

## ITEM 8 POLICY REVIEW - COMPLIANCE AND ENFORCEMENT POLICY

Council's Compliance and Enforcement Policy has been reviewed and updated as part of the policy review cycle. The Policy outlines the framework within which Council exercises its powers as an enforcement agency under a range of legislation. This report seeks Council's resolution to endorse the updated Policy.

### RECOMMENDATION

The updated Compliance and Enforcement Policy be adopted.

### REPORT AUTHORISATIONS

Report of: Corey Stoneham, Manager Regulation + Enforcement

Authorised by: Linda Davis, Director Planning + Environment - Future City + Neighbourhoods

### ATTACHMENTS

- 1 Compliance and Enforcement Policy

### BACKGROUND

The existing Compliance and Enforcement Policy was last adopted by Council in August 2022. The Policy outlines the overarching principles of how Council will exercise its legislative powers under a range of Acts in response to identified offences.

The Policy takes a risk based, escalating approach to compliance, and is modelled on the NSW Ombudsman's Enforcement Guidelines and Policy for Local Councils (Dec 2015). It is consistent with policies found across most NSW Councils.

### PROPOSAL

The Policy has been reviewed by leaders within Council's Regulation and Enforcement, Governance, and Development Assessment and Certification divisions. The changes are not wholesale but better describe the role of Private Certifiers when they are appointed as the Principal Certifier for a development.

Council's recently adopted risk rating tool has been used to assess the risks to potential compliance and enforcement matters, with some minor amendments made following the review. Other minor administrative changes have been made regarding the names of Government agencies.

### CONSULTATION AND COMMUNICATION

Consultation within Council's Regulation and Enforcement, Governance, and Development Assessment and Certification divisions has occurred, and feedback has been incorporated into the updated Policy.

In cases where no or only minor changes are proposed to a policy, community consultation is not required. Therefore, as the review proposes minor changes, the Policy has not been placed on exhibition for broad community consultation.

### PLANNING AND POLICY IMPACT

This report contributes to the delivery of Our Wollongong 2032 Goal 1: "We value and protect our environment" - 1.5 Maintain the unique character of the Wollongong Local Government Area, whilst balancing development, population growth and housing needs and Goal 5: "We have a healthy community in a liveable city" - 5.2 Urban areas are created and maintained to provide a healthy and safe living environment for our community.

### SUSTAINABILITY IMPLICATIONS

The Compliance and Enforcement Policy assists Council staff in prioritising its response to customer requests and in using its resources effectively and efficiently.

## RISK MANAGEMENT

Risks regarding this report and the attached policy have been considered and assessed against Council's risk rating tool. Key risk areas that have been identified include reputational risk, legal risk, environmental risks and risks associated with our community and staff.

The risks that have been identified and assessed can be managed through the consistent application of the policy, regulatory decisions that are taken and through the policy review cycle to ensure that relevant legislative changes that have been made are considered and incorporated into the policy.

## FINANCIAL IMPLICATIONS

There are no financial implications.

## CONCLUSION

Council's Compliance and Enforcement Policy has been reviewed. Changes are not wholesale but rather emphasise the role of Private Certifiers and general administrative and terminology changes.

It is recommended that the revised Compliance and Enforcement Policy attached be endorsed by Council.



## COMPLIANCE AND ENFORCEMENT COUNCIL POLICY

ADOPTED BY COUNCIL: [TO BE COMPLETED BY GOVERNANCE]

### PURPOSE

This Policy provides information for all internal and external stakeholders and interested parties about Council's position on compliance and enforcement matters in Wollongong City.

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 what 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, and the role of Councillors in enforcement.

Responsible 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.

### POLICY INTENT

This Policy applies to the investigation of complaints about unlawful activity or failure to comply with the terms or conditions of approvals, consents, notices or orders. It outlines how to assess whether complaints of unlawful activity require investigation, options for dealing with unlawful activities and regulatory breaches, matters for consideration and facilitates a proportional approach to compliance management.

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

The objectives of this Policy are:

1. To establish clear guidelines and protocols for Council staff in the 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 our environment.

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

### WOLLONGONG 2032 OBJECTIVES

~~This Policy is a direct contributor to the delivery of Wollongong 2032, Goal 1: "We value and protect our environment – 1.5 Maintain the unique character of the Wollongong Local Government Area, whilst balancing development, population growth and housing needs and Goal 5: "We have a healthy community in a liveable City" – 5.2 Urban areas are created and maintained to provide a healthy and safe living environment for our community.~~

~~This Policy is a direct contributor to the delivery of Wollongong 2032, Goal 1: "We value and protect our environment – 1.1.2 Impacts from development on the environment are assessed, monitored and mitigated" and Goal 5: "We are a healthy community in the liveable City" – 5.3.1 Promote and enforce~~

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~~compliance, develop and implement public health amenity and safety regulatory Programs and assist in improving compliance and legislative requirements.~~

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The Policy applies a risk-based approach to compliance management to ensure resources are focussed on those matters posing the biggest risk to the community and 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.

**1. Introduction**

Council’s regulatory responsibilities are applicable to threatened or *actual unlawful activity*, as well as a *failure to take action* (in order to be compliant with certain legal requirements). For simplicity, this Policy refers to both an act and/or an omission by an alleged offender as ‘unlawful activity’.

**2. Definitions**

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

**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 licence
- 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 licence.

**3. COMPLIANCE AND ENFORCEMENT PRINCIPLES**

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

Principle	Action
Accountable and transparent	<ul style="list-style-type: none"> <li>• Acting in the best interests of public health and safety and in the best interests of the environment</li> <li>• Ensuring accountability for decisions to take or not take action</li> </ul>

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	<ul style="list-style-type: none"> <li>• Acting fairly and impartially and without bias or unlawful discrimination</li> <li>• Providing information about compliance and enforcement priorities and reasons for decisions to improve understanding and certainty and promote trust by the regulated community</li> <li>• Ensuring meaningful reasons for decisions are given to all relevant parties, particularly when there is a departure from this Policy</li> </ul>
Consistent	<ul style="list-style-type: none"> <li>• Ensuring compliance and enforcement action is implemented consistently</li> <li>• Encouraging customer reports about possible unlawful activity by acting reasonably in response to the circumstances and facts of each matter</li> </ul>
Proportional	<ul style="list-style-type: none"> <li>• Ensuring the level of enforcement action is proportionate to the level of risk and seriousness of the breach</li> <li>• Making cost effective decisions about enforcement action</li> <li>• Taking action to address harm and deter future unlawful activity</li> </ul>
Timely	<ul style="list-style-type: none"> <li>• Ensuring responses to reports alleging unlawful activity and decision making in relation to those is timely.</li> </ul>

**4. RISK BASED REGULATION**

Our community has become more expectant of living in a healthy and liveable city where we value and protect our environment. It is understandable that a direct correlation of this expectation is that the number of laws and regulations have increased expanding the scope of necessary enforcement. From time to time reports alleging unlawful activity will exceed available resources.

Risk based regulation works 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. It is a way to target resources where they are most needed and where they will produce the most effective impact.

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 the amount of reactive incidents requiring a Council response.

Education and awareness raising activities are both 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 incentives e.g. financial/awards, 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 categorises the request into low, medium and high having regard to Council’s Risk Category Matrix. In that regard reference should be made to the Appendix 1 Risk Category Matrix.

Periodic reviews of Council’s Risk Category Matrix will be undertaken using intelligence collated from its case management systems as well as other sources to ascertain whether systemic or more serious patterns are emerging which warrant re-categorising the risk levels of unlawful activities.

**5. RESPONSIBILITY**

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

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

Council staff are required to:

- treat all relevant parties with courtesy and respect
- 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
- make full and proper records in relation to the assessment and investigation of reports alleging unlawful activity, including reasons for any decisions
- inform all relevant parties of reasons for decisions
- provide as much information as possible 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
- 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.

### 6. 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.

As outlined in Council's Customer Service Policy, Council generally seeks to keep confidential, personal information identifying a complainant. However, Council may be required to disclose this information in a variety of circumstances including the following:

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

#### 6.1 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:

- providing a clear description of the problem (and the resolution sought, if relevant)
- providing a clear description/account of the impact that the alleged activity is having

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- giving all available and relevant information to Council, including any new information about the alleged activity that may become known to the person following the making of their report
- not giving any information that is intentionally misleading or wrong
- cooperating with Council's inquiries and giving timely responses to questions and requests for information
- treating Council's staff with courtesy and respect

### 6.2 Anonymous Reports

Anonymous reports will be recorded and assessed. However, because it is not possible to seek clarification or additional information about a matter, it is more difficult to evaluate the allegations and therefore only high-risk matters that are reported anonymously are likely to be tasked for investigation.

## 7. 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 by Council are made at the Council's discretion. This means the objective is that reports alleging unlawful activity will be resolved to the satisfaction of Council, not necessarily the person raising the matter. Council will generally try to resolve matters as quickly and informally 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, Council may be unable to take further action. Council does not have unlimited resources and powers to deal with reports alleging unlawful activity.

## 8. 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 4).

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

### 8.1 Circumstances where no regulatory action will be taken

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

- the report is not supported with evidence or appears to have no substance.
- Council does not have jurisdiction to investigate or is not the appropriate 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 Safe Work NSW for workplace safety matters, the NSW Environment Protection Authority (EPA) for possible environmental offences and Community Justice Centres NSW for personal disputes.

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- 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).
- 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).
- The relevant Coordinator, Manager, Director, or General Manager may use discretion in determining that an investigation or further regulatory action isn't required in any of the following circumstances:
  - a) The investigation revealed that approval is likely to be achieved.
  - b) It is not a safety concern.
  - c) There is no amenity impact to the community.
  - d) The complaint is made anonymously, relates to low risk activity as defined by Councils 'Risk Category Matrix' and is without supporting evidence.
  - e) The complaint relates to a known neighbourhood dispute.
  - f) It is not in the public interest as the outcome will not justify the expenditure of resources.

### 8.2 *Relevant factors guiding decisions as to whether to take regulatory action*

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

- the activity is having a significant detrimental effect on the environment or it constitutes a risk to public safety
- the report is premature as it relates to some unfinished aspect of work that is still in progress
- the activity or work is permissible with or without permission
- all conditions of consent are being complied with
- much time has elapsed since the events, the subject of the report, took place
- another body is a more appropriate agency to investigate and deal with the matter
- it appears there is a pattern of conduct or evidence of a possible wide spread problem
- the person or organisation reported has been the subject of previous reports
- the report raises matters of special significance in terms of the Council's existing priorities
- there are significant resource implications in relation to an investigation and any subsequent enforcement action
- it is in the public interest to investigate the report
- the activity is having an amenity impact to the community

The above are factors for Council to consider and weigh in making a determination. 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:

- determine the cause of the incident
- determine if there has been a contravention of law, policy or standards
- gather evidence to the required standard to support any required enforcement action
- determine any necessary action to mitigate the possibility of reoccurrence of similar incident.



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Any decision not to investigate an allegation of unlawful activity will be recorded and the reasons for that decision clearly stated.

### 9. 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:

#### 9.1 Considerations about the alleged offence and impact

- the nature, extent and severity of the unlawful activity, including whether the activity is continuing
- the harm or potential harm to the environment or public health, safety or amenity caused by the unlawful activity
- the seriousness of the breach, including whether the breach is merely technical, inconsequential or minor in nature
- the time period that has lapsed since the date of the unlawful activity.

#### 9.2 Considerations about the alleged offender

- any prior warnings, cautions, instructions, advice that was issued to the person or organisation reported or previous enforcement action taken against them
- whether the offence was committed with intent
- whether the person or organisation reported has been proactive in the resolution of the matter and assisted with any Council requirements and instructions
- any mitigating or aggravating circumstances demonstrated by the alleged offender
- any particular circumstances of hardship affecting the person or organisation reported.

#### 9.3 Considerations about the impact of any enforcement action:

- the need to deter any future unlawful activity
- whether an educative approach would be more appropriate than a coercive approach in resolving the matter
- the prospect of success if the proposed enforcement action was challenged in Court
- the costs and benefits of taking formal enforcement action as opposed to taking informal or no action
- what action would be proportionate and reasonable in response to the unlawful activity
- whether Council is prevented from taking action based on earlier advice given, ie whether an estoppel situation has been created.

#### 9.4 Considerations about the potential for remedy:

- whether the breach can be easily remedied
- whether it is likely consent would have been given for the activity if it had been sought
- whether there is a draft planning instrument on exhibition that would make the unauthorised use legal.

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

Council will use the most effective, informal option to deal with unlawful activity where ever possible 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.

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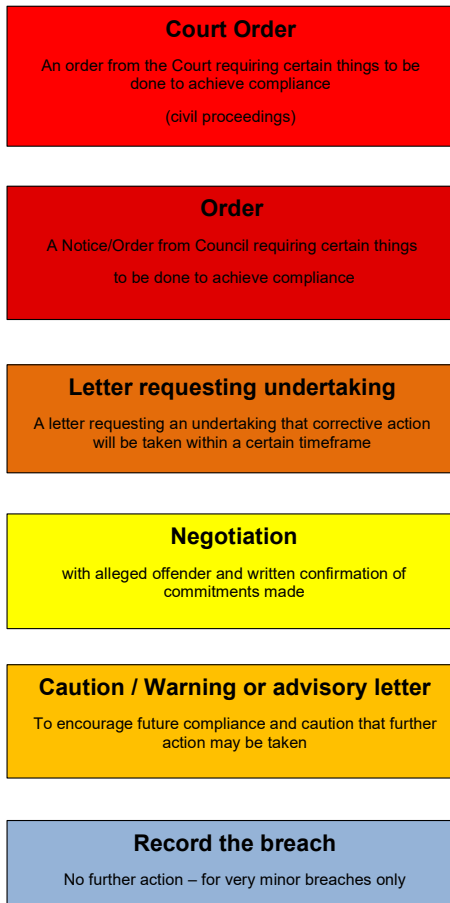
There are a range of enforcement actions available as shown below in Figure 1.

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. It is also important to note that the following is a guide only and each case must be assessed on the particular facts.

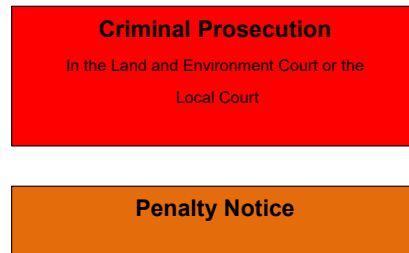
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**Figure 1: Enforcement actions available to Council**  
**Remedial or Rectification Action**



**Penalty Action**



Note that it may be appropriate to use more than one enforcement option in some cases. If initial enforcement action does not achieve a satisfactory outcome, it may be necessary to proceed to a higher level of enforcement response. For example, if a warning letter or notice of intention does not achieve the desired response, it may be appropriate to give an Order; or if an Order is not complied with, it may be appropriate to bring enforcement or prosecution proceedings.

**11. OFFENCES WHERE PENALTY NOTICE CAN BE ISSUED.**

For certain offences a penalty notice can be issued as the appropriate regulatory action, even for these certain offences, council officers have the authority to use discretion and issue a caution in place of a monetary fine. The circumstances for which a council officer may use discretion are clearly outlined as guidelines in section 19A (3) of the Fines Act 1996.

[https://www.justice.nsw.gov.au/justicepolicy/Documents/caution\\_guidelines\\_under\\_the\\_fines\\_act\\_pdf.pdf](https://www.justice.nsw.gov.au/justicepolicy/Documents/caution_guidelines_under_the_fines_act_pdf.pdf)

*Following up enforcement action*

All enforcement action will be reviewed and monitored to ensure compliance with any undertakings given by the subject of enforcement action or advice, directions or orders issued by Council. Reports alleging continuing unlawful activity will be assessed and further action taken if necessary. If the unlawful activity

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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 staff will consider other enforcement options.

### 12. 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:

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

*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 that 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 prosecutor is required to prove the elements of the offence beyond reasonable doubt.

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.

*Whether there is a reasonable prospect 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, all possible defences, and any other factors which ~~can~~ affect the likelihood of a successful outcome.

*Whether the 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.

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:

- the availability of any alternatives to legal action
- whether an urgent resolution is required (Court proceedings may take some time)
- the possible length and expense of Court proceedings
- any possible counter-productive outcomes of prosecution
- what the effective sentencing options are available to the Court in the event of conviction
- whether the proceedings or the consequences of any resulting conviction would be unduly harsh or oppressive.

*Time within which 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 unlawful activity has occurred.

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**13. 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, ~~office of~~ Building Commission NSW 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:

- 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.

**14. ROLE OF COUNCIL WHERE A PRIVATE PRINCIPAL CERTIFIER HAS BEEN APPOINTED NOMINATED AS THE PRINCIPAL CERTIFIER**

Where ~~at the Private Principal~~ Certifier has been appointed as the Principal Certifier (PC) the Council recognises that the ~~Private Principal~~ Certifier is the authority responsible for ensuring compliance with the conditions of development consent.

~~Private Principal~~ Certifiers have limited enforcement powers. Private Certifiers appointed as the PC They can issue a Written Directions Notice to ~~issue an order to~~ the owner or builder to comply with the conditions of consent or rectify any ~~non-compliance breaches~~. When a non-A copy of any Written compliant Written Directions Notice is issued by a Principal Certifier must be provided to Council an for assessment will be conducted to determine if as to whether Council will initiate enforcement action consistent with the risk based approach. enforce the notice by issuing an Order.

In instances where a Private Certifier is appointed as the PC, customers raising an issue will Persons making complaints regarding a site where the PC is private will, in most cases, be advised to contact the ~~Private Principal~~ Certifier in the first instance. This will give the ~~Principal - Private Certifier - Certifier~~ an opportunity to address the issues and take appropriate action. Council may intervene if an immediate public safety or environmental risk is identified.

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

It must be noted that Council is not the regulator of Private Principal Certifiers and any complaints about the conduct of Principal Certifiers must be directed to the NSW Fair Trading <https://www.fairtrading.nsw.gov.au/>.

Council will endeavour to work with ~~Private Principal~~ 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.

~~Refer to Council's Fact Sheet on Private Principal Certifiers for more information [www.wollongong.nsw.gov.au/](http://www.wollongong.nsw.gov.au/).~~

**15. REVIEW AND APPEAL PROCESSES**

Any order issued by Council (as a proposed order) (unless issued in an emergency) will have a notice period allowing representations to be made (generally up to 28 days). Representations should be made in writing to the attention of the General Manager.

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Fines issued by Council under a range of legislation have a review process that is managed by Revenue NSW. Information on how to request a review of a fine can be found at [www.revenue.nsw.gov.au](http://www.revenue.nsw.gov.au).

### **16. ROLE OF COUNCILLORS IN ENFORCEMENT**

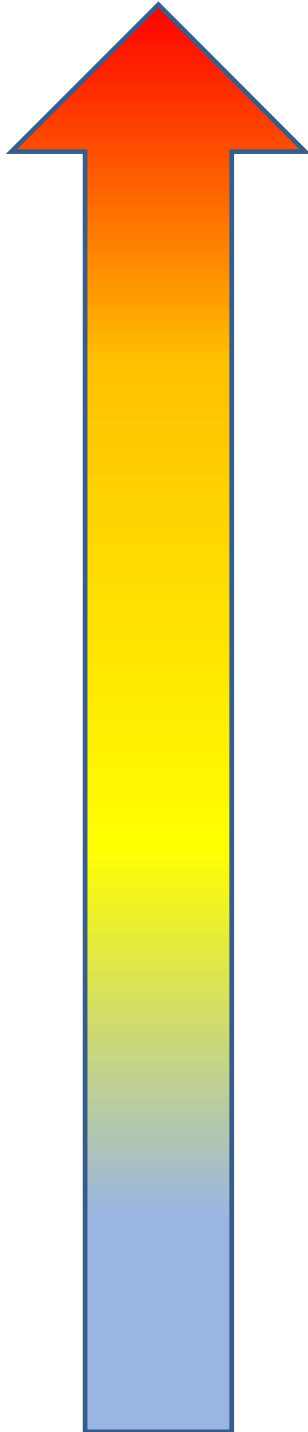
Compliance and enforcement matters are sensitive and easily susceptible to allegations of impropriety, bias or inconsistency. In order to manage those risks, and consistent with Councillors' Code of Conduct, Councillors do not attend on-site meetings with Council staff, the complainants, or persons the subject of investigation or enforcement action, or direct staff in relation to particular outcomes relating to investigations or enforcement options or actions.

Councillors can help individuals who raise concerns with them by referring them to the Regulation and Enforcement Division for the appropriate action to take place as outlined in this Policy.

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APPENDIX 1



**RISK CATEGORY MATRIX**

*High Risk*

~~May Include~~ing but not limited to:

- Fire safety compliance
- Major / significant pollution incidents
- Dog attacks, straying stock
- Large scale vegetation clearing
- ~~Abandoned vehicles~~ deemed dangerous or a public safety risk in unsafe locations
- Abandoned items posing a public safety risk
- Collapsed or unsafe building works adjacent to public areas
- Poor sediment control on building sites,
- Legionella outbreak
- ~~Food born illness outbreak~~
- Swimming pool barrier (fencing)

*Medium-Moderate Risk*

~~May Include~~ing but not limited to:

- Roaming dogs, dogs on beaches/ animal registration/general companion animal enquiries
- ~~Abandoned motor vehicles~~
- Minor pollution incidents
- Breaches of tree preservation orders
- ~~Swimming pool barrier fencing~~
- Domestic sewage surcharge
- Commercial & industrial air/noise complaints (criteria)
- Food premises complaints
- Public and environmental health premises complaints
- Significant unauthorised/non complying building works
- Building works where a Principal Certifier is appointed
- Land filling
- Waste / rubbish dumping
- Parking
- Footpath obstructions
- Onsite sewage management systems
- Reserve encroachments
- Boarding houses
- ~~Caravan park compliance~~

*Low Risk*

~~May Include~~ing but not limited to:

- Barking dogs
- Domestic noise complaints (power tools, air conditioners, pool pumps, amplified music)
- All other animal related enquiries
- Overgrown land (criteria)
- Home business/home occupation
- Minor unauthorised/non complying building works (criteria)
- Overland Stormwater flow (criteria)
- is appropriate authority


COMPLIANCE AND ENFORCEMENT

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- Smoke nuisance from domestic wood heaters, outdoor BBQ's, burning prohibited items
- ~~Weed biosecurity~~
- Keeping of roosters, rooster noise, including poultry and fowl houses
- Abandoned vehicles (not safety issue)
- Abandoned items (not safety issue)
- Footpath obstructions (not safety issue)
- Illegal camping (not safety issue)
- Unsightly premises
- Strata issues where Consumer's Tenancy & Trader's Tribunal is appropriate authority
- Dividing fences/boundary fence issues where [the NSW Civil and Administrative Tribunal is the appropriate authority.](#)
- Caravan park compliance

The action undertaken by Council in response to a request will be proportionate 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.





## COMPLIANCE AND ENFORCEMENT COUNCIL POLICY

### Risk Score Matrix

Severity scale ▶					
Likelihood ▼	Catastrophic 5	Major 4	Moderate 3	Minor 2	Insignificant 1
<b>A Almost Certain</b>	E25	E20	E16	H10	M5
<b>B Likely</b>	E20	E16	H12	M8	L4
<b>C Possible</b>	H15	H12	M9	M6	L3
<b>D Unlikely</b>	H10	M8	M6	L4	L2
<b>E Rare</b>	M5	L4	L3	L3	L1

Likelihood	
<b>A Almost Certain</b>	<ul style="list-style-type: none"> <li>Event is expected to occur in over 95% of occasions.</li> <li>The risk event will occur multiple times a year.</li> <li>The risk event will occur in most circumstances.</li> </ul>
<b>B Likely</b>	<ul style="list-style-type: none"> <li>The risk event will occur in 75% - 90% of occasions.</li> <li>The risk event will occur once every year.</li> <li>The risk event will probably occur on most occasions.</li> </ul>
<b>C Possible</b>	<ul style="list-style-type: none"> <li>The risk event will occur in 30% - 75% of occasions.</li> <li>The risk event will occur once every 1 to 5 years.</li> <li>The risk event will likely occur at some time.</li> </ul>
<b>D Unlikely</b>	<ul style="list-style-type: none"> <li>The risk event will occur in 10% - 30% of occasions.</li> <li>The risk event will occur once every 5 to 10 years.</li> <li>The risk event may occur at some time.</li> </ul>
<b>E Rare</b>	<ul style="list-style-type: none"> <li>The risk event will occur in 0% - 10% of occasions.</li> <li>The risk event may occur greater than every 10 years.</li> <li>The risk event would only occur in exceptional circumstances.</li> </ul>

Risk level ▼	Action you should take
<b>Extreme (E16-25)</b>	<p>Avoid the related activities that relate to this risk.</p> <p>If, however, activities related to this risk are required for Council then:</p> <ul style="list-style-type: none"> <li>Cease activity to determine if risk can be managed or avoided</li> <li>Review and introduce additional or improved controls to reduce the risk to an acceptable level before proceeding (or avoid the risk)</li> <li>Monitor and maintain control effectiveness if activity proceeds. Treatment actions to reduce the risk must be identified and tracked to completion.</li> </ul> <p>Escalation is required to the Director and General Manager and Enterprise Risk Management Committee for further review and approval.</p>
<b>High (H10-15)</b>	<p>Treatment actions to reduce the risk and / or prevent the risk from increasing, must be identified and tracked to completion. Escalation is required to the responsible Director for further review and approval.</p> <p>Consider ceasing activity temporarily to consider alternative options to manage the risk and to ensure risk can be managed appropriately.</p> <p>Escalation is required to the Director for further review and approval.</p>
<b>Moderate (M5-9)</b>	<p>Review controls to determine adequacy and effectiveness.</p> <p>Consider implementation of additional or improved controls to reduce the risk if deemed necessary.</p> <p>Continue to monitor and maintain control effectiveness</p>
<b>Low (L1-4)</b>	<p>Risk is managed by existing Controls, routine operations and procedures, with ongoing monitoring to ensure control effectiveness.</p>



# COMPLIANCE AND ENFORCEMENT COUNCIL POLICY

### LEGISLATIVE REQUIREMENTS

Document any instruments of Legislation (Acts, Regulations etc) that need to be followed as part of the policy.

### REVIEW

This Policy will be reviewed a minimum of once every term of Council, or more frequently as required.

### REPORTING

~~Are there any reporting requirements? I.e.: Annual Report requirements, external reporting to other agencies etc. required under this policy.~~

### ROLES AND RESPONSIBILITIES

~~The Manager Regulation and Enforcement is the Responsible Officer for reviewing and updating the Policy. The Environment and Development Compliance Manager and the Compliance and Regulation Manager are responsible for ensuring the Policy is implemented consistently by staff.~~

### RELATED STRATEGIES, POLICIES AND PROCEDURES

~~Document title of related procedures and their location. Do not document the procedure here. Procedures are related to task orientated areas and are not to be included in the policy. Procedures may require EMC approval in accordance with the Policy Framework.~~

APPROVAL AND REVIEW	
Responsible Division	Regulation and Enforcement
Date adopted by Council	[To be inserted by Corporate Governance]
Date/s of previous adoptions	29 August 2022, 3 April 2018, 25 November 2013, 28 November 2011, 23 June 2009.
Date of next review	[Not more than three years from last adoption]