

CENTRAL HIGHLANDS REGIONAL COUNCIL

SHOW CAUSE NOTICE

THE FACTS

WHAT IS A SHOW CAUSE NOTICE?

Queensland's planning legislation provides a range of development offences that may warrant investigation and enforcement. The most common development offences investigated by local governments are carrying out assessable development without a development permit and contravening conditions of a development approval.

Council as an enforcement authority has a responsibility for investigating and determining an appropriate response to development offences. 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 development permit.
- Non-compliance with development approval conditions.
- Building works or a structure in a dangerous or dilapidated state.
- Building works which have never received a final inspection certificate or certificate of classification.

As part of the investigation, council may issue a show cause notice if it reasonably believes there may be a contravention of the *Planning Act 2016*, the *Building Act 1975* or *Plumbing and Drainage Act 2018*. A show cause notice allows for procedural fairness (natural justice), giving a person the opportunity to provide their perspective as part of the investigation.

RECEIVING A SHOW CAUSE NOTICE

A show cause notice allows a person the opportunity to respond to council's allegations, before council takes any further action. A show cause notice is a formal document which:

- Sets out the grounds for council's understanding of the alleged offence; and
- invites you to respond to council, explaining why no enforcement action, such as issuing an enforcement notice, should be taken to resolve the issue.

The legislation requires that council gives a response timeframe of 20 business days. However, if there are compelling reasons that you may require further time to respond, please notify council prior to the date in the show cause notice and we can discuss the possibility of an alternative response timeframe.

In the event that an alleged offence poses a significant environmental or safety risk, an enforcement action may be taken by council without the giving of a show cause notice.

RESPONDING TO A SHOW CAUSE NOTICE

A show cause notice is a valuable opportunity for you to respond to council outlining what steps you intend to take to resolve the issue promptly or why you believe council should take no further action. However, you are not obligated to respond. If you do not dispute that there has been a contravention of the legislation, you might choose to advise council:

- What steps you intend to take to resolve the matter; and
- the timeframe for resolution.

Providing a response to a show cause notice enables council to determine whether it is reasonable to proceed with formal enforcement action (such as issuing an enforcement notice to remedy the breach of legislation) by assessing all the available information. Council will always first consider any advice of intentions to comply, restore or remediate in deciding whether or not to take further action.

If council needs clarification on a fact/s, we will contact you by telephone or email. However, if you would prefer a meeting to discuss the show cause notice, you are welcome to make an appointment with council.

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HOW TO RESOLVE THE MATTER

To resolve the matter, you may wish to consult a private certifier, a solicitor, or another professional 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.

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

Please refer to the case study below for an example of how a matter may easily be resolved.

Case Study:

In April 2018, council received a notification from a member of the public of a suspected unlawful shed that had been built on a residential property.

A week later, council inspected the property and sent the property owner a show cause notice, stating that it believed a development offence had occurred under Section 163 of the *Planning Act 2016*. The notice requested a response by the end of May 2018.

The owner then sought advice from a private certifier, who confirmed that the structure required a building approval and advised the appropriate timeframe for obtaining an approval would be three months.

At the end of May 2018, the owner wrote to council confirming that they had engaged a private certifier and required three months in which to have the structure approved. Council considered this response and decided not to take any enforcement action as the owner had taken the right steps towards achieving compliance with the legislation.

Council finalised the investigation after the shed was approved in June 2018.

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. Council will not reveal the source or details of a complaint or complainant to a third 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.

For more information

Visit:

www.centralhighlands.qld.gov.au

Email:

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Phone:

Central Highlands Regional Council
1300 242 68
or request a face-to-face meeting.

