

1.0 AUTHORITY

Compliance and enforcement help to prevent or minimise harm to health, property or the environment and improve the safety and amenity of residents and visitors to the municipality. It assists in promoting social policies, upholds social order, manages risks and meets the expectations of the community.

Mornington Peninsula Shire Council (Council) recognises the approach to enforcement can have a considerable impact on the experiences of residents, visitors, businesses and groups. The approach to enforcement can also have an impact on Council's reputation and the staff authorised with undertaking compliance duties.

2.0 INTENT

The purpose of this policy is to outline Council's approach to compliance and enforcement matters and to provide staff with direction about the manner in which these activities are to be undertaken.

In addition to enforcement, Council carries out a range of proactive activities to support and encourage compliance, such as community information and education programs.

3.0 SCOPE

This policy applies to all enforcement activities carried out by Authorised Officers, undertaken in accordance with the following Acts and their respective regulations (non-exhaustive list):

- *Building Act 1993*
- *Country Fire Authority Act 1958*
- *Domestic Animals Act 1994*
- *Domestic Building Contracts Act 1995*
- *Environment Protection Act 2017*
- *Fire Rescue Victoria Act 1958*
- *Food Act 1984*
- *Graffiti Prevention Act 2007*
- *Impounding of Livestock Act 1994*
- *Planning and Environment Act 1987*
- *Public Health and Wellbeing Act 2008*
- *Road Management Act 2004*
- *Summary Offences Act 1966*
- *Tobacco Act 1987*
- *Community Amenity Local Law 2022*
- *Short Stay Rental Accommodation Local Law 2018*
- *Consumption of Liquor Local Law 2022*

This policy does not apply to parking and traffic matters, managed in accordance with the *Road Safety Act 1986*.

4.0 GOVERNANCE PRINCIPLES

Under the *Local Government Act 2020*, Council must give effect to the following overarching governance principles:

- Council decisions are to be made and actions taken in accordance with the relevant law
- priority is to be given to achieving the best outcomes for the municipal community, including future generations
- innovation and continuous improvement are to be pursued
- collaboration with other Councils and Governments and statutory bodies is to be sought
- the transparency of Council decisions, actions and information is to be ensured.

5.0 POLICY STATEMENT

5.1 Council's approach to compliance and enforcement

5.1.1 Customers lodging compliance concerns with Council are diverse. They include individuals who raise concerns or make reports about alleged non-compliance (complainant) or individuals who are the subject of a report (respondent).

The following principles underpin Council's approach to compliance and enforcement. These principles have been developed with consideration of the desired experience for both customers and staff:

- We will treat people fairly, acting fairly, impartially and without bias or unlawful discrimination and treating all parties with courtesy and respect.
- Our response will be timely; ensuring responses to reports alleging non-compliances, and decision making in relation to those, are timely.
- We will be accountable and transparent; ensuring accountability for decisions to take or not to take action, recording all actions and decisions made relating to an investigation and providing a status of the investigation to relevant customers.
- We will have a consistent approach; ensuring all compliance and enforcement actions are approached in a consistent manner, proportionate to the community risk and seriousness, using reasonable resources.

5.1.2 Council's approach to compliance management is based on four key elements:

- Monitor compliance - undertake systematic monitoring and proactive inspection programs and activities to determine the level of compliance with current standards and laws and maintain a credible risk of detecting non-compliant activities.
- Inform and educate - provide information and undertake active awareness-raising activities regarding legislative responsibilities, Council's role and its compliance management processes, and potential impacts of non-compliance.
- Support to comply - provide advice and guidance to ensure responsible parties understand what compliance is and how to identify and manage the risks of their activities.

- Enforcement - address non-compliance with the law by objectively and assertively making the offender stop the non-compliant activity and remedy any harm to the public, environment or property, where appropriate.

5.1.3 Enforcement decisions will not be made for the purpose of increasing revenue for Council.

5.1.4 Enforcement programs, strategies or officer quotas will not be implemented for the purpose of increasing revenue to Council.

5.2 Responsibility

5.2.1 Council receives information or reports about alleged non-compliances from members of the community, external agencies and internal departments. Anyone making a report about an alleged non-compliance can, upon request, be provided with a reference number that can be used to follow up or enquire about that reported matter.

5.2.2 It is a reasonable expectation that investigations will be conducted, and responses or resolutions provided for all reports or concerns expressed or requests for action received in relation to an alleged non-compliance, unless it has been indicated that no response is necessary, or the report is anonymous.

5.2.3 Council staff are responsible for ensuring that any other possible non-compliant activity identified as a result of an inspection, proactive enforcement or other activity is brought to the attention of the appropriate team or department within Council.

5.2.4 Only Council staff with appropriate authorisations, or delegations from Council, the Chief Executive Officer (CEO) or where relevant, the Municipal Building Surveyor (MBS), can undertake investigations or compliance and enforcement action. The assessed risk will activate corresponding operational procedures and will dictate Council's response on a case by case basis.

5.3 Response to non-compliance

5.3.1 An investigation of alleged non-compliance may take a significant amount of time to complete, particularly where the issues are complex. When Council investigates, staff will give the complainant a high-level understanding of the typical process and timeframe relevant to the investigation and, where appropriate, progress of the investigation and any reasons for delay.

5.3.2 The complainant cannot expect to be given details about every aspect of the investigation, or information that would compromise the integrity of the investigation or Council requirements under the *Privacy and Data Protection Act 2014*.

5.3.3 Council staff will endeavour to manage the expectations of complainants and explain that in the absence of sufficient evidence, Council may be unable to take further action. Council staff will also explain that Council does not have unlimited resources and powers to deal with certain matters. Where Council is unable to fully investigate or act on a matter, because it is restricted by any legal or resource limitations, this will be explained to the complainant.

- 5.3.4** While there are certain statutory requirements that must be met in relation to notices and orders, Council staff will ensure that all explanatory communications are made in plain English and explain any technical language the law requires to be used.
- 5.3.5** Complainants should expect that their identities will remain confidential from the subject of their report, however, Council may have to disclose information that identifies them where:
- the disclosure is necessary to investigate the matter
 - their identity has already been disclosed to the respondent directly or in a publicly available document
 - the individual consents in writing to their identity being disclosed
 - the disclosure is required to comply with principles of procedural fairness
 - the matter proceeds to court.
- 5.3.6** Council will take any concerns an individual may have about their physical or psychological safety being endangered as a result of making a report, seriously. Respondents should expect the same privileges that details and outcomes of an investigation will remain confidential unless the above circumstances apply.
- 5.3.7** There can be a number of reasons why a person may choose to lodge a report anonymously, including privacy or concern for personal safety. A complainant may remain anonymous; however, it is recognised that this can affect Council's ability, make it difficult, or impossible to properly investigate a matter due to the inability to clarify or seek further information.
- 5.3.8** Council may receive reports from parties involved in neighbour disputes seeking Council's involvement. When a dispute between two neighbours is a civil matter, Council will often have no authority to resolve the issue in dispute. Council staff will thoroughly assess such reports to determine whether any action is required by Council. Care will be taken to explain which aspects of a report Council can deal with and which it cannot. Where possible, individuals will be provided with information about how to resolve neighbour disputes, including referral information resources, such as Victoria Legal Aid and Dispute Settlement Centre of Victoria.
- 5.3.9** Council expects that complainants will cooperate and act in good faith in respect of any investigations conducted by Council. This includes:
- providing a clear and truthful description of the matter
 - providing all available and relevant information to Council, including any new information that may become apparent
 - not providing information that is intentionally misleading, incorrect or considered to be manipulating an outcome in their favour
 - providing timely responses to questions and requests for information
 - treating Council's staff with courtesy and respect.

5.4 Investigating alleged non-compliance

- 5.4.1** The objectives of conducting an investigation of alleged non-compliance are to:
- determine the cause of the matter
 - determine if there has been a contravention of law, policy or standards

- gather evidence to the required standard to prove or disprove a matter
- determine any necessary action to mitigate any reoccurrence of a matter
- to resolve or offer suggestions, education or advisory information that will assist to resolve the matter.

5.4.2 When deciding whether to take enforcement action in relation to a confirmed case of non-compliance, Council will consider the full circumstances and facts of the matter and the public interest. Matters Council staff will consider in determining the most appropriate response include, but is not limited to:

- the seriousness of the offence
- the degree of wilfulness or knowledge of the respondent involved
- the past history of the respondent
- the consequences of non-compliance
- the likely effectiveness of the various enforcement options that are available
- deterrence (both to the respondent, and to others in the community)
- the effect on the respondent, the community and other people
- the potential safety impacts to life
- consistency of approach to similar breaches/offences.

5.4.3 The following factors must be ignored when making an enforcement decision or choosing an enforcement strategy:

- any element of discrimination or bias in favour of or against the person based on social status, ethnicity, nationality, political association, religion, gender, sexuality or beliefs, any possible political advantage or disadvantage to a government, person holding (or a candidate for) public office, or any political group or party.

5.4.4 Council staff will use discretion to determine the most appropriate approach to confirmed cases of non-compliance and may take more than one approach, dependant on the full circumstances and facts of each case.

5.4.5 The following enforcement options to be considered by Council reflect an escalation in response that is proportionate to the level of risk, the seriousness of the confirmed breach or the need for a deterrent:

- take no action on the basis of a lack of evidence or some other appropriate reason
- educate by providing information/advice to the respondent on how to be compliant
- negotiate with the respondent to obtain voluntary undertakings or an agreement to address the issues of concern
- issue a warning, a formal caution or direction
- issue a letter requiring work to be done or activity to cease in lieu of more formal action
- issue an order or notice under relevant legislation
- issue an infringement notice
- carry out the works specified in an order at the cost of the person served with the order
- seek an injunction through the courts (including VCAT and the Building Appeals Board) to prevent future or continuing unlawful activity

- commence legal proceedings for an offence against the relevant Act or Regulation.

5.4.6 All enforcement action will be reviewed and monitored to ensure compliance with any undertakings issued by Council. Reports alleging continuing non-compliance will be assessed and further action taken if necessary. If the non-compliance has ceased or the work has been rectified, the matter may then be considered to be resolved, unless the public interest dictate otherwise. Should initial enforcement action be found to have been ineffective, Council staff may consider other enforcement options.

5.4.7 No action will be taken when, after investigation, no breaches of the law are discovered. It may also be appropriate to take no action when:

- the complaint is vexatious, or the breach is trivial in nature
- the alleged offence is outside Council's area of authority
- taking action may prejudice other investigations or Council activities
- it is otherwise not in the public interest.

5.4.8 Informal action to achieve compliance may include offering verbal or written advice, verbal warnings and requests for action or written warnings. Advice from officers will be given clearly and simply and (where appropriate) will be confirmed in writing. The circumstances in which informal action may be appropriate include where:

- the act or omission is not serious enough to warrant formal action
- the past history reasonably suggests that informal action will secure compliance
- the officer is confident compliance will be achieved by informal action
- the consequences of non-compliance will not pose a significant risk informal action may prove more effective than a formal approach.

5.4.9 When employing formal action, officers will use professional judgement and discretion to assess the variables relating to each matter under consideration, including the reasonableness of the actions required by an order/direction and the timeframe to comply.

5.4.10 Where there is evidence that an offence has been committed, Council may issue an infringement or commence a prosecution in addition to serving an order. This may be done where it is determined that the circumstances justify taking both steps.

5.5 Prosecutions

5.5.1 Prosecution will generally be used as a last resort, or for non-compliance with a Building Order/Interim Notice and serious offences. Prosecutions may be necessary when a problem or hazard is serious, or prevalent in the community, and prosecution will tend to deter people from breaching the law.

5.5.2 A prosecution will only proceed if there is a reasonable prospect of a guilty verdict, and the prosecution is in the public interest.

5.5.3 Before a prosecution is commenced, there must be substantial, reliable and admissible evidence that a respondent has committed the offence.

- 5.5.4** The referral of a matter for prosecution will be done by the relevant Manager or in cases relating to building matters, the MBS.
- 5.5.5** Council and its delegated staff may obtain legal advice in deciding whether to commence criminal proceedings in the Magistrates' Court or enforcement action at VCAT and will consider:
- whether there is sufficient evidence to establish an offence or breach to the required standard of proof
 - whether all other reasonable options for compliance have been exhausted
 - whether the public interest warrants legal action being pursued.
- 5.5.6** Council recognises that there is sometimes a public interest in enforcement action and that publicising enforcement action plays an important role in helping the community understand the role of Council and the purpose and consequences of breaching the law. However, in providing information to media outlets, Council will also consider whether:
- the release of information will jeopardise other enforcement activities
 - Council is still investigating a report
 - Council is aware of circumstances particular to the complainant, respondent or others involved that mean partial disclosure of information will mislead or give a distorted picture of the facts.
- 5.6 Right to an Internal Review**
- 5.6.1** Under the *Infringements Act 2006*, a person who has been served with an infringement notice or a person acting on that person's behalf with the first-mentioned person's consent, may apply to Council for a review of the decision to serve the infringement notice if the person believes the decision:
- was contrary to law or involved a mistake of identity
 - that special circumstances apply to the person
 - the conduct for which the infringement notice was served should be excused having regard to any exceptional circumstances relating to the infringement offence
 - that the person was unaware of the notice having been served.
- 5.6.2** An application for review must be made in writing and the person conducting the review must not have been involved in issuing the infringement. Council has appointed an Infringement Oversight Officer who sits within the Legal and Governance team, independent of the regulatory teams.
- 5.6.3** In the event a decision is made to confirm the decision to issue an infringement and the person issued the infringement is still dissatisfied, the person can elect to have the matter heard before a Magistrate.
- 5.7 Council undertaking works following a default**
- 5.7.1** Failure to comply with orders and notices may result in further enforcement action, such as commencement of a prosecution or applying for an Injunction at a relevant court.

5.7.2 Where a respondent fails to do a thing that is required by law and the necessary action has not been carried out in the time allowed without good reason, Council can undertake the required work. Where work in default is undertaken, Council may seek to recover all costs, using any statutory means available.

5.7.3 The decision to carry out action in default will be made by the relevant Manager or in cases related to a building matter under the provisions of an Emergency Order, the MBS.

5.8 Shared enforcement responsibility

5.8.1 Some reports will raise matters involving shared regulatory responsibilities between Council and other authorities.

5.8.2 Council recognises that collaboration and cooperation between authorities to address issues of shared regulatory responsibility is the best approach. Where there are shared legislative responsibilities, Council staff will liaise with relevant authorities to establish:

- which authority will take the leading role on any joint investigation
- what activities each authority will carry out
- responsibilities for updating an individual where relevant
- protocols for exchanging confidential information between the relevant authorities.

5.9 Role of Councillors in compliance and enforcement

5.9.1 The *Local Government Act 2020* does not allow Councillors to direct Council staff in the exercise of their power or in the performance of their duty or function.

5.9.2 Councillors can, where an individual raises a concern with them, direct their enquiry to the relevant team in accordance with the Councillor and Staff Interactions Policy.

5.9.3 Councillors cannot request information that the Councillor is not lawfully entitled to, including information relating to current litigation and enforcement proceedings.

6.0 HUMAN RIGHTS CHARTER COMPATIBILITY

This policy has been assessed as being compatible with *the Charter of Human Rights and Responsibilities Act 2006*.

7.0 ASSOCIATED DOCUMENTS

- Mornington Peninsula Council and Wellbeing Plan
- Mornington Peninsula Domestic Animal Management Plan
- Engaging Legal Services Policy
- Councillor and Staff Interactions Policy
- *Infringements Act 2006*
- *Privacy and Data Protection Act 2014*
- Municipal Building Control Intervention Filter Criteria Guideline (VMBSG)

- Work Instruction – Interim Building Compliance & Enforcement Procedure
- Work Instruction – Significant Work Requiring Investigation
- Building Emergency Response Procedure (Draft)

8.0 DEFINITIONS

Authorised Officer	Refers to a Council staff member that has been appointed by Council under s 224 of the <i>Local Government Act</i> as an authorised officer for the purposes of the administration and enforcement of any Act, regulations or local laws which relate to the functions and powers of Council.
Authorisation	Refers to the appointment of an Authorised Officer under s 224 of the <i>Local Government Act</i>
Delegation	Refers to any specific power/s delegated to a Council
VCAT	Refers to the Victorian Civil and Administrative Tribunal

9.0 POLICY SPONSOR

The Manager – Community Safety, Health and Compliance is responsible for overseeing the application and review of this policy.

10.0 DOCUMENT CONTROLS

Council will review this policy every four years or more often as required.

10.1 Document Version Table

Summarise the key changes made to the document to provide a quick understanding of the updates. This policy will be reviewed within four years or earlier, as required.

Document Version Control				
Version	Section	Revision Description	Date Revised	Approved by

Administrative Updates

It is recognised that from time to time, circumstances may change leading to the need for minor administrative changes to this document. Where an update does not materially alter this document, such a change may be made administratively. Examples include a change to the name of a Shire department, the change to an existing policy or document referred to in this policy, and minor updates to legislation and the like which does not have a material impact. However, any change or update which materially alters the document must be by resolution of Council.