



Enforcement Policy



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Document Control

Policy	Enforcement Policy	Policy Number	TBA
Author/Reviewer	Director Sustainable Growth	Review Period and Date	Reviewed within 12 months of election/4 yearly - September

This policy shall be reviewed: -

- This policy shall be reviewed within 12 months of an election, and thereafter at four yearly intervals at least, to ensure it meets all statutory requirements and the needs of council. It may also be reviewed at other times as determined by council.

Document History

Date	Status	Version	Resolution	Description
26 July 2017	Draft	0.1		Presented to Council for endorsement, public exhibition 28 days
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25 October 2017	Final	1.0	17/283	Adopted



1. Introduction

Council's regulatory responsibilities are applicable to actual unlawful activity, as well as a failure to take action where directed.

For the purposes of this policy, a report alleging unlawful activity is where:-

- an individual expresses concern in relation to alleged unlawful activity; or
- an individual requests service from council about unlawful activity; or
- Council considers that a response or resolution to a report alleging unlawful activity is explicitly or implicitly expected by the individual, or legally required; or
- where Council becomes aware of a compliance matter through other means of notification.

2. Aims & Objectives

The intent of this policy is to establish clear guidelines and protocols for Council staff in the management of Council compliance responses and actions. It provides workable guidelines on:

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

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

- maintain the collective good and welfare of the community;
- prevent or minimise harm to health, welfare, safety, property or the environment;
- consider the broader public interest having regard to Council's priorities;
- consider the report fairly and impartially;
- fulfil Council's Legislative responsibilities.

3. Legislation and Other References

Council staff may be delegated to initiate various levels of enforcement action under the following Acts and associated regulations:

- *Environmental Planning and Assessment Act, 1979*
- *Local Government Act, 1993*
- *Protection of the Environment Operations Act, 1997*
- *Impounding Act, 1993*
- *Companion Animals Act, 1998*
- *Roads Act, 1993*
- *Food Act, 2003*
- *Public Health Act, 2010*
- *Swimming Pools Act, 1992*
- *Traffic Act, 1909*
- *Summary Offences Act, 1998*
- *Noxious Weeds Act, 1993*
- *Rural Fires Act, 1997*
- *Plumbing and Drainage Act, 2011*



4. Enforcement Principles

Council is committed to:

- acting in the interest of protecting community health, safety and or the environment;
- acting consistently, fairly, impartially and transparently;
- preventing discrimination on the basis of race, religion, sex, national origin, political association or other personal reason/s;
- ensuring the proposed enforcement action is in keeping with the guidelines of the Policy;
- ensuring enforcement action is taken against the right person for the correct offence.

5. Responsibility

Community

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:

- providing a clear description of the problem (and the resolution sought, if relevant);
- 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;
- not giving any information that is intentionally misleading or wrong;
- cooperating with Council's inquiries and giving timely responses to questions and requests for information;
- treating Council staff with courtesy and respect;
- allowing the investigation to be completed without prematurely taking the matter to other agencies unless referred to by Council;
- being prepared to engage in mediation where requested.

If these expectations of the individual are not met, Council may set limits or conditions on the continuation of the investigation or restrict any further communications with the individual. Any unreasonable conduct will be dealt with in accordance with the principles of the NSW Ombudsman's *Managing Unreasonable Complainant Conduct Manual* 2012 and any applicable Council Policy.

Council

An investigation of alleged unlawful activity may take a significant amount of time to complete, particularly where the issues are complex. Where Council investigates the report, staff will give the person reporting the activity general feedback on the progress of the investigation only and will not provide specific details or details that may compromise the integrity of the investigation.

Decisions about what action should be taken are made at Council's discretion which may not necessarily align with the expectations of the person reporting the activity. 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. Staff 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. Council will try to resolve matters as quickly and informally as possible so as to avoid the need to take formal action.

Councillors

Decision making relating to the investigation of reports alleging unlawful activity and 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 Council's policies are being carried out correctly, however

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they cannot ignore or alter a policy in order to satisfy the demands of special groups or individuals. Councillors are not an appeal body and all appeals need to be directed to the General Manager as Councillors cannot become involved in the management of regulatory or compliance actions.

6. Confidentiality of people who report allegations of unlawful activity

There are times when dealing with allegations of unlawful activity that the identities of people who report such matters are unable to remain confidential from the subject of their report in all circumstances. Council may be required to disclose information that identifies those who report such matters in the following cases:

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

7. Investigating unlawful activities

All matters regarding unlawful activities will be reviewed to determine whether the matter requires enquiry or investigation. Further enquiries/investigation will not be initiated where:

- the matter has already been investigated and resolved, or
- the matter does not fall within the jurisdiction of Council has no jurisdiction; or
- the activity is determined to be lawful without an investigation.

Anonymous reports will not be investigated.

8. Neighbourly Disputes

In cases where investigation reveals that the report of alleged unlawful activity is the result of a neighbourly dispute, involved parties will be encouraged to undertake mediation with the Community Justice Centre NSW or further reports regarding the same matter may not be investigated.

9. 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.

Considerations about the alleged offence and impact:

- the nature, extent and severity of the unlawful activity, including whether the activity is ongoing;
- 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; and
- the time period that has lapsed since the date of the unlawful activity.



Considerations about the alleged offender:

- any prior warnings, instructions, advice that was issued to the person or organisation reported or previous enforcement action taken against them;
- whether the offence was committed with intent;
- whether the person or organisation 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; and
- any particular circumstances of hardship affecting the person or organisation reported.

Considerations about the impact of any enforcement action:

- the need to deter any future unlawful activity;
- the prospect of success if the proposed enforcement action was challenged in court; and
- what action would be proportionate and reasonable in response to the unlawful activity.

Considerations about the potential for remedy:

- whether the breach can be easily remedied; and
- whether there is a draft planning instrument on exhibition that would make the unauthorised use legal.



Appendix A – Typical responses to common offences

The following table offers guidance on the priority given to the investigation of common offences and typical enforcement action. It is noted that Council has powers to enforce more than 1000 different offences and this list only covers some of the more common ones, and that the specific action taken is dependent upon the circumstances of each case. Priority = 1 being the Highest priority and 3 being the lower priority.

General offences	Priority	Warning/ Education	Penalty Infringement Notice	Notice &/or Order	Legal Action	LEC Class 4
<i>Companion Animals Act & Regulations</i>						
Unregistered dog/cat – 1 st offence	2	✓				
Unregistered dog/cat – not 1 st offence; not comply notice	2		✓	✓		
Not notify change in registration or identification information - not dangerous/menacing/restricted dog & 1 st offence	3	✓				
Not notify change in registration or identification information - dangerous/menacing/restricted dog &/or not 1 st offence	2		✓			
Dog not wear collar and name tag - not dangerous/menacing/restricted	3	✓				



General offences	Priority	Warning/ Education	Penalty Infringement Notice	Notice &/or Order	Legal Action	LEC Class 4
Dog not wear collar and name tag - dangerous/menacing/restricted dog &/or not 1 st offence	2		✓			
Dog escaped/uncontrolled/in prohibited place – 1 st offence & not causing nuisance & not dangerous/menacing/restricted dog	1	✓				
Dog escaped/uncontrolled/in prohibited place – Not 1 st offence &/or causing nuisance &/or dangerous/menacing/restricted dog	1		✓	✓		
Own/in charge of dog which rushes at/attacks etc	1	✓	✓			
Not immediately remove dog faeces from public place	2	✓	✓			
Fail to comply with notice/order/declaration	2		✓			



General offences	Priority	Warning/ Education	Penalty Infringement Notice	Notice &/or Order	Legal Action	LEC Class 4
<i>Environmental Planning & Assessment Act & Regulations</i>						
Development without consent – minor by an Individual or very minor by Corporation	2-3	✓				
Development without consent – not minor – likely to result in harm to public or environment	1-2			✓	✓	✓
Commencement of development not in accordance with consent (including complying development requirements) – minor by an Individual	2-3	✓	✓			
Commencement of development not in accordance with consent (including complying development requirements) – not minor by an individual, or minor/major by Corporation	1-2			✓	✓	✓
Occupy or change use of building without occupation certificate - Individual	2	✓				
Occupy or change use of building without occupation certificate - Corporation	2		✓	✓		✓
Failure to comply with an Order with no reasonable excuse	2			✓	✓	
Non-compliance with complying development certificate procedures/requirements	2	✓ 1 st offence	✓ 2 nd offence			
Fire safety certificate/statement offences	2	✓ 1 st offence	✓ 2 nd offence			



General offences	Priority	Warning/ Education	Penalty Infringement Notice	Notice &/or Order	Legal Action	LEC Class 4
<i>Food Act & Regulations</i>						
Minor issues of non-compliance not resulting in health or safety risk to the public (for example: administrative issues, less than 3 areas of minor non-compliance with Australian Food Standards Code)	2	✓				
Non-compliance with food standards Code (More than 3 issues identified; not 1 st offence)	1	✓	✓	Improvement Notice		
Non-Compliance with Improvement Notice	1		✓	Prohibition Order	✓	
Major issues of non-compliance with the Food Standards Code likely to result in serious health and safety risk to the public	1		✓	Prohibition Order + Seizure of goods		
<i>Impounding Act & Regulations</i>						
Abandon an article/motor vehicle in a public place	1-3	✓	✓ 2 nd offence	✓ 2 nd offence		
Animal unattended in a public place	1	✓	✓ 2 nd offence	✓ 2 nd offence		



General offences	Priority	Warning/ Education	Penalty Infringement Notice	Notice &/or Order	Legal Action	LEC Class 4
<i>Local Government Act & Regulations</i>						
Activity (etc) without approval – minor	1-3	✓				
Activity (etc) without approval – not minor	1-2	✓	✓	✓	✓	
Fail to comply with an Order with no reasonable excuse	2		✓	✓	✓	
Public place and parking offences	1-2	✓	✓ 2 nd offence			
<i>Plumbing and Drainage Act & Regulations</i>						
Plumbing and drainage activity (etc) not in accordance with legislative requirements	1-2	✓	✓ 2 nd offence			
<i>Public Health Act & Regulations</i>						
Not comply with controls for public swimming/spa pool	1		✓	✓		
Not comply with controls for skin penetration procedures	1		✓	✓		
Fail to comply with a Notice/Order	2		✓	✓		



General offences	Priority	Warning/ Education	Penalty Infringement Notice	Notice &/or Order	Legal Action	LEC Class 4
<i>Protection of the Environment Operations Act & Regulations</i>						
Fail to comply with a Notice/Direction	2		✓	✓		
Fail to pay Notice issue fee	2		✓			
Pollute waters/air/land – minor 1 st offence	2	✓				
Pollute waters/air/land – not minor 1 st offence	1-2		✓	✓	✓	✓
Transport etc asbestos/excess/hazardous waste to an unlawful facility	1-2			✓	✓	✓
Litter offences	1-2	✓	✓			
<i>Roads-related legislation & Regulations</i>						
Vehicle illegally parked on road verge – outside related residence, not causing obstruction (incl. footpath/line-of- sight), low safety risk and not advertising or for sale.	3	✓				



General offences	Priority	Warning/ Education	Penalty Infringement Notice	Notice &/or Order	Legal Action	LEC Class 4
Vehicle illegally parked on road verge – causing obstruction (including footpath/line-of-sight)/high safety risk and/or advertising or for sale.	1-2	✓	✓			
Parking in disabled zone without display permit	1		✓			
Illegal parking in high traffic/risk area (eg town centre, school)	1		✓			
Unapproved sign in road reserve	1-3	✓	✓ 2 nd offence			
<i>Swimming Pools Act & Regulations</i>						
Pool not have complying barrier, warning notice	1-2	✓	✓ 2 nd offence			
Fail to comply with a Notice/Direction/Order	2		✓			
Fail to register pool – 1 st offence	2	✓ caution with 28 days notice				
Fail to register pool – ongoing offence	2		✓ fine (after each caution with 28 day warning) + new caution with 28 day warning.			

***Notes**

- In some cases, the particular breach may be remedied or resolved prior to proceeding to the service of Notices, Orders or legal proceedings i.e. via negotiation or by promptly obtaining relevant approvals.
- Prior to determining an appropriate course of action, consideration is required to be given to the circumstances of the case and the courses of action contained in the above table may not be suitable or sufficient in all cases.