



COMPLIANCE & ENFORCEMENT POLICY P2.0066.1

COMPLIANCE & ENFORCEMENT

DIVISION: *Planning and Environment Services*

BRANCH: *Environment & Health*

CATEGORY: 2

PART 1 - INTRODUCTION

1. BACKGROUND

- 1.1 One of Camden Council's roles is to act as an enforcement authority under a broad range of legislation. Council officers are often required to make decisions and use discretion about appropriate enforcement action when non-compliant issues are identified.

Council also has a responsibility under Section 8 of the Local Government Act 1993 to ensure that its regulatory activities are carried out in a consistent manner and without bias.

Council's regulatory and enforcement actions should be exercised to ensure the health, safety and environmental protection of all stakeholders including residents, visitors, workers and business operators. All stakeholders should have confidence in the decision making and internal review processes.

In order to satisfy these needs this Policy has been developed and is broadly based on the "Model Policy" prepared for Local Councils by the NSW Ombudsman.

Council supports and welcomes the positive assistance of the community in reporting issues of concern and undertakes to work collaboratively with the community to promote the benefits of compliance as a way of sustaining a safer quality of life for all.

The spirit of this Policy is to use a graduated approach to enforcement action, for example the issue of a warning letter, which if not successful in resolving the issue may be followed by statutory Notices and Orders and, finally some form of enforcement proceedings either via a penalty notice or Court action if compliance cannot be achieved by any other method.

The Policy also recognises in some situations the gravity of the incident or other circumstances determines that an escalated approach is not appropriate and immediate regulatory action is required e.g. where an activity is or is likely to result in a significant public health or safety risk, or is or likely to cause environmental harm. Other offences such as parking matters and certain development consent breaches such as hours of operation may be dealt with using penalty notices due to the transient nature of the offence and the impracticality of using notices and orders to deal with the issue.

Enforcement Guidelines and Procedures will also be developed to further assist officers when determining the most appropriate enforcement actions. This documentation will further facilitate a consistent approach for departments with regulatory responsibilities and will ensure the objectives of the Enforcement Policy are delivered.

To ensure the draft Policy remains contemporary it is intended to review the

document every 3 years or after legislative changes.

Any abbreviations or terminology used in this Policy are outlined in Section 4.

2. OBJECTIVE

- 2.1 Camden Council is opposed to unlawful and non-compliant activities and aims to provide and deliver regulatory services in a fair, equitable and consistent manner designed to protect the natural, built and social environment.
- 2.2 This Policy aligns with Key Direction 6 – *Strong Local Leadership* in Councils Strategic Plan – Camden 2040.
- 2.3 This Policy references specific roles for Council acting as both an educator and a regulator.
- 2.4 Consequently the Policy aims to:
 - a) ensure all regulatory activities meet Council's Charter of responsibilities under Section 8 of the Local Government Act;
 - b) assist Council Officers to respond promptly and effectively to complaints of unlawful activity and undertake proactive investigation;
 - c) ensure Officers comply with Council's Code of Conduct when investigating any unlawful activity;
 - d) establish operational guidelines and procedures for Council Officers and the community which incorporate the principles of procedural fairness and natural justice where decisions are made in a consistent, fair, equitable and transparent manner;
 - e) establish criteria to determine whether enforcement action is warranted and if so, ensure such action is in accordance with the Council Officers Delegation of Authority in a timely, cost effective manner and proportional to the relative seriousness of the situation;
 - f) ensure all possible options are considered prior to the implementation of enforcement action;
 - g) take a proactive approach to compliance by providing information to the public about Council's role and policy on enforcement and encourage a culture of compliance aimed at self-regulation rather than Council imposed enforcement action;
 - h) provides a service which embodies good practice and ensures that Council is a Model Litigant by behaving ethically, fairly and honestly in litigation.

3. SCOPE

- 3.1 This Policy applies to all areas where Council has a compliance and enforcement role under the various Acts and Regulations.
- 3.2 All employees who deal with complaints and the enforcement of relevant legislation are responsible for implementing this Policy.
- 3.3 The application of the Policy includes but is not limited to:
 - abandoned vehicles
 - asbestos management
 - boarding houses
 - brothels
 - public/ commercial/ private swimming pools
 - development control
 - environmental and pollution control issues
 - failure to comply with a condition of an approval, an Order or Notice

- fire safety
 - food safety
 - removal of trees or clearing vegetation from land
 - on-site sewage management (septic systems)
 - parking control
 - public health and safety
 - the control over the keeping of animals and companion animals
 - the regulation of unlawful development activities
 - waste
 - any other functions for which Council is the Appropriate Regulatory Authority
- 3.3 Any enforcement action will be in accordance with this Policy, relevant NSW legislation and the State Debt Recovery Office (SDRO) Guidelines.
- 3.4 Whilst it is intended the principles in this Policy will have general application, there may be cases where the particular circumstances justify departure from these principles.
- 3.5 In any situation where an officer considers taking action which varies from the Policy and associated guidelines/procedures, the officer will discuss the reasons for the variance with the Team Leader/Manager and will document and implement the agreed course of action.
- 3.6 This Policy applies to Council's enforcement functions and supports the concept of an escalated and proportionate approach to most non-compliant issues except for examples such as parking and traffic matters.
- 3.7 While this Policy covers all matters to be taken into account when exercising discretion about compliance and enforcement matters, it recognises that Rangers who work with traffic and parking matters are faced with different time frames and decisions which need to be made on the spot.
- 3.8 It is Council's Policy that Rangers will enforce the Australian Road Rules and will carry out traffic and parking duties in a fair, equitable and consistent manner with a zero tolerance approach in school zones.
- 3.9 Zero tolerance is the strict enforcement of the rules.
- 3.10 Other offences such as certain development consent breaches eg hours of operation and some environmental offences (eg illegal burning of waste/plastics) may be dealt with using penalty notice due to the transient nature of the offence and the impracticality of using notices and orders to deal with the issue.

4. DEFINITIONS

- 4.1 **ABN/ACN:** Australian Business/Company Number.
- 4.2 **Administration fee:** A prescribed fee imposed in some legislation to cover the cost of the service of a notice/order and re-inspection fee and adopted by Council in the annual Schedule of Fees and Charges.
- 4.3 **ARA:** Appropriate Regulatory Authority, a term under the Protection of the Environment Operations Act 1997.
- 4.4 **Authorised Officer:** A Council Officer with delegated authority to carry out specific duties and take any necessary enforcement action. Such officers carry specific Authorities under various Acts which include prescribed powers of entry to certain properties.

- 4.5 **BCA:** Building Code of Australia, part of the National Construction Code series.
- 4.6 **BPB:** Building Professionals Board.
- 4.7 **CAN:** Court Attendance Notice used to commence proceedings in the Local Court.
- 4.8 **CRM:** Customer Request Management, an electronic Council computer reporting system that registers and records complaints, compliments and requests for service.
- 4.9 **Caution:** A formal warning given instead of a penalty advising enforcement action will follow if there is a recurrence, any consideration to issue a "Caution" should be in accordance with the Caution Guidelines issued by the NSW Attorney General under section 19 (1) (a) (1) of the Fines Act.
- 4.10 **Cautioning:** The verbal process an officer is required to issue to an alleged offender once the officer has considered an offence has occurred and the officer may use any subsequent statement/s made by the alleged offender as evidence.
- 4.11 **Civil Proceedings:** Include:
- Notices, Orders and Directions issued pursuant to various legislation;
 - Class 4 proceedings in the Land and Environment Court seeking an order to remedy a breach of the Environmental Planning and Assessment Act, the Local Government Act, the Protection of the Environment Act or any other Act, if the breach is causing or is likely to cause harm to the environment;
 - Interlocutory relief for matters causing or with reasonable potential to cause serious environmental harm. In such proceedings it is likely the Council would be required to provide an undertaking as to damages.
- 4.12 **Complainant:** A person lodging a customer action request (complaint) to Council.
- 4.13 **Council:** Camden Council.
- 4.14 **Criminal Proceedings:** Includes:
- the issuing of a penalty notice;
 - prosecuting an offence in the Local Court with the use of a Court Attendance Notice;
 - prosecuting for an offence in the summary jurisdiction of the Land and Environment Court (Class 5 proceedings).
- 4.15 **Defendant:** An alleged offender against whom action is being taken in Court.
- 4.16 **EP&A Act:** The Environmental Planning and Assessment Act 1979.
- 4.17 **Estoppel:** Legal rule of evidence.
- 4.18 **Fines Act:** Fines Act 1996.
- 4.19 **GIPA:** The Government Information (Public Access) Act 2009.
- 4.20 **ICAC:** Independent Commission Against Corruption.
- 4.21 **Informant:** the person who brings criminal proceedings.
- 4.22 **Issuing Agency:** Council.

- 4.23 **Issuing Officer:** the Council Officer authorised to issue a penalty notice for an offence.
- 4.24 **LGA:** Local Government Act 1993.
- 4.25 **Offence:** An offence under NSW legislation.
- 4.26 **PCA:** Principal Certifying Authority.
- 4.27 **PIN or Penalty Notice** - Penalty Infringement Notice (or Penalty Notice) occasionally referred to as an “on the spot fine”.
- 4.28 **Plaintiff:** The person commencing civil proceedings.
- 4.29 **Prima facie:** Presentation of sufficient evidence to support a legal claim.
- 4.30 **Procedural Fairness:** Procedural fairness relates to the use of fair and proper procedures as part of the decision making process.
- 4.31 **POEO:** The Protection of the Environment Operations Act 1997.
- 4.32 **Respondent:** The party against whom civil proceedings are brought.
- 4.33 **SDRO:** State Debt Recovery Office which produces the Fixed Penalty Handbook for the issue of penalty notices.
- 4.34 **Technical breach:** A breach to the provisions of an Act, Regulation, Notice, Order, Direction or Development Consent.
- 4.35 **Unauthorised/ unlawful activity:** Any activity that is:
- contrary to the terms or conditions of a development consent, approval or permission;
 - contrary to an environmental planning instrument that regulates the activities or work that can be carried out on particular land;
 - contrary to a legislative provision regulating particular activity of work;
 - without a required development consent, approval, permission or licence;
 - contrary to legislation for which the Council is the appropriate regulatory authority;
 - and includes any activity, place or structure which is a risk to public health and safety but excludes any parking or traffic offences which are dealt with in accordance with the Australian Road Rules.

PART 2 - POLICY STATEMENT

5. ENFORCEMENT & COMPLIANCE PRINCIPLES

- 5.1 Camden Council as a responsible regulator is committed to:
- a) acting with consistency, impartiality, objectivity and fairness;
 - b) avoiding any discrimination on the basis of race, religion, political association, sex or national origin;
 - c) the adoption of a graduated and proportionate response (where appropriate) to legislative non-compliance;
 - d) providing every opportunity for compliance by all stakeholders by indicating the relevant penalties for non-compliance;
 - e) providing written advice or directions in a clear and simple manner;

- f) ensure any action taken is in the public interest and the action is in proportion to the offence;
- g) ensure any action taken by Council is justified, against the correct person(s), cost effective and based on sound evidence which will withstand robust scrutiny;
- h) ensure any decision to take no further action or issue a caution is in the public interest and in accordance with relevant guidelines (e.g. SDRO);
- i) avoiding any actual or potential conflict of interest situations;
- j) conducting all investigations in accordance with the Code of Conduct and making decisions in a professional manner with appropriate integrity;
- k) creating awareness and seeking support from all stakeholders including workers and business operators and the broader community in the need for compliance when dealing with relevant issues;
- l) ensuring action is instigated within legislative time limits;
- m) disclosing all evidence relevant to an alleged offence and assisting the Court, as required.

6. APPLICABLE LEGISLATION

- 6.1 The diverse range of legislation to which this Policy applies is outlined in Appendix A.

7. PROCEDURAL FAIRNESS

- 7.1 Council is committed to natural justice and acting fairly in all aspects of the implementation of this Policy. In order to achieve this outcome Council will:
- a) provide an opportunity for an alleged offender to provide an explanation. However there will be situations such as parking enforcement and other circumstances considered to represent a serious risk to public safety or the environment or the like which would preclude this opportunity;
 - b) give due consideration to any written submission made by an alleged offender made either directly to Council or via another agency (e.g. State Debt Recovery Office);
 - c) make appropriate enquiries, investigations and searches prior to making an enforcement decision;
 - d) establish appropriate procedures to avoid an enforcement decision being influenced by an actual, potential or perceived conflict of interest;
 - e) implement procedures to ensure pertinent information is provided to a complainant and alleged offender, subject to maintaining appropriate confidentiality provisions;
 - f) act without bias and within statutory time frames.

8. CODE OF CONDUCT

- 8.1 Council Officers carrying out their duties including the consideration of some form of enforcement action will have due regard to the contents of Council's Code of Conduct which is available on Council's website <http://www.camden.nsw.gov.au/assets/pdf/Council/AboutCouncil/Code-of-Conduct/Code-of-Conduct-Adopted-26022013.pdf>
- 8.2 It is Council's expectation all inspections will be carried out in a respectful, helpful manner while being attuned to any language or cultural considerations. All officers should:

- a) not permit personal views, or prejudices to influence their attitude towards any person or duty required to be undertaken;
 - b) respond to any reasonable request or lawful direction of any supervisor or manager of the Council;
 - c) not commit any act which constitutes dereliction of duties;
 - d) not commit any act that brings Council into disrepute;
 - e) not publicly criticise Council in any way that is demeaning, defamatory or brings disrespect, or embarrassment to Council;
 - f) not publicly criticise any Council employee in any way, which is demeaning, defamatory or brings disrespect to Council;
 - g) not obey any order or direction which is contrary to the law;
 - h) report any such unlawful order to the attention of an immediate supervisor, manager or, if required the General Manager;
 - i) not solicit or receive any gift that is contrary to Council's Code of Conduct.
- 8.3 Council Officers who are accredited under the Building Professionals Board scheme must also satisfy the code of professional conduct requirements of such scheme.
- 8.4 Each officer should be mindful of any constraints that may have been placed on their "Delegations" by Council and be equipped with their specific authorisation (with photograph) under the particular Acts.

9. CONFLICT OF INTEREST

- 9.1 If a situation arises where an officer believes a perceived or actual conflict of interest exists, the matter will be referred to the supervisor.

10. DISCLOSURE OF INFORMATION

- 10.1 Council Officers will respect the privacy and confidentiality of information received, however due to its statutory obligations and other requirements, confidentiality cannot always be guaranteed.
- 10.2 The complainant's identity may be disclosed where:
- a) access to the information is permitted under legislation including but not limited to the Government Information (Public Access) Act 2009;
 - b) legal action is commenced and the information is disclosed in evidence
 - c) the person consents to the disclosure of the information;
 - d) the principles of natural justice dictate that information be disclosed to the person who is the subject of the complaint, which may enable the complainant to be identified;
 - e) the Council is of the opinion that disclosure of information is necessary to effectively investigate the matter.
- 10.3 Council Officers will also observe the information protection principles in the Privacy and Personal Information Protection Act 1998 which provides in certain circumstances for information to be shared with other public sector agencies for law enforcement purposes.
- 10.4 Reasons for decisions regarding compliance and enforcement action will be made available, unless to do so would cause a breach of the law. Reasons may not be given in any case where the information may cause harm to an informant, witness, or the alleged offender, nor in circumstances which would significantly prejudice the administration of justice.

- 10.5 Council's Rangers have access to external electronic databases including the NSW Companion Animals Register and the Roads and Maritime Services Vehicle Ownership Register. Neither of these are registers to which the general public or other Council Officers have access. The information on both registers is protected from general disclosure and can only be used for the lawful exercise of functions under the relevant Acts. Rangers are subject to routine external auditing in regard to the use of the databases.
- 10.6 Some officers have access to the following information:
- Statewide Electronic Database of Residential Swimming Pools
 - Department of Fair Trading Boarding Houses Register

11 RECEIVING AND RESPONDING TO CUSTOMER REQUESTS

- 11.1 Council's expectation is that all customer requests will be electronically recorded and dealt with within set customer service standards and having regard to the seriousness of the issue and other priorities.
- 11.2 All complaints will be initially assessed within practical time constraints and appropriate action taken in accordance with this Policy and the complainant so advised.
- 11.3 All complaints will be investigated unless:
- a) Council is not the Appropriate Regulatory Authority;
 - b) the matter has already been actioned and resolved;
 - c) insufficient information has been provided;
 - d) the complaint is premature and relates to an unfinished aspect of work still in progress;
 - e) a private Principal Certifying Authority is responsible for monitoring compliance with the conditions of development consent. Council will work cooperatively with relevant agencies and Private Certifiers to achieve compliant outcomes;
 - f) the activity is determined to be lawful and does not require an approval;
 - g) a Development Approval, Complying Development Certificate or any other lawful authority has been granted for the work;
 - h) the complaint is trivial, frivolous or vexatious in nature;
 - i) the complainant is solely seeking a monetary refund from a third party;
 - j) the complaint relates to a civil matter or dispute (private matter between neighbours).
- 11.4 In situations where Council is the Appropriate Regulatory Authority, the relative seriousness of each matter will determine the priority attached to a particular complaint. As a guide the following categories can be applied:

Category 1

- significant environmental or safety risk to life or property e.g. discharge of toxic waste to a water body, likely collapse of a shop awning over a public road, removal of a swimming pool fence or barrier, a fire safety issue, dangerous retaining wall, demolition of a heritage item, asbestos removal
- serious community safety or public health issues (e.g. dog attack, food poisoning, Legionnaires case);
- urgent matters as directed by Council's senior management and Council.

Category 2

- major non-compliance with approval
- non-life threatening fire safety or similar safety matter
- unauthorised use or building work where the opportunity to collect critical evidence is not lost (tree removal or demolition)

Category 3

- minor non-compliance with approval
- neighbour dispute

Representations from the Mayor, Councillors or Members of Parliament will also be actioned in accordance with the above priority categories. However, a response on either an action or proposed action will be provided promptly as a matter of priority.

- 11.5 An assessment after the initial response may result in a complaint being assigned a more appropriate priority category. It should also be remembered that some legislation including the Companion Animals Act and Swimming Pools Act include mandatory response times to complaints.
- 11.6 Efforts should be made to keep a complainant informed of the action taken in regard to their customer request, particularly those matters where action may become protracted due to the service of a Notice of Intention to Serve an Order, an Order or the instigation of legal action.
- 11.7 In the context of a Principal Certifying Authority, Council will investigate matters where the:
- a) Principal Certifying Authority fails or is unable to appropriately action a matter or where it is in the public interest;
 - b) Principal Certifying Authority has taken all the action available under the legislation, but the offence continues despite such action;
 - c) complaint relates to Council property;
 - d) complaint relates to an environmental pollution incident such as ineffective erosion and sediment control on a building site.

12 ANONYMOUS COMPLAINTS

- 12.1 Anonymous complaints may not be able to be investigated. The decision to investigate includes but is not limited to, the subject and seriousness of the matter, the likely reliability of the complaint, ability to access further information, available staff resources and Work Health and Safety responsibilities.
- 12.2 When an anonymous complaint is investigated, an appropriate record of the investigation will be made.

13 FRAUDULENT COMPLAINTS

- 13.1 Fraudulent complaints are where a person lodges a complaint with Council in someone else's name without that persons knowledge or where the nature of the complaint is untrue. Such complaints will be treated as vexatious unless a valid basis for such a complaint can be established. The decision to investigate such a matter will be based on the same criteria as for anonymous complaints.

14. USE OF STATUTORY DECLARATIONS

- 14.1 The investigation of some complaints may from time to time warrant consideration of the use of a statutory declaration by the complainant if a matter is to proceed. Any residents who complete a statutory declaration should be informed they may be required to appear in court as a witness should the matter be defended.
- 14.2 Furthermore, the completion of a statutory declaration by itself does not guarantee further enforcement action will be undertaken by Council.
- 14.3 In all circumstances involving the use of statutory declarations by residents, the relevant officer/s needs to be satisfied:
- a) a justified nuisance/offence exists which cannot be resolved without recourse to some other form of enforcement action;
 - b) other fair and reasonable attempts to resolve the matter have been unsuccessful;
 - c) the witness will appear in court if required;
 - d) the witness will be able to satisfy a Magistrate that they are a credible and impartial witness with a legitimate reason(s) for seeking resolution via the court
- 14.4 Unless these matters can be satisfied, other alternatives including private action or the use of mediation through the Community Justice Centre should be considered.

15. UNREASONABLE COMPLAINANT CONDUCT

- 15.1 Council has an obligation to use resources efficiently and effectively. While council acknowledges a customer's entitlement to make requests and complaints, it reserves the right to cease responding to customers that continually exhibit unreasonable customer behaviour including:
- a) requests that place unreasonable demands on Council's staff;
 - b) requests that place unreasonable demands on Council's resources;
 - c) unreasonable persistence;
 - d) unreasonable lack of cooperation;
 - e) requests or complaints based on unreasonable arguments;
 - f) abusive and derogatory behavior towards Council staff;
 - g) Complaints which are proven to be vexatious or retaliatory.
- 15.2 In the context of the above situations officers will follow Council's Policy on Dealing with Unreasonable Customer Conduct.

16. CONSULTATION WITH OTHER AGENCIES

- 16.1 There will be situations such as in the investigation of a complaint or the like where Council has no legal or geographical jurisdiction or operational responsibility and consequently the matter should be referred to the relevant agency without delay.
- 16.2 Agencies may include but not be limited to, the NSW Police Services, NSW Department of Planning and Infrastructure, Local Land Services, NSW Office of Fair Trading, NSW Department of Primary Industry, NSW WorkCover, NSW

Environment Protection Authority, NSW Food Authority, NSW Health, the Building Professional Board, NSW Roads and Maritime Services, Fire and Rescue NSW.

- 16.3 Council will consult with the responsible agencies to facilitate a coordinated and constructive compliance approach and keep the complainant informed.

17. PRIVATE CERTIFIERS

- 17.1 In terms of Council's Development Compliance role, complaints are received from time to time in regard to various matters on building construction sites where Council is not the Principal Certifying Authority.
- 17.2 In such situations in the first instance the complainant should be encouraged to contact the Principal Certifying Authority directly to ensure all relevant details are accurately communicated to the Principal Certifying Authority.
- 17.3 Alternatively, should an external observation by a Council Officer of a building site which is under the jurisdiction of a Principal Certifying Authority (not being Council) disclose significant non-compliant issues, Council will initially draw the matter to the attention of the Principal Certifying Authority.
- 17.4 If a complaint or observation relates to an urgent matter involving a life threatening situation or significant environmental damage or an on-going matter where valuable evidence may not be available if an immediate response is not commenced, a Council Officer may undertake an immediate investigation to assess the seriousness of the situation.
- 17.5 If the complaint is substantiated, Council will consider action in accordance with this Policy and the Principal Certifying Authority informed of any action taken by Council.
- 17.6 In any situation where it is considered a Principal Certifying Authority has acted incorrectly, improperly and/or unprofessionally a report may be forwarded to the Manager recommending referral of the matter to the Building Professionals Board.
- 17.7 Relevant factors for determining if a matter should be referred to the Building Professionals Board are:
- a) the seriousness of the failure to act professionally;
 - b) any previous history of complaints;
 - c) the level of cooperation from the Principal Certifying Authority to rectify the problem/s;
 - d) the adequacy of changes made by the Principal Certifying Authority to procedures or practices to ensure that future problems will be minimized.
- 17.8 Examples of matters that might be referred to the Building Professionals Board include but are not limited to:
- a) significant departure from the development consent and the PCA does not appear to be taking appropriate action to address the issue;
 - b) the persistent failure to submit relevant certificates or other documentation to Council within the specified time period;
 - c) Complying Development Certificates that do not meet the development standards for the relevant State Environmental Planning Policy.

18. BUILDING CERTIFICATES

- 18.1 Council recognises that persons who may have carried out unlawful building works may, as an option, apply for a Building Certificate under section 149D of the Environmental Planning and Assessment Act to retain the structure. If a building certificate is issued, Council cannot ask for demolition or alterations unless after 7 years of fair wear and tear.
- 18.2 It is Council's policy however that such applications should not be encouraged to justify unlawful works. Irrespective of whether or not a Building Certificate is applied for, Council may take action against a person who carried out unlawful works
- 18.3 The action may include the issuing of a penalty notice or in conjunction with criminal proceedings, where it is considered appropriate and necessary for punitive action to also be taken, having regard to the restriction provisions provided under Section 127 (7) of the EP&A Act.
- 18.4 Building Certificate applications to support unlawful building works will be expected to provide the same level of details in plans, certificates, specifications etc as would be required for assessing an Application for Development, a Construction Certificate, a Complying Development Certificate and/or an Occupation Certificate.

19. PROACTIVE COMPLIANCE MONITORING

- 19.1 In addition to responding to complaints and enquiries about alleged unlawful activity Council also provides a number of proactive compliance programs around high risk regulatory areas. These areas include;
- Food premises inspections
 - Public swimming pool water quality monitoring
 - Onsite sewage management systems (septic tanks)
 - Fire safety
- 19.2 Compliance action may be initiated where non-compliance is identified in the course of a proactive compliance inspection, in which case the principles outlined in this policy will also be applied.

20. THE DECISION PROCESS - TAKING ENFORCEMENT ACTION

- 20.1 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:

Considerations about the alleged offence and impact:

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

Considerations about the alleged offender:

- Any prior warnings, instruction, advice that was issued to the person or organization reported or previous enforcement action taken against them;
- Whether the offence was committed with intent;

- Whether the person or organization reported has been proactive in the resolution of the matter and assisted with any council requirements and instructions;
- Any mitigating or aggravating circumstances demonstrated by the alleged offender;
- Any particular circumstances of hardship affecting the person or organization reported.

Considerations about the impact of any enforcement action:

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

Considerations about the potential for remedy:

- Whether the breach can be easily remedied
- Whether it is likely consent would have been given for the activity if it had been sought
- Whether there is a draft planning instrument on exhibition that would make the unauthorized use legal.

20.2 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.

20.3 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 organization. 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.

21. OPTIONS FOR DEALING WITH CONFIRMED CASES OF UNLAWFUL ACTIVITY

21.1 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:

- To prevent or minimise harm to health, welfare, safety, property or the environment
- To influence behaviour change for the common good and on behalf of the community

The following 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:

Level of risk	Enforcement options
Very low	Take no action on the basis of a lack of evidence or some other appropriate reason Provision of information/advice on how to be compliant
Low	Negotiating with the person to obtain voluntary undertakings or an agreement to address the issues of concern Issuing a warning or a formal caution
Medium	Issuing a letter requiring work to be done or activity to cease in lieu of more formal action Issuing a notice of intention to serve an order or notice under relevant legislation, and then serving an order or notice if appropriate
High	<ul style="list-style-type: none"> • Issuing a penalty notice • Carrying out the works specified in an order at the cost of the person served with the order
Very High	<ul style="list-style-type: none"> • Seeking an injunction through the courts to prevent future or continuing unlawful activity • Commence legal proceedings for an offence against the relevant Act or Regulation

(NB: this is a guide only and each issue is assessed on its merits and circumstances. Some offences such as parking may be dealt with using penalty notice due to the transient nature of the offence and the impracticality of using notices and orders to deal with the issue)

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 ongoing compliance outcomes

are met. Should initial enforcement action be found to have been ineffective, council staff will consider other enforcement options.

22. TAKING LEGAL ACTION

22.1 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;

- Whether there is sufficient evidence to establish a case to the required standard of proof
- Whether there is a reasonable prospect of success before a court
- Whether the public interest warrants legal action being pursued

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.

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.

Whether the public interest requires legal action to 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 20).

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:

- The availability of any alternatives to legal action
- Whether an urgent resolution is required (court proceedings may take some time)
- The possible length and expense of court proceedings
- Any possible counter-productive outcomes of prosecution
- What the effective sentencing options are available to the court in the event of conviction
- Whether the proceedings or the consequences of any resulting conviction would be unduly harsh or oppressive

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.

23. RECOVERY OF FINES & LEGAL COSTS

23.1 Council's policy for recovery of costs in Courts is:

- a) to seek to recover fair and reasonable costs in all matters where costs are recoverable, either by consent or by order of the court;
- b) to seek to recover the penalty imposed by the court where such penalty is imposed;
- c) consider any recommendations of its legal representative/s to accept a lesser amount than the full legal cost if the acceptance will result in Council not incurring further and unnecessary legal costs.

24. COMMUNITY AWARENESS

24.1 Council will take every opportunity to promote ongoing community awareness in regard to compliance/enforcement. This may include but is not limited to, website references, the publication of press releases and the periodic inclusion in any community newsletters with a view to improving community confidence and awareness.

24.2 Awareness initiatives that focus on residents, developers and business operators will adopt an educational approach designed to engage and promote:

- a) an awareness of the spirit and content of this Policy;
- b) the minimisation of non-compliance by improving the knowledge of legislation within the community;
- c) the benefits of complying with the legislation and the consequences of not complying.

25. POLICY MONITORING & REVIEW

25.1 To ensure this Policy remains contemporary it will be reviewed every 3 years or after legislative changes.

25.2 The processes will include but not be limited to determining the levels of compliance in regulated/core business activities and the emergence of any apparent trends, the success or otherwise of specific types of enforcement action and the effectiveness of any education campaign/s.

Appendix A

The Policy applies but is not limited to the following NSW legislation and any subsequent amendments:

- Australian Road Rules 2008
- Boarding Houses Act 2012
- Companion Animals Act 1998
- Contaminated Land Management Act 1997
- Crown Lands Act 1989
- Environmental Planning & Assessment Act 1979
- Fines Act 1996,
- Food Act 2003
- Impounding Act 1993
- Local Government Act 1993
- Motor Dealers Act 1974
- Noxious Weeds Act 1993
- Protection of the Environment Operations Act 1997
- Public Health Act 2010
- Swimming Pool Act 1992
- Roads Regulations 2008
- Road Transport (General) Regulation 2013
- Road Transport (Mass Loading & Access) Regulation 2005
- Rural Fires Act 2008
- Building Professionals Act 2005
- Sydney Water Act 1994, and
- The Regulations relating to the above Acts.

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RELEVANT LEGISLATIVE INSTRUMENTS: N/A

RELATED POLICIES, PLANS AND PROCEDURES:
Asbestos Policy
Complaint Management
Feral and Infant Animal Policy
Dealing with Unreasonable Customer Conduct
Swimming Pools Inspection Program

RESPONSIBLE DIRECTOR: Director Planning and Environment

APPROVALS: Council

ATTACHMENTS: N/A

NEXT REVIEW DATE: February 2019

RECORD KEEPING NOTES:

HISTORY:

Issue	Approved by	Changes made	Date	TRIM Number
1	<i>Approved by Council</i>	<i>Created</i>	<i>8 March, 2016</i>	<i>Trim Number</i>
2				