

# FACT SHEET

## Building Enforcement Notice

### What is an enforcement notice?

An enforcement notice is a statutory notice which requires you to take particular actions to remedy an offence. The notice provides you with the opportunity to consider your options and resolve the matter in a timely way.

Council can issue an enforcement notice under the following legislation:

- section 168 of the *Planning Act 2016* on the basis that a person has carried out building works which are assessable development without an effective development permit;
- section 248 of the *Building Act 1975* on the basis that the building, structure or building work is dangerous, dilapidated, unfit for use or occupation, or is filthy, infected with disease or infested with vermin, or there is no certificate of classification for the building.

### Why have I received an enforcement notice?

Council reasonably believes that there is an offence involving a building or a structure for which you are liable, and it has not been remedied.

As part of an investigation, Council may have first given you a show cause notice, giving you an opportunity to provide your perspective in the matter. However, sometimes Council will proceed directly to an enforcement notice if it considers appropriate to do so (for example, where a structure is a threat to health and safety).

Council will only issue an enforcement notice after determining that it is reasonable in all the circumstances.

### Requirements of an enforcement notice

The notice will require you to either refrain from committing the offence, or remedy the situation in the way stated in the notice (or both).

Requirements commonly include:

- stop carrying out development;
- demolish or remove a work;
- apply for a development permit;
- to repair or rectify the work, secure the work, or fence off the work to protect persons.

Each requirement will carry a particular timeframe. For example, Council may require you to obtain a building development approval within 3 months.

### Do I have to comply with the requirements of the notice?

Whilst Council always encourages the public to voluntarily comply with legislation, it has a duty to take particular actions to protect the health and safety of the community.

Please be aware that if you do not comply with the requirements of the enforcement notice within the timeframes, Council may:

- issue a penalty infringement notice;
- initiate legal proceedings at the Magistrates Court or Planning and Environment Court; or
- carry out the required work and recover the cost of works pursuant to the *Local Government Act 2009*.

### Resolving the matter

To resolve the matter, you may wish to employ the services of a private building certifier, architect, consultant, solicitor or engineer 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. Information about building laws is available at:

<http://www.hpw.qld.gov.au/construction/BuildingPlumbing/Building/BuildingLawsCodes/Pages/default.aspx>

As an example of how a matter may be easily resolved, refer to the **case study**.

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

### Appeal of a notice

You may appeal the enforcement notice to the Building and Development Dispute Resolution Committee against the giving of the notice. Generally, an appeal must be started within **5 business days** if the notice is for a dangerous building or structure or **20 business days** if the notice is for any other purpose.

However, if you do have concerns, Council would urge you to immediately raise these with the responsible Council officer to avoid progressing to a costly appeal when your concerns might be easily resolved. If you do intend to proceed with an appeal, you would be encouraged to seek independent legal advice.

#### Case study

Council issued an enforcement notice for an alleged breach of section 163 of the *Planning Act 2016*, for constructing a deck without a building approval.

The notice required the owner to:

- Provide a temporary fence around the deck to prevent public access;
- Obtain a building development approval from a building certifier and provide Council with a copy of the decision notice.

The notice gave the owner a 2 week period to construct the temporary fence and a further 3 month period in which to obtain the approval.

The owner immediately installed the temporary fence and called Council to inspect. Council was satisfied that the first requirement had been complied with. Within 2 months, the owner sought an approval from a building certifier and gave Council a copy of the decision notice.

Upon review of the matter, Council determined that the owner had complied with both requirements of the enforcement notice. No further action was taken.