

Compliance and Enforcement Policy

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Contents

1. Purpose	2
2. Policy Statement.....	2
3. Scope	2
4. Objective.....	3
5. Compliance And Enforcement Principles	3
6. Risk Based Regulation	4
7. Responsibility	4
8. Submitting Reports Of Unlawful Activity.....	5
9. Responding To Concerns About Unlawful Activity.....	6
10. Anonymous Reports	6
11. Unreasonable Complainant Conduct.....	6
12. Investigating Alleged Unlawful Activity.....	7
13. Deciding Whether Or Not To Take Enforcement Action	8
14. Options For Dealing With Confirmed Cases Of Unlawful Activity	10
15. Taking Legal Action.....	11
16. Shared Enforcement Responsibilities	12
17. Role Of Council Where There Is A Private Certifier.....	12
18. Principal Certifiers Directions Notice	13
19. Building Information Certificates	13
20. Role Of Councillors In Enforcement	14
21. Reviews Of Penalty Notices For Building, Development, Environmental & Animal Offences	14

1. Purpose

This policy applies to regulatory programs, investigation of complaints and enforcement actions. This includes response to unlawful activity including failure to comply with approvals or legal directions such as notices and orders. It outlines how to assess and prioritise matters for investigation, describes regulatory options, and explains the matters to be taken into consideration when determining how to best respond to compliance cases.

It is based on the NSW Ombudsman “Enforcement Guidelines for Councils” and “Model Policy” (2015).

2. Policy Statement

This Policy applies a risk-based approach to compliance management to ensure resources are focused on those matters posing the biggest risk to the community and the environment. This approach is applied to both proactive compliance activities and also in response to reports alleging unlawful activity (reactive compliance). Council will undertake enforcement action where appropriate in accordance with this Policy document and within the appropriate legislative context.

3. 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 Shoalhaven.

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 the enforcement option Council will consider and whether to commence criminal or civil proceedings.

In certain circumstances Council will have shared enforcement responsibilities with other regulatory authorities. Advice and guidance is also provided on the role of Council in building and construction compliance matters where there is a Private Certifier. It also explains the role of Councillors in the enforcement process.

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

Council’s regulatory responsibilities are applicable to *threatened* or *actual unlawful activity*, as well as a *failure to take action*. For simplicity, this Policy refers to both an act and/or an omission by an alleged offender as ‘unlawful activity’.

4. Objectives

The objectives of this Policy are:

- 1 To establish clear guidelines and protocols for Council staff to enable the consistent management of Council's regulatory activities.
- 2 To provide a framework to facilitate a responsive and risk based approach to proactive and reactive compliance and enforcement matters.
- 3 To improve compliance management and reduce the impact of unlawful activity on the community and the environment.

This Policy also provides advice and guidance on the role of the Private Certifiers and the role of Councillors in enforcement.

5. Compliance and Enforcement Principles

The following are the principles that underpin Councils actions relating to compliance and enforcement.

Principle	Action
Accountable and transparent	<ul style="list-style-type: none">• Acting in the best interests of public health and safety and the environment• Ensuring accountability for decisions (to take or not take action)• Acting fairly and impartially and without bias or unlawful discrimination• Providing information about compliance, enforcement priorities and reasons for decisions to improve understanding and certainty and to promote trust by the regulated community• Ensuring meaningful reasons for decisions are given to all relevant parties, particularly when there is a departure from this Policy.• Acting on any complaints or concerns about the conduct of compliance officers in accordance with Council's complaints management policy and procedures• Advising people and organisations subject to enforcement action of any avenues available to seek an internal or external review of a decision
Consistent	<ul style="list-style-type: none">• Ensuring compliance and enforcement action is implemented consistently• Encouraging customer reports about possible unlawful activity by acting reasonably in response to the circumstances and facts of each matter
Proportional	<ul style="list-style-type: none">• Ensuring the level of enforcement action is proportionate to the level of risk and seriousness of the breach• Making cost effective decisions about enforcement action• Taking action to address harm and deter future unlawful activity

Timely	<ul style="list-style-type: none">• Ensuring responses to reports alleging unlawful activity and decision making in relation to those is timely.
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6. Risk Based Regulation

Our community has an expectation that Shoalhaven City is a healthy and liveable city where the environment is valued and protected by its Council. It is understood there is a correlation between this level of community expectation and the commensurate increase in the number of laws and regulations, governing the relevant compliance. From time to time reports alleging unlawful activity will exceed available resources.

Risk based regulation operates on the basis that the type of compliance action chosen will be dependent on an evaluation of the degree of risk, and the impact of the non-compliance on Council's ability to achieve its objectives. This allows Council's limited compliance resources to be deployed where they are most needed and where they will produce the most effective results to meet legislative responsibilities.

Council is committed to developing and implementing both proactive and reactive strategies to achieve effective and efficient risk based compliance enforcement programs. To this end, Council uses intelligence gained from its customer management systems to determine the most appropriate strategy.

Proactive compliance monitoring assists Council in meeting its statutory requirements, respond to common complaints and maintain a positive monitoring presence. The aim of proactive strategies is to reduce reactive incidents requiring a Council response.

Education and awareness-raising activities are proactive approaches to preventing breaches of the law and can be very cost effective in achieving compliance. Providing information to the public through media releases, Council's website, workshops with target groups and brochures, together with financial reward incentives, are all strategies Council will explore to determine the best fit for the areas of focus.

Reactive compliance enforcement incorporates a risk based approach which places requests into low, medium and high categories having regard to Council's Risk Category Guidelines (refer Appendix C).

Periodic reviews of risk categories will be undertaken using intelligence collated from its case management systems. Other sources are reviewed to ascertain whether systemic or more serious patterns are emerging which warrant re-categorising the risk levels of unlawful activities.

7. Responsibility

Council receives information about alleged unlawful activities from members of the public, contact from other Government Agencies and information gathered by its Officers during proactive inspections.

Only Council staff with appropriate delegations from the General Manager (Chief Executive Officer (CEO)) can undertake investigations or compliance and enforcement action in relation to this Policy.

Council staff are required to:

- 1) treat all relevant parties with courtesy and respect

- 2) communicate with all relevant parties and provide feedback on the progress of an investigation and any reasons for delay without compromising the integrity of the investigation
- 3) make full and proper records on Council's corporate systems 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 (within the bounds of confidentiality and privacy) 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 customer request system and actioned within the appropriate risk based time frame by the appropriate business unit.

8. Submitting reports of unlawful activity

Reports alleging unlawful activity will be recorded in Council's customer request systems and will be allocated a unique reference number. The report will be referred to the relevant Council Officer to commence any necessary action.

The name, address and contact details of the person submitting the report will also be recorded. This information is critical as Council may need to rely on evidence from the complainant to prove any alleged offence and commence enforcement action. Council will advise any complainants of the action, if any, taken or the reasons why no action was taken in the circumstances.

Council generally seeks to withhold personal information identifying a complainant. However, Council may be required to disclose this information in a variety of circumstances including the following:

- 1) When access to the information is permitted under another Council Policy (consistent with legislation)
- 2) Legal proceedings are commenced and the information is disclosed in evidence served
- 3) When access to the information is permitted under Legislation, including the Government Information (Public Access) Act 2009 (GIPA) or the Local Government Act 1993.
- 4) the disclosure is required to comply with the principles of procedural fairness
- 5) the disclosure is necessary to investigate the matter.

Also, in some circumstances it may be possible to ascertain the identity of the person submitting the report by the nature of the allegation.

8.1 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) providing a clear description/account of the impact the alleged activity is having
- 3) 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
- 4) not giving any information that is intentionally misleading or wrong
- 5) assisting with gathering discreet evidence, ie photographic evidence or the completion of a noise diary.
- 6) cooperating with Council's inquiries and giving timely responses to questions and requests for information
- 7) treating Council's staff with courtesy and respect

9. Responding to concerns about unlawful activity

Council will record every report alleging unlawful activity.

Not all reports will, can or 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 are made following the completion of a breach report by the Council Officer detailing the facts about the investigation. This report is reviewed by the Supervising Officer and in some instances the Manager where the final recommendation on the way forward is supported. This means the unlawful activity will be resolved to the satisfaction of Council's Authorised Officers and not necessarily the complainant. Council will generally try to resolve matters as quickly 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, in some cases, Council may be unable to take further action. Council does not have unlimited resources and powers to deal with reports alleging unlawful activity.

10. 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 evaluate the allegations and therefore these reports are less likely to warrant investigation.

11. Unreasonable Complainant Conduct

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:

- 1) requests that place unreasonable demands on Council's staff
- 2) requests that place unreasonable demands on Council's resources
- 3) unreasonable persistence
- 4) unreasonable lack of cooperation
- 5) requests or complaints based on unreasonable arguments

In the context of the above situations, Council Officers will follow Council's Complaints Policy and Procedure.

If there is a concern about a customer's conduct the Director will write to the customer with a proposed course of action. The customer will be given an opportunity to make representations to the General Manager (Chief Executive Officer - CEO) or authorised officer about Council's proposed course of action.

12. Investigating alleged unlawful activity

A preliminary assessment of all requests will be made to determine whether investigation or other action is required. Council will prioritise matters based on the Compliance and Enforcement Principles (Section 5).

If there is insufficient information in the report to undertake a preliminary assessment, the customer will be advised, and the matter will not be tasked for investigation.

12.1 *Circumstances where no action will be taken*

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

- 1) the report is not supported with evidence or appears to have no substance.
- 2) it pertains to a criminal act requiring investigation by the NSW Police Force
- 3) it involves an allegation of corrupt conduct by a Council Officer
- 4) an investigation would not be in the public interest or the interest of justice.
- 5) Council does not have jurisdiction to investigate or is not the appropriate regulatory 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, SafeWork NSW for workplace safety matters, the NSW Environment Protection Authority (EPA) for possible environmental offences and Community Justice Centres NSW for personal disputes.
- 6) 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).
- 7) 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).
- 8) the relevant Manager, Director or the General Manager (Chief Executive Officer - CEO) 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.

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

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

- 1) the activity is having a significant detrimental effect on the environment or it constitutes a risk to public safety
- 2) the report is premature as it relates to some unfinished aspect of work that is still in progress
- 3) the activity or work is permissible with or without permission
- 4) all conditions of consent are being complied with
- 5) much time has elapsed since the events identified in the report took place
- 6) another authority is a more appropriate agency to investigate and deal with the matter
- 7) it appears there is a pattern of conduct or evidence of a possible widespread problem
- 8) the person or organisation reported has been the subject of previous reports
- 9) the report raises matters of special significance in terms of Council's existing priorities
- 10) there are significant resource implications in relation to an investigation and any subsequent enforcement action
- 11) it is in the public interest to investigate the report.

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 of proof to support any required enforcement action
- d) determine any necessary action to mitigate the possibility of a similar incident recurring.

Any decision not to investigate an allegation of unlawful activity will be recorded together with a clearly articulated rationale for that decision.

13. Deciding whether or not to take 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 general considerations will assist Council staff in determining the most appropriate response in the public interest:

13.1 Considerations about the alleged offence and impact

The following matters about the alleged offence and its potential impact may be considered to determine whether or not to take enforcement action:

- 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
- 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.

13.2 Considerations about the alleged offender

The following matters about the alleged offender may be considered to determine whether or not to take enforcement action:

- 1) any prior warnings, cautions, 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.

13.3 Considerations about the impact of any enforcement action

The following matters about the impact of any enforcement action may be considered to determine whether or not to take enforcement action:

- 1) the need to deter any future unlawful activity, both for the specific offender and general deterrence
- 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 it has given. For example, if an authorised officer of the Council has said no action will be taken, then an estoppel situation has been created and Council cannot go back on its previous actions or words.

13.4 Considerations about the potential for remedy

The following matters about the potential for remedy may be considered to determine whether or not to take enforcement action:

- 1) whether the breach can be easily remedied
- 2) whether it is likely that 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.

14. Options for dealing with confirmed cases of unlawful activity

Council will use the most effective, informal option to deal with unlawful activity where it is considered practicable, 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.

There are a range of enforcement actions available as shown below in Figure 1. Enforcement options are not necessarily mutually exclusive. For example, in some circumstances it may be appropriate to simultaneously issue an Order and a Penalty Notice.

Figure 1: Enforcement actions available to Council

Remedial or Rectification Action	Penalty Action
<p style="text-align: center;">Court Order</p> <p>An order from the Court requiring certain things to be done to achieve compliance (Civil proceedings)</p>	<p style="text-align: center;">Criminal Prosecution</p> <p>In the Land and Environment Court or the Local Court</p>
<p style="text-align: center;">Notice/Order</p> <p>A Notice/Order from Council requiring certain things to be done to achieve compliance</p>	<p style="text-align: center;">Penalty Notice</p>
<p style="text-align: center;">Letter requesting undertaking</p> <p>A letter requesting an undertaking that corrective action will be taken within a certain timeframe</p>	
<p style="text-align: center;">Negotiation</p> <p>With alleged offender and written confirmation of commitments made</p>	
<p style="text-align: center;">Caution / Warning or advisory letter</p> <p>To encourage future compliance and caution that further action may be taken</p>	
<p style="text-align: center;">Record the breach</p> <p>No further action – for very minor breaches only</p>	

It may be appropriate to use more than one enforcement option in some cases. This is likely if the initial enforcement action does not achieve a satisfactory outcome and it may be necessary to proceed to a higher level of enforcement response. For example,

- 1) if a warning letter or notice of intention does not achieve the desired response, it may be appropriate to give an Order; or
- 2) if an Order is not complied with, it may be appropriate to bring enforcement or prosecution proceedings.

14.2 Following up on enforcement action

All enforcement action will be reviewed and monitored to ensure compliance with any undertakings given by the person the subject of enforcement action or advice, directions or orders issued by Council.

Reports alleging a continuation of 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 Officers will consider other enforcement options.

15. Taking Legal Action

Council and 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 the unlawful activity being proven before a Court
- 3) whether the public interest warrants legal action being pursued
- 4) time within which to commence proceedings

15.1 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 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 prosecution bears the burden of proof and is required to prove the elements of the offence beyond reasonable doubt. This holds true whether court proceedings are commenced or an infringement notice issued, as the accused may elect to contest the infringements in court.

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.

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

Given the expense of legal action, Council Officers will not recommend taking 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 both implying guilt (inculpatory) and

evidence serving to clear from alleged fault or guilt (exculpatory), all possible defences, and any other factors which could affect the likelihood of a successful outcome.

15.3 Whether the public interest requires legal action to be pursued

Public interest is the principal consideration in deciding whether to commence legal proceedings. In making this determination, the same factors to be considered when taking enforcement action apply.

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.

15.4 Time within which to commence proceedings

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

16. Shared enforcement responsibilities

Some reports will raise matters involving shared regulatory responsibilities between Council and other authorities including the Environment Protection Authority, NSW Police, NSW Liquor and Gaming, 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 work 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.

17. Role of Council where there is a Private Certifier

Where the Private Certifier has been appointed as the Principal Certifier, Council recognises the Private Certifier is the authority responsible for ensuring compliance with the conditions of development consent.

Council will endeavour to work with Private Certifiers 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.

People making complaints regarding a site under the supervision of a Private Certifier will be advised to contact the Private Certifier in the first instance. This will give the Private Certifier an opportunity to address the issues and take appropriate action.

Should the Private Certifier fail to use their enforcement powers to address the issue raised within a reasonable timeframe, Council may act to investigate the matter.

It must be noted that Council is not a regulatory authority placed above Private Certifiers. Any complaints about the conduct of Private Certifiers must be directed to the NSW Fair Trading www.fairtrading.nsw.gov.au.

18. Principal Certifiers Direction Notices

Private Certifiers have limited enforcement powers however, a written direction notice (WDN) is a compliance tool available to principal certifiers under section 6.31 of the EP&A Act. The notice must be issued in writing where it is suspected there is, or is likely to be non-compliance with aspects of development and gives the person responsible for that aspect of development an opportunity to remedy the non-compliance (including a potential non-compliance) before further compliance action might be taken by a consent authority. The WDN must be issued within 2 business days of becoming aware of the non-compliance.

A WDN must:

- 1) Identify the matter that has resulted in or would result in the non-compliance,
- 2) Specify the compliance period allowed to remedy the non-compliance, and
- 3) Specify the action to be taken to remedy the non-compliance.

Within a reasonable period after the expiry of the period permitted to remedy the non-compliance, the principal certifier must:

- 1) Return to site to conduct an inspection to assess whether the responsible person has complied with the WDN, and
- 2) Make a record of the inspection and provide a copy to the responsible person. The Department has designed a WDN template to assist with this process.

If the responsible person has failed to comply with the WDN, the principal certifier must:

- 1) Notify the land owner (including an owner's corporation).
- 2) Notify the consent authority within two days of conducting the inspection.
- 3) Send the consent authority and land owner a copy of the completed WDN advising them that it has not been complied with.

Once the principal certifier refers the completed WDN to the consent authority, the consent authority becomes responsible for any further enforcement action. If the issue is urgent or potentially a public danger, the certifier should immediately inform the council and, depending on the issue, may need to contact SafeWork NSW or the NSW Police.

Shoalhaven City Council Principal Certifiers will also adopt the WDN process.

19. Building Information Certificates

Persons who have carried out unlawful building works may, as an option, apply for a Building Information Certificate under section 6.24 of the *Environmental Planning and Assessment Act 1979* to retain the structure. If a building certificate is issued, Council cannot issue development control orders for demolition or alterations unless 7 years has lapsed and there are fair wear and tear issues needing to be addressed.

It is Council's policy however that such applications should not be encouraged to circumvent planning requirements and justify unlawful works. Irrespective of whether a Building Information Certificate is applied for, Council may take action against a person who carried out the unlawful works.

The action may include the issuing of a penalty notice or commencement of criminal proceedings, where it is considered appropriate and necessary for punitive action to also be taken. The direction taken will have regard to the restriction provisions provided under Section 9.57 of the *Environmental Planning and Assessment Act 1979* and the severity of the case.

20. 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 (CEO) may present certain decisions to be ratified by the elected Council if this is necessary or desirable. The councillors also have the right to call for a report about particular issues to a Council meeting.

Relevant References:

Section 352 of the Local Government Act states *"A member of staff of a council is not subject to direction by the council or by a councillor as to the content of any advice or recommendation made by the member"*.

21. Reviews of penalty notices for building, development, environmental & animal related offences

All "requests for reviews" must be referred through to Revenue NSW in the first instance. The submission to Revenue NSW should be in accordance with the Review Guidelines. For more details, please refer to <https://www.revenue.nsw.gov.au/help-centre/resources-library/br001.pdf>

When Revenue NSW refers any "request for review" to Council it will be referred to the relevant supervisor to prepare a detailed report on the issues and submissions made in respect of the penalty notice issued. This report will be reviewed by the relevant Manager. This does not relate to parking and animal offences review requests will be undertaken by the Lead, Ranger Services.

The Manager 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. The Manager will keep proper records of its decisions and reasons.

APPENDIX A

The Policy applies but is not limited to, Council's responsibilities under the following Acts, their associated Regulations and any subsequent legislative amendments:

- Australian Road Rules 2014
- Roads Act 1993
- Road Transport Act 2013
- Boarding Houses Act 2012
- Companion Animals Act 1998
- Contaminated Land Management Act 1997
- Crown Lands Act 1989
- Environmental Planning & Assessment Act 1979
- Environmental Planning & Assessment Regulation 2021
- Environmental Planning & Assessment (Development Certification and Fire Safety) Regulation 2021
- Fines Act 1996
- Food Act 2003
- Impounding Act 1993
- Local Government Act 1993
- Motor Dealers Act 1974
- Biosecurity Act 2015
- Plumbing & Drainage Act 2011
- Protection of the Environment Operations Act 1997
- Public Health Act 2010
- Swimming Pool Act 1992
- Rural Fires Act 2008
- Sydney Water Act 1994

APPENDIX B

DEFINITIONS

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

Complaint

A 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.

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

- a report alleging unlawful activity (see definition below)
- a request for information about a Council policy or procedure
- a request for an explanation of actions taken by Council
- a 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:

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

APPENDIX C

RISK CATEGORY GUIDELINES

RISK CATEGORY		
HIGH	MEDIUM	LOW
FEATURES OF CATEGORY		
Matters likely to cause significant risk or harm to the environment and/or public safety (i.e. likely to cause serious and irreversible impacts).	Matters likely to cause moderate risk of harm to the environment and/or public health and safety (i.e. impacts of concern that need to be controlled or mitigated).	Matters likely to cause minimal risk of harm to the environment and/or public health and safety (i.e. low impact, reversible and easily mitigated).
INDICATIVE TIMEFRAME OF INITIAL RESPONSE		
Immediately or within 48 hours	Response within 15 working days	Response within 20 working days
EXAMPLE REPORT TYPES/ISSUES		
<p>Large scale/major pollution incidents</p> <p>Serious public health issues such as food poisoning outbreaks and Legionnaires cases</p> <p>Dangerous Dog attacks, straying stock</p> <p>Clearing or removal of significant trees and vegetation</p> <p>Abandoned vehicles in unsafe locations</p> <p>Collapsed or unsafe building works adjacent to public areas</p> <p>Poor sediment control on building sites</p> <p>Swimming pool with no fence or barrier</p> <p>Significant fire safety issues</p> <p>Urgent asbestos removal</p> <p>Demolition or damage to a heritage item</p> <p>Sewer leaks and overflows</p> <p>Large scale unauthorised landfilling and waste disposal</p> <p>Persons residing in unsafe conditions representing an imminent threat to their person health and safety.</p>	<p>Roaming dogs, animal registration and general companion animal enquiries</p> <p>Abandoned motor vehicles</p> <p>Minor pollution incidents air, noise, odour and water quality</p> <p>Breaches of Vegetation Permits</p> <p>Swimming pool with non-compliant fence or barrier</p> <p>Commercial or industrial air and noise complaints</p> <p>Food premises complaints e.g. health and hygiene, condition of premises, suspected food poisoning</p> <p>Public Health complaints e.g. condition of swimming pools and spas, skin penetration premises, cooling towers</p> <p>Significant unauthorised / non complying building and land use matters</p> <p>Unauthorised building works where a Private Certifier is appointed</p> <p>Minor landfilling, or rubbish dumping</p> <p>Footpath obstructions</p> <p>On-site Sewage Management Systems failures</p> <p>Reserve encroachments</p> <p>Boarding houses</p> <p>Overland storm water flow caused by non-complaint works</p>	<p>Barking dogs</p> <p>All other animal related enquiries</p> <p>Domestic noise complaints (power tools, air conditioners, pool pumps, amplified music)</p> <p>Overgrown land</p> <p>Accumulation of rubbish or material on land</p> <p>Home business/home occupation</p> <p>Minor unauthorised /non complying building works (criteria)</p> <p>Smoke nuisance from domestic wood heaters, outdoor BBQ's, burning prohibited items</p> <p>Illegal Parking</p>

Note: The action undertaken by Council in response to a request will be proportionate to the quantum of resources available at the time. For example, where the number of requests exceeds the amount of resources available, requests may be actioned using compliance through voluntary action (letters of cooperation). Conversely, when resources are available, more detailed investigations may be conducted.