

Enforcement Policy

Policy Title	Enforcement Policy
Responsible Manager(s)	Director Planning
Contact Officer(s)	Manager – Development and Environment
Directorate	Planning
Approval Date	31 March 2025
Strategic Focus Area	Thriving, Responsive
Delivery Plan Link	115. Respond to customer/community complaints in a timely manner
Operational Plan Link	115 a) Ensure all complaints are investigated with transparency and integrity in accordance with Council's complaints policy

Purpose

The purpose of this Policy is to assist Council staff to act promptly, consistently, and effectively to allegations of unlawful activity.

Objective/Aims

The intent of this Policy is to establish clear guidelines and protocols for Council staff in the management of Council compliance investigations, 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; or
- 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.

Scope

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

- Development and building control
- Pollution control
- Environmental health
- Public health and safety, including skin penetration and food premises
- Priority weeds
- Water and sewer, including on-site sewage management systems
- Animal control
- Fire safety
- Tree preservation

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;
- an individual requests service from council about unlawful activity;
- 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.

Policy Details

1.	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; • actively deploying the powers available in legislation to facilitate compliance with relevant regulations, rules, and conditions; • 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; and • ensuring enforcement action is taken against the right person for the correct offence.
2.	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; and • 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.

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	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.
3.	Confidentiality of people who report allegations of unlawful activity Council understands the concerns an individual may have about their physical safety as a result of lodging a complaint of unlawful activity. Council will maintain confidentiality of complainants, however people who report allegations of unlawful activity should not expect that their identities will always remain confidential. 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; or • 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.
4.	Investigating alleged unlawful activities A preliminary assessment of the alleged unlawful activity will be made to determine whether an investigation or other action is required. Council will prioritise any further investigation based on risk to public safety, human health, and environment. Further enquiries/investigation will not be initiated where: • the matter has already been investigated and resolved, • 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.

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5.	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.
6.	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.
7.	Shared enforcement responsibilities Some investigations will involve shared regulatory responsibilities between Council and other statutory bodies including, but limited to, the Environment Protection Authority (EPA), the NSW Police Force, the Office of Liquor, Gaming and Racing, NSW Fair Trading, NSW Food Authority, Natural Resource Access Regulator and Crown Lands.

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	Council recognises that collaboration and cooperation between authorities to address issues of shared regulatory responsibility is the best approach. Council will liaise with relevant authorities to establish:
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- Which authority will take the leading role on any joint investigation
- Which activities each authority will carry out
- Responsibilities for updating an individual where relevant
- Protocols for exchanging confidential information between the relevant authorities

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Document History

Date	Status	Version	Resolution	Description
February 2025	Draft	0.1		Draft Enforcement Policy reviewed and updated.
26 February 2025	Draft	0.2		Draft Enforcement Policy presented to Council for endorsement, public exhibition 28 days.
26 February 2025	Draft	0.3	25/23	Draft Enforcement Policy be placed on public exhibition and submissions for 28 days.
31 March 2025	Final	1.0	25/23	No submissions received after 28 day public exhibition - Enforcement Policy adopted.

- This Enforcement Policy shall be reviewed within 12 months of an election, and thereafter at intervals of no greater than four years. Any review will ensure this Policy continues to meet all statutory requirements and the operational needs of Hilltops Council. The Policy may also be reviewed at other times as determined by Hilltops Council.
- This Policy commences on and from the date of adoption by Hilltops Council as listed in the document history and replaces all previous versions.