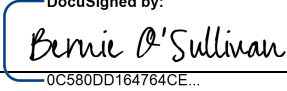




Policy Title:	Compliance and Enforcement Policy		
Date of Adoption:	15 November 2021		
Adoption Method:	<input type="checkbox"/> Council	<input checked="" type="checkbox"/> CEO	<input type="checkbox"/> Other (please specify)
CEO Signature:	<small>DocuSigned by:</small>  <small>0C580DD164764CE...</small>		Date: 15-11-2021
Responsible Officer and Unit:	Manager Safer Communities		
Nominated Review Period:	<input type="checkbox"/> Annually	<input checked="" type="checkbox"/> Other - 3 years	
Last Review Date:	N/A first policy		
Next Review Date:	November 2024		
Purpose/Objective:	To guide Council's approach and decision-making so compliance and enforcement activities are conducted in an equitable, consistent and transparent way.		
Background/Reasons for Policy:	<p>As part of the Local Laws, Infringement and Enforcement internal audit conducted in 2016, it was identified that Council did not have an overarching policy that sets out the broad principles and intent of enforcement. It was recommended that management develop and implement a policy that outlines Council's approach towards enforcement in the municipality.</p> <p>Council's Authorised Officers enforce a range of legislation in addition to Local Laws, therefore it is appropriate this policy should cover all compliance and enforcement actions undertaken by Council.</p> <p>The establishment of the Regulatory Compliance Department in the 2020 organisational restructure supported the need for an overarching Compliance and Enforcement Policy.</p>		
Definitions:	<p>Authorised Officer – a person appointed by Council to perform a regulatory role and is authorised or empowered under an Act, Regulation or other statutory instrument administered by Council for the purposes of carrying out regulatory and enforcement functions.</p> <p>Complaint – An expression of dissatisfaction with:</p> <ul style="list-style-type: none"> the quality of an action taken or service provided by Council or its contractors a delay or failure in providing a service or taking action by Council or its contractors the behaviour of a Council employee, contractor or volunteer a decision making process/practice of Council. 		

DOCUMENT HISTORY	Version	Date	Author
Initial Draft	1	16/02/2021	Allie Jalbert Rhassel Mhasho
Second Draft	2	02/07/2021	Allie Jalbert
Final Draft	3	08/11/2021	Allie Jalbert
Approval			

	<p>Compliance - The act of adhering to and demonstrating adherence to an Act, by-law, Regulation or similar.</p> <p>Council – Macedon Ranges Shire Council and its representatives.</p> <p>Enforcement - The act of compelling observance of, or compliance with, legislative and/or regulatory requirements, including actions taken by an Authorised Officer in response to contraventions of law.</p> <p>Infringement – means the same as an ‘infringement notice’ as defined in the <i>Infringements Act 2006</i>.</p> <p>Local Law – any Local Law made by Council in accordance with the <i>Local Government Act 1989</i>.</p> <p>Regulation – Monitoring and/or control of an activity or process to ensure the objectives of an Act, Regulation, or other statutory instrument administered by Council are achieved.</p> <p>Report alleging unlawful activity - An expression of concern or a request for service in relation to alleged unlawful activity, where a response or resolution is explicitly or implicitly expected or legally required.</p> <p>Prosecution - The process of instituting legal proceedings in Court.</p> <p>Notice/Order - A written direction of an Authorised Officer requiring specific action to be taken or ceased to achieve legislative compliance.</p> <p>Unlawful Activity – Any act or omission that is contrary to law, including any Act, Regulation, or other statutory instrument administered or regulated by Council.</p>
<p>References:</p>	<p>NSW Ombudsman Model Compliance and Enforcement Model Policy 2015 City of Charles Sturt Enforcement Policy Hobsons Bay Planning and Enforcement Policy Wyndham City Enforcement Policy EPA Victoria Compliance and Enforcement Policy</p>
<p>Related Policies:</p>	<p>Council Plan 2017 - 2027 Customer Service Charter Complaints Handling Policy Staff Code of Conduct Councillor Code of Conduct Risk Management Policy and Framework Internal review guidelines – Fines and Enforcement Services (Victorian Government - Department of Justice and Community Services)</p>
<p>Related Legislation:</p>	<p>Refer to scope</p>

Purpose

Council is responsible for administering a wide range of legislation providing for an outcome-based approach to compliance, balancing individual and community interests, and considering risk, the safety, health and amenity of the community.

The purpose of this policy is to provide a framework for transparency in decision-making, and to facilitate a practical and proportional approach to carrying out regulatory and enforcement activities. It is intended to:

- assist Council to act promptly, effectively and consistently;
- guide compliance outcomes that are credible, understandable and fairly applied; and
- to explain this approach to our community and businesses, including how and why we conduct compliance activities.

This policy outlines Council's approach and the matters to be considered at the various stages of the enforcement process from the receipt and investigation of reports alleging unlawful activity, through to what enforcement option Council may choose to achieve compliance and deter offending.

Objectives

The intention of this policy is to set out a clear framework for Council to apply in carrying out regulatory and enforcement activities, providing workable guidelines on:

- the principles that underpin Council actions relating to compliance and enforcement
- assessing and responding to reports alleging unlawful activity
- assessing whether reports alleging unlawful activity require investigation
- determining what level of enforcement action may be warranted and/or necessary
- options available for dealing with confirmed cases of unlawful activity
- a framework to be applied in decision-making throughout the investigation and case management process that is adaptable to evolving circumstances and level of risk.

Scope

This policy is relevant to a broad range of regulatory and enforcement activities undertaken by Council's Authorised Officers and its authorised contractors for and on behalf of Council within the municipality.

This includes, but is not limited to, the following legislation administered by Council:

- Building Act 1993
- Country Fire Authority Act 1958
- Domestic Animals Act 1994
- Domestic Animals Regulations 2015
- Environment Protection Act 1970
- Fire Rescue Victoria Act 1958

- Food Act 1984
- Impounding of Livestock Act 1994
- Infringements Act 2006
- Infringements Regulations 2016
- Local Government Act 1989
- Local Government Act 2020
- Planning and Environment Act 1987
- Public Health and Wellbeing Act 2008
- Public Health & Wellbeing Regulations 2009
- Tobacco Act 1987
- Residential Tenancies Act 1997
- Road Safety Act 1986
- Road Safety Road Rules 2017
- Road Management Act 2004
- Summary Offences Act 1966
- All Local Laws of Macedon Ranges Shire Council
- Prevention of Cruelty to Animals Act 1986 (POCTA)
- Prevention of Cruelty to Animals Regulations 2008

Responsible Authorised Officers and authorised contractors are not limited by this policy in their use of discretion and exercise of official functions. The full circumstances and facts of each case need to be considered and a decision made on the merits.

Council's approach to regulation and enforcement

Council's primary aim is to assist members of the community, businesses, and visitors to:

- Understand laws that may impact them and their legal obligations;
- Voluntarily comply with legislation;
- Rectify issues of non-compliance within a reasonable timeframe; and
- Prevent further or repeated instances of non-compliance.

In undertaking Council's regulatory role, Council adopts an education, encouragement and enforcement approach to achieve legislative compliance. Council's approach reflects an escalation in response that is outcome focused and proportionate to the level of risk, the level of community harm, the seriousness of the legislative breach, the ability to gain compliance, and the need for deterrence.

- Education – the provision of information, advice and education in a range of formats, including in person, to raise awareness and proactively prevent a breach of legislation

- Encouragement - providing instruction and allowing reasonable time to remedy a breach or comply with certain requirements, usually through the provision of verbal directions, correspondence or other informal action
- Enforcement – includes options such as issuing of orders or notices, issuing of infringements, carrying out rectification works, seizure of items, commencing legal proceedings, or other legal actions to remedy a breach and deter further offending

Principles of Good Enforcement

Council aims to undertake its compliance and enforcement role in a clear and responsive manner. The principles that underpin Council actions relating to compliance and enforcement are:

Principle	Action
Accountable and transparent	<ul style="list-style-type: none"> • Acting in accordance with Council policies and legislative authority • Acting in the best interests of public health and safety and in the best interests of the environment • Ensuring accountability for decisions to take or not take action • Acting fairly and impartially and without bias or unlawful discrimination • Providing information about compliance and enforcement priorities and reasons for decisions to improve understanding and certainty and promote trust by the regulated community • Ensuring meaningful reasons for decisions are given to all relevant parties, particularly when there is a departure from this policy • Acting on any complaints or concerns about the conduct of compliance officers in accordance with Council's complaints handling policy and procedures • Advising people and organisations subject to enforcement action of any avenues available to seek an internal or external review of a decision. • Ensuring enforcement actions are not undertaken for the purpose of or relied upon for revenue raising
Communication	<ul style="list-style-type: none"> • Actively inform the community of significant changes to laws and regulations • Utilising a variety of communication tools and platforms to inform the community of their legislative responsibilities and what to expect of Council in addressing alleged unlawful activities • Providing clear advice and information that can be easily understood

	<ul style="list-style-type: none"> • Council will assist and raise awareness of how to seek a review of an enforcement decision
Consistent	<ul style="list-style-type: none"> • Ensuring all compliance and enforcement action is implemented consistently • Encouraging reports about possible unlawful activity by acting reasonably in response to the circumstances and facts of each matter
Proportionate	<ul style="list-style-type: none"> • Ensuring the level of enforcement action is proportionate to the level of risk and seriousness of the breach • Taking the level of action necessary to effectively reduce harm, obtain an appropriate resolution and/or deter future unlawful activity • Providing fair and reasonable timeframes to achieve compliance taking into account the level of risk • Making fiscally responsible decisions when undertaking legal action (e.g. responsibly managing the costs of prosecutions/VCAT matters including seeking reimbursement/costs orders)
Timely	<ul style="list-style-type: none"> • Ensuring responses to reports alleging unlawful activity and decision making in relation to those is timely • ensuring that, wherever practicable, our enforcement services are effectively co-ordinated to minimise unnecessary interdepartmental overlaps and time delays
Proactive prevention or Voluntary Compliance	<ul style="list-style-type: none"> • Prevention is better than cure and our role involves actively working with business and individuals to advise on and assist with compliance • Information is readily available through Council's website and service centres that enables understanding of legislative responsibilities • Communications, marketing, and media opportunities are utilised to assist the community in understanding legislative responsibilities and to deter offending
Risk based approach	<ul style="list-style-type: none"> • Council's Risk Management Policy and Risk Management Framework underpin the assessment of risks that helps inform enforcement options, timelines and outcomes • Council will prioritise investigation and enforcement for non-compliance issues that pose a higher level of risk to safety and amenity of the community • Council will target its regulatory and compliance activities to where the most significant impacts can be made

Compliance Monitoring and Investigations

Authorised Officers may instigate investigations into unlawful activity through reports from members of public, reports from other agencies, through surveillance activities (e.g. cameras in littering/graffiti hotspots), or through auditing programs / proactive inspections (e.g. fire prevention, parking patrols and inspections related to permits, registrations, and licenses). Authorised Officers may also monitor activities through Court / VCAT orders.

Reports of unlawful activity are assessed by Council to determine the level of risk, the priority to be given to the matter, and an appropriate level of response.

Anonymous reports of unlawful activity are recorded and assessed based on the information available. It may be more difficult to fully evaluate such allegations without the ability to seek further information from the reporting party, resulting in limited response options.

Response Options and Enforcement Tools

A number of enforcement options are available to address alleged unlawful activity and those utilised will be dependent on the circumstances of each matter being considered. Authorised Officers may employ a variety of tools provided for in legislation to conduct investigations, gather evidence, and respond to non-compliance.

Decisions about the level of response must be fair, consistent, balanced and relate to common standards that ensure the public and municipality are adequately protected. Where a decision is made not to investigate concerns raised, the decision and reasons will be recorded in Council's Records Management system and the person raising the concerns will be advised verbally and/or in writing.

In coming to a decision on the most appropriate means of response, the Authorised Officer shall consider, amongst other relevant factors:

- the substance and reliability of the information received;
- the level of risk associated with the alleged non-compliance;
- the seriousness of the offence;
- the degree of wilfulness involved;
- past history;
- the consequences of non-compliance;
- the likely effectiveness of the various enforcement options;
- the person's capacity to achieve compliance;
- general and specific deterrence;
- the effect on the community and other people; and
- consistency of approach to similar breaches/offences.

Enforcement Approach Assessment

Council's Authorised Officers will carry out an assessment of each matter using the tools set out in Diagrams 1 and 2 below in conjunction with Council's Risk Management Framework. These tools guide Authorised Officers in prioritising and targeting compliance actions, and for determining appropriate enforcement options for the situation or issue being actioned.

Diagram 1

Table 1: Likelihood of Non-Compliance Ratings

Likelihood of Non-Compliance	Description
Almost Certain	Repeated non-compliance, past legal action taken for similar or related breaches, failure to undertake remedial works as directed, refuses or fails to comply with direction or furnish information required, provides false or misleading information, obstructs Authorised Officers.
Likely	Wilful or deliberate non-compliance, previous enforcement activity for similar or related breaches, requirements were apparent when breach occurred (e.g. signs in place, permit conditions), serious negligence leading to breach, little or no demonstrated assurance or capacity to meet regulatory requirements, insufficient steps or works undertaken to remedy risks/damage/breach.
Possible	Previous reports or occurrence of non-compliance, may have little or no awareness of regulatory requirements, negligence leading to breach, has not demonstrated adequate efforts to fully comply with requirements/instructions, harm/risks abated and some remedial works or actions undertaken, demonstrates a willingness and capacity to comply.
Unlikely	No history of non-compliance, may have little or no awareness of regulatory requirements, cooperative attitude, demonstrates strong willingness and capacity to comply, prompt action taken to sufficiently remedy breach, carry out remedial works and abate any harm/risks.

Table 2: Impact / Consequence of Non-Compliance Descriptors

Consequence	Description
Major	Has a major impact on community or environment. Imminent or serious threat/risk to safety, health, amenity or environment (even if harm has not yet occurred). Significant public interest in issue, specific and/or general deterrence required.
Moderate	Has a moderate impact on community or environment. High level threat/risk to safety, health, amenity or environment (even if no harm has occurred). High level public interest in issue, high need for specific or general deterrence.
Minor	May have a minor impact on the wider community or environment. Low-medium level risk to safety, health, amenity or environment but harm/risk can be easily/promptly abated. Some remedial works or actions required. Medium level public interest in issue, some need for general deterrence.
Negligible	Little to no impact on safety, health, amenity, or environment. Low potential for broader community concern. Unsubstantiated or vexatious reports without basis. Does not fall within Council's jurisdiction.

Table 3: Enforcement Response Matrix

Likelihood of Non-Compliance	Impact / Consequence of Non-Compliance			
	Negligible	Minor	Moderate	Major
Almost Certain	Elevated	Elevated	Significant	Significant
Likely	General	Elevated	Elevated	Significant
Possible	Low	General	Elevated	Significant
Unlikely	Low	Low	General	Elevated

Enforcement Action Options

Diagram 2 below outlines enforcement options to be considered by Authorised Officers reflecting an escalation in response that is proportionate to the level of risk, the seriousness of the confirmed breach and/or the need for deterrence. The circumstances described are examples to guide decision making for the most suitable enforcement action based on the enforcement response level and not designed to be an exhaustive or prescriptive list.

Diagram 2: Enforcement Action Options

Enforcement Response Level	Possible Enforcement Actions
Low	<p>No Action / Record Only may be a suitable course of action after preliminary assessment or investigation of the matter where the following circumstances apply:</p> <ul style="list-style-type: none"> • There is insufficient evidence to substantiate breaches of legislation have occurred or are occurring • The report is from an anonymous source and details provided are insufficient to locate the alleged offending or warrant investigation • The concerns raised are frivolous, vexatious or trivial in nature • The alleged offence is outside Council's area of authority or jurisdiction (referral to other agencies may be appropriate) • Taking action may prejudice other major investigations • A matter falls into the category of civil dispute that is more appropriately dealt with through dispute resolution or other civil remedies (e.g. fence boundary disputes) • A matter has already been rectified or resolved through voluntary compliance <p>Informal Action may be a more suitable course of action when the above circumstances do not apply and the risk level is deemed to be low. Informal action may include the following:</p> <ul style="list-style-type: none"> • Providing information or advice about requirements and how to be compliant, which may be verbal and/or in writing; • Negotiating with the person to obtain voluntary undertakings or an agreement to adequately address the issues of concern • Issuing a letter for work to be done, an activity to cease, or to obtain required permits instead of more formal action or notices • Issuing a verbal or written warning <p>Informal Action may also be more appropriate than more formal actions when there is a low prospect of prosecution success if the matter were proceeded with.</p>
General	<p>General Action may include the following:</p> <ul style="list-style-type: none"> • Issuing a notice to comply or other legal direction to remedy a breach of legislation

	<ul style="list-style-type: none"> • Issuing a penalty infringement notice that carries a low level monetary fine (e.g. up to 5 penalty units) • Seizure or impound of items or animals on public land or on private land at the request of the land owner/occupier • Issuing a notice of intention to serve an order or notice under relevant legislation, and then serving an order or notice if appropriate
Elevated	<ul style="list-style-type: none"> • Issuing a penalty infringement notice that carries a high level monetary fine (e.g. over 5 penalty units) • Council carrying out the works specified in a notice to comply or other legal direction after a person's failure to comply with the direction (at the cost of the person served with the direction) • Executing warrants or other court issued orders to search for and/or seize things, animals, or prevent access to a premises • Commence formal administrative proceedings (e.g. dangerous or menacing dog declarations) • Responding to legal proceedings that a person has commenced in response to Council enforcement actions • Formal undertakings / agreements with Council
Significant	<ul style="list-style-type: none"> • Seeking an injunction through the courts to prevent future or continuing unlawful activity • Executing court orders to conduct works or remove a person from a premises • Commence prosecution or other legal proceedings for an offence against the relevant Act or Regulation. • Monitoring orders of the court to ensure ongoing compliance

Delegations

Authorised Officer delegations for taking action under this policy are included in the Instruments of Delegation and/or authorisation issued through State Government instruments.

Conflicts of Interest

Where a personal association or relationship with the alleged offender or any other person involved exists the Authorised Officer will ensure:

- an alternative Authorised Officer will investigate and make decisions where possible; and
- a supervisor will be notified; and the facts about any conflict/relationship will be recorded in accordance with Council's Code of Conduct; and a conflict of interest disclosure form will be completed if required.

Decision Reviews and Appeals

If a person does not agree with a decision or enforcement action taken by an Authorised Officer, there may be options available for a review or appeal in accordance with legislative provisions and/or Council policies and procedures. Common examples include:

- Appealing a permit refusal to Council
- Requesting an internal review of an infringement
- Electing for an infringement to go to the Magistrates Court to be determined
- Requesting a review of an infringement from Fines Victoria
- Appealing through VCAT
- Appealing through the Magistrates' Court

The appropriate avenue for having a matter reviewed or appealing a decision is in most cases determined by legislation. Authorised Officers are required to provide accurate information about a person's right to reviews and appeals, and the appropriate process for the circumstance.

If a person has a complaint about the conduct of an Authorised Officer or other Council representative, they may lodge a formal complaint in accordance with Council's Complaints Handling Policy or contact the Victorian Ombudsman for further advice.

Role of Councillors in Enforcement

Councillors have a key role in setting the strategic objectives of Macedon Ranges Shire Council through Council plans, policies, budgets, and adoption of Local Laws. Councillors may also play a role in advocating for State legislation enforced by Council.

Councillors can assist enforcement by:

- supporting the organisational requirements to carry out enforcement action
- developing policies that support legislation
- advocating for the importance of legislation and compliance to the community

Councillors can help individuals who raise concerns about unlawful activities with them directly, by providing community members with guidance about where to find information about legislation enforced by Council, policies of Council related to their concerns, and how to report matters to Council for Authorised Officer action.

Decision-making relating to the investigation of reports alleging unlawful activity and taking enforcement action is the responsibility of appropriately Authorised Officers and/or the Council itself. Any such matters referred to Councillors by the community should be referred to an Authorised Officer.

Review of policy

The Manager Safer Communities will review this policy every three years.