

## RISK BASED LAND USE COMPLIANCE POLICY

### (COMMUNITY POLICY)

#### 1. Scope

The Risk Based Land Use Compliance Policy (this 'Policy') provides guidance and direction for Livingstone Shire Council in allocating resources to maximise the community benefits when undertaking reactive compliance and enforcement actions associated with the following:

- (a) planning;
- (b) building;
- (c) environmental health; and
- (d) plumbing and drainage.

#### 2. Purpose

The purpose of this Policy is to:

- (a) Implement a “**risk based assessment**” approach for evaluating the impacts and/or consequences of non-compliant land use activities based on the following criteria:
  - (i) risks to health and safety of persons;
  - (ii) levels of environmental harm;
  - (iii) levels of amenity impact;
  - (iv) Council reputation/public perception;
  - (v) levels of statutory non-compliance; and
  - (vi) legal or economic consequences.
- (b) Inform strategic decision making in prioritising investigations and allocating resources based on a “**risk based assessment**” of land use compliance complaints;
- (c) Maximise the benefits to the community in the allocation of resources for resolving land use compliance matters.
- (d) Ensure the use of resolution options which are appropriate and proportionate to the seriousness of the compliance matters under investigation; and
- (e) Apply consistency in addressing non-compliant land uses.

**NOTE:** The policy is not intended to limit Council officers in their use of discretion or exercise of official functions. The full circumstances and facts of each case must be considered and decisions made based on the merits of the individual case.

#### 3. References (legislation/related documents)

*Building Act 1975*  
*Environmental Protection Act 1994*  
*Food Act 2006*

#### 4. Definitions

To assist with interpretation, the following definitions shall apply:

Compliance and regulatory enforcement	The actions undertaken by Council in ensuring a person is reasonably complying with, or is taking appropriate steps towards reasonable compliance with, relevant laws, regulations, approvals, standards and/or policies.
Person	Includes a body of persons, whether incorporated or unincorporated.
Risk based assessment	The risk rated evaluation of a land use activity against the criteria outlined in Appendix A of this policy.

#### 5. Policy Statement

Council commits to:

- (a) act in accordance with the principles of natural justice and procedural fairness;
- (b) focus on changing behaviours to assist achieving acceptable land use compliance outcomes;
- (c) seek voluntary compliance in order to minimise the need for enforcement action;
- (d) encourage neighbours who are in dispute to use mediation to assist resolution;
- (e) use “**risk based assessment**” of land use compliance complaints to inform strategic decision making and prioritise investigations and the allocation of resources accordingly;
- (f) not apply unreasonable or extreme interpretations of acts, regulations or conditions of approval which would be inconsistent with those previously applied for similar matters; and
- (g) collect and analyse data and other information gathered to inform “**risk based assessment**” decision making.

##### 5.1 Compliance and Regulatory Enforcement

To assist in ensuring the appropriate observance of community expectations and standards, Council uses the following tools and strategies.

##### 5.1.1 Compliance assistance

Compliance assistance involves informing the community on when and why compliance is required and what actions are required to achieve compliance. Council aims to encourage voluntary compliance by providing information to the community to:

- (a) remove barriers to compliance such as a lack of knowledge regarding legislative requirements and landowner or occupier responsibilities;
- (b) increase awareness and understanding within the community on what constitutes compliance and how it can be achieved;
- (c) highlight the consequences of non-compliance, such as loss of reputation to business, risks to health and safety, impacts upon amenity, damage to the environment and the financial penalties which apply; and

- (d) facilitate compliance through proactive and positive engagement with landowners or occupiers who are associated with non-compliant land uses.

Council provides compliance assistance in a number of ways including the following;

- (a) professional officer advisory services;
- (b) customer service centre;
- (c) website information;
- (d) community education through information uploaded onto Council's website;
- (e) online development enquiry service;
- (f) newsletters (for example: Food Advisor and The Plum Drum);
- (g) development forums;
- (h) information sheets;
- (i) application and approval guides; and
- (j) providing details of dispute resolution services which are available.

#### **5.1.2 Pro-active compliance and regulatory functions**

Proactive compliance is systematically undertaken by Council through the following functions:

- (a) building certification (approvals and Inspections);
- (b) plumbing certification (approvals and inspections);
- (c) development assessment (approvals and inspections); and
- (d) environmental health business activities (approvals and inspections).

#### **5.1.3 Reactive compliance and regulatory functions.**

Reactive compliance and regulatory enforcement is undertaken in response to customer requests received by Council. Each of these requests is assessed and risk rated according to the criteria in **Appendix A** of this policy, with the appropriate action then taken in accordance with the “**risk based resolution hierarchy**” shown below.

**Note** - The initial response time for addressing a particular matter should be in accordance with the performance measures contained within Council's adopted service level agreements.

#### **5.1.4 Compliance resolution and enforcement action**

The “**risk based resolution hierarchy**” below identifies the range of compliance resolution and enforcement options available for Council to use for each of the identified risk categories.

The starting and finishing points for each customer request will be dependent upon the particular circumstances of the case. However, the response(s) chosen should be appropriate and proportionate to the seriousness of the offence(s) and should:

- (a) set a proper precedent for future cases;
- (b) be consistent with the intent and objectives of the relevant legislation;
- (c) be an appropriate use of Council's resources; and
- (d) be consistent with those previously applied to similar matters (except where there is sufficient evidence to demonstrate otherwise).

<b>Risk based resolution hierarchy</b> <i><b>NOTE</b> - The “<b>risk based resolution hierarchy</b>” is a guide only and each case will be assessed on the facts and circumstances relevant to it.</i>					
Resolution actions	Risk rating				
	Extreme	High	Medium	Low	Very Low
Prosecution	✓	✓	✓		
Court Order	✓	✓	✓		
Penalty Notice	✓	✓	✓		
Enforcement Notice	✓	✓	✓		
Penalty Notice	✓	✓	✓	✓	
Show Cause Notice	✓	✓	✓	✓	
Letter requesting undertaking	✓	✓	✓	✓	✓
Negotiated Outcome	✓	✓	✓	✓	✓
Formal Caution/Warning	✓	✓	✓	✓	✓
Civil dispute mediation	✓	✓	✓	✓	✓
Property Notation/Breach recorded	✓	✓	✓	✓	✓
Verbal advice only		✓	✓	✓	✓
Information sheet				✓	✓
No Action					✓

## 6. Changes to this Policy

This Policy is to remain in force until any of the following occur:

- the related information is amended/replaced; or
- other circumstances as determined from time to time by the Council.

## 7. Repeals/Amendments

This Policy repeals the Livingstone Shire Council Policy titled 'Risk Based Land Use Compliance Policy (v1.0).

Version	Date	Action
1.0	05/08/2018	Adopted
2.0	16/11/2021	Amended Policy Adopted - 'risk based resolution hierarchy' table amended

**CALE DENDLE**  
**CHIEF EXECUTIVE OFFICER**

# Appendix A

## Rating categories for non – compliant land uses

***NOTE - Examples have been provided for guidance purposes only***

<u>EXTREME - LEVEL 5</u> <u>RISK CRITERIA</u>	<u>EXTREME - LEVEL 5</u> <u>CONSIDERATIONS/CONSEQUENCES</u>
Health and safety	<ul style="list-style-type: none"><li>• Death or serious injury to persons highly probable (with little or no pre-warning of occurrence)</li><li>• Severe and/or permanent damage to the environment</li><li>• Intense detrimental impact on the liveability of the community</li><li>• Death or serious injury to flora or fauna</li><li>• Serious damage to Council's reputation</li><li>• Enforcement action strongly recommended</li><li>• Prosecution strongly considered</li></ul>
Environmental impact	
Amenity	
Legal/Economic	
Council reputation/Public perception	
<b>For example:</b> <ul style="list-style-type: none"><li>• Dangerous and/or dilapidated building adjacent to public space or a threat to an adjoining premises</li><li>• Unfenced or non-compliant pool fence (other than minor matters)</li><li>• Effluent discharge into waterway or public place</li><li>• Absence of High Hazard Backflow Prevention Device at cross connection with drinking water supply</li><li>• Significant fire safety non-compliance of a building(s)</li><li>• Large scale clearing of protected vegetation</li><li>• Significant food safety non-compliance</li><li>• Disturbance of friable asbestos</li><li>• Odours so offensive some people are evacuated or leave voluntarily</li><li>• Multiple (more than five) complaints</li><li>• Extensive media interest</li><li>• Major spill or dumping of hazardous substance(s) into waterway or stormwater system</li><li>• Personal appearance services (high risk tattoos)</li></ul>	
<u>HIGH - LEVEL 4</u> <u>RISK CRITERIA</u>	<u>HIGH - LEVEL 4</u> <u>CONSIDERATIONS/CONSEQUENCES</u>
Health and safety	<ul style="list-style-type: none"><li>• Death or serious injury to persons possible but occurrence has a reasonable pre-warning time (for example: storm surge, flooding or bushfire)</li><li>• Serious and/or long-term impact to the environment</li><li>• Serious impact on the liveability of the community</li><li>• Potential serious harm to flora and/or fauna</li><li>• High/moderate risk to Council's reputation</li><li>• Enforcement action recommended</li><li>• Prosecution considered</li></ul>
Environmental impact	
Amenity	
Legal/Economic	
Council reputation/Public perception	
<b>For example:</b> <ul style="list-style-type: none"><li>• Significant obstruction of footpath or road</li><li>• Unapproved and unsuitable onsite sewage facility</li><li>• Residential occupation of buildings in a high risk natural hazard area without the required appropriate building/planning approval</li><li>• Defective High Hazard Backflow Prevention device at cross connection with drinking water supply</li><li>• Land pollution (public dumping)</li></ul>	

<ul style="list-style-type: none"><li>• Pollution of waterways</li><li>• Air pollution (multiple properties affected)</li><li>• Multiple (more than two) public complaints</li><li>• Ombudsman or state member interest</li><li>• High local media interest</li><li>• Lack of sediment or erosion control (large scale impacts)</li><li>• Land filling requiring operational works approvals</li><li>• Light industry or General industry in a residential area.</li><li>• Significant stormwater diversion from development having adverse impacts</li><li>• Homeowner working on asbestos containing material</li><li>• Significant ongoing dust, noise or light emission nuisances</li></ul>	
<u>MEDIUM - LEVEL 3</u> <u>RISK CRITERIA</u>	<u>MEDIUM - LEVEL 3</u> <u>CONSIDERATIONS/CONSEQUENCES</u>
Health and safety	<ul style="list-style-type: none"><li>• Consequence of death or serious injury unlikely</li><li>• Injury or adverse health effects to persons possible but not imminent</li><li>• Moderate and/or medium-term impact to the environment</li><li>• Significant level of statutory non-compliance</li><li>• Moderate impact on the liveability of the neighbourhood</li><li>• Some ongoing management implications</li><li>• Minimal reputational damage to Council</li><li>• Public largely unaware and few (two or less) complaints</li><li>• Independent mediation an option</li><li>• Enforcement action considered</li><li>• Prosecution considered</li></ul>
Environmental impact	
Amenity	
Legal/Economic	
Council reputation/Public perception	
Level of statutory non - compliance	
For example: <ul style="list-style-type: none"><li>• Contravenes conditions of Council approval(s) with resolution difficult</li><li>• Lack of or defective Medium Hazard Backflow Prevention device</li><li>• Residential occupation of buildings without building approval and/or plumbing final certificate(s)</li><li>• Stormwater diversion from development having a moderate adverse impact on two or more properties</li><li>• Moderate impact on the liveability of two or more properties</li><li>• Inconsistent impact assessable land use</li><li>• Impact assessable land use involving referral agency</li><li>• Shop or Medical centre use in a Residential Zone</li><li>• Indoor sports facility (gymnasium) use in a Residential Zone</li><li>• Lack of requisite quarterly servicing of on-site sewerage facility (for example: Aerated Wastewater Treatment System)</li><li>• Unapproved swimming pool that is compliant with the pool safety standards</li><li>• Unapproved Class 10 buildings greater than twenty square metres (for example: garden shed or pergola)</li><li>• Lack of sediment or erosion control (moderate scale impacts)</li><li>• Clearing of native vegetation in a covenant or sensitive area such as erosion prone land or waterway</li><li>• Moderate ongoing dust, noise, odour or light emission nuisances</li><li>• Overspray from spray painting activity</li></ul>	
<u>LOW – LEVEL 2</u> <u>RISK CRITERIA</u>	<u>LOW – LEVEL 2</u> <u>CONSIDERATIONS/CONSEQUENCES</u>
Health and safety	<ul style="list-style-type: none"><li>• Minor injury or adverse health effects to persons possible</li><li>• Minor or short-term impact to the environment and community</li><li>• Moderate impact on the liveability of one property</li></ul>
Environmental impact	

Amenity	<ul style="list-style-type: none"><li>• Moderate level of statutory non compliance</li><li>• Negligible impact on Council's reputation</li><li>• No legal action anticipated</li><li>• Independent mediation considered appropriate action</li><li>• Enforcement action unlikely</li></ul>
Legal/Economic	
Council reputation/Public perception	
Level of statutory non - compliance	
For example: <ul style="list-style-type: none"><li>• Unapproved Class 10 buildings less than twenty square metres (for example: garden shed or pergola)</li><li>• Unapproved retaining wall (less than1.5 metres high)</li><li>• Code assessable development involving a referral agency</li><li>• Office or Bed and breakfast in an existing Dwelling house</li><li>• Domestic noise complaints affecting one property only</li><li>• Conditions of Council approval(s) contravened but able to be reasonably resolved</li><li>• Multiple minor matters of legislative non-compliance, with compliance able to be achieved</li><li>• Stormwater diversion from development having a moderate adverse impact on one property only</li><li>• Lack of sediment or erosion control (low scale impacts)</li><li>• Minor ongoing dust, noise, odour or light emission nuisances</li></ul>	
<b><u>VERY LOW – (LEVEL 1)</u></b> <b><u>RISK CRITERIA</u></b>	<b><u>VERY LOW – (LEVEL 1)</u></b> <b><u>CONSIDERATIONS/CONSEQUENCES</u></b>
Health and safety	<ul style="list-style-type: none"><li>• Very minor impact to the environment and community</li><li>• No adverse health or safety risks to persons</li><li>• Multiple neighbour disputes unlikely</li><li>• Minor matter of legislative non-compliance</li><li>• Minor matter of legislative non-compliance exacerbated by neighbourhood dispute</li><li>• Independent mediation considered appropriate action</li><li>• Enforcement action not considered</li></ul>
Environmental impact	
Amenity impacts	
Legal/Economic	
Level of statutory non - compliance	
For example: <ul style="list-style-type: none"><li>• Minor vegetation modification in covenants</li><li>• In ground swimming pool in a flood hazard area</li><li>• Home based business in a Dwelling house</li><li>• Commercial land use in an existing building in a Business or Centre Zones</li><li>• Accepted development not satisfying the applicable codes</li><li>• Building encroachment over boundary</li><li>• Dividing fences and associated minor retaining works</li><li>• Strata disputes</li><li>• Stormwater nuisances not associated with development</li><li>• Amenity issues not related to a development (for example: tree planting or landscaping works)</li><li>• Minor building works (for example: pergola, barbecue area or awning)</li><li>• Plants/letter boxes in road reserve</li><li>• Property owner replacing tap ware in own dwelling (not licensed plumber)</li><li>• Light, dust, noise or odour matters with minor nuisance impact to one property only.</li></ul>	