
Compliance and Enforcement Policy



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1 Introduction

Council's regulatory responsibilities are applicable to actual unlawful activity, as well as a failure to take action (in order to be compliant with certain legal requirements). For simplicity, this policy refers to both an act and/or an omission by an alleged offender as 'unlawful activity'.

This policy distinguishes between a 'report alleging unlawful activity' and a 'complaint'.

For the purposes of this policy, a report alleging unlawful activity is where an individual expresses concern in relation to alleged unlawful activity, or they request service from council about such matters. Council considers that a response or resolution to a report alleging unlawful activity is explicitly or implicitly expected by the individual, or may be legally required.

A complaint is where an individual expresses dissatisfaction about Council services, staff or the handling of a complaint. Therefore, a complaint may arise where an individual claims that Council staff has failed to take action in relation to a report alleging unlawful activity. A complaint will be recorded separately and responded to in accordance with Council's *Complaints and Other Feedback Policy* (POL-016).

2 Purpose and scope

This policy provides information for all internal and external stakeholders and interested parties about Council's position on compliance and enforcement matters in the local government area.

The purpose of this policy is to provide structure for consistency and transparency in decision making, and to facilitate a proportional approach to compliance and enforcement. It is also intended to assist Council staff to act promptly, effectively and consistently in response to allegations of unlawful activity.

This policy outlines matters to be considered at the various stages of the enforcement process from the receipt and investigation of reports alleging unlawful activity, through to what enforcement option Council will choose and whether to commence criminal or civil proceedings.

In certain circumstances Council will have shared enforcement responsibilities with other regulatory authorities. This policy sets out a collaborative and cooperative approach to such matters. Advice and guidance is also provided on the role of Council in building and construction compliance matters where there is a private certifier, and the role of Councillors in enforcement.

Responsible Council staff are not limited by this policy in their use of discretion and exercise of official functions. The full circumstances and facts of each case need to be considered and a decision made on the merits.

3 Organisational approach

Compliance and enforcement plays a significant role in supporting and maintaining community values which seek to:

1. prevent or minimise harm to health, welfare, safety, property or the environment;
2. improve the safety and amenity of residents and visitors to the area;
3. promote social policies (e.g. to preserve or protect the environment);
4. manage risks;
5. uphold social order;
6. meet the expectations of the community;
7. make the regulated community aware of their legal obligations and how to comply.

Council has a wide range of powers to intervene and regulate a variety of issues, however it does not have unlimited resources or a legal expenses budget to enable involvement and resolution of every matter in terms of its statutory powers provided under the various Acts and Regulations.

Council needs to ensure it utilises its limited resources and legal budget to achieve outcomes that will be of most benefit to the public interest.

Council generally will not action compliance and enforcement matters:

- a) that only impact the interests of private individuals and/or;
- b) that are of a relatively minor nature and/or;
- c) that do not pose a risk to public health and safety or cause environmental harm and/or;
- d) where individuals have recourse to alternative avenues for resolution.

In such cases Council may provide limited assistance through the provision of advice and direction associated with obtaining information and alternative means of resolution with customers to be advised accordingly.

4 Policy objectives

The intent of this policy is to establish clear guidelines and protocols for Council staff in the management of Council's regulatory activities.

It provides workable guidelines on:

1. responding to reports alleging unlawful activity;
2. assessing whether reports alleging unlawful activity require investigation;
3. deciding on whether enforcement action is warranted;
4. options for dealing with confirmed cases of unlawful activity;
5. taking legal action;
6. implementing shared enforcement responsibilities.

The policy also provides advice and guidance on:

- a) the role of the Principal Certifying Authority; and
- b) the role of Councillors in enforcement.

5 Application

This policy applies to regulatory issues within Council's area of responsibility including, but not limited to:

1. development control
2. building control
3. swimming pool safety
4. unauthorised vegetation removal
5. pollution control
6. environmental health
7. public health and safety
8. water and sewer
9. septic systems
10. control over animals
11. food safety
12. fire safety
13. unauthorised use of council managed land
14. parking and vehicle offences
15. sediment and erosion
16. sewer / water / stormwater infrastructure
17. noxious weeds

A comprehensive list of matters and Council's response is provided within Appendix 1, Compliance Response Framework.

6 Compliance and enforcement principles

The following are the principles that underpin Council actions relating to compliance and enforcement:

6.1 Accountable and transparent

1. acting in the best interests of public health and safety and in the best interests of the environment;
2. ensuring accountability for decisions to take or not take action;
3. acting fairly and impartially and without bias or unlawful discrimination;
4. providing information about compliance and enforcement priorities and reasons for decisions to improve understanding and certainty and promote trust by the regulated community;
5. ensuring meaningful reasons for decisions are given to all relevant parties, particularly when there is a departure from this policy;
6. acting on any complaints or concerns about the conduct of compliance officers in accordance with Council's complaints management policy and procedures;
7. advising people and organisations subject to enforcement action of any avenues available to seek an internal or external review of a decision.

6.2 Consistent

1. ensuring all compliance and enforcement action is implemented consistently;
2. encouraging reports about possible unlawful activity by acting reasonably in response to the circumstances and facts of each matter.

6.3 Proportional

1. ensuring the level of enforcement action is proportionate to the level of risk and seriousness of the breach;
2. making cost-effective decisions about enforcement action;
3. taking action to address harm and deter future unlawful activity.

6.4 Timely

Ensuring responses to reports alleging unlawful activity and decision-making in relation to those is consistent with the prescribed response times outlined Appendix 1, *Compliance Response Framework*.

7 Responsibility

Council receives information about alleged unlawful activity from members of the public, contact from other government agencies and information gathered by its officers during proactive inspections.

All Council staff who deal with reports alleging unlawful activity are responsible for implementing this policy. Council staff are also responsible for ensuring that any other possible unlawful activity identified as a result of an inspection, proactive enforcement or other activity is referred to the appropriate business unit of Council.

Council staff are required to:

1. treat all relevant parties with courtesy and respect;

2. communicate with all relevant parties when required and requested, such as at the conclusion of the investigation;
3. make full and proper records in relation to the assessment and investigation of reports alleging unlawful activity, including reasons for any decisions;
4. inform all relevant parties of reasons for decisions;
5. provide as much information as possible to all relevant parties about the outcomes of investigations to show that adequate and appropriate action was taken and/or is proposed to be taken in response to a report of alleged unlawful activity;
6. provide information to all relevant parties about any avenues to seek an internal or external review of a decision.

All reports alleging unlawful activity are to be entered into Council's records management system and actioned in a timely manner by the appropriate business unit.

Only Council staff with appropriate delegations from the General Manager can undertake investigations or compliance and enforcement action in relation to this policy.

8 Responding to concerns about unlawful activity

8.1 How reports alleging unlawful activity will be dealt with by Council

Council will record and assess every report alleging unlawful activity with further action to be determined having regard to Appendix 1, *Compliance Response Framework*.

Council will respond to every such report unless the person raising the matter has indicated they do not wish to receive a response about Council's handling of the matter, or the report is anonymous.

Generally speaking, Council's objectives when dealing with reports alleging unlawful activity are to:

1. maintain the collective good and welfare of the community
2. prevent or minimise harm to health, welfare, safety, property or the environment
3. consider the broader public interest having regard to Council's priorities and any resource limitations
4. consider the report fairly and impartially

Not all reports will need to be investigated. A preliminary assessment of all matters will be made to determine the priority for a response, and whether investigation or other action is required.

An investigation of alleged unlawful activity may take a significant amount of time to complete, particularly where the issues are complex. If Council decides to investigate, staff will give the person who reported the alleged unlawful activity regular feedback on the progress of the investigation, and any reasons for delay. This does not mean that the individual can expect to be given details about every aspect of the investigation or information that would compromise the integrity of the investigation.

Decisions about what action should be taken by Council are made at the Council's discretion. This means the objective is that reports alleging unlawful activity will be resolved to the satisfaction of Council, not necessarily the person raising the matter. Council will generally try to resolve matters as quickly and informally as possible so as to avoid the need to take formal action.

Council staff will endeavour to manage the expectations of people who report alleged unlawful activity, and in particular explain that in the absence of sufficient evidence of unlawful activity, Council may be unable to take further action. They will also explain that Council does not have unlimited resources and powers to deal with reports alleging unlawful activity. If Council is

unable to fully investigate or take action on a matter because it is restricted by any legal or resource limitations this will be explained to the individual.

While there are certain statutory requirements that must be met in relation to notices and orders, Council staff will ensure that all explanatory communications are made in plain English and explain any technical language the law requires to be used.

8.2 Confidentiality of people who report allegations of unlawful activity

People who report allegations of unlawful activity should not expect that their identities will remain confidential from the subject of their report in all circumstances. Council may have to disclose information that identifies them in the following cases:

1. the disclosure is necessary to investigate the matter
2. their identity has already been disclosed to the subject of their report directly or in a publicly available document
3. the individual was consulted following receipt of a Government Information (Public Access) Act 2009 NSW application and did not object to the disclosure
4. the individual consents in writing to their identity being disclosed
5. the disclosure is required to comply with principles of procedural fairness
6. the matter proceeds to court

Council will take seriously any concerns an individual may have about their physical safety being endangered as a result of making a report. However, this may limit Council's ability to investigate the matter.

8.3 What Council expects from people who report allegations of unlawful activity

Council expects that people who report allegations of unlawful activity will cooperate and act in good faith in respect of any investigations conducted by Council. This includes:

1. providing a clear description of the problem (and the resolution sought if relevant);
2. giving all available and relevant information to Council, including any new information about the alleged activity that may become known to the person following the making of their report;
3. not giving any information that is intentionally misleading or wrong;
4. cooperating with Council's inquiries and giving timely responses to questions and requests for information;
5. treating Council's staff with courtesy and respect;
6. allowing the investigation to be completed without prematurely taking the matter to other agencies unless referred to by Council.

If these expectations of the individual are not met, Council may need to set limits or conditions on the continuation of the investigation or may need to restrict any further communications with the individual.

Any unreasonable conduct will be dealt with in accordance with Council's, *Managing Unreasonable Complainant* Policy (POL-033).

8.4 What parties can expect from Council staff

People who report alleged unlawful activity, as well as individuals or businesses that are subject to investigation and any enforcement action, can expect that Council staff will:

1. treat them with courtesy and respect
2. acknowledge their report and inform them about the possible duration of the investigation
3. advise them of the outcome of the allegation reported, including a full explanation of the reasons why that outcome was considered to be reasonable in the circumstances

4. clearly explain decisions in plain English
5. provide information about any relevant internal and external appeal processes that may be available
6. carefully assess any new information provided by any party after a decision has been made and advise whether further action will be taken

8.5 Complaints about Council's enforcement actions

Any complaints about Council's handling of reports alleging unlawful activity will be recorded separately and handled in accordance with Council's *Complaints and Other Feedback Policy* (POL-016).

Where a person or organisation subject to enforcement action merely disputes Council's decision to take enforcement against them, they will be directed to make representations in accordance with any relevant internal and external appeal processes.

Council staff will act on any complaints about the conduct of compliance officers in accordance with Council's *Complaints and Other Feedback Policy* (POL-016) and the *Code of Conduct Policy* (POL-031).

8.6 Anonymous reports

Anonymous reports will be recorded and assessed in accordance with the above requirements. However, because it is not possible to seek clarification or additional information about a matter, it may be more difficult to validate the allegations and therefore these reports are less likely to warrant investigation.

8.7 Unlawful activity outside business hours

Unlawful activity can occur outside business hours. In particular, Council may receive reports about matters such as offensive noise and failure to comply with limitations on hours of operation during nights and weekends.

Due to resource and operational capability restraints on Council, investigations into alleged unlawful activity outside business hours will be assessed on the basis of risk of *harm to health, welfare, safety, property or the environment* or it is otherwise in the public interest to take such action.

8.8 Neighbour disputes

Council will at times receive reports from parties involved in neighbour disputes seeking Council's involvement. When a dispute between two neighbours is a civil matter, Council will often have no authority to resolve the issue in dispute. Some reports will raise several matters, some of which will require Council's involvement and some of which will be personal to the parties.

Council staff will thoroughly assess such reports to determine whether there is evidence of any possible unlawful activity requiring action by Council. Care will be taken to explain which aspects of a report Council can deal with and which cannot be dealt with and why. Where possible, individuals will be provided with information about how to resolve neighbour disputes including referral information resources such as LawAccess and Community Justice Centres.

It is possible that one party will provide further information about a matter which changes Council's decision about whether it will become involved. In such circumstances, Council staff will carefully consider the matter before taking action and document reasons for the new decision. Relevant parties will be advised about the reasons Council has changed its position on a matter. Council staff will not change a decision about whether or not Council should be involved purely as a response to the conduct of an individual such as persistent demands or threats.

Council has adopted a Compliance Response Framework (The Framework) which details a wide range of the most common issues for which Council receives enquiries and requests for assistance. The Framework identifies matters that Council will generally deal with, the level of involvement for matters classified as a minor nature and the timeframes associated with matters requiring further investigation. See Appendix 1 Compliance Response Framework.

9 Investigating alleged unlawful activity

Not all reports alleging unlawful activity will warrant investigation. A preliminary assessment of all matters will be made to determine whether investigation or other action is required. Council will prioritise matters on the basis of risk to public safety, human health and the environment.

The Framework appended to the Enforcement Policy details response timeframes that will be used to investigate common unlawful activities. The Framework applies a risk based approach that reflects the relative potential for impact on public health and safety or environmental harm and a proportionate risk-based timeframe for response.

If there is insufficient information in the report to undertake a preliminary assessment, further information may need to be sought from the person who made the report or an inspection undertaken. Staff may also need to consult Council records and other internal business units to understand the relevant history and context of a matter.

9.1 Circumstances where no action will be taken

Council will take no further action if, following a preliminary assessment, it is identified that:

1. Council does not have jurisdiction to investigate or is not the appropriate authority to take action on the issues raised. Where there is another appropriate authority or course of action, Council may bring the matter to the attention of the authority or provide information and contact details to the individual. For example, NSW WorkCover for workplace safety matters, the NSW Environment Protection Authority for possible environmental offences and Community Justice Centres NSW for personal disputes;
2. the report relates substantially to a matter previously determined by Council and no new or compelling information is presented which would cause Council to change its earlier decision. In this case, staff will acknowledge the report and advise that no further action will be taken as no new information had been provided (other than where the person has previously been advised they would receive no further response);
3. the allegations relate to a lawful activity (e.g. where there is an existing approval or the activity is permissible without Council approval or consent being required);
4. the report is not supported with evidence or appears to have no substance;
5. the relevant Council Officer determines that investigation or other action would have an unreasonable impact on resources and/or is unlikely to achieve an outcome sufficient to justify the expenditure of resources.

9.2 Relevant factors guiding decisions as to whether to take action:

When deciding whether to investigate, Council will consider a range of factors including:

1. whether the activity is having a significant detrimental effect on the environment or it constitutes a risk to public safety;
2. whether the report is premature as it relates to some unfinished aspect of work that is still in progress;
3. whether the activity or work is permissible with or without permission;
4. whether all conditions of consent are being complied with;
5. how much time has elapsed since the events the subject of the report took place;
6. whether another body is a more appropriate agency to investigate and deal with the matter;

7. whether it appears there is a pattern of conduct or evidence of a possible wider spread problem;
8. whether the person or organisation reported has been the subject of previous reports;
9. whether the report raises matters of special significance in terms of the Council's existing priorities;
10. whether there are significant resource implications in relation to an investigation and any subsequent enforcement action;
11. whether it is in the public interest to investigate the report.

The above are factors for Council to consider and weigh in making a determination. Council staff are not limited in their use of discretion by these considerations and may decide to investigate based on these and other factors.

The objective of the processes Council staff use when investigating incidents of alleged unlawful activity is to:

- a) determine the cause of the incident;
- b) determine if there has been a contravention of law, policy or standards;
- c) gather evidence to the required standard to support any required enforcement action;
- d) determine any necessary action to mitigate the possibility of reoccurrence of similar incidents.

Any decision not to investigate an allegation of unlawful activity will be recorded and the reasons for that decision clearly stated.

Council has endorsed the NSW Ombudsman *Compliance and Enforcement Guidelines 2015* and NSW Ombudsman *Investigating complaints (a manual for investigations 2004)* to assist and guide its relevant internal procedures for investigations.

10 Taking enforcement action

When deciding whether to take enforcement action in relation to a confirmed case of unlawful activity, Council will consider the full circumstances and facts of the matter and the public interest. The following common considerations will assist Council staff in determining the most appropriate response in the public interest:

10.1 Considerations about the alleged offence and impact:

1. the nature, extent and severity of the unlawful activity, including whether the activity is continuing;
2. the harm or potential harm to the environment or public health, safety or amenity caused by the unlawful activity;
3. the seriousness of the breach, including whether the breach is merely technical, inconsequential or minor in nature;
4. the time period that has lapsed since the date of the unlawful activity.

10.2 Considerations about the alleged offender:

1. any prior warnings, instructions, advice that was issued to the person or organisation reported or previous enforcement action taken against them;
2. whether the offence was committed with intent;
3. whether the person or organisation reported has been proactive in the resolution of the matter and assisted with any Council requirements and instructions;
4. any mitigating or aggravating circumstances demonstrated by the alleged offender;
5. any particular circumstances of hardship affecting the person or organisation reported.

10.3 Considerations about the impact of any enforcement action:

1. the need to deter any future unlawful activity;
2. whether an educative approach would be more appropriate than a coercive approach in resolving the matter;
3. the prospect of success if the proposed enforcement action was challenged in court;
4. the costs and benefits of taking formal enforcement action as opposed to taking informal or no action;
5. what action would be proportionate and reasonable in response to the unlawful activity;
6. whether Council is prevented from taking action based on earlier advice given, ie. whether an estoppel situation has been created.

10.4 Considerations about the potential for remedy:

1. whether the breach can be easily remedied;
2. whether it is likely consent would have been given for the activity if it had been sought;
3. whether there is a draft planning instrument on exhibition that would make the unauthorised use legal.

10.5 Legal or technical issues

Where legal and/or technical issues are in question, Council staff will consider whether legal advice or professional advice from duly qualified staff or other experts should be obtained and considered. Council may also require a person subject to possible enforcement action to obtain professional advice in relation to issues of concern to Council for assessment as to whether further action is required.

10.6 Requirements of council staff considering enforcement action

Prior to taking enforcement action, Council staff will take into account the above considerations as well as the evidence gathered during their investigation. Council staff must act impartially, be mindful of their obligations under Council's Code of Conduct and not act as a decision-maker in relation to any matter in which they have a personal interest. Enforcement action will not be taken purely as a response to the conduct of an individual such as persistent demands or threats.

Council staff are required to maintain records about critical thinking and decision-making processes in relation to reports alleging unlawful activity and any enforcement action, as well as records of interactions with relevant parties. Council staff will at all times adhere to Council's internal approval processes prior to the commencement of any enforcement action.

Council staff will take steps to ensure that any enforcement action is taken against the correct person or organisation. Where there are multiple possible parties to an alleged unlawful activity, it will generally not be appropriate to take enforcement action against every person who may be liable for the alleged unlawful activity. In such circumstances, Council staff will be guided by legal advice in determining the appropriate persons to pursue.

10.7 Related enforcement guidelines

Other related guidelines may be implemented as required to assist staff with undertaking specific types of regulatory activity and the circumstances in which enforcement action will or will not be taken.

11 Options for dealing with confirmed cases of unlawful activity

Council will try to use the quickest and most informal option to deal with unlawful activity wherever possible unless there is little likelihood of compliance with such options. Council staff will use discretion to determine the most appropriate response to confirmed cases of unlawful activity

and may take more than one approach. Any enforcement action taken by Council will depend on the full circumstances and facts of each case, with any decision being made on the merits.

At all times, Council's key concerns are:

1. to prevent or minimise harm to health, welfare, safety, property or the environment;
2. to influence behavioural change for the common good and on behalf of the community.

The Framework (refer Appendix 1) identifies a range of common matters raised with Council including what action will or will not be taken, and the response times for those matters requiring an investigation response. Enforcement options to be considered by Council are ordered to reflect an escalation in response that is proportionate to the level of risk, the seriousness of the confirmed breach or the need for a deterrent.

11.1 Following up enforcement action

All enforcement action will be reviewed and monitored to ensure compliance with any undertakings given by the subject of enforcement action or advice, directions or orders issued by Council. Reports alleging continuing unlawful activity will be assessed and further action taken if necessary. If the unlawful activity has ceased or the work has been rectified, the matter will be resubmitted for follow up action to ensure compliance outcomes are met. Should initial enforcement action be found to have been ineffective, Council staff will consider other enforcement options.

Council will utilise its Request Management system to record, manage and monitor compliance actions.

12 Taking legal action

The Council and its delegated staff will be guided by legal advice in deciding whether to commence criminal or civil proceedings and will consider the following:

1. whether there is sufficient evidence to establish a case to the required standard of proof;
2. whether there is a reasonable prospect of success before a Court;
3. whether the public interest warrants legal action being pursued.

12.1 Whether there is sufficient evidence to establish a case to the required standard of proof

Council considers the decision to take legal action a serious matter, and as such will only initiate and continue proceedings once it has been established that there is admissible, substantial and reliable evidence to the required standard of proof.

The basic requirement of any **criminal** prosecution is that the available evidence establishes a *prima facie* case. The prosecutor is required to prove the elements of the offence beyond reasonable doubt.

In **civil** enforcement proceedings, Council will require sufficient evidence to satisfy the court that an actual or threatened breach has occurred on the balance of probabilities.

12.2 Whether there is a reasonable prospect of success before a Court

Given the expense of legal action Council will not take legal action unless there is a reasonable prospect of success before a Court. In making this assessment, Council staff will consider the availability, competence and credibility of witnesses, the admissibility of the evidence, all possible defences, and any other factors which could affect the likelihood of a successful outcome.

12.3 Whether the public interest requires legal action be pursued

The principal consideration in deciding whether to commence legal proceedings is whether to do so is in the public interest. In making this determination, the same factors to be considered when taking enforcement action apply (see Section 11, Taking enforcement action).

The following considerations relate more specifically to the decision to commence legal proceedings and will assist Council and its delegated staff in making this determination:

1. the availability of any alternatives to legal action;
2. whether an urgent resolution is required (court proceedings may take some time);
3. the possible length and expense of court proceedings;
4. any possible counter-productive outcomes of prosecution;
5. what the effective sentencing options are available to the court in the event of conviction;
6. whether the proceedings or the consequences of any resulting conviction would be unduly harsh or oppressive.

12.4 Time within which to commence proceedings

Council staff must be aware of legislative time limits in which enforcement proceedings must be commenced. Sometimes legal action will be statute barred despite good evidence that unlawful activity has occurred.

13 Shared enforcement responsibilities

Some reports will raise matters involving shared regulatory responsibilities between Council and other authorities including the Environment Protection Authority, the NSW Police Force, the Office of Liquor, Gaming and Racing, NSW Fair Trading, NSW Food Authority and Crown Lands.

Council recognises that collaboration and cooperation between authorities to address issues of shared regulatory responsibility is the best approach. To this end, where there are shared legislative responsibilities, Council staff will liaise with relevant authorities to establish:

1. which authority will take the leading role on any joint investigation;
2. which activities each authority will carry out;
3. responsibilities for updating an individual where relevant;
4. protocols for exchanging confidential information between the relevant authorities.

Council will reasonably endeavour to respond to requests for information or assistance on joint regulatory matters in a timely manner.

14 Role of council where there is a private certifier

Council retains its regulatory role and enforcement powers where a private certifier has been appointed the Principal Certifying Authority (PCA). However, if a private certifier is appointed the PCA, it is not Council's responsibility to ensure building and construction compliance.

Private certifiers have limited enforcement powers as the PCA. They have the power to issue a 'notice of intention to issue an order' to the owner or builder to comply with the conditions of consent or rectify any breaches. A copy of any 'notice of intention' issued by a private certifier must be provided to Council for assessment as to whether Council will enforce the notice by issuing an order.

Council and private certifiers will work together to resolve any issues when they arise to achieve compliance with the development consent or complying development certificate. Council staff will take steps to ensure individuals are clear about which agency performs which role.

15 Role of Councillors in enforcement

Decision-making relating to the investigation of reports alleging unlawful activity and taking enforcement action is the responsibility of appropriately authorised council staff or the Council itself.

Individual Councillors do not have the right to direct Council staff in their day-to-day activities. Councillors can help individuals who raise concerns with them by satisfying themselves that their Council's policies are being carried out correctly, however they cannot ignore or alter a policy in order to satisfy the demands of special groups.

The General Manager may present certain decisions to be ratified by the elected Council if this is necessary or desirable, and the Councillors may also have the right to call for a report about particular issues to a Council meeting.

16 Delegations

Council staff delegations for taking action under this policy are included in Council's Delegation Register.

17 Other resources

The NSW Ombudsman website has the following helpful resources at www.ombo.nsw.gov.au:

- Managing unreasonable complainant conduct - a model policy and procedure
- Managing Unreasonable Complainant Conduct Manual 2012
- The Rights Stuff - Tips for making complaints and solving problems
- Effective complaint handling guidelines - 2nd edition
- Managing information arising out of an investigation - Balancing openness and confidentiality
- Reporting of progress and results of investigations
- Good Conduct and Administrative Practice
- Options for Redress
- Investigating Complaints - A manual for investigators
- Enforcement guidelines for Councils
- Better Service and Communication for Council
- Prosecution Policy of the Commonwealth (2014) Guidelines for the making of decisions in the prosecution process
- NSW Planning (2010) Prosecution Guidelines

18 Definitions

The following are the definitions of key terms in this policy:

Complaint: Is an expression of dissatisfaction made about Council services, staff or the handling of a complaint, where a response or resolution is explicitly or implicitly expected or legally required.

Refer also to Council's *Complaints and Other Feedback Policy* (POL-016).

For the purposes of this policy, a complaint does not include a:

1. report alleging unlawful activity (see definition below);
2. request for information about a Council policy or procedure;
3. request for an explanation of actions taken by Council;
4. request for internal review of a Council decision.

Enforcement: Actions taken in response to serious or deliberate contraventions of laws.

Regulation: Using a variety of tools and strategies to influence and change behaviour to achieve the objectives of an Act, regulation or other statutory instrument administered by Council.

Report alleging unlawful activity: An expression of concern, or a request for service in relation to alleged unlawful activity, where a response or resolution is explicitly or implicitly expected or legally required.

Unlawful activity: Any activity or work that has been or is being carried out contrary to the below and/or failure to take required action in order to be compliant with:

1. terms or conditions of a development consent, approval, permit or licence;
2. an environmental planning instrument that regulates the activities or work that can be carried out on particular land;
3. a legislative provision regulating a particular activity or work;
4. a required development consent, approval, permission or licence.

19 Key Responsibilities

Position	Directorate	Responsibility
Mayor	Council	To lead councillors in their understanding of, and compliance with, this policy and guidelines.
General Manager	Executive	To lead staff, (either directly or through delegated authority) in their understanding of, and compliance with, this policy and any related procedures. To approve resources to develop, implement and review this policy.
Directors	All Directorates	To communicate, implement and comply with this policy and any related procedures.
Council Leaders	All Directorates	To communicate, implement and comply with this policy and any related procedures To lead staff in their understanding of, and compliance with, this policy.
All Council officials	Council	To comply with this policy and any related procedures.

20 References

- NSW Ombudsman Compliance and Enforcement Model Policy 2015

21 Details of Approval and revision

- **Approval date:** 26/09/2022
- **Responsible Group:** Sustainable Places Group
- **Responsible Section:** Compliance and Regulatory Enforcement
- **Superseded policies/procedures:**
- **Next review date:** 28/08/2025

Table of amendments

Amendment	Authoriser	Approval ref	Date
This policy was reviewed with only minor amendments to formatting and spelling.	Council	2022/225	26/09/2022
The adopted compliance framework (within appendices) were adopted by Council however there is no change to the content of the policy, with the exception of minor formatting adding numbering for easier references to different sections of the policy.	Council	2019/156	12/09/2019

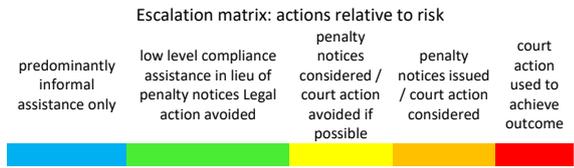
22 Appendix 1 – Compliance Response Framework

DESCRIPTION OF RISK	INITIAL RESPONSE TIME & RISK TO THE COMMUNITY					Escalation matrix: actions relative to risk →
	EXTREME	HIGH	MEDIUM	MINOR	MINOR	
	4 hours	Within 2 Working Days	Within 7 Working Days	Information Only **	No Action	
PLANNING BUILDING AND COMPLIANCE						
Dangerous structure adjoining public land, e.g. dilapidated awnings		✓				
Swimming pool fencing complaint on private land		✓				
Non-compliance with development consent or construction works governing environmental protection (operational machinery)		✓				
Development not in accordance with consent			✓			
Development carried out without consent / construction certificate			✓			
Right of way and covenant complaints, other than conditions of consent					✓	
Building works carried out without approval now made lawful by Exempt and Complying Development SEPP				✓		
Retaining wall (structurally unsafe) that potentially impacts public safety and/or neighbouring infrastructure			✓			
Boundary fence and retaining wall issues where the Dividing Fences Act applies - Community Justice Centre and the Local Court				✓		
Landform modification involving potential flooding impacts or potential property damage		✓				
Landform modification without consent			✓			
Unauthorised use of premises (requiring consent)			✓			
Short term holiday letting				✓		
Strata property disputes					✓	
Inadequate Sediment and Erosion Control, direct flow into waterway		✓				
Inadequate Sediment and Erosion Control not in accordance with consent		✓				
Inadequate Sediment and Erosion Control not direct flow into waterway but nuisance to public place		✓				
Inadequate Sediment and Erosion Control causing nuisance between adjoining neighbours (works not requiring consent)					✓	
ANIMALS						
Dog attacks Major - (e.g. imminent risk to public, where a person has been bitten or serious injury to other animals, or assistance to Police)	✓					
Dog attacks minor (after an event - minor or no injury to persons or animals or risk to public safety)		✓				
Dog - Dangerous, Menacing or Restricted Breed as per Companions Animal Act, no imminent risk to public safety, e.g. dog contained		✓				
Pick up of seized Dogs contained (Pound operating hours only)	✓					
Domestic roaming dogs - general complaint after the event.			✓			
Dog barking (complaints from 2 or more premises)			✓			
Barking Dogs Anon or one resident complainant only. (Dog owner to be given advice only)				✓		
Impounding of Cats - Council provides pound facility but no collection service					✓	
Roaming cats – nuisance				✓		
Breach of Companion Animals Act - identification, registration		✓				
Wild dogs and foxes on Council owned land			✓			
Stock on high use road	✓					
Stock on low use road		✓				
Stock Complaints General trespassing - Horses, Cattle, Sheep, Donkeys			✓			
Keeping of non-stock animals e.g. rabbits, birds, geese, ferrets, chickens, roosters - including enclosures, noise and odours				✓		
FOOTPATH AND CYCLEWAYS						
Footpath obstruction (immediate safety hazard - 8am - 5pm, 7 days per week - after hours Police matter)	✓					
Footpath obstruction, e.g. builder's material obstructing pedestrian access		✓				
Footpath obstructions, minor or nuisance			✓			
PARKING						
Parking traffic hazard (8am - 5pm, 7 days per week - after hours Police matter)	✓					
Parking - general complaints		✓				
Abandoned motor vehicles (posing immediate safety hazard, 8am - 5pm, 7 days per week - after hours Police matter)	✓					
Abandoned motor vehicles and articles (public place)			✓			
Road Offences illegal works general			✓			
ENVIRONMENTAL HEALTH						
Air Pollution - source occurring from commercial or industrial premises			✓			
Air Pollution - burning of prohibited items e.g. tyres, coated wire, paint and solvent containers	✓					
Air Pollution - Prohibited Lighting of Fires: Schedule 2 areas under POEO			✓			
Asbestos- inappropriate removal or burial of asbestos containing material on private land		✓				
Asbestos- building or structures containing asbestos or storage of asbestos on private land, no removal or active disturbance of material, unlikely to pose a threat to public health or safety				✓		

DESCRIPTION OF RISK	INITIAL RESPONSE TIME & RISK TO THE COMMUNITY					Escalation matrix: actions relative to risk →
	EXTREME	HIGH	MEDIUM	MINOR	MINOR	
	4 hours	Within 2 Working Days	Within 7 Working Days	Information Only **	No Action	
Nuisance from domestic smoke - BBQ's, domestic wood heaters, residential burning off				✓		
Rural and Agricultural nuisances including but not limited to burning of vegetation, noise, soil and erosion control issues (not entering waterways)					✓	
Land Pollution - Accumulation of waste, dumped or deposited waste on private land impacting on the public interest and or public health			✓			
Land Pollution public lands - rubbish dumping, littering		✓				
Odours - Residential and commercial garbage complaints: location of garbage bins, dog faeces, domestic odours					✓	
Noise Pollution - commercial and industrial impacting on residential areas affecting the community and or public interest			✓			
Neighbour to neighbour impact associated with domestic noise pollution complaints - e.g. air conditioners, heat pumps, amplified sound equipment, musical instruments, power tools, lawn mowers, leaf blowers, swimming pool pumps and motor vehicles/trail bikes				✓		
Water Pollution Incidents having an effect on waterways - Environmental degrading substances into waterways e.g. oil, paint, nutrient runoff - Failing Onsite Sewerage Management System into waterways	✓					
Urgent Response requests from other Agencies (i.e. NSW Police, HAZMAT, EPA, Ministry of Health, NSW Food Authority), relating to Food Poisoning Outbreak, Major Pollution Incidents, Notifiable Disease Outbreaks and Clandestine Drug Laboratories.	✓					
Complaints relating to regulated premises (food premises, skin penetration/hairdressers, beauty salons, cooling towers/ warm water systems, public swimming and spa pools, caravan parks, water carters)			✓			
Public swimming pool water quality			✓			
Unhealthy Condition of Premises - breeding of mosquitoes, vermin and pests, significant accumulation of waste, failing OSSM			✓			
Domestic green/unclean pools - no evidence of mosquito larvae					✓	
Unsanitary motels including bed bugs					✓	
Unightly premises - condition of property not deemed a public health risk					✓	
Mould in private residences					✓	
SEWER						
Urgent Response requests - sewer overflows - private line	✓					
Urgent Response requests - sewer overflows, Council reticulated service	✓					
Trade Waste Agreements - Compliance with conditions of approval			✓			
Private Sewer Pump Station Agreements - Compliance with conditions		✓				
Building in Vicinity of Sewers - Compliance with Council Policy for matters not requiring consent			✓			
Effluent Pumpout Agreements (Nana Glenn and Coramba)			✓			
Unauthorised connection to Council's Sewer infrastructure			✓			
STORMWATER						
Overland stormwater flow nuisances (private property)				✓		
Overland stormwater flow nuisances (Council owned property)			✓			
Stormwater nuisance (diversion / downpipes / guttering)			✓			
Overland stormwater flow nuisances associated with development consent			✓			
Unauthorised connection to Council's Stormwater infrastructure			✓			
WATER						
Water Restriction Breaches		✓				
Water Backflow Agreements - Compliance with conditions of approval		✓				
Unauthorised connection to Council's Water infrastructure			✓			
Water Carters Agreements - Compliance with conditions			✓			
Reclaimed Water Agreements - Compliance with conditions and management plan			✓			
Raw Water Agreements - Compliance with conditions			✓			
PARK AND RESERVES _ OPEN SPACES						
Public reserve breaches (unauthorised use)			✓			
Public land licence breaches (fitness, outdoor dining, surf school)			✓			
Illegal Camping public lands		✓				
SIGNAGE						
Illegal signage public place			✓			
TREES AND VEGETATION						
Overgrown land which exceeds the following criteria: a) The average height of grass on the land exceeds 500mm or one metre in any area, or b) The site has an accumulation of vegetation, rubbish or materials, which provides a harbourage for vermin.			✓			
Overgrown land which does not meet the above criteria					✓	
Unauthorised clearing of mapped prescribed vegetation or vegetation protected under SEPP (Coastal Management) 2018 (operational machinery)	✓					

DESCRIPTION OF RISK	INITIAL RESPONSE TIME & RISK TO THE COMMUNITY					Escalation matrix: actions relative to risk →
	EXTREME	HIGH	MEDIUM	MINOR	MINOR	
	4 hours	Within 2 Working Days	Within 7 Working Days	Information Only **	No Action	
Unauthorised clearing of prescribed vegetation (operational machinery)		✓				
Unauthorised clearing of protected native vegetation as determined by corporate mapping (ceased or historic works)			✓			
Enquiries regarding native vegetation not prescribed under the Preservation of Vegetation Controls					✓	
Non-compliance with development consent governing biodiversity protection (operational machinery)	✓					
Non-compliance with development consent governing biodiversity protection (works ceased)			✓			
Tree Disputes Between Neighbours (not prescribed vegetation under Preservation of vegetation controls)					✓	
Tree removal - public lands (removal in progress)	✓					
Tree removal - public lands (removal completed)			✓			
Noxious weeds			✓			
ROADS						
Road Opening Permits - works without a permit or non-compliance with permit		✓				
Driveway Applications - works without a permit or non-compliance with permit			✓			
Damage to local roads/kerb/footpath during construction			✓			
Unmade/unmaintained Council Road Reserves - no works identified within Capital Works Program; no high risk safety issues identified					✓	
Trading without approval public lands (Section 68 Local Government Act) – i.e. busking, vehicles for sale, stalls, mobile vendors		✓				

** Note: Information Only consists of:
 - Referral to Council / Government / Industry website
 - Posting a pamphlet / information sheet
 - Letter providing information



23 Appendix 2 – Escalation Matrix

Resolution Action	Escalation Matrix				
	Insignificant*	Minor*	Moderate*	Major*	Catastrophic*
Prosecution			✓	✓	✓
Court Order					✓
Closure direction			✓	✓	✓
Affirmative action i.e. initiate works to effect compliance with direction			✓	✓	✓
Penalty Notice			✓	✓	✓
Formal Order/ Direction/Prohibition		✓	✓	✓	✓
Formal Notice		✓	✓	✓	✓
Show cause	✓	✓	✓	✓	✓
Letter requesting undertaking	✓	✓	✓	✓	✓
Negotiated Outcome	✓	✓	✓	✓	✓
Formal Caution/Warning	✓	✓	✓	✓	✓
Civil dispute mediation	✓	✓	✓	✓	✓
Property Notation/Breach recorded	✓	✓	✓	✓	✓
Verbal advice only	✓	✓	✓	✓	
Information sheet	✓	✓			
No Action	✓				