



ENFORCEMENT NOTICE

An enforcement notice is a document which requires you to take actions to remedy an offence. The notice provides you with the opportunity to consider your options and resolve the matter in a timely way. Council can issue an enforcement notice under Section 168 of the Planning Act 2016 for a development offence.

An enforcement notice might relate to:

- Carrying out assessable development without a permit;
- Contravening a development approval; and/or
- Use of premises where the use is not a lawful use.

Reasons for Receiving an Enforcement Notice

You may receive an enforcement notice if Council reasonably believes that there is an offence involving a land use or works for which you are liable, and it has not been remedied. Please note that while you may not have originally commenced the use/undertaken the works, responsibility passes to a new owner upon completion of a property transfer.

As part of an investigation, Council may have first given you a show cause notice, giving you an opportunity to provide your perspective in the matter. However, sometimes Council will proceed directly to an enforcement notice if it considers appropriate to do so e.g. where a structure, such as a retaining wall, is a threat to health and safety.

Council will only issue an enforcement notice after deciding that it is reasonable in the circumstances.

Requirements of an Enforcement Notice

The notice will require you to either do certain things, or stop doing certain things (or both). Requirements commonly include:

- Stop carrying out development;
- Stop a stated use of a premises;
- Demolish or remove works;
- Restore, as far as practicable, premises to the condition the premises were in immediately before the development started; and/or
- Apply for a development permit.

Each requirement will carry a particular time frame. For example, Council may require you to prepare and lodge an application within 20 business days.

Complying with Notice Requirements

Whilst Council always encourages the public to voluntarily comply with legislation, it has a duty to investigate matters and to take particular actions to ensure compliance as well as to protect the health and safety of the community.

Please be aware that if you do not comply with the requirements of the enforcement notice within the time frames, Council may:

- Issue a Penalty Infringement Notice (PIN);
- Initiate legal proceedings at the Magistrates Court or Planning and Environment (P&E) Court; or
- Carry out the required work and recover the cost of works pursuant to the *Local Government Act 2009*.

Resolving the Matter

To resolve the matter, you may wish to employ the services of a consultant town planner, engineer, or solicitor to give you advice on the matter. These professionals may be able to give you an understanding of the required time and costs involved, if any, in resolving the matter.



INFORMATION SHEET



If you resolve the matter before the date within the enforcement notice, we encourage you to notify Council to arrange for a further inspection, so that the investigation can be finalised as soon as possible.

An example case study is provided below of how a matter can be resolved while avoiding any further unnecessary costs.

Confidentiality

Council deals with the personal information of all parties to an investigation in a strictly confidential manner. We will not disclose your personal details, or the details of any complainant, to any party. You may be able to make a right to information request about the matter. However, details such as the name and address of the complainant will generally not be available to an applicant under the privacy legislation.

Appealing a Notice

You may appeal the issue of an enforcement notice. Generally, an appeal must be started within five business days if the notice is for a dangerous structure, e.g. a retaining wall, or 20 business days if the notice is for any other purpose.

However, if you do have concerns, Council would urge you to immediately raise these with the Development Compliance Team to avoid progressing to a costly appeal when your concerns might be easily resolved. If you do intend to proceed with an appeal, you would be strongly advised to seek independent legal advice, planning advice, or engineering advice.

Related Websites and Information

Livingstone Shire Councils Planning Scheme and mapping

<https://www.livingstone.qld.gov.au/doing-business/building-and-development/town-planning/planning-scheme-information>

Related Information Sheets and Checklists

<https://www.livingstone.qld.gov.au/homepage/247/development-information-sheets-and-checklists>

Queensland Government Department of State Development, Manufacturing, Infrastructure and Planning website

<http://planning.dsdmip.qld.gov.au/planning/our-planning-system/the-legislation>

