

10.8. Compliance and Enforcement Policy - post-exhibition report

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ATTACHMENTS	1. DRAFT Amended Compliance and Enforcement Policy 2025 [10.8.1 - 17 pages]
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PURPOSE:

The purpose of this report is to advise Council of the results of the public exhibition process regarding the draft Compliance and Enforcement Policy, and to recommend its adoption as amended.

EXECUTIVE SUMMARY:

- The *Compliance and Enforcement Policy* was adopted by Council in August 2004 and last amended in September 2022.
- On 10 March 2025, Council considered the review of the draft amended Compliance and Enforcement Policy and resolved to endorse it for the purpose of placing it on public exhibition and consultation for 28 days.
- The public exhibition and consultation period was open for 28 days from 25 March 2025 until 22 April 2025. Four submissions were received.
- Following the public exhibition process, the draft Policy includes minor housekeeping amendments to reference the current legislation and align with the NSW Ombudsman's Compliance and Enforcement Guidelines.

RECOMMENDATION:

1.THAT Council adopt the amended Compliance and Enforcement Policy, as attached to this report.

Background

The Compliance and Enforcement Policy was originally adopted by Council in August 2004 and last amended in September 2022.

A review of the Compliance and Enforcement Policy was undertaken to align with current legislation and NSW Ombudsman recommendations. As a result, the structure of the draft Policy has been updated to align with the NSW Ombudsman's Model Compliance and Enforcement Policy, which provides a standardised and effective framework for compliance and enforcement within Council.

The draft Policy does not include amendments to the way that the Council officers investigate or act on compliance matters. The core approach to investigations and enforcement remains unchanged. Council officers will continue to investigate and act on compliance matters as per established protocols.

At its meeting of 10 March 2025, Council resolved:

1. *THAT Council endorse the draft Compliance and Enforcement Policy and place it on public exhibition for 28 days for public comment.*
2. *THAT Council adopt the draft Compliance and Enforcement Policy at the end of the submission period if no submissions are received during that period.*
3. *THAT should submissions be received during the exhibition period, a further report on the draft Compliance and Enforcement Policy, that includes consideration of submissions, will be provided to Council.*

Report

This report reviews the submissions received during the consultation period and recommends minor amendments to the exhibited draft, for Council's consideration and adoption.

Consultation Summary

The public exhibition and consultation period occurred between 25 March 2025 and 22 April 2025. Four responses were received. These are outlined below.

The online feedback form, hosted on North Sydney Council's Your Say site, invited members of the community to submit comments and suggestions on the draft policy, together with any documents that would support their submission.

A summary of each submission and comments are provided below.

Closure of Community Justice Centres

The draft Policy included a reference to Community Justice Centres. The NSW Government has confirmed Community Justice Centres will close on 30 June 2025, except where a matter

is referred by the Court. One submission noted that this reference should be removed. Clause 4.4.12 of the Policy has been amended in response to the submission.

Uncertainty about what activities the policy applies to

Concerns were raised regarding uncertainty about which activities this Policy applies to, particularly in comparison to the NSW Ombudsman Guidelines, which reference a broader range of activities.

Clause 4.2.1 of the Policy confirms it applies to all compliance matters within Council's area of responsibility. The Policy includes examples as guidance; however, it does not include a complete list as the relevant legislation and responsibilities change over time. Listing all matters/circumstances that Council has jurisdiction over is not recommended as this can be a nuanced issue and may potentially mislead if not exhaustive or complete.

Some examples from the NSW Ombudsman Guidelines have been excluded, as they do not fall within Council's jurisdiction. For example, Council is not the regulatory authority for potable (drinking) water services, which may be relevant for some regional councils.

Periodic reporting to Council

A submission was received proposing that the Policy include a requirement for periodic reporting to Council on investigations that take longer than 21 days. The submission proposed that such reports include details such as the cost of each investigation and an explanation as to whether a fine was issued.

Investigations may take longer than 21 days due to the natural justice requirements regarding notices, order, and legal matters. Clause 4.5.13 of the Policy provides that regular updates will be provided to the person who made the report if the investigation takes longer than 21 days.

Part 4.4 and 4.5 of the Policy set out requirements for documenting and recording all compliance decisions. However, the Policy does not require periodic reporting to Council. These matters are considered operational and are managed through ongoing review by Council staff under delegated authority.

Clause 4.11.4 of the Policy provides that the CEO may, when necessary or appropriate, present certain decisions to be ratified by the elected Council.

Use of the terminology "minimal tolerance approach"

A response was received that provided comments on the use of the term "minimal tolerance approach" and how this could be interpreted in Clause 4.7.1 of the draft Policy.

The terminology is not used or defined within the NSW Ombudsman Guidelines. As such, reference to the terminology has been removed from Clause 4.7.1 of the draft Policy. The

underlying considerations for taking enforcement action in relation to cases of unlawful activity remain unamended in Clause 4.6 of the draft Policy.

Concerns with Noakes Boatyard

Several responses referred to an ongoing compliance matter involving Noakes Boatyard in Berrys Bay. This matter is currently under investigation and falls outside the scope of this Policy review. Regular updates regarding the Noakes Boatyard are provided to the community via the Waverton and Euroka Precinct meetings, and to individual residents from time to time.

Consultation requirements

Community engagement has occurred in accordance with Council's Community Engagement Protocol.

Financial/Resource Implications

There are no direct financial or resource implications arising from this report or Policy position.

Legislation

Council has a responsibility under Section 8 of the Local Government Act 1993 to ensure its regulatory activities are carried out in a consistent manner and without bias.

The draft Compliance and Enforcement Policy will assist in achieving and maintaining minimum standards for the operational duties, functions and responsibilities of officers involved in the enforcement and resolution of all regulatory activities.

COMPLIANCE AND ENFORCEMENT POLICY

READOPTED:

xxx

NEXT REVIEW:

xxx

DOCUMENT TYPE:

Council Policy

POLICY OWNER:

Director Planning and Environment

POLICY REFERENCE:

CNCL_POL_ECM9697491



1. PURPOSE

- 1.1. Council acknowledges it has an obligation under s 8 of the *Local Government Act 1993* to exercise its regulatory authority consistently and without bias.
- 1.2. This Policy aims to ensure consistent compliance actions regarding food safety, public health, environmental and development non-compliance are achieved, while respecting natural justice principles.
- 1.3. The purpose of this policy is to provide a structure for consistency and transparency in decision making, and to facilitate a proportional approach to compliance. It is also intended to assist Council staff to act promptly, effectively and consistently in response to allegations of unlawful activity.
- 1.4. This policy outlines matters to be considered at the various stages of the compliance process, including the receipt of a report alleging unlawful activity, investigation, what enforcement actions Council may consider and whether to commence criminal or civil proceedings.
- 1.5. Council will have shared enforcement responsibilities with other regulatory authorities in certain circumstances. This policy emphasises that Council will approach such matters in a collaborative and cooperative manner. Advice and guidance are also provided on the role of Council in building compliance matters involving a private certifier, and the role of councillors in enforcement.

2. SCOPE

- 2.1. This Policy applies to all persons and companies who carry out, or may have carried out, unlawful activities within the North Sydney Local Government Area.
- 2.2. Council staff and contractors carrying out works must do so in accordance with the law. It is recognised that Council has limited authority to take compliance action against its own employees or contractors. In such circumstances, resolution of these issues may be best handled under contractual terms and performance agreements, or by an external regulatory authority.
- 2.3. Council staff retain the discretion to exercise their official duties without limitations imposed by this Policy. The full circumstances and facts of each case need to be considered, and a decision will be made on merit. The compliance action taken will be dependent upon the circumstances of each case and consideration will be given to the various questions within Clause 4.6 of this Policy.

3. DEFINITIONS

TERM	DEFINITION
3.1 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: <ul style="list-style-type: none"> a) A report alleging unlawful activity (see definition below), b) A request for information about a Council policy or procedure, c) A request for an explanation of actions taken by Council, d) A request for internal review of a Council decision.
3.2 Compliance or enforcement action	Actions taken in response to a confirmed contravention of the law.
3.3 Delegations of Authority	Formal authorisation allowing the Chief Executive Officer the authorisation to exercise council powers and functions on its behalf, and to authorise staff of council with aspects of those powers. These powers are published through a Delegations Instrument.
3.4 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.
3.5 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.
3.6 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 to be compliant with: <ul style="list-style-type: none"> a) terms or conditions of a development consent, approval, permit or license, b) An environmental planning instrument that regulates the activities or work that can be carried out on particular land, c) a legislative provision regulating a particular activity or work, d) a required development consent, approval, permission or license, e) a law of New South Wales, in which Council is the regulatory authority.
3.7 Unreasonable complainant conduct	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.

	<p>In accordance with Council's <i>Managing Unreasonable Complainant Conduct Policy</i>, this 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; and 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; and 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; and 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; and e) 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.
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4. PROVISIONS

4.1 POLICY OBJECTIVES

4.1.1 The intent of this Policy is to establish clear guidelines for Council staff in the management of Council's compliance and enforcement activities.

4.1.2 The Policy provides workable guidelines on:

- a) responding to reports alleging unlawful activity,
- b) assessing whether reports alleging unlawful activity require investigation,
- c) deciding whether compliance action is warranted,
- d) options for dealing with confirmed cases of unlawful activity,
- e) taking legal action,
- f) implementing shared compliance responsibilities.

4.1.3 The policy also provides advice and guidance on:

- a) the role of the Principal Certifier,
- b) the role of Councillors in compliance.

4.2 APPLICATION

4.2.1 The policy applies to compliance matters within Council's area of responsibility including, but not limited to:

- a) development and building control,
- b) pollution control,
- c) environmental health,
- d) public health and safety,
- e) noxious weeds,
- f) septic systems,
- g) food safety,
- h) fire safety,
- i) tree preservation.

4.3 COMPLIANCE AND ENFORCEMENT PRINCIPLES

4.3.1 The following principles underpin Council's compliance and enforcement activities:

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 act, • acting fairly and impartially and without bias or unlawful discrimination, • providing information about compliance priorities and reasons for decisions to improve understanding and certainty and promote trust by the 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 <i>Complaints Handling Policy</i>, • advising people and organisations subject to compliance action of any avenues available to seek an internal or external review of a decision (where required by legislation).
Consistent	<ul style="list-style-type: none"> • ensuring all compliance action is implemented consistently,

	<ul style="list-style-type: none"> encouraging 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 compliance action is proportionate to the level of risk and seriousness of the unlawful activity, making cost-effective decisions about compliance 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.

4.4 REPORTS OF ALLEGED UNLAWFUL ACTIVITY

- 4.4.1 Reports of alleged unlawful activity to be resolved to the satisfaction of Council
Reports alleging unlawful activity will be resolved to the satisfaction of Council, not necessarily the person reporting the matter. Council staff will endeavour to manage the expectations of people who make a report alleging unlawful activity.
- 4.4.2 Confidentiality of people who report allegations of unlawful activity
People who report allegations of unlawful activity should not expect their identities will remain confidential from the subject of their report in all circumstances. Council may have to disclose information that identifies them in the following cases:
- the disclosure is necessary to investigate the matter,
 - their identity has already been disclosed to the subject of their report directly or in a publicly available document,
 - the individual was consulted following receipt of a *Government Information (Public Access) Act 2009* application and did not object to the disclosure,
 - the individual consents in writing to their identity being disclosed,
 - the disclosure is required to comply with principles of procedural fairness,
 - the matter proceeds to court.
- 4.4.3 Council will take any concerns an individual may have about their physical safety being endangered because of making a report seriously. However, this may limit Council's ability to investigate or act in relation to the alleged unlawful activity.
- 4.4.4 What Council expects from people who report allegations of unlawful activity
Council expects people who report allegations of unlawful activity will cooperate and act in good faith in respect of any investigations conducted by Council. This includes:

- a) providing a clear description of the problem (and the resolution sought, if relevant),
- b) giving all available and relevant information to Council, including any new information about the alleged unlawful activity that may become known to the person after making the report,
- c) not giving any information that is knowingly misleading or wrong,
- d) cooperating with Council's inquiries and giving timely responses to questions and requests for information,
- e) treating Council's staff with courtesy and respect,
- f) allowing the investigation to be completed without prematurely taking the matter to other agencies, unless referred to by Council.

4.4.5 If these expectations are not met, Council may set limits or conditions on the continuation of the investigation or may need to restrict further communication.

4.4.6 Any unreasonable conduct will be dealt with in accordance with the principles of the *NSW Ombudsman's Managing Unreasonable Complainant Conduct Manual 2012* and Council's *Managing Unreasonable Complainant Conduct Policy*.

4.4.7 What parties can expect from Council staff

People who report alleged unlawful activity, as well as individuals or businesses that are the subject to an investigation or compliance action can expect that Council staff will:

- a) treat them with courtesy and respect,
- b) advise them of the outcome of the alleged unlawful activity,
- c) use plain English (where appropriate),
- d) provide information about any relevant internal and external appeal processes, (where required to do so by law),
- e) carefully assess any new information provided by any party after a decision has been made and advise whether further action will be taken.

4.4.8 Anonymous reports

Anonymous reports will be recorded and assessed in accordance with the above requirements. However, the investigation may be inconclusive as it is not possible to seek clarification or additional information about an alleged unlawful activity.

4.4.9 Unlawful activity outside of business hours

Unlawful activity can occur outside of Council's business hours. Council may receive reports about offensive noise or a failure to comply with a development consent during the night or weekend.

4.4.10 Due to resource and operational capability constraints, investigations into alleged unlawful activity outside of Council's business hours will be prioritised based on the risk of harm to health, welfare, safety, property or the environment, or if it deemed to be in the public interest.

4.4.11 Neighbour disputes

Council may receive requests for assistance from parties involved in a neighbour dispute seeking its intervention. However, when a dispute between neighbours is a civil matter, Council often lacks the authority to resolve the matter.

- 4.4.12 Council staff will evaluate reports to identify evidence of any unlawful activity that requires Council action. Council staff will clarify which elements of the report that Council can assist with and which it cannot, along with the reasons. Where possible, individuals will be referred to mediation services to help resolve civil matters.
- 4.4.13 It is possible that one party will provide further information about a matter which changes Council's decision about whether it will become involved. In such circumstances, Council staff will carefully consider the matter before acting and document reasons for the new decision. Relevant parties will be advised of the decision and reasons why Council has changed its position on a matter.
- 4.4.14 A decision or position on a matter will not be altered solely in response to an individual's behaviour, such as making persistent demands or threats.

4.5 INVESTIGATING ALLEGED UNLAWFUL ACTIVITY

- 4.5.1 How reports alleging unlawful activity will be dealt with by Council
Council will record and assess every report alleging unlawful activity.
- 4.5.2 Council staff should acknowledge every report alleging unlawful activity within 5 working days, unless the person raising the matter indicates they do not wish to receive a response or the report is anonymous.
- 4.5.3 A preliminary assessment of all reports alleging unlawful activity will be undertaken to determine whether an investigation or other action is required. Not all reports alleging unlawful activity will warrant an investigation.
- 4.5.4 If there is insufficient information in the report to undertake a preliminary assessment, further information may need to be sought from the person who made the report, or an inspection undertaken. Council staff may need to consult Council records and other internal business units to understand the relevant history and context of a matter.
- 4.5.5 Circumstances when no further action will be taken
Council will take no further action, following a preliminary assessment, if it is identified that:
 - a) Council does not have jurisdiction to investigate or is not the appropriate regulatory authority to act on the issues raised. Where there is another appropriate regulatory authority, Council may bring the matter to the attention of the authority or provide the contact details of the authority,
 - b) the report substantially relates to a matter that has been previously determined by Council and no new or compelling information is presented which would cause Council to change its earlier decision. In

this case, Council 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),

- c) the allegations relate to a lawful activity (eg. there is an existing approval, or the activity is permissible without Council approval),
- d) the report has no substance or is not supported by evidence,
- e) the relevant Manager, Director or the Chief Executive Officer determines an 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.

4.5.6 Council staff are not limited in their use of discretion by these considerations and may decide to investigate or not investigate a matter based on these and other factors.

4.5.7 Any decision to not investigate an allegation of unlawful activity will be recorded and the reason clearly stated. The person making the report will be notified of the decision and reason for the decision.

4.5.8 Reports alleging unlawful activity that warrant an investigation or action

Matters will be prioritised based on risk to public safety, human health and the environment. Where a preliminary assessment determines an investigation is warranted, an investigation or action should be initiated within the following timeframes:

- a) Urgent or life threatening - as soon as possible, being either the day of receipt or the following day. Examples include building collapse, unauthorised demolition of heritage items or contributory items, unsafe building works, surcharging drains or serious incidents where public health or the environment is at risk.
- b) General matters – within 5 working days. Examples include works that are not in accordance with a development consent, unauthorised development, noise affecting multiple people and food safety.
- c) Nuisance matters – within 10 working days. Examples include overgrown land, domestic noise or matters where there is no immediate adverse health or safety impacts.
- d) Out of hours matters – Council's Rangers will action the matter in the first instance and follow up action will be taken by Council's Planning and Environment staff within 10 working days. Examples include out of hours works or noise matters.

4.5.9 All people who make a report alleging unlawful activity should receive communication from Council staff who are handling the matter within 21 working days. The communication will detail the action taken by Council or the action that Council plans to take.

- 4.5.10 In the event Council is unable to act on a report alleging unlawful activity, Council staff will explain why Council is unable to act on a matter, particularly when there is insufficient evidence of an unlawful activity.
- 4.5.11 Timeframes to acknowledge reports alleging unlawful activity, initiate an investigation/ action or provide a communication may vary depending on available resources.
- 4.5.12 An investigation of alleged unlawful activity may take a significant amount of time to complete, particularly where the issues are complex.
- 4.5.13 If a matter is not resolved within 21 working days, Council staff will provide regular feedback on the progress of the investigation to the person who reported the alleged unlawful activity. This does not mean the individual can expect to be given daily updates, details about every aspect of the investigation or information that would compromise the integrity of the investigation.

4.6 CONSIDERATIONS FOR DEALING WITH CONFIRMED CASES OF UNLAWFUL ACTIVITY

- 4.6.1 When deciding whether to take enforcement action in relation to a confirmed case of unlawful activity, Council will consider the full circumstances of each matter and the public interest.
- 4.6.2 Council staff will use discretion to determine the most appropriate enforcement action in response to confirmed cases of unlawful activity, and more than one approach may be taken.
- 4.6.3 The following considerations will assist Council staff in determining whether to take enforcement action and the most appropriate enforcement action that is in the public interest:

Considerations about the alleged offence and impact

- a) Could the unlawful activity be carried out lawfully if Development Consent was sought? Consideration should be given to the impacts of the development and if Development Consent would have been approved.
- b) Is the unlawful activity technical or inconsequential in nature with no aggravating circumstances? Consideration should be given to the material implications that the contravention might have on the interests of any relevant party, as well as any negative impact on the amenity of the area or environment.
- c) 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.
- d) Has the alleged activity occurred to a heritage item or in a heritage conservation area? Consideration should be given to the detriment to the natural or built environment.

Considerations about the alleged offender

- e) Have previous warnings been provided or is there is a compliance history? If previous warnings have been provided, formal enforcement action would be appropriate.
- f) Has the alleged offender been provided with an opportunity to make representations on the matter?
- g) Are there mitigating or aggravating circumstances demonstrated by the alleged offender?
- h) Has the alleged offender exhibited contrition for the contravention? Consideration should be given to the attitude of the person and their willingness to prevent a recurrence of the problem in some circumstances.

Considerations about the impact of any enforcement action

- i) How will the enforcement action deter any future unlawful activity? Consideration should be given to this specific site, and compliance matters throughout the Local Government Area in a broader sense.
- j) How long has the unlawful activity been occurring and is enforcement action statute barred? Consideration should be given to any time limit that may prevent Council from taking legal action.
- k) Is there any doubt over the evidence or offence? Consideration should be given to the reliability of the evidence and whether it clearly identifies an offence.
- l) What are the prospects of success if appealed? Consideration should be given to the likelihood of success if the decision is appealed in Court.
- m) Are the costs of enforcement likely to be prohibitive for the nature of the contravention? Consideration should be given to the relative costs and benefits of taking formal enforcement action in lieu of informal enforcement action. The enforcement action should be commensurate with the seriousness of the contravention.
- n) Is the condition of development consent that is not being complied with unreasonable or ambiguous? A condition of development consent that is unreasonable or ambiguous may not be enforceable.

Consideration about the potential remedy

- o) Could the unlawful activity be easily remedied by some action on the part of the person responsible? Consideration should be given to the actions of the person if they are actively and positively attempting to remedy the unlawful activity.
- p) Is there a Draft Planning Instrument (eg. Local Environmental Plan) that would make the contravention legal if adopted? Consideration should be given to deferring any enforcement action.

4.7 TAKING ENFORCEMENT ACTION

- 4.7.1 Council staff may take informal enforcement action or formal enforcement action to prevent or remedy an unlawful activity.

- 4.7.2 Council staff will use discretion to determine the most appropriate enforcement action and may take more than one enforcement action.
- 4.7.3 The available enforcement action differs depending upon the relevant legislation; however, the principles of application should remain consistent.
- 4.7.4 If the compliance process is being used to delay enforcement action or there has been a blatant attempt to flout the law, appropriate enforcement action will be instigated without delay.
- 4.7.5 All enforcement action will be taken in accordance with the legislative processes and provide avenues for representation and appeal where required, to ensure the principles of natural justice are observed.
- 4.7.6 Informal enforcement action
Council staff may take informal enforcement action including:
- a) No further action based on no reliable evidence or other appropriate reason,
 - b) Educating the person who carried out the unlawful activity,
 - c) Negotiating with the person who carried out the unlawful activity to obtain an undertaking to address the issues of concern. For example, seeking an undertaking to cease the unauthorised land use until Development Consent is obtained,
 - d) Requesting certain actions occur in lieu of commencing formal enforcement action. For example, requesting minor works occur so the unauthorised development aligns with the exempt development standards.
- 4.7.7 Formal enforcement action
Council staff may take formal enforcement actions including:
- a) Issuing Notices, Orders, and Directions requiring compliance with legislative requirements or an Environmental Planning Instrument,
 - b) Issuing formal Warning Notices or Penalty Notices,
 - c) Commencing civil proceedings (or seeking an injunction) in Court to either remedy or restrain the unlawful activity,
 - d) Carrying out works specified in an Order, at the cost of the person served with the Order,
 - e) Commencing criminal proceedings for an offence under the legislation.
- 4.7.8 All enforcement action will be monitored to ensure compliance.
- 4.7.9 Reports alleging continued unlawful activity, in contravention of an enforcement action, will be assessed and investigated. Further enforcement action will be taken as necessary.
- 4.7.10 Should the initial enforcement action be found to have been ineffective, Council staff will consider other enforcement actions.

4.8 TAKING LEGAL ACTION

4.8.1 Council and delegated staff will be guided by legal advice in deciding whether to commence criminal or civil proceedings. The following will be considered:

- a) Whether there is sufficient evidence to establish a case to the required standard of proof,
- b) Whether there is reasonable prospect of success before a Court,
- c) Whether the public interest warrants legal action being pursued.

4.8.2 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 that there is admissible, substantial and reliable evidence to the required standard of proof.

4.8.3 The basic requirement of any criminal prosecution is that the available evidence establishes a prima facie case. The prosecutor is required to prove the elements of the offence beyond reasonable doubt.

4.8.4 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.

4.8.5 Reasonable prospects of success before a Court

Given the expense of legal action Council will not take 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, possible defences, and any other factors which could affect the likelihood of a successful outcome.

4.8.6 Public interest requires legal action to be pursued

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

4.8.7 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:

- a) Possible length and expense of Court proceedings,
- b) Any possible counter-productive outcomes of prosecution,
- c) Effective sentencing options available to the Court in the event of conviction.

4.8.8 Time to commence proceedings

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

4.9 SHARED ENFORCEMENT RESPONSIBILITIES

- 4.9.1 Some reports alleging unlawful activity will raise matters involving shared regulatory responsibilities between Council and other authorities including Transport for NSW, NSW Environment Protection Authority, NSW Police Force, Liquor & Gaming NSW, NSW Fair Trading, SafeWork NSW, Building Commission NSW, NSW Food Authority and Crown Lands.
- 4.9.2 Council recognises that collaborative and cooperative approach between authorities to address issues of shared responsibility is required. Where there are shared legislative responsibilities, Council staff will liaise with relevant authorities to establish:
- a) which authority will take the leading role on any joint investigation,
 - b) which activities each authority will carry out,
 - c) responsibilities to update an individual where relevant,
 - d) protocols for exchanging confidential information between relevant authorities.
- 4.9.3 Council will reasonably endeavour to respond to requests for information or assistance on joint compliance matters, where resources are available, in a timely manner.

4.10 ROLE OF COUNCIL WHERE THERE IS A PRIVATE CERTIFIER

- 4.10.1 Council retains its regulatory role and compliance authority where a private certifier has been appointed the Principal Certifier.
- 4.10.2 Private certifiers have an obligation to issue a Written Direction Notice under Section 6.31 of the *Environmental Planning and Assessment Act, 1979* if they become aware of any non-compliance for any aspect of the development. The private certifier must issue the Written Direction Notice to the person responsible for carrying out that aspect of the development. The Written Direction Notice must:
- a) identify the matter that has resulted or would result in the non-compliance, and
 - b) direct the person to take specified action within a specified period to remedy the matter.
- 4.10.3 If the person fails to comply with the Written Direction Notice within the specified period, the private certifier must send a copy of the Written Direction Notice to Council and notify Council that compliance has not been achieved.
- 4.10.4 From this point, Council becomes the appropriate regulatory authority for the non-compliance. The private certifier remains responsible for the remainder of the site and development.

- 4.10.5 In the event Council issues a Notice to give a Development Control Order in relation to building work or subdivision work where a private certifier has been appointed as the Principal Certifier, a copy of the Notice must be provided to the private certifier in accordance with Clause 9(2) of Schedule 5 of the *Environmental Planning and Assessment Act, 1979*.

4.11 ROLE OF COUNCILLORS IN COMPLIANCE AND ENFORCEMENT

- 4.11.1 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.
- 4.11.2 Individual councillors do not have the right to direct council staff in their day-to-day activities.
- 4.11.3 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 to satisfy the demands of special groups.
- 4.11.4 The Chief Executive Officer may present certain decisions to be ratified by the elected Council, if this is necessary or desirable, and the councillors may also have the right to call for a report about issues to a council meeting.

4.12 DELEGATIONS

- 4.12.1 Council staff delegations for acting under this policy are published through Council's Delegations of Authority instrument both internally and externally.

5. ROLES & RESPONSIBILITIES

RESPONSIBLE	ACCOUNTABLE
5.1 Responsible Officer	The Manager Environment and Building Compliance is the responsible officer for this Policy and is accountable for its currency and communication.
5.2 Mayor and Councillors	The Mayor and Councillors have a governance role in relation to council policies. They are responsible for reviewing and adopting policies that reflect legislative requirements and community expectations.
5.3 Chief Executive Officer	Council has delegated the Chief Executive Officer the authority to exercise the responsibilities detailed in this Policy.
5.4 Executive Leadership Team	ELT are responsible for ensuring their departments adhere to the requirements of this Policy and providing guidance in respect of the strategic objectives of the Policy within their Division and the organisation.
5.5 Employees	Implementation of this Policy applies to all Council Planning and Environment staff, including Assessment Officers, Building Surveyors, Compliance Officers, Environmental Health Officers,

	<p>Environmental Protection Officers and Rangers, where authorised to enforce legislation in accordance with Council's Delegations Manual and/or implementation of Delegated Authority.</p> <p>Council's Environment and Building Compliance Department will prepare educational information regarding this Policy for Council's website.</p>
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6. RELATED DOCUMENTS

DOCUMENT	LOCATION
6.1 Complaints Handling Policy	Enables Council to respond to issues raised by people making complaints in a timely and cost-effective way
6.2 Customer Service Policy	Demonstrates how Council will provide the highest possible level of service to its customers.
6.3 Managing Unreasonable Complainant Policy	Assists staff to in managing unreasonable complainant conduct.
6.4 Mediation Policy	Promotes and supports the use of mediation by Council in the resolution of disputes in areas of building and development, or other matters in which Council has an interest or responsibility

7. RELATED LEGISLATION AND GUIDANCE

LEGISLATION/GUIDANCE	NOTES
7.1 Boarding Houses Act, 2012	Regulates boarding houses in New South Wales, ensuring safe and decent living conditions for residents.
7.2 Building and Development Certifiers Act, 2018	Regulates the work of building and development certifiers in New South Wales.
7.3 Environmental Planning and Assessment Act, 1979	Regulates land use and development in NSW, ensuring environmental protection and compliance through planning controls, approvals, monitoring, and enforcement mechanisms.
7.4 Food Act, 2003	Regulates food handling and sale in New South Wales, Australia, to ensure food safety and prevent misleading conduct. It aims to protect public health by setting standards for food handling, processing, and sale.
7.5 Local Government Act, 1993	Local Government Act, 1993 - governs the structure, functions, and operations of local councils.
7.6 Protection of the Environment Operations Act, 1997	Regulates pollution and waste management in NSW, ensuring environmental protection through licensing, monitoring, investigation, and enforcement of environmental standards.

7.7 Public Health Act, 2010	Addresses public health risks, controls the spread of infectious diseases, recognizes the role of local government in public health, and monitors diseases and conditions affecting public health.
7.8 Swimming Pool Act, 1992	Swimming Pool Act, 1992 - regulates swimming pool safety, requiring fencing, registration, and compliance with safety standards

8. VERSION HISTORY

Version	Date Approved	Approved by	Resolution No.	Review Date
1	2 August 2004	Council	794	2008/09
2	16 February 2009	Council	61	2012/13
3	18 February 2013	Council	61	2016/17
4	25 June 2018	Council	214	2020/21
5	26 September 2022	Council	286	2024/25
6	DRAFT	Council		2028/29