

Show cause and enforcement

Why have I received a show cause notice?

As a local authority, Council has the responsibility for investigating matters under state legislation. Under some legislation, Council, as the administering authority, may issue show cause and enforcement notices - most often issued by the Planning Services Compliance team for matters relating to the *Building Act 1975* and the *Planning Act 2016*. Generally a show cause notice is issued prior to an enforcement notice. Under some circumstances, such as for dangerous or urgent matters, an enforcement notice will be issued without a show cause notice. Non-compliant swimming pool barriers will often require an enforcement notice under these circumstances.

During an investigation, Council will examine the facts and circumstances to determine whether any enforcement action is necessary.

An investigation might relate to:

- works which have been carried out without a building development approval;
- building works or a structure in a dangerous or dilapidated state;
- a building that is unfit for occupation; or
- building works which have never received a final inspection certificate or certificate of classification.

As part of the investigation, Council has given you a show cause notice because it reasonably believes there may be a contravention of the *Planning Act 2016* or the *Building Act 1975* for which you may be responsible.

The opportunity to hear your perspective is an important part of the investigation.

What is a show cause notice?

A show cause notice is a formal document which sets out the basis for Council's understanding of the alleged offence and invites you to respond to Council. Your response or representations will then be considered with the facts and circumstances in determining if an enforcement notice is to be issued for the alleged offence.

The show cause notice must provide the alleged offender with a minimum of twenty business days in which to respond to the allegations. However, if there are valid circumstances requiring a person to seek additional time to provide the response, they must notify Council prior to the expiry date of the show cause notice. An alternative response timeframe may then be agreed.

The show cause notice is divided into three sections:

- Offence details
- Requirements to comply that are being considered (if enforcement notice is issued)
- Making representations.



When is a show cause notice issued?

A show cause notice may be issued during an investigation after Council has examined available facts and circumstances and may be issued in relation to a variety of matters under the *Building Act 1975* and the *Planning Act 2016*. The most common reasons for the issuing of a show cause notice include:

- Assessable building work carried out without a building development approval
- Building work in a dilapidated condition or unfit for occupation or use
- Building work that has never received a final inspection certificate or certificate of classification
- Building work not in accordance with an approval (including siting variation, amenity and aesthetic approval, or a building approval)
- Material change of use (MCU) of land without a development approval
- Operational works (e.g., assessable earthworks or vegetation clearing) carried out without development approval
- Breach of development approval conditions
- Assessable permanent signage installation on private property.

Responding to a show cause notice

Recipients of show cause notices are not obligated to provide a response (representations). However, this is a valuable opportunity to provide information, including advice of intentions to comply and/or discretionary or mitigating circumstances. It may also be an opportunity to provide defences or to formally dispute a contravention of legislation. These representations may influence the decision to issue the notice and/or proceed with formal enforcement action.

If your response to the show cause notice is to commit to undertaking certain steps to resolve the matter, you should include details of the timeframe for resolution. When providing a response, you are encouraged to supply supporting evidence. This supporting evidence is highly regarded and will assist Council in making a determination of further action. Supporting evidence may include medical documentation, statutory declarations, town planner confirmation of engagement and/or a building certifier notice of engagement.

Council will also consider responses received from legal representation, other parties (such as a town planner, building certifier, support person) on your behalf.


It is important to ensure any response to the show cause notice is forwarded to Council within the time frame set out in the notice. Any representations received after this date may be considered at the discretion of Council.

Resolving a show cause notice

The most effective way to resolve a show cause notice is to complete the required action listed in the show cause notice. If the matter is resolved before the date within the show cause notice, Council should be notified so a reinspection can be conducted and the investigation finalised.

To resolve the matter, professional assistance will often be required. This is particularly the case if you intend to seek the appropriate development approval. Planning consultants should be engaged to provide advice in relation to planning related matters. Engineers and architects will often be required to be engaged in addition to a building certifier for building work assessment.

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Sometimes the likelihood of obtaining an approval is low due to development constraints, zoning or the condition of the building work. In these cases, it is far more appropriate to cease the land use and/or remove the unapproved work. It is important to seek appropriate qualified advice prior to seeking any development approval.

Removal/cessation of unapproved development (unapproved building work, earthworks, land use) does not require a development approval in order for reinstatement work to begin. However the land must be reinstated insofar as practical to its condition prior to the unlawful development occurring. If required, the investigating officer will provide advice to you regarding what is deemed to be sufficient reinstatement. It is also recommended that Council officers are kept advised of any reinstatement work in the event of calls being received from concerned residents observing the apparent increased activity on site.

Sometimes the removal/demolition of an approved building/structure may be required. In this instance a building approval issued by a building certifier is required prior to demolition. In the case of dangerous structures Council will prioritise any referral agency approval application (if applicable) to expedite the process.

What is an enforcement notice?

An enforcement notice is a statutory notice which requires you to take particular actions to remedy an offence within a required time frame. The notice provides you with an opportunity to consider your options and resolve the matter in a timely way.

The enforcement notice can be divided into three sections:

- Offence details
- Requirements of the notice
- Appeal rights.

When is an enforcement notice issued?

Council can issue an enforcement notice for offences for which a show cause notice have previously been issued. Council may also issue an enforcement notice without first issuing a show cause notice for dangerous or urgent matters which may include:

- Non-compliant swimming pool fencing
- Significant unapproved building work in progress
- Dangerous buildings that pose a significant risk to health and safety
- Illegal land use that poses a significant risk to health and safety.

Resolving an enforcement notice

The most effective way to resolve an enforcement notice is to complete the required action listed in Part B of the notice. The notice will usually require you to either refrain from committing the offence and/or to remedy the situation in the way stated in the notice. Each requirement will provide a time frame in which the item must be completed.



Requirements commonly include:

- Cease carrying out the development
- Demolish or remove building work
- Restore, as far as practicable, the property to the condition it was in prior to the development starting
- Apply for a development permit
Obtain necessary documents (e.g., pool safety certificate, certificate of classification, final certificate)
- Repair pool barrier
- Install temporary fencing around a building/swimming pool to prevent access.

If the required action is completed before the date provided on the enforcement notice, Council should be notified so a reinspection can be conducted and the investigation finalised.

To resolve the matter, professional assistance will often be required. This is particularly the case if it is intended to seek the appropriate development approval. Planning consultants should be engaged to provide advice in relation to planning related matters. Engineers and architects will often be required to be engaged in addition to a private building certifier for building work assessment.

Sometimes the likelihood of obtaining an approval is low due to development constraints, zoning or the condition of the building work. In these cases, it is far more appropriate to cease the land use and/or remove the unapproved work. It is important to seek appropriate qualified advice prior to seeking any development approval.

Removal/cessation of unapproved development (building work, earthworks, and land use) does not require a development approval in order for work to begin. However, the land must be reinstated, as far as practical, to the condition it was in prior to the unlawful development occurring. The investigating officer will provide advice in relation to what is deemed sufficient reinstatement if this is requested. It is also recommended that Council officers are kept advised of any reinstatement work in the event of calls being received from concerned residents who may be observing the apparent increased activity on site.

Sometimes the removal/demolition of an approved building/structure may be required. In this instance a building approval issued by a building certifier is required prior to demolition. In the case of dangerous structures Council will prioritise any referral agency approval application (if applicable) to expedite the process.

Enforcement notice appeal rights

Enforcement notices may be appealed to the Building and Development Dispute Resolution Committee (for offences under the *Building Act 1975*) or the Planning and Environment Court (for offences under the *Planning Act 2016*).

An appeal must be started within five business days of the enforcement notice if the notice is for a dangerous building or structure or 20 business days if the notice is for any other purpose. If you intend to proceed with an appeal, independent legal advice is encouraged. It is also recommended that if you have any concerns, you contact the issuing Council officer and discuss the matter in detail. This may resolve the matter without the cost of an appeal in many instances.

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Non-compliance with an enforcement notice

Council has a duty to take particular actions to protect the health, safety and amenity of the community. If the requirements of an enforcement notice are not complied with within the time frames on the notice (or alternate agreed time frames that may be agreed upon if representations are made) then one or more of the following may occur:

- Infringement for failing to comply with an enforcement notice (ongoing non-compliance may result in multiple infringements being issued)
- Initiation of legal proceedings at the Magistrates Court or Planning and Environment Court
- Council contractors carry out the required work and recover the costs of works pursuant to the *Local Government Act 2009*.

If you have intentions to comply but are unable to do so within the stated time frames of the notice, you are encouraged to contact Council or the investigating officer as soon as possible. Extended time frames are nearly always granted if you are able to show progress toward meeting your requirements and/or can show evidence of extenuating circumstances that have impacted your ability to meet the requirements of the notice within the stated time frames.

Further Information

For further information contact Council at 1300 763 903 or E: enquiries@cassowarycoast.qld.gov.au