

## Compliance and Enforcement Policy

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### 1. PURPOSE AND SCOPE

- 1.1. This policy applies to the regulatory process undertaken by Council staff, when investigating a potential breach of legislation, Council Code or Policy.
- 1.2. This policy will provide the framework to assist Enforcement Officers in acting promptly, effectively and consistently in undertaking daily patrols and/or responding to allegations of unlawful activity. This policy is also designed to provide a framework to ensure transparency in decision making with respect to the statutory functions of council.
- 1.3. The NSW Ombudsman's Enforcement Guidelines for Councils (December 2015) has been used as a resource for revisiting this policy.
- 1.4. This policy outlines matters to be considered at the various stages of the enforcement process.
- 1.5. For simplicity, this policy refers to both an act and/or an omission by an alleged offender as 'unlawful activity'.
- 1.6. This policy sets out how requests for review of Penalty Notices are undertaken.

### 2. POLICY OBJECTIVES

The objectives of this policy are to:

- a. Deliver clear guidelines for the exercising of discretion, for Council and its Enforcement Officers, in investigating & identifying the appropriate course of regulatory action, in regards to allegations of unlawful activity.
- b. Ensure that the discretion utilised by Council and its Enforcement Officers takes into account all relevant information, including the available evidence, cost to the community, the circumstances of the individual case and public policy and precedent considerations. The policy also provides a legal and administrative framework to assist

Council and its Enforcement Officers in making decisions with respect to its enforcement functions

### **3. APPLICATION**

This policy is to be read in conjunction with Council's Code of Conduct and applies to the investigation and enforcement of unlawful activity or failure to comply with the terms or conditions of approvals, licences and orders. While primarily directed at the regulation of development activity, the policy is also applicable to:-

- Pollution control
- Regulation of parking
- Regulation as to the keeping of animals
- Environmental health
- Public health and safety
- Noxious Weeds
- Water and sewer
- Septic systems
- Food safety
- Fire safety
- Tree preservation

### **4. COMPLIANCE AND ENFORCEMENT PRINCIPLES**

The following are the principles that underpin council's approach to the undertaking of regulatory investigations:

- a. Accountability and transparency:
  - i. acting in the best interests of public health safety and the environment;
  - ii. ensuring accountability for decision making;
  - iii. acting fairly and impartially and without bias or unlawful discrimination;
  - iv. providing information about compliance and enforcement priorities and reasons for decisions to improve understanding and certainty and promote trust within the community;
  - v. ensuring meaningful reasons for decisions are given to all relevant parties, particularly when there is a departure from this Policy;
  - vi. acting on any complaints or concerns about the conduct of Enforcement Officers in accordance with Council's Complaints Management Policy and Procedures;
  - vii. advising people and organisations subject to enforcement action any avenues available to seek a review of a decision.
- b. Consistency
  - i. ensuring all compliance and enforcement action is implemented consistently.
  - ii. Council will not consider representations against a penalty infringement notice unless it has been forwarded to them by the NSW State Debt Recovery Office.
- c. Proportional
  - i. ensuring the level of enforcement action is proportionate to the level of risk and seriousness of the breach

- ii. taking action to address harm and deter future unlawful activity
  - iii. Making cost effective decisions concerning enforcement action (i.e the issuing of a Penalty Infringement Notice, local court action or Land and Environment Court action etc.)
- d. Timely
- i. ensuring responses to customer requests alleging unlawful activity are undertaken in a timely manner.
- e. Safety
- i. ensuring the safety of Enforcement Officers is paramount at all times

## 5. 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 patrols or inspections.

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

## 6. DEFINITIONS

*Enforcement Officer* is an employee or contractor of Shoalhaven City Council who is delegated to undertake regulatory investigations and/or actions on behalf of the organisation, for breaches of state legislation, national legislation or Council Codes or Policies. Enforcement Officers will include such roles as Rangers, Parking Officers, Compliance Officers, Building Surveyors, Planners, Environmental Health Officers, Tree Preservation Officers and any other role within the organisation with the delegation to undertake regulatory investigations and/or actions.

*Unlawful activity* is any activity or work that has been or is being carried out:

- Contrary to the terms or conditions of a development consent, approval, permission or licence.
- 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 a particular activity or work.
- Without a required development consent, approval, permission or licence.

## 7. INVESTIGATING ALLEGED UNLAWFUL ACTIVITY

- 7.1 A preliminary assessment of all matters will be made to determine whether investigation is required. If an investigation is warranted, Council will prioritise matters on the basis of risk to public safety, human health and the environment.

- 7.2 Breach Reports will be completed in accordance with the Policy and peer reviewed for all major investigation matters. Examples of where a breach report will be warranted include such scenarios as a dog attack, unauthorised development, illegal tree clearing etc.
- 7.3 Minor matters such as parking offences, littering offences, etc do not necessarily require a breach report or an investigation to prove the offence. In such cases a penalty infringement notice can be issued on the spot.
- 7.4 Council will take no regulatory action if, following a preliminary assessment, it is identified that:
- i. council does not have jurisdiction to investigate or is not the appropriate authority to take action on the issues raised.
  - ii. the report relates substantially to a matter previously investigated by council and no new or compelling information is presented which would warrant council altering a previous decision.
  - iii. the allegations relate to a lawful activity (eg where there is an existing approval or the activity is permissible without council approval or consent being required)
  - iv. the report is not supported with evidence or appears to have no substance
  - v. the allegation, after a peer review, is proven to be trivial, frivolous or vexatious
  - vi. the relevant manager, director or the general manager 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.
  - vii. it is not in the public interest, after a peer review, to continue to investigate the alleged unlawful activity.

## **8. INVESTIGATION PROCESS**

All investigations will be conducted in accordance with Councils' current internal standard operating procedures.

## **9. RESPONDING TO ALLEGATIONS OF UNLAWFUL ACTIVITY**

Allegations of unlawful activity requiring urgent attention will be actioned within 72 hours.

All other allegations of unlawful activity will be actioned, in a timely manner, reflective of the likelihood of risk to the general public and/or environment.

## **10. OPTIONS FOR DEALING WITH CONFIRMED CASES OF UNLAWFUL ACTIVITY**

Council will use the quickest and most appropriate option to deal with unlawful activity wherever possible.

Council may, depending on the available evidence, utilise one or more of the following forms of regulatory action in line with Council's internal operating procedures:

- a. Referral
  - i. Referring the allegation to an external agency for further investigation or prosecution action. i.e. Police, NSW Government Department etc.

- ii. Referring the disputing parties issue to an external mediator. i.e. The Community Justice Centre or NSW Civil & Administrative Tribunal (NCAT).
- b. No Action
- c. Education
  - i. Educating the offender, after they have been identified, as to the requirements of the relevant legislation, Council Policies or Codes
- d. Warnings or cautions
  - i. Giving a Warning Notice for unlawful activity.
  - ii. Issuing a formal CAUTION
- e. Notices, Orders, Directions, Legal Prosecution
  - i. Giving a Notice/Order/Emergency Order requiring work to be undertaken or the activity to cease.
  - ii. Giving a verbal and/or written Direction to take action to rectify a breach of legislation
  - iii. Issue a Penalty Notice
  - iv. Carrying out the work specified in an Order, under delegated authority and transferring the cost of such action to the offender.
  - v. Court attendance notice

## **11. TAKING ENFORCEMENT ACTION – MATTERS TO BE CONSIDERED**

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 regulatory response and shall be documented as part of the Breach Report:-

### **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, 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 or instructions;
- any mitigating or aggravating circumstances demonstrated by the alleged offender;
- any particular circumstances of hardship affecting the person or organisation reported.

**Considerations about the impact of any enforcement action:**

- the need to deter and 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 by Council or a previous decision made by Council.

**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 unauthorised use legal.

**12. REVIEWS OF PENALTY NOTICES FOR BUILDING, DEVELOPMENT, ENVIRONMENTAL & ANIMAL OFFENCES**

- 12.1 All “requests for reviews” must be referred through Revenue NSW in the first instance.
- 12.2 When Revenue NSW refers any “request for review” to Council it shall be considered by the Penalty Review Panel (PRP) established by Council (subject to clause 12.5)
- 12.3 The PRP will consider reviews in accordance with the relevant provisions of the Fines Act 1996, (and any guidelines issued under the Act), the Attorney General’s Internal Guidelines
- 12.4 The PRP will keep proper records of its decisions and reasons.
- 12.5 Animal offences review requests will be undertaken by the Unit Manager

**13. REPORTING**

The PRP report each 6 months to Council providing statistical information of matters and their determination

**14. REFERENCES**

NSW Ombudsman, Enforcement Guidelines for Councils (December 2015)  
Attorney General’s Internal Review Guidelines

The investigation process and any enforcement actions shall be undertaken in accordance with Council's Compliance – Operating Procedure