

# POLICY COVER SHEET

## Compliance and Enforcement Policy - Interim

<b>Type:</b>	<b>Organisational</b>
<b>Adopted:</b>	30 October 2018
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<b>Approved By:</b>	Executive Management Team (EMT)
<b>Next Review Date:</b>	30 April 2020
<b>Responsible Officer:</b>	Director Assets and Development
<b>Department:</b>	Assets and Development
<b>File No:</b>	18/35043
<b>Attachments:</b>	Nil

<b>Step</b>	<b>Approved By</b>	<b>Date of Approval / Completion</b>
Reviewed relevant legislation	Responsible Officer	
Consultation with relevant officers / departments	Responsible Officer	
Draft completed	Responsible Officer	
Draft reviewed by Governance	Governance Officer	14 August 2018
Draft approved by Department Manager	Department Manager	
Draft circulated to staff via Murri for feedback	Responsible Officer	
Changes made	Responsible Officer	
Draft to EMT Policy Meeting	General Manager	
Changes made	Responsible Officer	
EMT approval	CEO	30 October 2018
Briefing Note approved (if applicable)	General Manager	
Agenda Item approved (if applicable)	General Manager	
Council adoption (if applicable)	Council	

### Conflicts of Interest

There are no declared conflicts of interest associated with preparation of this policy. Refer to conflict of interest section of this policy.

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### 1. Purpose

The purpose of the Compliance and Enforcement Policy – Interim (Policy) is to set out for staff, councillors and community Council’s approach to compliance and enforcement in administering local laws and relevant legislation.

### 2. Rationale

Council is responsible for administering a range of laws and regulations as set out in the *Local Government Act* (including our Community Local Law) and a range of other legislation.

The laws are typically intended to govern community life, ensuring the safety and wellbeing of the community and that harm is prevented. These laws set the standards to which all members of the community are expected adhere.

The community, including potentially regulated parties and impacted parties, should have:

- a clear understanding of their rights and obligations under relevant legislation
- support to fulfil these obligations where appropriate
- an understanding of how Council will approach administration of this legislation and, in particular, how Council will approach compliance and enforcement and the consequences of non-compliance.

This Policy is intended to guide how Council officers approach the task of compliance and enforcement.

Council is conferred powers to make and administer laws under various legislation. For example, the *Local Government Act 1989* establishes that power for councils to make local laws in relation to certain matters. Under s98 of the *Local Government Act 1989* Council and the CEO delegate powers to Council officers to perform duties and functions under legislation and local laws. This is known as an instrument of delegation which enable the business of Council to be carried out in accordance with Council policies and procedures, including this Policy.

Instruments of delegation give Council officers the ability to enforce laws and rules as determined by Council and the State Government (where applicable).

### 3. Scope

This Policy covers compliance and enforcement activities undertaken by or on behalf of Murrindindi Shire Council, including but not limited to, the following areas:

- building control
- control of animals
- fire prevention
- food safety
- litter and waste management

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- local laws, including land and general amenity, burning off, consumption of alcohol, waste, swimming pools, and streets and roads
- parking control
- land use planning and development
- public and environmental health
- roads and drainage management
- environment protection e.g. onsite wastewater management, native vegetation management.

For detailed information about the range of legislation administered by Council refer to the relevant instruments of delegation.

#### 4. Definitions

Reference Term	Definition
Proactive compliance	Planned activity to monitor compliance with certain requirements e.g. routine follow-up inspection to determine compliance with a planning permit, compliance campaign targeting signs and furniture on footpaths and road reserves.
Reactive compliance	Compliance activity undertaken in response to a report from the community or another agency in relation to alleged non-compliance with a requirement.
Harm	The adverse outcome the law or regulation is seeking to prevent e.g. public safety, environment, financial advantage
Authorised officer	An officer authorised under specific legislation for the purpose of administering that legislation and conveyed powers to assist in that task. Typically, under <i>Local Government Act 1989</i> and <i>Planning and Environment Act</i> .
Council officer	An employee of Murrindindi Shire Council or approved contractor.
Local law	Community Local Law or Governance Local Law made by Murrindindi Shire Council pursuant to the <i>Local Government Act</i> (refer to Council's website)
Infringement notice	An infringement notice is a notice issued, usually by Council officers under delegation, in response to minor law breaking where the matter is better dealt with by payment of a fine than taking court proceedings.

#### 5. Policy

##### 5.1 Objectives

Council will seek to achieve an acceptable level of compliance with relevant legislation to reduce harm and protect the safety and wellbeing of the community, taking into account the Policy principles and compliance and enforcement approach set out below and the resources available to address compliance issues.

We will promote and support compliance using a range of approaches and use enforcement to achieve compliance where this is appropriate.

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Enforcement activities by Council will be outcome focussed. That is, when a non-compliant activity is identified, in the first instance Council will seek to resolve the issue and work with relevant parties to achieve compliance.

While our compliance activities are primarily designed to promote and support compliance, from time to time based on the risk of harm and the culpability of the offending, a sanction may be appropriate as either a specific or general deterrent.

This Policy should be read in conjunction with the legislation, regulations and other instruments that govern different areas of regulation.

## 5.2 Principles

Within the constraints in which Council operates, we will undertake our compliance and enforcement activities in accordance with the following principles:

Safety	The safety of our staff and the community is our first priority and takes precedence over enforcement outcomes.
Risk-based	Recognising that compliance and enforcement resources are not endless, we will target our efforts to prevent and address the issues of highest risk, with public safety as highest priority.
Proportionate	Our compliance and enforcement outcomes will be proportionate to the issue being addressed and the culpability of the action.
Timely	Council will seek to investigate and resolve matters in the shortest time practicable, taking into account resources, the risk and urgency of the potential harm and the need to ensure robust investigation and assessment.
Transparent	Subject to requirements for privacy, Council will be transparent, predictable and accountable in its compliance decision making. Council's conduct and decisions will be open to public scrutiny, through both internal and external review processes.
Consistent	Council's compliance and enforcement actions will be predictable - similar circumstances will lead to similar outcomes.
Partnership	Council will work in partnership with the community, recognising the important role that the community fill in sharing information about how to comply and in providing information to Council about non-compliance.  Council will work in partnership with other relevant law enforcement agencies, sharing information to the extent appropriate under the law, and supporting joint initiatives.
Effective	Compliance and enforcement activities will be effective in addressing the specific outcomes sought by the relevant law.  Council will not seek to duplicate regulation where there is already Victorian or Australian law that covers the issue.  Council will not prioritise enforcement of laws that make little or no difference, instead we will seek to change them (or advocate for change where Council does not make the law).
Equity	Council will take into account the specific circumstances in determining whether any enforcement action is warranted, including previous decisions and circumstances in different areas across the Murrindindi Shire.
Lawful	We will always conduct our compliance and enforcement activities in accordance with the relevant laws and the powers and responsibilities they convey. Council will conduct itself as a model litigant.

### 5.3 Compliance and Enforcement Approach

Council will use a range of strategies to achieve an acceptable level of compliance across the community – fines and prosecutions are typically a last resort for serious and/or repeat offending.

Council's approach to compliance and enforcement has the following elements:



### 5.4 Specific Policy Guidance and Expectations

#### Risk-based Approach

Council will prioritise both its reactive and proactive compliance based on the risk posed by the alleged offending. The assessment of risk will be consistent with Council's risk framework.

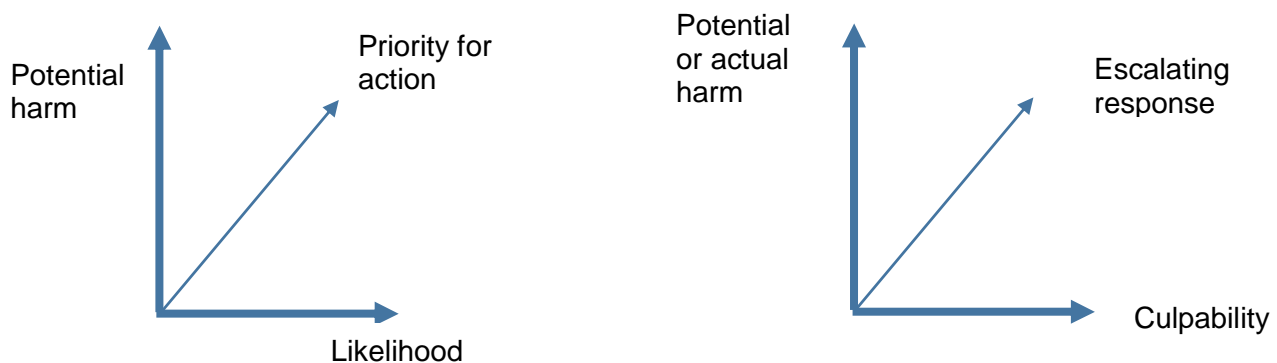
In this context, specific priority is afforded to alleged compliance matters that impact public health, wellbeing, safety or the environment or that may result in significant commercial gain for the offender.

As a result, not all alleged compliance issues will be investigated in detail, or with the same urgency, noting there will always be a greater demand for compliance action than resources to support. Council will be transparent about its compliance priorities and prioritisation decisions.

Council's response to a compliance issue will be determined based on both the risk posed and the culpability of the offending.

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A compliance plan will be prepared that sets out priorities for proactive compliance activities based on risk.



### Prosecution and Related Enforcement Actions

With the consistent focus of Council's compliance and enforcement activities on outcomes, Council will typically only consider a prosecution or related enforcement action where:

- there is or was serious risk of harm – including serious public health and safety and environment impacts
- after being given adequate opportunity to take corrective action, the action taken is insufficient
- the culpability of the offending warrants this action as a deterrent e.g. repeated wilful non-compliance
- legislation requires this response.

Decisions to proceed with prosecution need to consider:

- adequacy of evidence
- likelihood of success
- strategic importance of the case
- cost and risks associated with the prosecution.

Note that the requirements of specific regulatory frameworks take priority e.g. role of Victorian Building Authority in relation to prosecution of indictable offences.

### Retrospective Approvals

Where an activity that requires approval is identified as occurring (or having occurred) without approval, then Council will (where appropriate):

- cease the activity/remove the structure or require the party to seek the relevant approval (where this is appropriate)
- assess any application for approval as if the activity or works were not in place and provide approval or not as appropriate
- if any approval is time limited, the approval will take into account the time for which the works or activity have been in place
- if not approved, then Council will require cessation of the activity or removal of the works.

Even where the activity or development is approved, the need for further sanction will be considered. This may range from a formal warning to fines or other penalties depending on the circumstances. It

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is important that there is a consequence to wilful or negligent failure to gain necessary approvals before undertaking and activity or works.

Retrospective approvals will be determined by Council, Chief Executive Officer (CEO) or relevant Director. This reflects the increased implications of approving or not approving an application made retrospectively.

### Internal Review

Unless inconsistent with the provisions of the legislation being administered, all approval, compliance and enforcement decisions may be subject to internal review.

Where a person is aggrieved by a decision, that person may seek internal review of the decision.

To seek internal review, the aggrieved person may write to the CEO seeking review.

The CEO will appoint a senior Council officer (typically manager or above) that has not been involved in the decision to date, or an appropriate independent person who is not an employee of Council, to undertake the review. Any review will be completed in a timely manner – typically within 30 days.

The decision by any aggrieved person to access internal review does not preclude that person from seeking review by relevant external bodies such as Ombudsman Victoria, where appropriate.

### Documentation

Documentary records will be maintained, including:

- all compliance related reports from community members and other agencies
- investigations
- the rational for any decision, including assessment against relevant criteria.

This ensures that any decision is reproducible.

### Roles and Responsibilities

All staff will ensure that they hold the relevant delegations and authorisations for any statutory decisions made or powers exercised, including powers to access private property and collect evidence.

### Protecting the Integrity of Compliance and enforcement Activities

All staff involved in compliance and enforcement activities must declare and manage any conflict of interest, in accordance with the Employee Conduct (Code of Conduct) Policy. This applies irrespective of whether the staff member is the final decision maker.

Where practicable, relevant Council officers will move areas of responsibility from time to time to reduce the risk of inappropriate relationships with regulated parties.

No cash will be accepted by Council officers in the field in payment for either permits, penalties or fees. All payments will be directed to the relevant Council service centre or online (where available).

Unless urgent action is required, all proposed enforcement action should be reviewed and endorsed by a second Council officer.

Where an infringement notice is to be revoked, as a minimum, this requires endorsement by the manager of the person issuing the infringement notice.



Protecting private information

All private or personal information shall be protected and managed in accordance with Council's Privacy Policy, and any limitations imposed by the relevant legislation.

**6. Related Policies, Strategies and Legislation**

Compliance and enforcement action will be primarily guided by the legislation establishing the compliance requirements and enforcement mechanisms e.g. *Planning and Environment Act, Local Government Act 1989*.

Additional Murrindindi Shire Council policies and subordinate legislation that are particularly relevant include:

- Community Local Law
- Employee Conduct (Code of Conduct) Policy
- Privacy Policy.

**7. Council Plan**

The Council Plan 2017-2021 includes the following Our Place strategy:

'Enhance community safety, resilience and liveability through improved planning, community engagement, and a fair and transparent approach to compliance'.

**8. Management and Review**

This Policy will be reviewed within 18 months of the date of coming into effect, following consideration of community feedback.

**9. Consultation**

This Policy is adopted as an interim policy pending feedback from the community.

**10. Human Rights Charter**

This Policy has been developed with consideration of the requirements under the Charter of Human Rights and Responsibilities.