

# FACT SHEET

## Building Show Cause Notice

### Why have I received a show cause notice?

As a local authority, Council has responsibility for investigating matters under the building legislation. 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 building development approval;
- building works or a structure in a dangerous or dilapidated state;
- a building that is unfit for occupation; or
- building works which have never received a final inspection certificate or certificate of classification.

As part of the investigation, Council has given you a show cause notice because it reasonably believes there may be a contravention of the *Planning Act 2016* or the *Building Act 1975* for which you may be responsible.

The opportunity to hear your perspective is an important part of the investigation.

### What is a show cause notice?

Council is committed to being fair to you and giving you the opportunity to respond, before taking any further action. A show cause notice is a formal document which:

- sets out the basis 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 we give you a response timeframe of twenty 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 notice and we can discuss the possibility of an alternative response timeframe.

### Responding to a show cause notice

Whilst a show cause notice is an opportunity for you to respond to Council, you are not obligated to respond. However, it is a valuable opportunity for you to write to Council outlining what steps you intend to take to resolve the issue, or why you believe Council should take no further action. 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 giving you an enforcement notice which will require particular actions) by assessing all of the information at hand. Council will always first consider any advice of intentions to comply, discretionary or mitigating circumstances or defences that you raise in your response to the show cause notice.

If Council needs clarification on some point, we will contact you by telephone or email. However, if you would prefer to have a meeting to discuss the show cause notice, you are welcome to make an appointment with the representative named in the notice.

### How to resolve 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>

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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 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.

### 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.

In particular, 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 detailed information on privacy matters, please contact Council on (07) 3412 3412.

### Case study

In July 2017, Council inspected a residential property and discovered that a carport had been built without a building approval.

A week later, Council 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 August 2017.

The owner then sought advice from a private building certifier, who confirmed that the structure required a building approval and advised the approximate timeframe for obtaining an approval would be 3 months.

At the end of August 2017, the owner wrote to Council confirming that they had engaged a private certifier and required 3 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.

After the carport was approved in September 2017, Council finalised the investigation.