

SHOW CAUSE INFORMATION SHEET

This information sheet contains important information that you should know about your Show Cause 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, in the way stated in the notice.

Council will generally become 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.

If you are selling your property

As a normal part of the conveyancing process, the purchaser's solicitor may request Council to conduct an inspection of the outside of the premise to establish if there have been any unlawful building works carried out. If this is found to be the case, Council will as a matter of course, issue a show cause notice.

Even though there is a contract of sale against the property, you are still the registered owner until such time that the settlement has been effected, and therefore the notice will be issued against you and not the purchaser. Unless specifically contracted otherwise, this should not affect the sale, and any responsibility for unlawful work should pass to the purchaser upon sale.

Confidentiality

Council is required by the *Building Act 1975* to keep a register of notices available for public inspection. However, the Council treats all customer requests and investigations as confidential. A Council officer will not reveal the source or details of a customer requests or complainant to a third party. Information about the customer requests is available by application to Council under the provisions of the *Information Privacy Act 2009* for a fee. However, details such as the name and address of the complainant are privileged information and will be suppressed. For further information you should contact the Corporate & Community Services Directorate at Gympie Regional Council.

What is a Show Cause Notice?

A Show Cause Notice is an official document inviting you to "show cause" or justify to Council why Council should not issue you with an Enforcement Notice to remedy the alleged breach of legislations. If you do not attend the hearing or respond in one or the other ways indicated in the notice, Council will issue an Enforcement Notice. Failure to comply with an Enforcement Notice is of itself an offence under both the *Building Act 1975* and the *Planning Act 2016* carrying a penalty of 1,665 penalty units, currently \$210,039, so it is very important that you make a representation to Council or remedy the breach.

Do I have to attend a hearing?

You are encouraged to make representations in writing, outlining why you believe Council should take no further action. It is helpful if you can furnish photos, a report and letters of support from your affected neighbours (if a relaxation is required), or any other information that you feel may help your case. You may wish to employ the services of an architect or an engineer, if appropriate, to make an inspection and write a report about the matter outlined in the show cause notice to support your case. *You do not have to attend in person if you do not want to.*

Written representation will allow Council officers to make a thorough consideration of all the relevant matters. If they have further questions and/or need clarification on some point, they will contact you (or your professional) usually by telephone, and allow you the opportunity to make an explanation.

However, if you wish to have a personal meeting, you can make an appointment with the appropriate officer at the Council's Planning & Development Directorate on telephone number (07) 5481 0490 between 8am to 5pm Monday to Friday.

Procedural Fairness

The *Building Act 1975* and the *Planning Act 2016* allow persons to "show cause" as to why an enforcement notice should not be issued. The "rules of natural justice" or procedural fairness are applied to a show cause proceeding. In most cases the rules will require:

- * that a person be given sufficient time within which to show cause. Twenty (20) business days is the minimum requirement. However, requests to delay will be seriously considered by the Council should circumstances warrant it and these are made in writing and received by the Council prior to the expiration of the notice;
- * that a person be given all documents and information that set out the nature of the customer requests made against them;
- * that the person be given an opportunity to be heard whether in writing or orally;
- * that the person be allowed to be represented by a lawyer or agent;
- * that the person considering the show cause be unbiased;
- * that the decision to proceed further with the service of an enforcement notice be based upon "logically probative evidence", not speculation or suspicion.

If you can't "show cause"

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. Despite this requirement, it is very often the case that you simply cannot "show cause". For example, if you have built a garage without a development approval required by *Planning Act 2016* section 163, it will be virtually impossible to show why the Act does not apply to you and why you should not be required to obtain a Development Approval.

If you feel that you cannot show cause, it will be helpful to concede this in writing outlining how you intend to remedy the offence. Council will need to know:

1. what work program you will put into place to remedy the offence; and
2. how long it will take; and
3. when you will comply.

If you have attended a hearing or made representations in writing about the Show Cause Notice and Council has deliberated and decided that you cannot "show cause", an Enforcement Notice will be issued immediately.

What if I remedy the offence?

If you remedy the offence before the expiry of the "show cause" period stated on the notice (minimum 20 business days), you should notify Council in writing or by telephone to arrange for an inspection (to establish compliance) so that the notice may be lifted.

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 without 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.

Appeals

A show cause notice is not appealable because it is merely giving you an opportunity to "show cause" why an alleged offence should not be remedied by you (or by Council on your behalf if you fail to comply).

However, an Enforcement Notice, when/ if you receive one, is able to be appealed to the Building and Development Dispute Resolution Committee. If you receive an enforcement notice subsequent to not "showing cause", you will receive more details on where to make an appeal at the time.

Still need help?

An officer of Council is available to answer any questions if you wish to have a personal meeting, you can make an appointment with the appropriate officer at the Council's Planning & Development Directorate on telephone number (07) 5481 0490 between 8am to 5pm Monday to Friday.