or is being carried out—

- contrary to the terms or conditions of a licence, permit, registration, development consent, approval, permission, or other written authorisation from Council;
- contrary to an environmental planning instrument that regulates the activities or work that can be carried out on land;
- contrary to a legislative provision regulating a particular activity or work; or
- without a licence, permit, registration, development consent, approval, permission, or the like.

Voluntary Compliance means a person or business that manages their activity within community expectations and/or conditions of approval, licence or permit.

3. PURPOSE

Transparency, respect, tolerance, fairness, and consistency are the principles underpinning this policy. The policy supports proportionality and transparency in decision making and an openness about how the Blackall Tambo Regional Council operates in terms of its enforcement activities and how it values those that voluntarily comply with their lawful obligations.

4. OBJECTIVES

The aim of this policy is to establish clear guidelines for how the Blackall-Tambo Regional Council —

- will exercise its compliance and enforcement actions under the various Acts, Regulations, Local Laws, and Planning Scheme;
- will support an agency, corporation, or person to achieve compliance with lawful requirement; and
- expects its residents and visitors to comply with the intent of the Acts, Regulations or Local Laws and taking into consideration community expectations.

The Policy actively seeks voluntary compliance, provides the community with a clear understanding of Council’s Compliance and Enforcement Policy, and provides Council staff with a variety of enforcement tools, resources, and discretion to—

- enhance community health, safety, and amenity
- determine if enforcement action is warranted;
- assess if enforcement action is proportionate to the risks involved;
- manage unlawful activities; and
- ensure a consistent approach to compliance and enforcement is followed.

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5. STATEMENT

The policy provides clarity into what individuals or business may expect from Council if subject to enforcement action.

Through the Compliance and Enforcement Policy the role of Council is to ensure that its enforcement practices are safe, fair, practical, and consistent and that it effectively discharges its statutory obligations in the investigation and enforcement of unlawful activities.

Council also acknowledges through this policy the value of those in the community that voluntarily comply with legislation and the contribution of the Queensland Ombudsman’s office in providing guidance (“Tips and Traps for Regulators” publication 2007) to good decision making and administrative practices.

5.1. Principles of Effective Enforcement

Council advocates firm but fair regulation not carried out in isolation but in consultation that provides positive community outcomes.

Underlying the policy of firm but fair regulation are the principles of —

- *proportionality* in application of the law and in securing compliance;
- *consistency* of approach;
- *transparency* about how Council operates and what individuals and business may expect from Council, and
- *targeting* of enforcement action based on risk.

Incidents requiring regulatory intervention may differ and in assessing the most appropriate enforcement action, authorised persons may consider —

- risk;
- cost;
- evidence;
- behaviour;
- circumstances; and
- public interest.

Consistency is an essential element in good administrative decisions and inspires community confidence in Council and its procedures. The Blackall Tambo Regional Council will work towards regulatory consistency across the region.

Transparency is an integral part of the Compliance and Enforcement Policy and maintains community confidence in Council’s ability to regulate fairly. It also assists those who are regulated to understand what is expected of them and why Council intends to take enforcement action.

5.2 Voluntary Compliance

To achieve its compliance and enforcement objectives, the Blackall Tambo Regional Council uses a range of flexible and targeted measures to promote regulation.

Compliance measures such as a communication and education activities, timely provision of information and advice, persuasion, cooperative assistance and collaboration are designed to encourage stakeholders to comply with legislation.

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Where non-compliances are detected, enforcement mechanisms may need to be used. Council recognises that both compliance and enforcement mechanisms are necessary to provide an effective and flexible regulatory system that enables the most appropriate response to be chosen for a given issue or incident.

The Council will regularly review its compliance and enforcement policy and procedures, and incorporate lessons learned back into the policy, procedures, and the legislative process.

Voluntary compliance must be supported by the community. If embraced it will help improve business performance, stakeholder value and allow the development and implementation of targeted corrective and preventative actions.

6. APPLICATION

The Blackall-Tambo Regional Council has at its disposal a broad range of statutory instruments to assist in the –

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

This document is the overarching enforcement policy for the Blackall-Tambo Regional Council and outlines Council’s approach to compliance and enforcement and the principles that will be followed.

The policy is supplemented by a corporate investigations manual and departmental standard operating procedures.

All enforcement activities are carried out with regard to “best enforcement principles” as outlined in this policy document and compliance with the respective legislation.

All action requests or complaints about alleged unlawful activity should be acknowledged within the timeframe provided under the “Customer Service Charter” and where necessary a report provided on what action Council has taken or plans to take.

6.1. Enforcement Action

Authorised persons will determine what, if any enforcement action is appropriate, in accordance with the principles of good enforcement and from the options prescribed below. Where it is found that Council does not have the authority to act on an unlawful activity it will refer all material to the appropriate agency.

6.2. Informal Action

The prerequisites for issuing an informal action include that the offence must be of a trivial or minor nature² and the subject must have no previous warnings, Prescribed Infringement Notices, or prosecutions in relation to similar offences. Informal actions can include—

- caution (verbal advice); and/or
- advisory letter where advice is being confirmed; and/or
- remedial action requested informally.

² An act which results in an inconsequential impact

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Council officers will provide individuals and business the opportunity to discuss what is required to comply with the law before formal enforcement action commences, unless urgent action is required (i.e., to protect community health, safety or amenity including environmental harm).

6.3. Formal Action

Formal action may be issued where the criteria for issuing informal action is not available. Formal action can include a—

- verbal warning; and/or
- warning/enforcement letter; and/or
- Compliance Notice; and/or
- Stop Order; and/or
- Prescribed Infringement Notice.

Where remedial action is required, Council officers will clearly explain why the action is necessary. Notification may include details such as the date by which remedial action(s) must be carried out. Similarly, Council officers will provide individuals and business the opportunity to discuss what is required to comply with the law before formal enforcement action commences, unless urgent action is required (i.e. to protect community health, safety or amenity including environmental harm).

Where urgent action is required enforcement tools exist to expedite an immediate and effective response, with written explanation given to an individual, organisation or business of any rights of appeal against formal enforcement action at the time the action is taken.

The regulatory effort is directed primarily towards those whose activities give rise either the most significant harm to our community or the risk of serious environmental harm. Enforcement action will be primarily focused on those responsible for the risk and who are best placed to manage it.

The Blackall-Tambo Regional Council will take no action where an investigation identifies—

- the legislation is not applicable in the circumstances;
- there is insufficient evidence;
- another agency has acted, and issues of duplicity arise;
- the statutory time limit has expired;
- an exemption, exception or defence available under relevant legislation is clearly applicable in the circumstances; and
- a public interest factor(s)dictates that no action is the appropriate response.

6.4. Prosecution

Prosecution is an important part of an enforcement regime. Council recognises that prosecution is a serious consequence and that it should only be pursued after full consideration of the implications and outcomes sought and as the option of last resort.

Decisions about prosecution will consider the views of Senior Council Officers and Council’s legal advisor. Prosecutions will not commence unless there is sufficient, admissible, and reliable evidence that an offence has been committed and that there is a realistic prospect of a conviction.

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If the allegation does not pass the evidential test, no further action will be taken, regardless of how important or serious the allegation may be. Where there is sufficient evidence, a prosecution may not commence unless it is in the public interest to do so.

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

Where an offence passes the public interest test and sufficiency of evidence test Council may prosecute in any of the following circumstances—

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

6.5. Alternatives to Prosecution

In the cases where prosecution is not the most appropriate course of action the alternatives of counselling, warning, issue of a Compliance Notice, Stop Order or Prescribed Infringement Notice or a combination of the above will be considered, the alternative selected will depend on the method considered most suitable for each case.

Counselling, warnings, the issue of a Compliance Notice, Stop Order or Prescribed Infringement Notice or a combination of the above are recorded and may be referred to in subsequent dealings. The council may also utilise the services of other agencies in facilitating remedial action including the Community Justice Program.

6.6. Impartiality

All acts of enforcement and assessment of compliance should always adhere to the employee and councillor codes of conduct and any decision to prosecute or not to prosecute will always be based on evidence and the law.

6.7. Working With Other Regulators

Where Council and other enforcement agencies have the power to act or regulate (i.e. Queensland Police Service, Building Services Authority, Environmental Protection Agency, Queensland Health etc), Council will liaise with the agency to ensure effective co-ordination, avoid inconsistencies and to ensure that any proceedings instituted are for the most appropriate offence.

6.8. Works in Default

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Under some legislation, Council may execute works in default instead of taking legal action. In such cases the expenses of default work may be recovered and may be charged against the land or in the case of a negotiated cost, met by the defaulter on completion of the works.

When the Council takes such action, it will take all reasonable steps to notify all interested parties. The council may consider exercising its work in default power where it is legally possible, practicably and/or there is a will on behalf of the defaulter. 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 the Council takes such action it will notify all interested parties, seek agreement where possible and appoint contractors to undertake the works.

6.9. Injunctions

An injunction may be sought where there are sufficient grounds and where the circumstances present a potential and/or immediate danger to community health, safety, amenity, environmental harm or are causing extreme distress.

7. WHO DECIDES WHAT ENFORCEMENT ACTION IS TAKEN

In the majority of cases, decisions about the most appropriate course of enforcement action are made by authorised person(s). Decisions are based upon operational manuals, standard operating procedures, professional judgment, legal guidelines, statutory codes of practice and priorities set by Council.

The role of the authorised person is an important one as they can mitigate, guide, educate and enforce to uphold community standards and reflect the values and culture of the Blackall Tambo Regional Council.

For serious offences (where the nature of the offence points towards prosecution or seizure), decisions about enforcement action are collaborative and involve the authorised person, Senior Council Officers, and Council’s legal advisor where appropriate.

8. MONITORING AND REVIEW OF POLICY

All Council staff who deal with written and verbal action requests or complaints about unlawful activity are responsible for implementing these policy guidelines.

All levels of management are required to monitor the implementation of the policy by enforcement officers and make any necessary suggestions and recommendations for improvement.

Any variance from the policy should be reported to the appropriate Manager who will ensure that it is addressed and that the necessary training is given to the officer(s) concerned.

This Policy will be reviewed when there is any meaningful change in legislation or other circumstances which affect its effectiveness and validity.

9. REVIEWABLE DECISIONS AND COMPLAINTS

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Should a business or person have a concern about enforcement actions undertaken by Authorised Officers they may have their concern investigated by the following—

9.1. Complaints Management System

The Blackall-Tambo Regional Council has a formal complaint management process which can be found on the Council’s website: where copies of this policy are also available.

9.2. Written Representation

In addition to the corporate complaints management process any person may in the first instance take up their complaint with the Chief Executive Officer.

9.3. Reviewable Decision

Most legislation that the Blackall-Tambo Regional Council enforces has a reviewable decision procedure. The procedure for reviewable decision (Prescribed Infringement Notices) is explained in Standard Operating Procedure “Reviewable Decisions” Procedure No. RS-001.

9.4. Queensland Ombudsman’s Office

The Queensland Ombudsman’s Office core function is to investigate complaints about decisions and actions of local government agencies.

The Ombudsman’s office encourages people to try to resolve their complaint with the agency concerned first.

Applicants should approach Council and genuinely try to have the problem resolved. The Ombudsman’s office advocates that applicants keep a record of their discussions with the Council and copies of letters or emails to and from the agency.

If not satisfied with the Council’s response or there is undue delay in dealing with a complaint, people can complain to the Queensland Ombudsman ([www. http://www.ombudsman.qld.gov.au](http://www.ombudsman.qld.gov.au)).

9.5. Freedom of Information

To enhance government accountability and to promote discussion of public affairs, the *Freedom of Information Act (1992)* (FOI Act) provides a mechanism for persons to have access to documents in the possession or under the control of Council.

There are certain grounds for refusing access to documents held by Council contained in the Act. One of these is that the document is open to public access under another Act whether by payment of a fee or otherwise.

An application for access to documents under the FOI Act (1992) must—

- be in writing;
- provide sufficient information concerning the document requested to enable Council's FOI Officers to identify the document/s; and



- Be accompanied by the current application fee, unless the document to which access is sought contains the applicant's personal affairs.

If a business or a person suspects an authorised person of misconduct, they should refer their concerns in the first instance to the Council and if required following internal investigation referred to Queensland Crime and Misconduct Commission (CMC) for investigation.

10. DELEGATIONS FOR ENFORCEMENT ACTION

Council staff are delegated to initiate various levels of enforcement action. The delegation register kept by Council articulates who within Council has the decision-making power to issue stop orders, compliance notices, issue Prescribed Infringement Notices or to initiate proceedings etc.

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