



POLICY NO.	CPLE2
POLICY TITLE	Compliance and Enforcement Policy
STATUS	Council
SERVICE	People and Culture
DOCUMENT ID	659034

1. PURPOSE

The purpose of the Compliance and Enforcement Policy is to establish a framework to guide the most efficient and effective use of council's regulatory resources to achieve the best environmental, health and safety outcomes for the community.

The Policy aims to provide consistency in enforcement action in matters of food safety, public health, environmental and development non-compliance and ensures natural justice principles are respected.

The enforcement action taken will be dependent upon the circumstances in each case and consideration will be given to the various questions, as specified within this Policy. This will help guide the allocation of Council's human and financial resources to address those regulatory issues which present the greatest risk, and to utilise a collaborative approach, when appropriate, to achieve suitable outcomes without the need for harsher, more punitive action.

The Policy outlines the procedures, methodology and service levels to be applied, based on risk management principles, when responding to reports of alleged unlawful activity in the community.

Council acknowledges that it has an obligation under s.8 of the *Local Government Act 1993* to ensure that the exercise of its regulatory powers is carried out consistently and without bias.

2. INTRODUCTION

Council receives customer requests related to alleged unlawful activity, and expends considerable resources responding to these. Customer requests can be reasonably classified into two categories:

- Matters which primarily impact on the interests of private individuals, and
- Matters which impact the broader public interest.

The *Local Government Act 1993* contains a charter or set of guiding principles designed to direct councils in the carrying out of their functions. These guiding principles include a range of matters with the following considered to be of relevance to this policy:

- To properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development;
- To ensure that, in the exercise of its regulatory functions, it acts consistently and without bias.

The Compliance and Enforcement Policy is intended to give guidance regarding the process of receiving, acknowledging, assessing, and investigating reports of alleged unlawful activity, as well as guide the appropriate response, as promptly as possible to either educate, assist to achieve compliance, or enforce where necessary.

3. POLICY STATEMENT AND 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 local government area.

Council aims to:

- Prevent or minimise harm to health, welfare, safety, property and the environment;
- Manage risks;
- Meet the expectations of the community;
- Reduce incidents on non-compliance by educating the community of their legal obligations and how to comply;
- Efficiently allocate council resources.

This policy assists council to meet these aims through:

- Providing structure for consistency and transparency in decision making, and facilitating a proportional approach to compliance and enforcement;
- Assisting council staff to act promptly, effectively and consistently in response to allegations of unlawful activity;
- Defining how we prioritise responses based on priorities and risk management principles;
- Addressing non-compliances in a manner that is consistent with the seriousness of the non-compliance;
- Educating offenders and the wider community to prevent non-compliance;
- Setting out a collaborative and cooperative approach to matters where council have shared enforcement responsibilities with other regulatory authorities or private certifiers;
- Clarifying the role of Councillors in enforcement.

Delegated council staff are not limited by this policy in their use of discretion and exercise of official functions. The full circumstances and facts of each case need to be considered and a decision made on the merits of the matter being investigated.

This policy applies to regulatory issues with council’s area of responsibility including, but not limited to:

Development & building control	Pollution control	Environmental health
Public health and safety	Water and sewer	Septic systems

Food safety

Fire safety

Pool barrier compliance

Native vegetarian

Parking and traffic issues *

*Routine parking enforcement is not covered under this policy as penalty notices are generally issued on-the-spot and arrangements with Revenue NSW are in place for management of these.

4. DEFINITIONS

Authorised Officer	Any employee delegated by the General Manager as an authorised officer under various legislation.
Complaint	The communication (orally or in writing) of dissatisfaction with a decision, policy, procedure, charge, employee, agent or the quality of the service provided which may include a delay in taking action, making a decision, or providing a service.
Unreasonable complainant conduct (UCC)	<p>is any behaviour by a current or former complainant which, because of its nature or frequency raises substantial health, safety, resource or equity issues for Council staff, other service users and complainants or the complainant himself/herself. In accordance with Council's <i>Managing Unreasonable Complainant Conduct Policy</i> is grouped into five categories of conduct:</p> <ul style="list-style-type: none">a) Unreasonable persistence - is continued, incessant and unrelenting conduct by a complainant that has a disproportionate and unreasonable impact on Council staff, services, time and/or resources;b) Unreasonable demands - are any demands (express or implied) that are made by a complainant that have a disproportionate and unreasonable impact on Council staff, services, time and/or resources;c) Unreasonable lack of cooperation - is an unwillingness and/or inability by a complainant to cooperate with our organisation, staff, or complaints system and processes that result in a disproportionate and unreasonable use of Council services, time and/or resources;d) Unreasonable arguments - include any arguments that are not based in reason or logic, that are incomprehensible, false or inflammatory, trivial or delirious and that disproportionately and unreasonably impact upon Council staff, services, time, and/or resources; ande) Unreasonable behaviours - is conduct that is unreasonable in all circumstances, regardless of how stressed, angry or frustrated that a complainant is, because it unreasonably compromises the health, safety and security of Council staff, other service users or the complainant
Unlawful activity	<p>is any activity or work that has been or is being carried out:</p> <ul style="list-style-type: none">a) contrary to the terms or conditions of a development consent, approval, permission or license;b) contrary to Council's <i>Local Environmental Plan</i>, as amended, that regulates the activities or work that can be carried out on

	<p>particular land;</p> <p>c) contrary to a legislative provision regulating a particular activity or work;</p> <p>d) without a development consent, approval, permission or license; and includes unauthorised works and uses; and</p> <p>e) contrary to the laws of New South Wales in which Council is the regulatory authority.</p>
<p>Delegations Manual and/or Implementation of Delegated Authority</p>	<p>means the Delegations Manual adopted by Council from time to time and any Implementation of Delegations adopted by Council from time to time.</p>

5. POLICY GUIDELINES

5.1 General Principles

1. **Proportionality** - taking action that is reasonable and relates directly to the actual breach.
2. **Consistency** - ensuring that similar issues are dealt with in the same way.
3. **Transparency** - ensuring that Council's intentions and actions are easily understood and documented.
4. **Customer Service** - working with the business or individual to achieve compliance with the law by being approachable, courteous and efficient.
5. **Prioritising** - making sure that resources are targeted primarily on those whose activities give rise to the most serious risk.

5.2 Responding to complaints of alleged unlawful activity

All complaints or notifications to Council relating to alleged unlawful activity should be acknowledged to the complainant in accordance with Council's *Complaints Handling Policy*. Action should be instigated within the following time frames:

- 5.2.1 Council will record and assess every report alleging unlawful activity in accordance with Council's [Customer Complaints Policy](#).
- 5.2.2 Council will respond to the customer, unless the person raising the matter has indicated they do not wish to receive a response, or the report is anonymous.
- 5.2.3 Urgent and life-threatening matters should be actioned as soon as possible following receipt of the complaint. This means either on the day received or the day immediately following e.g. unsafe building works, collapsed buildings, surcharging drains, serious incidents where public health or the environment is at risk and unauthorised demolition of heritage items or contributory items.
- 5.2.4 General compliance matters within five working days e.g. include, works not in accordance with consent or constructed without consent, illegal uses, noise affecting several persons, food complaints;
- 5.2.5 Nuisance matters actioned within 10 working days e.g. domestic noise minor non-compliances such as overgrown land or matters where there are no immediate adverse health or safety impacts; and
- 5.2.6 Out of hours action requests are dealt with by the Rangers in the first instance, followed by a more formal investigation by the Health and Building Officer, if required e.g. out of hours works and noise matters.

All complainants should receive communication from the Council Officer handling the complaint within 10 days, detailing the action taken by Council or the action that Council plans to take.

Timeframes may vary depending on staff and other resources. In such instances, complainant acknowledgement communications may include temporarily revised investigation times.

5.3 Investigating unlawful activity

Not all reports will 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.

If investigated, staff will keep the customer updated 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 or the protection of personal information.

5.3.1 Complaints and matters regarding unlawful activity will be investigated, unless:

- the matter has already been actioned and resolved;
- a private principal certifying authority (PCA) is responsible for monitoring compliance with the conditions of development consent;
- Council has no jurisdiction (e.g. NSW WorkCover issues on building sites or some internal matters within strata buildings etc);
- the activity is determined to be lawful without an investigation; or
- the complaint is vexatious in nature.

5.3.2 Council will investigate matters where:

- The PCA fails or is unable to appropriately action a matter or where it is in the public interest;
- The PCA has taken all the action available under the legislation, but the offence continues or re-occurs despite that action;
- The complaint relates to Council property; and/or
- The complaint relates to an environmental pollution incident.

5.3.3 If a decision is made not to investigate a complaint, the decision must be recorded with clear reasons why it was not investigated. The complainant must then be notified.

5.3.4 Council 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. If council is unable to fully investigate or act on a matter because it is restricted by any legal or resource limitation, this will be explained to the individual.

5.3.5 While there are certain statutory requirements that must be met in relation to notices and orders, council staff will ensure that all explanatory communications are made in plain English and explain any technical language the law requires to be used.

5.4 Options for action in confirmed cases of unlawful activity - Council will consider a range of matters before taking regulatory action.

Regulatory action is any formal and informal action taken to prevent or rectify infringements of the legislation. The regulatory options will differ where different pieces of legislation are used, but the principles of application should remain constant.

Approaches to be considered without taking formal regulatory action include:

- 5.4.1 Taking no action on the basis of no reliable evidence or other appropriate reason.
- 5.4.2 Counselling the person who carried out an unlawful activity to educate them on the relevant requirements. Council acknowledges the role of educational initiatives to achieve compliance in some situations. This is to be appropriately file noted in Council's CRM system.
- 5.4.3 Negotiating with the person who carried out the unlawful activity to obtain an undertaking from them to address the issues of concern arising from an investigation. For example, cease current unauthorised works and submit appropriate application for the remaining works to be completed.
- 5.4.4 Referring parties for mediation with the Community Justice Centre or alternatively for mediation in accordance with Council's mediation processes.
- 5.4.5 A letter requiring works to be carried out or works to cease in lieu of more formal action i.e. a Warning Notice and letter.

Such action may be all that is required in minor breaches where no serious impacts have occurred. Whilst these approaches recognise that Council may use discretion in the process, Council is also obliged to uphold the law, including compliance with relevant administrative law principles e.g. acting fairly and equitably, and to act in the public interest.

Where appropriate, a staged approach may be taken. This is to ensure compliance will be adopted by giving businesses and individuals the opportunity to discuss and remedy the breach before action is taken, unless immediate action is required.

5.5 Enforcement Action

Enforcement action includes:

- 5.5.1 Issuing of Directions, Notices and Orders requiring compliance with legislative requirements or those of an environmental planning instrument;
- 5.5.2 Commencement of criminal proceedings for an offence under legislation or alternatively issuing Penalty Infringement Notice (PIN);
- 5.5.3 Commencement of civil proceedings in a Court to either remedy or restrain unlawful activity.

However, before any enforcement action is taken, the action officer, management or the Council must acknowledge the circumstances in each case and consider the following questions:

- a) **Could the unlawful activity be carried out lawfully if development consent or an exemption from development consent was sought?**

In these circumstances, Council will be less inclined to proceed with legal action especially if an owner actively and positively attempts to rectify the situation.

- b) **Are the breaches technical or inconsequential in nature with no aggravating circumstances?**

Consideration will be given to the material implications that the breach might have on the interests of any party, as well as any detrimental effect on the amenity of the area or environment in general.

c) Could the non-compliance be easily remedied by some action on the part of the person responsible?

In general Council will attempt to ensure compliance by informal means however there is a need to balance the public interest in enforcing the law with whether it is possible to remedy a breach and at what cost.

d) Has the unlawful activity created a health, safety or environmental hazard?

Consideration should be given to the degree of detriment or risk to the environment.

e) Are the unlawful activities or works carried out on a heritage item and did they adversely affect the heritage significance?

In most cases, Council's Heritage Advisor and Planners will be consulted in assessing the detriment to the natural or built environment and whether formal action is warranted.

f) Would it be in the public interest?

Some of the issues that should be considered are: Has the unlawful activity affected a significant number of people; would enforcement action impact unreasonably on certain population groups, particularly disadvantaged or marginalised groups; are there any circumstances of hardship affecting both the complainant and the person or corporation subject to the complaint?

g) Have previous warnings been issued?

If the investigation reveals that a previous warning has been issued and the unlawful activity is not resolved, a more formal approach would be appropriate.

h) Has the person responsible been educated about Council policy and unlawful activity? (That is, did the person know their actions were unlawful?)

When deciding whether to take an educative approach, consideration will be given to issues such as the level of contrition shown by the wrongdoer, whether they have previously been warned as a result of this or similar behaviour, and the level of intent shown.

i) Are the costs of enforcing likely to be prohibitive for the nature of the offence?

Consideration should be given to the relative costs and benefits of taking formal enforcement action as opposed to taking no action or taking informal action. Council's action should commensurate with the seriousness of the 'breach'.

j) Is the condition of development consent not being complied with, unreasonable, or ambiguous?

A condition of consent that is unreasonable or ambiguous can be unenforceable.

k) Is there any doubt over the evidence or the offence?

Consideration should be given to whether the collected evidence clearly identifies an actual breach. Council should not take untimely or unwarranted action.

l) What are the chances of a success if challenged?

Council should take into consideration what the likelihood is of a successful appeal or court challenge against the proposed enforcement action.

m) Does the person or corporation exhibit contrition for an offence?

In some cases, it will be appropriate to have regard to the attitude of the offender and their willingness to prevent a recurrence of the problem.

n) Has the person or company who carried out the unlawful activity had an opportunity to provide representations or submissions on the matters?

Council should consider all elements pertaining to the circumstances of the case leading to the non-compliance.

If the process is being used as a delaying action or there has been a blatant attempt to flout the law, appropriate enforcement action will be instigated without delay.

If it is considered that enforcement action is required, it will be taken in accordance with existing procedures and legislative processes.

In taking enforcement action, Council must recognise that the statutory process also provides avenues for representation and appeal and thereby natural justice principles will still be observed.

5.6 Importance of Follow-up Action

Council staff will follow up matters reasonably required to be followed up to determine compliance. This includes conducting follow up inspections or re-inspections and resubmitting documents in Council's electronic document management system on expiry of compliance periods for warnings, Directions, Notices and Orders issued.

5.7 Community Education

Council will ensure adequate information is available to raise awareness and educate the community about compliance and enforcement. This includes awareness publications on Council's website.

Table 1: Risk Categories for prioritising investigation of unlawful activity

	CONSEQUENCE			
LIKELIHOOD	<i>Minor</i> eg. Small, isolated, minor damage to health, property or environment	<i>Moderate</i> eg. Reoccurring, short-term, medium level damage to health, property or environment	<i>Major</i> eg. Long-term, reoccurring and serious damage to health, property or environment	<i>Severe</i> eg. Permanent and serious damage to health, property or environment
Very likely - almost certain, could happen any time	Medium	High	Extreme	Extreme
Likely - possible, could happen sometime	Medium	Medium	High	Critical
Unlikely - could happen but rarely	Low	Medium	Medium	High
Very unlikely - probably won't happen	Low	Low	Medium	Medium

Table 2: Example risk categories and indicative response timeframes

	RISK CATEGORY			
	EXTREME	HIGH	MEDIUM	LOW
FEATURES OF CATEGORY	Permanent, long-term or reoccurring and serious damage to health, property or environment likely or very likely Large scale impacts Very serious offences Very high priority issue for council and community	Moderate, major or severe consequences likely, or very likely Medium-large scale impacts Serious offences Very high priority issue for council and community	Moderate consequences are likely, serious impacts are very unlikely Small- Medium scale impacts Moderate offence severity Very high priority issue for council and community	Consequences are minor or moderate and are unlikely or very unlikely to occur Small scale, isolated impacts Low level offence severity Very high priority issue for council and community
INDICATIVE TIMEFRAME OF INITIAL RESPONSE	Immediate and urgent response	Response within 24hrs	Response within 5 working days	Response within 10 working days
EXAMPLE REPORT TYPES/ISSUES	Significant pollution incidents Large scale vegetation clearing Threatened species Food poisoning Abandoned vehicles - unsafe location Collapsed/unsafe building works in public areas Dog attacks Serious public safety issues	Roaming dogs Unsafe buildings and building works Rubbish dumped in unsafe location/ hazardous Pollution incidents Tree Removal Dangerous/ restricted dogs Straying stock on roads	Abandoned vehicles Stormwater or drainage issues Dumped rubbish (not hazardous) Breach of consent conditions (e.g. waste management) Sediment control Noise affecting several people Unauthorised land use	Biosecurity Minor consent breaches Signage Overgrown land Aesthetic issues Neighbor disputes Nuisances– eg. domestic noise, barking dogs Stormwater runoff

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:

Significance of Breach	Enforcement Options	Examples
Very low	<ul style="list-style-type: none"> • take no action on the basis of a lack of evidence or not in the public interest, some other appropriate reason • provision of information/advice on how to be compliant 	<ul style="list-style-type: none"> • Low risk anonymous requests • Illegal Camping • Woodsmoke concerns • Minor/unknown non-compliance with development consent
Low	<ul style="list-style-type: none"> • Negotiate a corrective action and timeframes • issuing a warning or a formal caution 	<ul style="list-style-type: none"> • Residential parking • Minor activities in public places without approval • Small scale works without consent
Medium	<ul style="list-style-type: none"> • Negotiate a corrective action • Issuing a letter requiring work to be done or activity to cease in lieu of more formal action • issuing a penalty notice • issuing a notice of intention to serve an order or notice under relevant legislation, and then serving an order or notice if appropriate 	<ul style="list-style-type: none"> • Noise issues • Minor Food premise non-compliances • Overgrown Land • Unregistered Dog • Abandoned Vehicles • Illegal Dumping • Tree Removal
High	<ul style="list-style-type: none"> • Issuing a penalty notice • issuing a notice of intention to serve an order or notice under relevant legislation and then serving an order or notice if appropriate • carrying out the works specified in an order at the cost of the person served with the order 	<ul style="list-style-type: none"> • Dog Attack • Pollution of land/water • Development without/not in accordance with consent • Large scale clearing, earthworks, dumping, pollution • Non-compliance with an Order • Public health incidents • Non-compliant pool barriers posing a risk to the public
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. 	<ul style="list-style-type: none"> • Major Dog Attacks on people • Large scale/irreversible damage to environment • Major development without/not in accordance with consent

RESPONSIBILITIES / ACCOUNTABILITIES

Council Staff

Staff delegations for acting under this policy are included in council's Delegation Register. All authorised officers who deal with written and verbal customer requests or complaints alleging unlawful activity are responsible for implementing this policy.

Manager Risk and Compliance

Is responsible for:

- Implementing and communicating this policy
- Ensuring the policy is reviewed and updated to compliment external changes in legislation or government policy or administrative guidelines

Shared enforcement responsibilities

Some reports will raise matters involving shared regulatory responsibilities between council and other authorities including the Environment Protection Authority, the NSW Police Force, the Office of Liquor, Gaming and Racing, NSW Fair Trading, NSW Food Authority, NSW Health 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 liaise with relevant authorities to establish:

- 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

Council will reasonably endeavour to respond to requests for information or assistance on joint regulatory matters in a timely manner.

The role of Councillors in enforcement

Individual Councillors are not authorised 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 they cannot ignore or alter a policy in order to satisfy the demands of individuals or special groups.

Customers should be requested to use the normal request process (preferably by lodging a form through Council's website) in accordance with Council policy. Preference or additional urgency cannot be given to an issue if it is lodged through a Councillor.

RELATED POLICIES/LEGISLATION

- [Local Government Act 1993](#)
- [NSW Ombudsman Model Compliance and Enforcement Policy](#)
- [Hunter's Hill Council Complaints Handling Policy](#)
- [Hunter's Hill Council Code of Conduct \(CORP.S. Pol-03\)](#)
- [Boat Trailer Parking Policy](#)
- Hunter's Hill Council - Delegations Register
- Planning and Development Procedures (internal)

POLICY AUTHORITY

The General Manager

REVIEW

The policy is due for review in 2025 or with any change to relevant legislation or Council Policy.

ADOPTED BY COUNCIL/EXECUTIVE:

DATE: 27 November 2023

RESOLUTION NO: 234/23

VERSION CONTROL TABLE

DATE	VERSION	RES. NO.	KEY CHANGES	AUTHOR
27 November 2023	1.0	234/23	New policy	Manager Risk & Compliance