

## 2.10 Authority to Undertake Enforcement Actions

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POLICY TITLE: AUTHORITY TO UNDERTAKE ENFORCEMENT ACTIONS

FILE REF: SC14

EXPIRY DATE: JULY 2026

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### STATEMENT OF INTENT

Lockhart Shire Council has a considered approach to responding to unlawful activity.

This Policy aims to provide consistency in enforcement action in matters relating to health and safety, pollution, roads, animal control, food safety as well as environmental and development non-compliance and ensure natural justice principles are respected.

The Council acknowledges that it has an obligation under section 8A of the Local Government Act 1993 to ensure that in the exercise of its regulatory powers it acts fairly, ethically and without bias in the interests of the local community.

### GENERAL PRINCIPLES

Council, in its approach to enforcement and in performing its regulatory functions, will have regard to the following principles:

- *Proportionality* - taking action that is reasonable and relates directly to the actual breach.
- *Consistency* – ensuring that similar issues are dealt with in the same way.
- *Transparency* – ensuring that what we do and why we do it is easily understood.
- *Helpfulness* – working with the business or individual to achieve compliance with the law by being approachable, courteous and efficient.
- *Openness* – by being open about the way we go about doing things.
- *Prioritising* – making sure that resources are targeted primarily on those whose activities give rise to the most serious risk.

### OPTIONS FOR ACTION IN CONFIRMED CASES OF UNLAWFUL ACTIVITY

Council will consider a range of matters before taking regulatory action.

Regulatory action is any formal and informal action taken to prevent or rectify infringements of the legislation. The regulatory options will differ where different pieces of legislation are used, but the principles of application should remain constant.

Approaches to be considered without taking formal regulatory action include:

- Taking no action on the basis of no reliable evidence or other appropriate reason.
- Counselling the person who carried out an unlawful activity to educate them on the relevant requirements. Council acknowledges the role of educational initiatives to achieve compliance in some situations.
- Negotiating with the person who carried out the unlawful activity to obtain an undertaking from them to address the issues of concern arising from an investigation. For example, the submission of a section 96 application to modify consent.
- A letter requiring works to be carried out or works to cease, or other remedial action in lieu of more formal action i.e. a warning letter.
- Such action may be all that is required in minor breaches where no serious impacts have occurred.

When deciding whether to take an educative approach, consideration will be given to issues such as the level of contrition shown by the wrongdoer, whether they have previously been warned as a result of this, or similar, behaviour and the level of intent shown.

Whilst these approaches recognise that Council may use discretion in the process, Council is also obliged to uphold the law, including compliance with relevant administrative law principles (for example: acting fairly and equitably), and to act in the public interest.

Where appropriate, a staged approach to ensure compliance will be adopted and in the first instance businesses and individuals will be given the opportunity to discuss and remedy the breach before action is taken, unless immediate action is required. Timeframes are to be specified in correspondence to ensure compliance within a reasonable timeframe.

### ENFORCEMENT ACTION

Where the options outlined in Section 3 above are considered inappropriate in the circumstances, or have been pursued but proven unsuccessful, enforcement action will be taken.

## 2.10 Authority to Undertake Enforcement Actions (cont'd)

The options outlined in Section 3 may be inappropriate in circumstances where warning letters have previously been issued but ignored, the wrongdoer is a repeat offender or the risk to health and safety warrants immediate action.

Enforcement action will be taken with a considered approach. Enforcement action includes:

- Issuing of Notices and Orders requiring compliance with legislative requirements or those of an environmental planning instrument.
- Commencement of criminal proceedings for an offence under legislation or alternatively issuing a Penalty Infringement Notice (PIN).
- Commencement of civil proceedings in a Court to either remedy or restrain unlawful activity.

### AUTHORISED PERSONS

Section 377 (1) of the Local Government Act 1993 provides that a council may, by resolution, delegate to the general manager or any other person or body (not including another employee of the council) any of the functions of the council under this or any other Act, except for the matters expressly excluded by the Act.

Section 378 (2) provides that the general manager may sub-delegate a function delegated to the general manager by the council to any person or body (including another employee of the council).

Council has previously resolved, pursuant to section 377 (1), to delegate authority to the General Manager to exercise all such powers, authorities, duties and functions as may be experienced by the Council under any Act other than:

- a) In relation to any matter where the Mayor has directed the General Manager, in writing, not to exercise a delegated function and to refer the matter to Council for determination; and
- b) Those functions that are required by Section 377 to be exercised only by the Council.

The General Manager has, pursuant to section 378 (2), sub-delegated authority under the following Acts to the respective employees:

Employee	Acts
Director of Engineering	Environmental Planning and Assessment Act 1979 Heavy Vehicle National Law Act 2012 Local Government Act 1993 Protection of the Environment Operations Act 1997 Roads Act 1993 Crown Land Management Act 2016
Director of Planning and Environment	Companion Animals Act 1998 Environmental Planning and Assessment Act 1979 Food Act 2003 Public Spaces (Unattended Property) Act 2021 Local Government Act 1993 Plumbing and Drainage Act 2011 Protection of the Environment Operations Act 1997 Public Health Act 2010 Swimming Pools Act 1993
Compliance Officer	Companion Animals Act 1998 Environmental Planning and Assessment Act 1979 Public Spaces (Unattended Property) Act 2021 Local Government Act 1993 Protection of the Environment Operations Act 1997 Crown Land Management Act 2016 Rural Fires Act 1997 Graffiti Control Act 2008
Environmental Officer	Biosecurity Act 2015

*Adopted by Council 21 August 2023  
Refer Minute No. 151/23*

*Adopted by Council 17 August 2020  
Refer Minute No. 161/20*

## **2.10 Authority to Undertake Enforcement Actions (cont'd)**

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*Adopted by Council 21 August 2017  
Refer Minute No. 186/17*

*Adopted by Council 18 April 2017  
Refer Minute No. 74/17*

*Adopted by Council 17 August 2009  
Refer Minute No. 283/09*

*Adopted by Council – 15 May 2000  
Refer Minute No. 22204*