

Compliance and Enforcement Policy

Draft Review

Adoption Date:
Click or tap to enter a date.

Review Date:
Click or tap to enter a date.

Version:
1.0 (March 2024)

Responsible Department:
**Health, Building & Regulatory
Services**

TRIM Document Number:
D05193958

Contents

1. Introduction	4
2. Policy Objectives	4
3. Application of the Policy	4
4. Relevant Legislation	5
5. Responsibility	5
6. Investigation of Alleged Offences and Breaches	6
6.1. Neighbour issues	6
6.2. Council's jurisdiction	7
6.3. Prioritisation of investigations	7
6.4. Reports which may not be investigated	8
6.5. Alleged unlawful activities outside standard operating hours	9
6.6. Anonymous reports	9
6.7. Confidentiality	9
6.8. Complaints about Council staff or actions	9
7. Options for Enforcement	10
8. Discretion	10
9. When will Council Commence Enforcement Action?	11
9.1. Nature and seriousness of the breach	11
9.2. Evidence of the offence or breach	11
9.3. Balancing of public interest and cost to Council	11
9.4. The available methods of enforcement	12
9.5. The circumstances of each case	12
10. Determining Appropriate Action and Enforcement	13
11. Legislative Provisions and Requirements	15
12. Legal Proceedings - General	15
12.1. Criminal Proceedings	15
12.2. Civil Proceedings	15
12.3. Criminal or Civil Proceedings?	16

12.4. Recovery of Legal Costs	16
13. Notices, Orders & Appeals	16
14. Penalty Notices - Fines	17
15. Review of a Penalty Notice (Fine)	18
15.1. Penalty Notice – Caution Guidelines	18
16. Certification of Development	18
17. Exempt & Complying Development	20
18. Parking	20
19. Unattended Items	21
20. Neighbour and Private Disputes	23
21. Education and Awareness	24
22. Governance	24
23. Related Guidelines, Policies and Procedures	25
A. Summary of regulatory matters and typical enforcement options*	26

Note. The key updates and amendments to the current policy are highlighted

1. Introduction

The purpose of the policy is to assist Council staff to undertake Council's regulatory and compliance functions in an appropriate, consistent and effective manner.

In the context of this policy unlawful activity means any regulatory requirement, activity or work that has been or is being carried out;

- contrary to a requirement of an Act, Regulation or associated provision regulating a particular activity, work or matter;
- contrary to an environmental planning instrument that regulates the activities or work that can be carried out;
- without a required development consent, approval, permit, certificate or licence; and/or
- contrary to the conditions or requirements of a development consent, approval, permit, certificate or licence.

Council is strongly opposed to unlawful activities and regulatory breaches and Council will undertake regulatory action in accordance with this policy and relevant Acts, Regulations and associated requirements.

Randwick City Council also acknowledges that it has an obligation under section 8 of the *Local Government Act 1993* to ensure that the exercise of its regulatory power is carried out with consistency and without bias.

The policy provides clear guidelines, including the appropriate exercise of discretion that Council will use in investigating and assessing unlawful activities, taking into account all relevant information including the available evidence; environmental, amenity and safety impacts; cost to the community; circumstances of the case and the public interest.

The policy outlines the process and matters to be considered, from receipt or identification of an allegation about an unlawful activity through to enforcement action and any relevant appeals process.

2. Policy Objectives

This policy provides a legal and administrative framework to assist Council in its regulatory, compliance and enforcement functions, providing guidelines on:

The investigation and response to customer action requests relating to regulatory matters

- Options for dealing with unlawful activities
- Matters for consideration in the investigation of alleged unlawful activities
- Facilitating a proportional approach to compliance and enforcement
- Determining the most appropriate regulatory and enforcement response.

The policy also provides information about Council's regulatory activities and processes.

3. Application of the Policy

The policy applies to the investigation and enforcement of regulatory matters and unlawful activities associated with:

- Consents, approvals, applications, certificates, permits and orders
- Air, noise and water pollution
- Fire safety
- Food safety
- Public health and safety
- Control over animals
- Roads, footpaths, parks and reserves
- Parking control
- Tree preservation
- Waste disposal and littering

4. Relevant Legislation

This policy applies to the enforcement of all Acts and their associated Regulations, Standards and Rules administered by Council, including, but not limited to:

- *Local Government Act 1993*
- *Environmental Planning and Assessment Act 1979*
- *Food Act 2003*
- *Protection of the Environment Operations Act 1997*
- *Public Health Act 2010*
- *Boarding Houses Act 2012*
- *Swimming Pools Act 1992*
- *Building & Development Certifiers Act 2018*
- *Companion Animals Act 1998*
- *Roads Act 1993*
- *Road Transport Act 2013*
- *Public Spaces (Unattended Property) Act 2018*
- *Crown Land Management Act 2016*
- *Rock Fishing Act 2016*

5. Responsibility

All Council staff who receive and respond to reports about alleged unlawful activities and regulatory matters are responsible for implementing this policy and a range of staff are authorised by Council's General Manager to undertake these functions, including Council's Environmental Health Officers, Building Surveyors, Compliance Officers, Rangers, Parking Officers, Tree Preservation Officers and other Authorised Officers.

6. Investigation of Alleged Offences and Breaches

Council receives information about alleged unlawful activities from members of the public, business operators or government agencies. Reports about alleged unlawful activities may also be reported by Council officers when undertaking inspections or patrols of an area.

While Council is proactive in the detection of unlawful activities, not all offences are readily discernible and early detection can only be achieved with the support and direct reporting of our community.

Reports alleging unlawful activities will be entered into Council's customer request system and will be allocated a reference number. The request will be referred to the relevant team or officer for investigation and action.

Reports about alleged unlawful activities or breaches must include accurate and complete information, and an indication of the impacts or harm arising from the activity.

The name, address and contact details of the person submitting the report will also be recorded. This information is important as Council may need to rely on evidence from the person to prove any alleged offence and to commence enforcement action.

Except in the case of urgent matters, reports or concerns relating to privately-owned premises are encouraged to be provided in writing, to enable the investigating officer to better understand the issues and to determine whether or not the matter falls within Council's jurisdiction and warrants investigation. Also, to facilitate a full and proper investigation of the matter and gathering of evidence of any unlawful activity.

Council staff will:

- Investigate matters in accordance with relevant Acts, Regulations, Council policies and procedures
- Provide information about the alleged breach to any alleged offender
- Consider all submissions made about the matter
- Make reasonable enquiries or investigations before making a decision
- Make records of the investigations and reasons for decisions
- Provide information to the parties about the investigation, matters for consideration and relevant regulatory requirements
- Communicate with relevant parties and advise of the action to be taken or has been taken in the particular matter
- Make decisions and take enforcement action which is proportionate and appropriate for the severity of the offence or unlawful activity
- Advise parties of any rights of review or appeal
- Act fairly and without bias

6.1. Neighbour issues

To promote good neighbourly relations neighbours are encouraged to talk with each other to resolve their concerns prior to making any complaints to Council.

Reporting matters to Council without first talking with your neighbour may cause unnecessary friction and impact on long-term neighbourly relations.

Council is unable to take action or intervene in neighbour disputes relating to the activities or behaviour of a neighbour or other matters which are of a private or civil nature e.g. dividing fence or retaining wall disputes, trespass, building encroachments, damage to private properties, property/land disputes or actions resulting from the behaviour of a person.

Other dispute resolution processes or legislative provisions may also be available for the resolution of neighbour nuisances and issues.

The NSW Community Justice Centres may also be able to assist with the resolution of neighbour complaints and for more information visit www.cjc.justice.nsw.gov.au.

6.2. Council's jurisdiction

Whilst Councils have regulatory powers under a wide range of Acts and Regulations, Councils do not have jurisdiction in all matters or unlawful activities.

A number of NSW government departments and other authorised agencies or persons are responsible for the investigation, enforcement or resolution of disputes and alleged unlawful activities, including:

- **NSW Health**
- NSW Police
- NSW Fair Trading
- **NSW Building Commission**
- NSW Liquor & Gaming
- SafeWork NSW
- NSW Environment Protection Authority
- NSW Department of Planning and Environment
- **Registered (Accredited) Certifiers**

If Council is not the appropriate regulatory authority for a particular matter, Council will advise the customer accordingly and provide any necessary assistance to the regulatory authority.

6.3. Prioritisation of investigations

Council officers will undertake investigations into alleged unlawful activities or breaches as soon as practicable. However, it is also recognised that Council does not have unlimited resources to investigate and action all reports immediately or within specific timeframes. In addition, not all reports and allegations made to Council will require an investigation (as outlined in section 6.4).

Upon receipt of reports or requests for investigation, Council officers will carry out a preliminary assessment of the matter to determine if an investigation is required and/or the priority for the investigation.

Generally, reports relating to public and occupant safety and environmental harm will be given a higher priority, as detailed in the examples below:

Urgent

- Major water pollution incident
- Immediate threat to public health or safety
- Multiple food poisoning incident
- Asbestos incident
- Sewer blockage/leak
- Unauthorised demolition of a heritage item or building in a heritage conservation area
- Dog attack

High

- Building safety
- Fire safety
- Swimming pool safety
- Public health and safety
- Unauthorised development (significant impact or in progress)
- Significant tree removal
- Food safety
- Single food poisoning incident
- Dangerous illegal parking

Medium

- Construction site management
- Unauthorised development (general)
- Noise complaints (major)
- Air or water quality
- Abandoned vehicles
- Roads, reserves & footpaths
- Stormwater drainage
- Animal control (general)
- Waste dumping
- Trees

Low

- Animal nuisances
- Food labelling
- Overgrown vegetation
- Unauthorised activity / development (minor nature / scale)
- Noxious weeds
- Noise complaints (minor)
- Health and amenity (minor)
- Waste storage
- Aesthetic issues
- Neighbour nuisances
- Historical alleged activities or breaches
- Minor issues, technical or administrative breaches

When prioritising and undertaking investigations, Council officers will take all relevant matters into consideration, including the extent and nature of the alleged breach or activity and the material impacts arising from the activity.

Some investigations may take some time to action or complete, particularly where the investigation or issues are complex or where applications may be submitted to council for consideration (e.g. an application for development consent or modification of a consent).

It is also acknowledged that Council does not have unlimited resources to investigate and enforce all alleged unlawful activities or to intervene in neighbour issues and civil disputes. In some cases, the extent of investigation and enforcement action may also be limited, due to the absence of sufficient evidence or resources required for lengthy or detailed investigations or surveillance and priority will be given to other current urgent or significant matters.

6.4. Reports which may not be investigated

All reports regarding alleged unlawful activities will be investigated, except where:

- Advice has been provided to relevant parties and no further investigation is necessary
- The activity is considered to be lawful without further investigation
- The matter has already been investigated and addressed to the satisfaction of the relevant Manager, Director or General Manager
- The report is not supported with sufficient details or evidence or it appears to have no substance
- Council is not the most appropriate authority and/or has no jurisdiction to take action in the matter (e.g. matters under the jurisdiction of a State authority such as SafeWork NSW, NSW Health, NSW Environmental Protection Authority, NSW Office of Fair Trading or Building Commissioners Office)

- The matter may be resolved via alternative dispute resolution processes i.e. strata by-law or tenancy matters which may be resolved between the parties or through the NSW Civil and Administrative Tribunal (NCAT)
- The matter principally relates to a private dispute or nuisance or serves to progress a private interest, or should be resolved between the parties or through mediation or civil proceedings
- The complaint is considered to be trivial, frivolous, vexatious or of a retaliatory nature
- The complaint or report relates to the behaviour of a person or neighbour dispute
- The relevant Manager, Director or General Manager has determined that investigation and/or regulatory action is not warranted or feasible e.g. having regard to the extent of time and/or resources that would be involved in the matter and/or impact upon other current urgent or higher priority cases or the taking of regulatory action would be unreasonable or not in the public interest).

Council must consider a range of factors when determining whether the particular matter will warrant further investigation, but if a decision is made not to investigate or act upon a complaint or matter, the decision must be recorded with clear reasons why. The customer must be advised of the decision and the reasons for not taking further action.

6.5. Alleged unlawful activities outside standard operating hours

Council may receive reports about alleged unlawful activities which occur outside of standard operating hours and on weekends (e.g. alleged failure to comply with conditions relating to operating hours or use of plant or equipment at night). Council officers aim to investigate all alleged unlawful activities, however due to operational and resource constraints investigations outside of standard operating hours will be limited and based on an assessment of the risk of harm to public health, safety and the environment and the public interest.

6.6. Anonymous reports

Anonymous reports will be recorded and assessed in accordance with this policy. However, because it is not possible to contact the person making the report for clarification or information about the issue or associated impacts, it may not be feasible to investigate the allegation, evaluate the impacts or obtain evidence of a breach or take enforcement action. Therefore, Council may determine that anonymous reports relating to low-impact, historical alleged breaches or other matters may not warrant an investigation.

6.7. Confidentiality

Council officers will not disclose confidential or personal and private information. However, the identity of the person making the report to Council may be apparent, due to the nature and location of the matter being investigated. The identity of the person making the report may be disclosed in the following cases:

- The identity has already been disclosed to the subject of the report directly
- The identity has already been disclosed in a publicly available document or report
- The disclosure has been made after determination of an application made under the *Government Information (Public Access) Act 2009*
- The individual consents to their identity being disclosed
- The disclosure is required to comply with principles of procedural fairness
- The disclosure is necessary to properly investigate the matter
- The matter is the subject of a Subpoena or Court proceedings.

6.8. Complaints about Council staff or actions

Any complaint about Council staff and the handling of reports or investigations of alleged unlawful activities will be recorded and processed separately, in accordance with Council's Complaints Handling Policy and Code of Conduct.

7. Options for Enforcement

There are a range of possible options available to Council, depending on the nature and extent of the alleged offence or breach, relevant legislative provisions, available evidence, circumstances of the case and the appropriate desired outcome.

Importantly, the enforcement action taken in a particular case should be commensurate with the nature, scale, severity of the offence and associated impacts on the community and environment.

Regulatory action and enforcement options may include:

- Take no action because the activity is not unlawful
- Take no further action due to the lack of evidence of an offence or breach
- Take no further action having regard to the minor nature of the offence or breach and/or the circumstances of the case
- Counsel the person investigated to educate them on the relevant Council or regulatory requirements
- Referring parties to the NSW Community Justice Centres (CJC) for mediation (i.e. in instances where it is considered that mediation would be more appropriate to resolve a particular matter rather than taking enforcement action)
- Issue a warning and advise the person that any further breaches may result in possible regulatory action or penalties
- Direct the person, or issue a letter requiring the person, to; cease specified activities; carry out specified works; provide specified information, documentation or certification; or obtain necessary approvals, within a specified timeframe
- Consult and negotiate with the parties and/or obtain undertakings, to achieve a reasonable outcome and resolution of a particular matter
- Issue a formal Notice of Intention to serve an Order under relevant legislation, which allows the person to make representations to Council, prior to determining any appropriate action
- Issue a formal Order or Notice under relevant legislation, requiring specified work to be undertaken or, to cease specified activities or, to provide specified documentation, certification or the like to Council
- Issue a formal 'caution' for the offence or breach
- Issue a Penalty Notice (fine) for the offence or breach
- Take legal proceedings for the offence or breach (i.e. Local Court or Land & Environment Court)
- Advise the relevant parties to consider implementing civil enforcement proceedings to obtain a Court Order or Injunction (i.e. to remedy or restrain a breach of relevant legislative provisions or to seek a Court order or direction)
- Council may carry out the works specified in a Council Order under relevant legislation, at the expense of the person served with the Order.

8. Discretion

Council's compliance and enforcement officers regularly encounter matters in which they are required to exercise independent professional judgement and make decisions, as authorised delegated Council officers to determine whether or not to take enforcement action and what enforcement action is appropriate in the particular case, which often involves complex considerations and weighing up of many factors.

The taking of regulatory or enforcement action by Council and its officers is a discretionary power. This means that, whilst Council is provided with the authority to enforce a law, this does not mean that there is legal obligation to do so, not even at the insistence of a third party.

Council's decision whether or not to take regulatory action is determined, essentially, by the following criteria:

- there is sufficient evidence to prove that the offence has occurred and the person/s responsible for the offence;
- it must be evident from the facts and the circumstances of the case, that the taking of regulatory action would be appropriate (having regard to the matters for consideration as outlined in this policy);
- the taking of enforcement action would be appropriate and proportionate to the offence or unlawful activity; and
- the action is in the public interest.

When exercising discretion, Councils are obliged to:

- use discretionary powers in good faith, including for the intended and authorised purpose;
- base their decisions on facts and findings supported by evidence, only relevant considerations and not irrelevant ones;
- give proper, genuine and realistic consideration to the merits of the case, including weighing-up the importance of relevant factors;
- exercise discretion independently and not under the direction of a third party or body;
- make decisions in accordance with relevant rules or policies but not inflexibly; and
- observe the basic rules of natural justice and procedural fairness.

The decision to pursue regulatory action will also be made impartially and will not be influenced by any inappropriate reference to race, religion, sex, national origin or political association, nor will it be influenced by matters that are of a civil nature or a private dispute.

Further details on the use of discretion by regulatory authorities can be found in the Enforcement Guidelines for Councils published by the NSW Ombudsman.

9. When will Council Commence Enforcement Action?

Council will decide whether to take enforcement action after it has considered, among other things, the following matters:

9.1. Nature and seriousness of the breach

Council will have regard to the impact the unlawful activity is causing on amenity or harm to the environment. If action is required, Council will consider what is reasonable in the circumstances and ensure the action is not disproportionate to the level of harm or damage arising from the breach.

9.2. Evidence of the offence or breach

To be able to take enforcement action Council must have sufficient evidence of the alleged offence (which can be substantiated in Court if necessary), including evidence of the person/s responsible for the offence.

9.3. Balancing of public interest and cost to Council

Council will weigh up the public interest or benefits that will be served against the cost to the Council, and the community, of taking enforcement action.

In considering the 'public interest' Council will have regard to whether the unlawful activity:

- will impact on a significant number of people;

- will impact on disadvantaged or marginalised groups;
- is indicative of a systemic flaw;
- is individual in nature but often occurs;
- has attracted sustained public attention and no alternative resolution is proposed or likely; and
- significantly undermines the integrity of the relevant regulatory provisions.

Council will also consider whether more effective means of rectifying an unlawful activity are available before formal legal proceedings are initiated. This may include one or a combination of the following:

- Reporting a breach to the relevant Federal or NSW government department or professional association; and
- Use of statutory powers such as;
 - granting consent to a relevant application;
 - making an order under relevant legislation; or
 - issuing a building certificate under the *Environmental Planning and Assessment Act 1979*.

In some cases, a person may submit an application to the Council, to seek approval or consent for the activity which commenced or was carried out without the required consent or approval. A person may also submit an application to the Council for a 'building certificate', which, if issued, 'regularises' the subject unauthorised building work and prevents Council from issuing certain orders or taking further regulatory action in relation to the unauthorised work.

If an application is made to Council seeking approval or acceptance of a previous unauthorised activity or building work, it is generally appropriate to properly consider and determine the application, before taking further enforcement action which seeks to remedy the breach (i.e. except in the case of a serious breach or significant environmental harm/impact or public safety issue).

9.4. The available methods of enforcement

If formal proceedings are considered to be the best option, the decision on which court to bring proceedings in will be informed by considerations such as the following:

- Likely cost and resources associated with the proceedings;
- Prospects of recovery of those costs from the respondent or defendant;
- Objectives and remedies available;
- Available methods of enforcement; and
- Circumstances of each case.

9.5. The circumstances of each case

In prosecution and enforcement matters, Council consideration will be given to the following matters (as applicable):

- Whether the unlawful activity has caused a breach which is technical in nature and does not cause harm to amenity or to the environment
- Whether the unlawful activity is ongoing. If it has ceased, Council must consider the length of time that has expired
- The nature, scale, severity and impacts associated with the activity or breach
- Whether the impact of the unlawful activity on the natural or built environment and on health, safety and amenity
- Whether development consent or other approval would have been granted by Council if the appropriate application had been submitted prior to the unlawful activity being undertaken
- Whether the person(s) who committed the breach has shown contrition and, where possible, has remedied the unlawful activity

- Whether the person(s) who committed the breach has made submissions to the Council that provide reasonable grounds for the Council to conclude that the person was under a genuine mistaken belief as to a relevant factual or legal matter
- Whether the person(s) who committed the breach has shown deliberate or wilful conduct in their actions
- Whether the person(s) who committed the breach should have been aware of their obligations because they have:
 - particular knowledge e.g. a builder or company that regularly carries out work and is generally aware of the relevant Council or other requirements;
 - received a previous warning; or
 - been subject to previous formal legal action
- Whether or not the person has cooperated with Council and assisted in the prompt and effective resolution of the matter
- Whether the unlawful activity was unavoidable
- Whether or not the issue relates to public or private nuisance or matter which may be resolved between the affected parties
- Personal hardship, health or well-being considerations which may have contributed to the unlawful activity
- Such other matters that may appear to be relevant to the individual case.

10. Determining Appropriate Action and Enforcement

Council is not required to take enforcement action in every instance of unlawful activity, offence or breach of a relevant Act, Regulation or other statutory provision.

The type of enforcement action should be proportionate to the level of risk and seriousness of the breach, with more severe breaches attracting a more severe action.

Importantly, to be able to take any enforcement action and if necessary, to prove the offence in Court, Council must have sufficient evidence of the offence) and be able to identify the person responsible for the offence or breach.

Council and its officers will exercise professional judgement and discretion to determine whether or not enforcement action should be taken and what type of enforcement action should be taken.

Enforcement action should:

- Aim to change the behaviour of the offender
- Aim to eliminate any financial gain or benefit from the offence
- Be responsive and consider what is appropriate for the particular offence and issue
- Be proportionate to the nature of the offence and level of harm caused
- Aim to rectify or minimise the harm where appropriate
- Aim to deter future non-compliance
- Aim to achieve a balance between the public interest, the benefits of enforcement action and cost to Council.

A range of matters may be taken into consideration when determining the appropriate enforcement response to any unlawful activity including:

- a. The nature, extent and severity of the offence or breach
- b. The impact or potential impact of the offence or breach upon the natural or built environment

- c. The impact or potential impact of the offence or breach upon the health, safety and amenity of the locality and community
- d. Whether or not the breach is of a technical, inconsequential or minor nature
- e. Whether or not Council is legally prevented from taking action
- f. The time period that has lapsed since the date of the offence or breach
- g. Whether or not the breach has been or can be remedied or rectified
- h. Whether or not an informal warning, a formal caution or provision of education would be appropriate in the circumstances
- i. Whether or not the particular matter satisfies relevant regulations, standards and requirements (i.e. Building Code of Australia)
- j. Whether or not the person has demonstrated genuine mitigating circumstances, hardship or contrition
- k. Whether or not the person has been proactive in the resolution of the matter and assisted with any Council requirements and instructions
- l. Whether or not a relevant development consent has been or can be obtained or sought for the particular matter (i.e. a variation to a development consent)
- m. The extent, level and nature of the matter and comparison with other provisions and criteria (e.g. comparison of unauthorised development against relevant or similar provisions for exempt or complying development)
- n. Whether or not any previous warnings, instructions or advice was provided which has not been followed
- o. Whether or not it is likely that consent would have been issued for the particular matter if consent had been sought
- p. Whether or not any modifications or works have or may be carried out to reasonably address or minimise potential impacts of the particular matter (i.e. removal of part of unauthorised works having the greatest impacts)
- q. Whether or not it was likely that the person was aware or should have been aware of the relevant regulatory provisions and requirements
- r. Whether or not the proposed action would be reasonable and proportionate in the particular case
- s. Whether or not the issue relates to a private, neighbour or civil dispute between other parties
- t. Whether or not the Council has sufficient admissible evidence to prove each element of the offence or breach
- u. The likely chances of success if the enforcement action was challenged in Court and relevant 'case-law'
- v. The costs and benefits of further investigating a particular matter, taking enforcement action or implementing proceedings (i.e. resources and cost of lengthy investigations, enforcement action or legal action would be excessive and/or outweigh the likely benefits or outcomes)
- w. Whether or not there are available alternative disputes resolution options, including the availability of options to resolve the matter that do not require the involvement of Council (e.g. resolution of disputes relating to defective building work; damage to premises; tenancy/property disputes, strata by-laws disputes, contracts or agreements or other matters which may be resolved via negotiation or mediation between the parties, relevant Tribunals or Court proceedings)
- x. The circumstances of the particular case
- y. The public interest (i.e. having regard to the extent and degree of impact, upon the broader community).

Annexure A contains a summary of a number of unlawful activities and typical courses of action which may be appropriate for the offence.

11. Legislative Provisions and Requirements

Specific provisions are contained within each piece of legislation relating to the appointment of Authorised Officers, Powers of Entry, Inspections & Investigations, Search Warrants, Issuing of Notices & Orders, Issuing Penalty Infringement Notices, Legal Proceedings, Appeals, Court Orders, Penalties, Compensation and other associated activities.

Specific provisions are also contained in most legislation to restrict Authorised Officers' access to residential premises, unless permission has been obtained or the inspection relates to a current approval or Council has obtained a Search Warrant.

Although Councils are provided with a range of Acts and Regulations to regulate and enforce, the provisions are, in most cases, very specific and action may only be taken if certain matters or circumstances are evident and can be demonstrated by the Authorised Council Officer.

The Acts and Regulations do not provide Council with unfettered powers to take action in matters which are not specifically provided for in the legislation (e.g. actions or behaviour of parties and neighbour nuisances).

Council officers are required to be duly authorised and carry out their regulatory functions fully in accordance with these provisions. Failure to do so may affect any potential proceedings or appeal and could result in a determination against Council or possible compensation.

12. Legal Proceedings - General

Prior to taking enforcement action, Council must have sufficient evidence of the offence (under the relevant Act or Regulation) and the person responsible for the offence or breach.

12.1. Criminal Proceedings

The commencement of legal proceedings or issue of penalty notices in relation to an offence or breach of an Act or Regulation are identified as 'criminal proceedings'.

In criminal proceedings, Council must be able to prove the particular offence 'beyond reasonable doubt'.

These types of proceedings are 'punitive' and may result in the issue of a fine by the Court, if the case is proven. In criminal proceedings, there is generally no provision which enables the Court to issue an order requiring the offender to remedy the breach or restrain the unlawful activity.

In some cases, it may be clearly evident that an unlawful activity has occurred. However, Council may not have sufficient evidence to prove, that a particular person has committed the offence, which would prevent Council from commencing proceedings or issuing a penalty notice for the offence.

12.2. Civil Proceedings

In some cases (i.e. cases of a significant breach, environmental harm, life safety or ongoing offence), Council may commence 'civil proceedings' in the Land & Environment Court, seeking an order from the Court requiring the offender to do or refrain from doing something.

In civil proceedings (e.g. Land & Environment Court class 4 proceedings), the level of proof is based on the 'balance of probability', which is less onerous than that in the criminal jurisdiction. However, even if the breach is established, the Court has the discretion as to whether or not an order will be issued.

In civil proceedings, the costs of litigation may be substantial and the Court may order the parties to pay their own legal costs or may order one party to pay the other parties legal costs in addition to their own costs.

12.3. Criminal or Civil Proceedings?

Deciding whether to commence criminal or civil proceedings depends on the outcome that is being sought. If Council were willing, retrospectively, to accept the results of the unlawful activity or if the unlawful activity cannot be undone or is not ongoing and Council wishes to punish the offender, criminal proceedings may be preferred subject to the considerations detailed below.

Conversely, if Council is not willing to accept the unlawful activity (e.g. for alleged major offences against the *Environmental Planning and Assessment Act 1979* where the court may not have any jurisdiction to make an ancillary order requiring rectification of the unlawful activity), it is often more appropriate for Council to commence civil proceedings.

In general terms, the type of enforcement action and proceedings should be proportionate to the severity of the offence and harm. For example:

- General offence or breach – issue of a penalty notice or fine by Council
- Substantial breach or offence – Local Court (criminal proceedings)
- Major breach or ongoing offence or significant harm/impact (civil proceedings).

In determining appropriate type of proceedings, Council will have regards to the matters for consideration in this policy and any advice from Council's legal advisors.

If Council decides not to commence proceedings under the *Environmental Planning and Assessment Act*, *Local Government Act* or *Protection of the Environment Operations Act*, any person may commence their own proceedings for an order to remedy or restrain a relevant breach.

12.4. Recovery of Legal Costs

In the event of any legal proceedings in the Local Court or Land & Environment Court, Council may seek to recover any penalty imposed by the Court.

Council may also seek to recover its fair and reasonable costs in all matters where costs are recoverable, either by consent or order of the Court.

Council may agree to settle or agree to legal costs (i.e. based on the advice of its Solicitors), having regard to the circumstances of the case and to prevent incurring further unnecessary costs.

13. Notices, Orders & Appeals

Most legislation administered by Council has provisions which offer Council the option of the issuing of Orders. These provisions provide Council with a formal cost effective mechanism to direct land owners and occupiers to do or refrain from doing something that is unlawful or, contrary to particular provisions, requirements or standards.

Generally such provisions operate on the 'principles of natural justice' and require Council to issue a 'Notice of Intention to Give an Order', prior to an Order being issued. A 'Notice of Intention' is not required in cases of an emergency.

A person who receives a 'Notice of Intention' has a period of time in which they can make submissions on the proposed Order or the proposed timeframe in which the Order is to be complied with. Any representation made to Council will be considered prior to determining the appropriate course of action.

The relevant legislation contains provisions by which a person may lodge a formal appeal against an Order in the Land & Environment Court or Local Court within a specified timeframe (generally 28 days from the date the Order served). The appeal provisions will be outlined in Council's Orders.

14. Penalty Notices - Fines

A number of the Acts and Regulations which Council administer provide the ability for Council officers to issue Penalty Notices (i.e. a Fine) for certain offences. The Penalty Notice system was introduced to provide an effective and efficient means to deal with those offences which are generally not serious enough to warrant instituting Court proceedings.

The payment of a penalty notice does not result in the recording of a criminal conviction. Non-payment of a penalty notice is not dealt with by way of criminal sanctions, but is recoverable as a civil debt by Revenue NSW. However, a person may elect to have the matter heard in proceedings in the criminal jurisdiction of the Local Court.

Penalty notices may be issued by designated authorised officers under the relevant legislation. In many instances, authorised officers are not only Council officers, but include officers from other agencies such as the Police, Roads & Maritime Services, Environment Protection Authority, NSW Department Planning & Environment, NSW Health, SafeWork NSW, NSW Fair Trading and Building Commissioners Office.

Penalty notices are generally most appropriate where:

- the breach is relatively minor,
- the facts are apparently indisputable,
- the penalty is proportionate and appropriate for the particular offence or breach;
- the breach is a one-off situation that can be remedied easily, and
- the issue of a penalty notice is likely to be a practical and viable deterrent.

It may not be appropriate to issue penalty notices where:

- the breach is on-going,
- the penalty prescribed in the penalty notice would be clearly inadequate for the severity of the offence,
- the extent of impact or the harm to the environment or locality cannot be assessed immediately,
- the evidence may be insufficient or controversial and the matter may be unlikely to succeed in the event of a Court hearing,
- a significant period of time has elapsed since the alleged breach,
- negotiations to find a resolution to the problem which is the subject of the breach are being conducted,
- a direction has been issued to perform specified work (i.e. via a Notice of Intention to serve an Order) within a timeframe and the time limit for such performance has not expired,
- multiple breaches have occurred.

Penalty notices are generally most suitable for immediate and straight-forward offences or breaches, to uphold the objectives of the relevant regulatory requirements and to act as a deterrent against further similar breaches, including:

- Public place offences
- Roads, traffic and parking offences
- Waste and littering offences
- Failure to comply with public notices
- Certain animal control offences
- Most development control offences
- Low-impact pollution incidents
- General fire safety offences
- Failure to comply with fire safety statement requirements.

15. Review of a Penalty Notice (Fine)

To ensure that Council manages the penalty notice process and enforcement action in a consistent, transparent, accountable and unbiased manner, any requests or representations seeking reconsideration or waiving of a penalty notice **are** to be made directly with Revenue NSW.

Revenue NSW have in place specific guidelines (Revenue NSW Review Guidelines), to assist and guide them when considering requests for the review of a penalty notice, in a consistent and transparent manner, as recommended by the NSW Ombudsman.

When reviewing a penalty notice, Revenue NSW may seek further information or refer the representations regarding the issue of the penalty notice to the Council for comment and advice.

Where representations seeking reconsideration or waiving of a penalty notice, are made to Council via Revenue NSW, the General Manager's delegate will have due regard to upholding the integrity of the Council's regulatory and enforcement functions.

Council will generally not support the waiving of a penalty infringement notice unless:

- it is evident that an error has been made in the issuing of the penalty notice; or
- documentary evidence is provided from a registered Health Practitioner that the offence occurred due to the result of a medical emergency or incident; or
- the extent of evidence or circumstances may affect the successful prosecution of the offence the subject of the penalty notice in the event of a Court hearing or appeal; or
- it is evident that Council has acted unreasonably or inappropriately in the issuing of the penalty notice; or
- after consideration of legal advice or the exceptional circumstances of the case and it considered appropriate to do so.

Where representations are made to Revenue NSW seeking reconsideration or waiving of a penalty notice, the decision to waive a penalty notice is a matter for Revenue NSW alone.

15.1. Penalty Notice – Caution Guidelines

In certain circumstances it may be appropriate for Council to give an official 'Caution' to an offender, instead of issuing a penalty notice.

Council may give an official Caution for minor or inconsequential breaches or in other exceptional circumstances (e.g. in circumstances where there has been no environmental impact or harm and there are no safety concerns or material impact upon the community or environment).

An official Caution should be given by Council's Authorised Officer in accordance with the Caution Guidelines approved by the NSW Attorney General.

16. Certification of Development

The Legislative Framework in NSW

The 'certification' of development in NSW is carried out by building certifiers known as **Registered** (Accredited) Certifiers. Registered Certifiers can be private certifiers or Council certifiers.

The private-certification regime was introduced in 1998 and the extent of development which is certified by private-sector Building Certifiers and other Registered Certifiers has progressively increased since the provisions were introduced, to the extent that most developments in Sydney, other cities and major towns are now certified by private-sector Registered Certifiers.

NSW Fair Trading and the Building Commissioners Office are the responsible authorities for the regulation of building certifiers under the *Building and Development Certifiers Act 2018*.

Registered Certifiers are responsible for the issue of Construction Certificates and Complying Development Certificates and other Certificates under the *Environmental Planning and Assessment Act 1979* and associated Regulations.

Registered Certifiers are also required to be appointed (e.g. by the building owner) as the Principal Certifier for the subject development, to assess compliance with relevant development consent, Construction Certificate or Complying Development Certificate (as applicable) and to issue an Occupation Certificate upon completion of the development.

The Building Commissioners Office is responsible for the investigation of complaints about all Registered Certifiers and they also undertake audits of development and compliance with relevant building regulations and standards.

Councils do not have any powers to investigate, audit or discipline Registered Certifiers. Registered Certifiers are required to comply with the conditions of their registration and they are also subject to a Code of Conduct. If necessary, any person may lodge a complaint with the Building Commissioners Office if it is considered that the certifier is in breach of their registration or any regulatory provisions or, if the certifier is not reasonably acting upon or responding to concerns about the development.

Customer enquiries and complaints about development

The legislative framework in NSW provides Registered Certifiers with prime responsibility to ensure compliance with relevant consents, certificates and building regulations. Together with the ability for the Building Commissioner or Council to step-in and take appropriate regulatory action where it is necessary to do so.

All reports, enquiries or concerns relating to building or development compliance (i.e. alleged non-compliance with a development consent, construction certificate or complying development certificate) should be referred directly to the appointed certifier for investigation and appropriate action.

The appointed Principal Certifier for the particular development is required to appropriately act upon any reports about the building work or development and to respond to the customer accordingly, as outlined in the Practice Standards for Registered Certifiers and the Certifiers Code of Conduct.

Principal Certifiers are responsible for ensuring that the development is 'consistent' with the relevant development consent or complying development certificate and Certifiers are able to exercise professional judgement to determine whether or not the development is 'consistent' with the consent.

Principal Certifiers also have the authority to determine whether or not a range of ancillary matters associated with the development have been satisfied (e.g. earthworks, structural work, stormwater drainage, building finishes and landscaping work).

If the Principal Certifier for the development identifies that the building is not being carried out in accordance with the relevant consent or other requirements, the certifier is required to issue a Written Direction Notice to the owner or builder, which outlines the non-compliance and specifies a period of time in which to remedy or resolve the non-compliance. If the requirements specified in a Written Direction Notice are not satisfied within the specified period, the certifier is required to notify Council accordingly.

Upon receipt of notification of the non-compliance with a Written Direction Notice, Council officers will undertake their own investigation and assessment of the matter and Council may issue a Notice of Intention to Serve an Order if the development is not being carried out in accordance with the development consent (or a complying development certificate). Following the issue of a Notice of Intention to serve an Order, Council is required to consider any representations which may be made by or on behalf of the person served with the Notice and to determine any appropriate regulatory action (e.g. issue of an Order or Penalty Notice (fine) for a breach of consent).

Council also does not carry out any assessment or review of construction certificates, complying development certificates or other certificates issued by Registered Certifiers and any enquiries or concerns regarding the certificates and development encompassed in the certificates must be referred directly to the certifier for assessment and response.

Whilst all reports relating to the building work or development should be referred directly to the appointed certifier for the development, matters relating to 'off-site' environmental or amenity impacts (i.e. pollution incident, breach of working hours, public safety or other urgent matters) may also be referred to Council for investigation and appropriate regulatory action by Council.

In the case of an emergency or urgent matter (e.g. unsafe building or collapse of adjoining land), the report should be provided to both the Council and certifier as soon as possible, to facilitate a prompt investigation of the matter.

17. Exempt & Complying Development

Exempt Development relates to specified minor development, building work and renovations which do not require any approval from Council or an accredited certifier, subject to compliance with specified limitations and requirements.

Exempt development does not require any notification to Council or any approval from Council. The owner or builder is responsible to ensure compliance with the relevant requirements specified in the applicable planning instrument for exempt development.

Further information about [Exempt Development](#) can be found on Council's website and the [NSW Planning & Environment](#) website.

Complying development relates to a wide range of development types including new dwellings, alterations and additions to dwellings, granny flats, dual-occupancy developments, outbuildings, swimming pools, use of premises, shop or office fit-outs, alterations and additions to commercial and industrial development and other development.

Applications for a Complying Development Certificate are required to be assessed and determined by a Registered Certifier and they are assessed against specified prescriptive requirements and development standards. If the application meets these requirements, the application must be approved by the Certifier.

Councils do not have any authority to review or change the determination of a Complying Development Certificate and the validity of a Complying Development Certificate may only be challenged in the Land & Environment Court.

Any queries and concerns relating to complying development should be referred directly to the relevant Registered Certifier for assessment and response. The accredited certifier has an obligation to investigate the matter and to take appropriate action.

Further information about [Complying Development](#) can be found on Council's website and the [NSW Planning & Environment](#) website.

18. Parking

The [NSW Road Rules 2014](#) establish the driving, traffic and parking laws which apply throughout NSW. These rules and restrictions are intended to promote safe driving and parking practices, assist with traffic flow and encourage an equitable use of a limited number of parking spaces.

Parking restrictions may be of a statutory type (which apply without specific signage being in place) or sign-posted. In accordance with the Road Rules all drivers are required to comply with statutory rules and regulations. Drivers must also comply with all sign-posted parking restrictions.

The enforcement of parking offences can, at times, cause concerns to drivers, residents and businesses. It is necessary to consider the rationale and importance of the road rules and why parking restrictions are in place.

The penalty amounts for parking offences are set by the NSW Government and Council is unable to vary these amounts.

Council's officers enforce parking offences in accordance with the NSW Road Rules. Council officers are required to be diligent and complete their assigned tasks and patrols in a professional, appropriate, consistent, unbiased and accountable manner in accordance with Council's policies and procedures. Council officers do not receive any benefits from the issue of penalty notices.

Further information about [Parking](#) permits, rules and fines can be found on Council's website.

19. Unattended Items

Council's Rangers are authorised under the *Public Spaces (Unattended Property) Act 2021*, - to help manage unattended property in public places. It does this by allowing authorised officers of councils to take possession of unattended items in public places in specified circumstances, such as shopping trolleys, vehicles, shared devices, animals (other than companion animals), and other items. It also gives Councils directions on how property taken into possession can be reclaimed, sold or disposed of. Council Rangers may also issue fines if the provisions or requirements are not satisfied.

Under the legislation, authorised officers are able to:

- Take possession or move unattended property left in public
- Take enforcement action for offences e.g. issue warnings, notices and penalty notices (fines) or court proceedings
- Temporarily store unattended property
- Recover costs for dealing with unattended property
- Care for animals to ensure their welfare

The Act classifies items into three classes – personal items (class 1), sharing service items (class 2) and vehicles (class 3).

Class 1 (personal) items are small or medium-sized things capable of ownership that can ordinarily be collected by 1 or 2 people without the need for machinery to lift, tow or move them. Examples include baggage or personal recreational equipment such as bicycles or kayaks.

Class 2 (sharing service) items are available for the use of the public at large, whether on payment of a fee or other benefit, including as part of a 'sharing service'. Examples are shopping trolleys and share-bikes. Share e-scooters (where legally able to be used) are also regarded as Class 2 items.

Class 3 items (vehicles) are motor vehicles, which have the same meaning as that of the Road Transport Act 2013, and include caravans, boat trailers or other trailers, whether or not attached to a motor vehicle. The Public Spaces (Unattended Property) Act and associated Regulation specifies both the circumstances and the processes to be followed during an investigation, impoundment, and disposal of an unattended item.

Under the legislation, an authorised officer may only take possession of an item if the officer believes the item is unattended, **and** the item:

- Obstructing access to or within a public place
- Poses a risk to persons, animals, or the environment.
- Is interfering with public amenity (subsequent guidelines set out the tangible aspects of 'amenity' that may be considered and include things like traffic, noise, odour, dust and light).
- has been in the same or substantially the same place for the period prescribed by the regulations.

Prescribed periods to remove unattended items

The Act and Regulations provide specific, risk-based timeframes for items to be managed by the person responsible prior to regulatory action commencing.

If the Item is observed obstructing access or posing a safety risk, the following period of notice must be given in which to remove the item:

- Class 1 (personal item) - 3 hours notice to remove
- Class 2 (Shared service item) - 3 hours notice to remove
- Class 3 (Motor vehicle) - No notice required if posing a safety risk / obstructing access

If the Item is causing an amenity impact or exceeds prescribed period, the following periods must be provided in the notice to remove the item:

- Class 1 (Personal item) – 7 days (7 days notice required)
- Class 2 (Shared service item) – 7 days (4 days notice required)
- Class 3 (Motor vehicle - registered) – 28 days (15 days notice required)
- Class 3 (Motor vehicle – unregistered/defective) - 15 days (3 days notice required)

When assessing a vehicle which may be *unattended* Council's authorised officer will take the following matters into consideration:

- The location of the vehicle
- If the vehicle is causing or likely to cause an obstruction to traffic or danger to the public
- The impact upon vehicular and pedestrian safety
- If the vehicle is parked legally or otherwise
- If the vehicle is currently 'registered' or not
- The size, condition and appearance of the vehicle
- The impact of the vehicle/s upon the amenity of the area.
- The timeframe in which the vehicle has been present in the same or approximately the same location.

Steps in the regulatory process

If an item is found to be obstructing access or causing a safety risk to persons, animals and the environment an authorised officer may take possession of the item and take it to a place of storage or move the item to a safe location nearby.

If the item is causing an amenity issue or has been left in one location for a length of time prescribed in the regulations, Council officers will seek to identify and notify the owner of the regulatory action to be taken if the item is not removed by the specified notice period. Notices may be affixed directly to the item or sent to a specified residential or commercial address.

If an unattended item is not removed by the specified notice period Council may take possession of the item and arrange for it to be taken to a secure place of storage.

Once Council is in possession of the item, further attempts to identify, contact and notify the owner will be taken by the officer.

Council's authorised officer may also issue a Penalty Notice (fine) for the offence and the relevant towing and impounding fees and charges contained in Council's Pricing Policy are also required to be paid to Council if a vehicle is impounded. Council will proceed to sell or dispose of the vehicle if it is not claimed by the owner beforehand.

In relation to reports relating to unattended vehicles, Council will investigate requests from residents and the community about possible unattended or abandoned vehicles. However, should the vehicle in question be found to be in a satisfactory condition, legally parked, duly registered, and not posing any obstruction, danger, or public safety risk, nor significantly impacting the amenity of the area for an extended period, Council may defer proceeding with an investigation until a period of 28 days following the vehicle being reported Council.

It is also important to acknowledge that even after a comprehensive 28-day investigation period, it may not be appropriate to proceed with the impoundment of a vehicle if the vehicle in question is found to be parked legally, currently registered, and has not been identified as causing an obstruction, hazard, or significantly impacting the amenity of the area. There may be extenuating circumstances, such as a family or medical emergency, overseas travel or another legitimate reason which could justify the vehicle being parked for an extended period, our policy emphasises the necessity of a balanced and considerate

evaluation of each individual case to ensure that enforcement actions are just and proportionate. This policy is designed to ensure the judicious use of Council resources while balancing the need to maintain public safety and order within our community, respecting the circumstances of vehicle owners.

It should also be noted that the 'registration' status of a vehicle is not necessarily related to the determination of an unattended item. In some cases, a vehicle may be parked on a street for a long period of time and it may not be currently 'registered', but this does not enable Council to declare the vehicle to be unattended merely because the vehicle is not currently registered.

However, if the vehicle is not currently 'registered' with the Roads Authority, Council may issue a Penalty Notice under the *Road Transport Act 2013* which allows Council authorised officers to issue fines to vehicles left on a public road 15 days past the expiration of their registration.

With regard to Class 2 items, the NSW Department of Planning and Environment has developed a code of practice for class 2 sharing items including shopping trolleys and other items. This code of practice, which has been made pursuant to the act, sets out required standards for sharing service operators regarding safe management of sharing service items in public places as well as expected standards of communication between authorities and operators.

Council is committed to working proactively with shared service item operators to ensure the safe and responsible management of their items in public places.

Investigations into class 1 and 2 items may be resource intensive in nature, in recognition of this investigations will be prioritised to ensure the most effective use of Council resources. The criteria which will be considered include the risk to public and environmental safety, the level of obstruction caused, the impact on the amenity of the area, and the availability of necessary resources. This approach will allow Council to address the most pressing issues promptly while maintaining our commitment to community health and safety.

20. Neighbour and Private Disputes

Council encourages positive relationships between neighbours but recognises that disputes can occur for various reasons. In some circumstances people complain to Council about their neighbour's behaviour or actions without discussing the issue with their neighbour beforehand.

Many neighbour disputes may relate to noise, trees, fences, retaining walls, nuisances, trespass, pets, work or structures on or near property boundaries or the alleged behaviour or actions of a person.

Neighbour disputes and nuisances are best resolved by neighbours engaging in constructive discussion and implementation of reasonable and amicable solutions. Involving Council in these types of disputes before attempting to resolve the issue with your neighbour may also be counter-productive and detrimental to on-going neighbourly relations.

Before referring reports about neighbour issues to Council, reasonable efforts should be made to resolving the matter between the parties beforehand.

Council has limited powers and resources and is unable to intervene in neighbour issues and disputes which:

- are related to the behaviour or actions of persons (e.g. rude or aggressive behaviour, trespass, vandalism or deliberate actions aimed at annoying or disturbing neighbours)
- are of a minor, trivial, infrequent or inconsequential nature
- are principally related to a private dispute or nuisance or issue between neighbours or other parties
- do not have a material impact upon other parties or the environment
- relate to 'tit-for-tat' neighbour complaints of a minor, technical or historical nature
- are able to be addressed through other dispute resolution processes (e.g. Strata by-law disputes, Community Justice Centres or civil proceedings)

- relate to matters that can be resolved between the parties via mediation or other legislation (e.g. access to neighbouring lands, dividing fences, encroachments, alleged damage to premises or other activities)
- relate to private easements, rights-of-way or other restrictions on private property
- relate to property issues, boundary or fencing disputes, encroachments, site drainage/flooding, damage from trees or other activities
- would have an unreasonable impact upon Council's resources.

These matters should be resolved between the parties directly or through mediation or civil proceedings.

The NSW Community Justice Centres provide mediation services to assist neighbours to resolve these types of disputes and Council encourages neighbours to attend mediation before contemplating any possible regulatory action.

Disputes relating to tenants, Strata developments and By-laws should be resolved between the parties or via the Owners Corporation, Building or Property Manager, or NSW Civil and Administrative Tribunal (NCAT).

Importantly, Council has no jurisdiction or power to address the alleged inappropriate behaviour or actions of a person. Concerns about anti-social, threatening, intimidating, offensive or criminal behaviour or trespass should be made directly to NSW Police.

21. Education and Awareness

Council aims to take a proactive approach in preventing unlawful activities or breaches, including the provision of information to the public and applicants about planning and building requirements, conditions and regulatory requirements to be satisfied.

Council provides information to raise awareness and educate the community about compliance, enforcement and regulatory requirements.

22. Governance

Role of Regulatory Officers

Council's regulatory officers are delegated by the General Manager having regard to their roles and they are required to undertake their investigations into the facts and circumstances of the particular case in an impartial manner and objective manner.

Regulatory officers must not have or be perceived to have, any conflicts of interest in relation to the alleged unlawful activity, the person reporting the activity or the people or conduct being investigated.

Council staff are also required to comply with Council's Code of Conduct, to ensure that investigations and actions are undertaken in an impartial and accountable manner and without any conflict of interest.

Role of Councillors

The investigation of reports alleging unlawful activities or offences and taking enforcement action is the responsibility of Council's authorised, suitably qualified and trained regulatory officers.

Individual councillors do not have the authority to investigate or take enforcement action or to direct Council officers in their day-to-day activities. Councillors may however, refer any reports of alleged unlawful activities from constituents or other parties to the General Manager or delegated officers for appropriate action, as outlined in this policy.

The General Manager may also present certain decisions to be ratified by the elected Council if this is necessary or desirable.

Policy Review

This policy will be reviewed within 5 years of adoption or sooner if there are any significant changes to legislation, policies or procedures.

23. Related Guidelines, Policies and Procedures

- Enforcement Guidelines for Councils - NSW Ombudsman (2015)
- NSW Department of Planning Practice Note - Exercising Discretion
- Council's Business Rules and Standard Procedures
- Relevant Council Policies and Council resolutions

In the event of any inconsistency between this Policy and any Act or Regulation in relation to the same matter, the Act or Regulation prevail over this Policy.

This Policy has been prepared having regard to current relevant Acts, Regulations, Planning Instruments and the abovementioned guidelines.

A. Summary of regulatory matters and typical enforcement options*

Offence Scenario	Act / Reg.	Details of the case	Warning / Education	Penalty Infringement Notice	Notice &/or Order	Local Court Proceedings	L&EC Proceedings (e.g. class 4)
Dangerous dog/dog Attack	Companion Animals Act 1998	Dog has attacked another animal or person			✓	✓	
Nuisance Dog Order	Companion Animals Act 1998	Failure to comply with a Nuisance Dog Order (i.e. possible danger to other people, unrestrained or barking dog)		✓		✓	
Potential for pollution	POEO Act 1997	Location of stockpile of soil/sand may cause pollution incident (i.e. in rain)	✓ (first occasion)				
Pollution incident - minor	POEO Act 1997	Soil, sand or other waste has or is likely to enter stormwater system		✓	✓		
Pollution incident - major	POEO Act 1997	Pollutant e.g. oil or paint has entered stormwater system creek or ocean			✓	✓	
Site management	Local Govt. Act 1993 or EP&A Act 1979	Articles located on footpath without approval - Possible safety hazard		✓	✓		
Building work outside of hours	Env. Planning and Assessment Act 1979	Carrying out building works outside of hours permitted in DA	✓ (first occasion)	✓	✓		
Unauthorised development	Env. Planning and Assessment Act 1979	Unauthorised development or non-compliance with consent conditions - generally		✓	✓		
Unauthorised building works (minor) - owner builder	Env. Planning and Assessment Act 1979	Construction of pergola awning by home-owner and the structure has no material impact on other parties and locality - No building or structural issues	✓ (first occasion)	✓			

Offence Scenario	Act / Reg.	Details of the case	Warning / Education	Penalty Infringement Notice	Notice &/or Order	Local Court Proceedings	L&EC Proceedings (e.g. class 4)
Unauthorised building works - licensed builder	Env. Planning and Assessment Act 1979	Unauthorised building work or non-compliance with consent - building or planning issues to be resolved		✓	✓		
Unauthorised building works - major	Env. Planning and Assessment Act 1979	Substantial unauthorised building work or non-compliance with consent - Planning and BCA compliance issues			✓	✓	✓
Variation to DA (minor) - Owner Builder	Env. Planning and Assessment Act 1979	Minor variation to Development Consent (resolved promptly e.g. section 96 obtained)	✓ (first occasion)	✓	✓ (if not resolved promptly)		
Variation to DA or work without CC - General	Env. Planning and Assessment Act 1979	Unauthorised variation to Development Consent or building work without prior Construction Certificate		✓	✓	✓ major or multiple breaches)	
Unauthorised/noncomplying use of premises - general	Env. Planning and Assessment Act 1979	Unauthorised or non-complying use of premises - Issues able to be reasonably addressed or resolved		✓	✓		
Unauthorised use of premises - major	Env. Planning and Assessment Act 1979	Unauthorised use of premises as a boarding-house, backpacker accommodation or brothel			✓	✓	✓
Fire safety offence - general	Env. Planning and Assessment Act 1979	Failure to submit an annual fire safety statement after due date or failure to maintain fire safety measure or exit system		✓	✓ (If not resolved in specified time period)		
Fire safety - major	Env. Planning and Assessment Act 1979	Substantial fire safety breach or fire safety upgrading of development			✓	✓	✓
Food Safety - general	Food Act 2003	Failure to comply with Food Safety Standards	✓ (minor breach only)	✓	✓		
Food Safety - major	Food Act 2003	Multiple/substantial breaches of Food Safety Standards			✓ (inc. possible 'prohibition order')	✓	

Offence Scenario	Act / Reg.	Details of the case	Warning / Education	Penalty Infringement Notice	Notice &/or Order	Local Court Proceedings	L&EC Proceedings (e.g. class 4)
Traffic/Parking	Road Rules 2014	Parking of vehicle in a 'School-Zone' or in a 'No Stopping' area		✓			
Traffic/Parking	Road Rules 2014	Parking of vehicle contrary to relevant adopted and sign-posted parking requirements		✓			
Vehicle is parked across or upon a Driveway or Access to a property *	Road Rules 2014	A vehicle is partially or wholly parked across a driveway or other access/egress to/from a property. [Also, refer to the notes below]	✓ (If driver is present and immediately moves the vehicle)	✓ (if vehicle prevents or impedes access to property or other parking restrictions apply)			
Unattended Item	Public Spaces (Unattended Property) Act 2021	Failure to move unattended item within specified period/s. The authorised officer shall also consider the matters contained in section 19 of this policy to determine the appropriate course of action.	✓ (Nil/Negligible impact)	✓ (If the item is deemed unattended, impacting on public place and not moved in specified period)	✓ (Impound the item if causing a public safety issue, impact on access or amenity of area)		
Tree Preservation Matter - minor	Env. Planning and Assessment Act 1979	Tree covered by TPO/DCP lopped without approval – minor impact on tree / amenity of locality	✓				
Tree Preservation Matter - major	Env. Planning and Assessment Act 1979	Tree covered by TPO/DCP removed without approval –significant impact on amenity of site / locality				✓	

* Notes:

- In some cases, the particular breach may be remedied or resolved prior to proceeding to the service of Notices, Orders or legal proceedings i.e. via negotiation or by promptly obtaining relevant approvals.

- Prior to determining an appropriate course of action, consideration is required to be given to the matters for consideration in section 10 of this policy, and the courses of action contained in the above table may not be suitable or sufficient in all cases.
- In the case of a minor, inconsequential or trivial breach, Council's authorised officer may issue a written warning or a formal caution, where appropriate.
- Generally, in relation to vehicles parked across or upon a driveway to a residential property, an authorised officer may determine not to take regulatory action, if the vehicle is not affecting the use of a public footpath; the vehicle does not materially affect access or egress to the property or vehicular or pedestrian safety, or; the vehicle belongs to the resident of the property (or visitor).

FOLLOW US ONLINE



1300 722 542
council@randwick.nsw.gov.au
www.randwick.nsw.gov.au

Randwick City Council
30 Frances Street
Randwick NSW 2031