

4. Proposed adoption of Enforcement and Compliance Policy

This report proposes the adoption of an Enforcement and Compliance Policy that provides a clear direction regarding enforcement and compliance issues in dealing with unlawful activity. The Policy is to be supported by a number of specific procedures and guidelines to further guide staff enforcement and compliance approaches.

Group Manager, Planning and Environment

BACKGROUND

10 Enforcement and compliance issues have been guided for the past 6 years by staff procedures based on the NSW Ombudsmen's "Local Government Enforcement Guidelines". These Guidelines have been used at Bega Valley Shire since August 2003. Council has not had a specific Enforcement or Compliance Policy.

Following the Department of Local Government "Promoting Better Practice Review of Bega Valley Shire" in 2007, Council is required to formally adopt a Policy that provides clear guidelines for the exercise of enforcement and compliance options in dealing with requests or complaints about unlawful activity.

DISCUSSION

20 In the course of its normal operations Council receives many reports and requests regarding unlawful activity in the Shire. Unlawful activity in this context is an activity or work that is contrary to the terms and conditions of consents, approvals, notices, construction consents, licences, planning instruments or applicable legislation.

Council has a clear obligation to properly record and consider all reports and requests regarding unlawful activity. Council has an effective data management system (DATAWORKS) for managing reports and requests regarding unlawful activity and this is proving to be a good risk management practice. Failure to deal adequately with such reports or requests may though expose Council to claims for compensation and the expense of litigation. Such failure also has the potential to undermine Council's role as a regulator.

30 The proposed Policy (attached) has been developed to ensure that matters involving unlawful activity are addressed promptly, consistently and effectively. The proposed Policy is also to be supported by the following documents:

- Enforcement and Compliance Guidelines;
- Parking Enforcement Guideline;
- Court Attendance Notice Procedures, and
- Penalty Infringement Notice Procedures.

These proposed documents have been substantially based on the 2003 NSW Ombudsmen's Local Government Enforcement Guidelines.

40 The application of the Policy is solely a function of staff under specific delegation from the General Manager. Council's delegation register was also reviewed and thoroughly upgraded as an earlier component of this project.

The proposed Policy and supporting Guidelines / Procedures provide practical steps in how to assess whether requests or reports of unlawful activity require investigation, options for dealing with unlawful activity, and how to determine whether enforcement action is warranted.

The proposed Policy and Parking Enforcement Procedure also addresses the recent requirements of the Department of Local Government's review of Local Government Parking Enforcement.

ISSUES

Legal

50 Under section 8 of the Local Government Act 1993 Council has a responsibility to ensure that its regulatory powers are carried out in a consistent manner and without bias. In addition, following Department of Local Government recommendations regarding the conduct of local government carparking and regulatory functions, Council has also been required to adopt specific policy and procedures to guide regulatory activity.

Policy

60 The adoption of a Policy for enforcement and compliance activities is in line with the Department of Local Governments (DLG) requirements and best practice. The Guidelines and procedures have been developed to assist staff in the implementation of the proposed Policy.

Consultation

The proposed Policy and supporting staff procedures have been based on the NSW Ombudsmen's "Enforcement Guidelines for Councils".

Resources (including staff)

Council's regulatory role will be supported by the adoption of the proposed Policy. The supporting staff procedures will also provide for improvements in the managing of regulatory activities.

CONCLUSION

70 The adoption of the proposed Policy will meet legal requirements as well as satisfy recommendations of the DLG regarding Council regulatory activities. The associated

guidelines and procedures that have been developed by staff will also ensure that Council's regulatory activities are conducted efficiently and in accord with best practice.

RECOMMENDATION

That the proposed Bega Valley Shire Council Enforcement and Compliance Policy (No. 4.3.4) be adopted.

Attachment 1 – Proposed Enforcement and Compliance Policy (No. 4.3.4)

4.3.4

Enforcement & Compliance Policy

| | | |
|-------------------------|-------|--------------------------------|
| POLICY GROUP | 4 | Planning & Environment |
| POLICY SUB GROUP | 4.3.4 | Enforcement & Compliance |
| VERSION | 1 | |
| DATE ADOPTED | | |
| RESPONSIBLE DIRECTORATE | | PLANNING & ENVIRONMENT |
| RESPONSIBLE MANAGER | | ENVIRONMENTAL SERVICES MANAGER |
| PLANNED REVIEW DATE | | March 2012 |

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OBJECTIVES

1. To establish clear procedures and guidelines for the management of Council's regulatory activities and the implementation of compliance action.
2. To ensure that regulatory matters are managed in a transparent and consistent manner and that the principles of natural justice and procedural fairness are followed.

BEGA VALLEY SHIRE COUNCIL (BVSC) POLICY

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- Council has an obligation under section 8 of the Local Government Act 1993 to ensure that regulatory powers are carried out in a consistent manner and without bias.
- Council will follow the principles of the 'NSW Ombudsmen's Enforcement Guidelines for Councils', the NSW Director of Public Prosecution 'Prosecution Policy and Guidelines' and the BVSC 'Enforcement and Compliance' and 'Parking Enforcement' Guidelines in regard the enforcement and compliance functions that comprise the procedures and guidelines associated with this Policy.

Policy implementation procedures, guidelines and documents

Reference No.

- 4.3.4(a) *Enforcement and Compliance Guidelines*
- 4.3.1(a) *Parking Enforcement Guidelines*
- 4.3.4(b) *Penalty Infringement Notice Procedures*
- 4.3.4(c) *Court Attendance Notice Procedures*

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Related BVSC policies

Policy No. Title

No. *Title*