

BUILDING ENFORCEMENT NOTICE INFORMATION SHEET

This information sheet contains important information that you should know about your Enforcement Notice.

Why have I received a Notice?

Council has formed the view that you have breached a particular matter in the *Planning Act 2016*, the *Building Act 1975* or its subordinate regulation or technical codes. This breach is stated in the Notice, and now requires you to take action stated to remedy the offence.

Usually the Council becomes aware of the problem in one of three ways:

1. a Customer Request is made by your neighbour or someone else who is in a position to know the circumstances; or
2. the problem was discovered during a property search (ordered by the purchaser's solicitor if you are selling your property); or
3. a Council officer noticed the problem while performing other duties.

Purpose of the Enforcement Notice

The purpose of an Enforcement Notice is very specific in that it requires the matters identified to be resolved in a certain way and within certain time frames.

Council has served this Notice on you to enforce compliance and ensure the safety and well being of the community.

When the building, structure or building work is dangerous

This may be the first time that you have become aware of the problem. Ordinarily, unless a matter is dangerous (such as an unfenced swimming pool) or minor (like a missing stormwater downpipe or the like), the law says that Council must issue a Show Cause Notice antecedent to an Enforcement Notice either because you could not 'show cause' or that the offence is dangerous or minor.

Failing to comply with the Notice

It is an offence against section 168 of the *Planning Act 2016* to fail to comply with this Enforcement Notice, the maximum penalty of which is 1665 penalty units, currently the equivalent of \$210,039.

Because this Enforcement Notice is issued either under section 248 (Enforcement Notices) of the *Building Act 1975*, or section 170 (Notifying about enforcement notices) of the *Planning Act 2016*, if you fail to perform any work required to be performed under this Enforcement Notice, the Council may be able to enter the premises and perform the work under the *Local Government Act 2009*. Amounts incurred by the Council become a debt owing to the Council and can be recovered against the land as if it were an overdue rate.

Entry to land by Council Officers

Authorised Council officers may, under this Notice, inspect the premises at any reasonable time (other than at night) to check that work required to be undertaken by this Notice has been undertaken and completed in accordance with the *Planning Act 2016*, the *Building Act 1975* or its subordinate regulations or technical codes.

When demolition is required

If the Council believes that it is not possible and practical to repair or rectify the building or structure, nor to secure the building or structure (whether by systems of support or in another way), nor to fence off the building or structure to protect persons, nor to cleanse, purify and disinfect the building or structure, Council will ask you to demolish the building or structure to remedy the offence. This is a requirement of section 249 of the *Building Act 1975*.

What if I remedy the offence?

If you remedy the offence before the expiry of the Enforcement period stated on the Notice, you should notify Council in writing or by telephone and arrange for an inspection (to establish compliance). Once compliance has been achieved, the Notice may be lifted.

Appeals under the Building Act

If the Notice was given to you under the *Building Act 1975*, you have rights to appeal to the Building and Development Dispute Resolution Committee against the giving of the Enforcement Notice. Any appeal must be started:

- within twenty (20) business days after the day that the Enforcement Notice is given; or
- if the Enforcement Notice is given in relation to a dangerous building or structure, then such appeal must be started within five (5) business days after the Enforcement Notice is given.

If the Council considers that the building, structure or building work is not dangerous, the lodging of a Notice of Appeal stays the operations of the Enforcement Notice until:

- the Building and Development Dispute Resolution Committee, on the application of the Council, decides otherwise; or
- the appeal is withdrawn; or
- the appeal is dismissed.

For further information on your rights to appeal and the required forms and fees contact:

Building and Development Dispute Resolution Committees

Telephone: 1800 804 833

Fax: (07) 3237 1248

Postal address: GPO Box 2457, Brisbane, Qld 4001

Email: registrar@qld.gov.au

Web: <http://www.hpw.qld.gov.au/construction/buildingplumbing/disputeresolution/Pages/default.aspx>



Appeals under the Planning Act 2016

If the Notice was given under the *Planning Act 2016*, an appeal may be made to a tribunal or the Planning and Environment Court against the giving of the Enforcement Notice. Any appeal must be started within twenty (20) business days after the day that the Enforcement Notice is given.

However, the lodging of a Notice of Appeal does not stay the operation of the Enforcement Notice if:

- the Council believes that the work is a danger to persons; and/or
- the Council believes that the work is a risk to public safety.

If you intend to appeal the Notice to the Planning and Environment Court, you should seek advice from your legal advisor.

Issuing more than one Notice

You may have received more than one Notice. Notices may in certain circumstances be issued under more than one piece of legislation.

For example, if a building is being constructed with an approval and as a result of that work is dangerous a Notice may be given under:

- Section 163 (carrying out assessable development without permit) of the *Planning Act 2016*, for carrying out building work that is assessable development; and
- Section 248 (1)(b) (Enforcement Notices) of the *Building Act 1975* on the basis that the building, structure or building work is dangerous.

The important thing to note is that one offence may allow more than one Notice to be issued. Where Notices are to be issued under both the *Planning Act 2016* and the *Building Act 1975*, two separate Notices must be given, as the requirements for Notices under each Act are different.

If you are required to lodge a development application

You are free to lodge a development application with Gympie Regional Council or a Private Certifier of your choice.

If you are required by this Notice to apply for a development application, information is available from the Building & Plumbing Section.

For further information, contact an appropriate officer at the Council's Planning & Development Directorate between 8am to 5pm Monday to Friday.

Gympie Regional Council
Planning & Development Directorate
29 Channon Street
PO Box 155
GYMPIE QLD 4570
Ph: (07) 5481 0490