

<b>Policy title</b>	Compliance
<b>Responsible manager(s)</b>	Director, Planning and Sustainability Services
<b>Contact officer(s)</b>	Divisional Manager, Environmental Services
<b>Directorate</b>	Planning and Sustainability
<b>Approval date</b>	14 June 2022
<b>Outcome area</b>	1. Our sustainable shire celebrates our natural environment and outdoor lifestyles
<b>Strategy</b>	1.2 Value, protect, and enhance our natural environment
<b>Delivery Program</b>	1.2.3 Work in partnership to provide natural resource management to develop community awareness of environmental opportunities, issues and impacts
<b>Operational Plan</b>	1.2.3.3 Monitor, inspect and respond to public and environmental health matters

## Purpose

This policy provides information about Council's position on compliance and enforcement matters in the Eurobodalla Shire Council local government area.

The purpose of this policy is to provide a structure for consistency and transparency in decision-making, and to facilitate a balanced 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, to Council's enforcement options, and whether to commence criminal or civil proceedings.

## Policy aims

- Enable Council to acknowledge its obligation under Section 8 of the *Local Government Act 1993* to ensure that its regulatory powers are carried out in a consistent manner and without bias.
- Establish clear guidelines for Council's authorised officers in dealing with proactive regulatory action, and for assessing and investigating customer service requests or complaints about unlawful activity.
- Provide a proactive position regarding enforcement action in regard to Council's regulatory and compliance functions.
- Foster responsive and responsible regulation, fairness, consistency, and equity in any action taken by Council in response to allegations of unlawful activity.
- Establish operational priorities and factors to be considered when determining how a complaint should be dealt with by Council.
- Follow the principles of the '*NSW Ombudsman's Enforcement Guidelines for Councils*' (2015), the NSW Director of Public Prosecution 'Prosecution Policy Guidelines' and the NSW EPA Enforcement Guidelines in regard to the enforcement and compliance function that comprise the procedures and guidelines associated with this policy.
- Make Council's policies and requirements for compliance readily accessible and understandable to the public.

## Policy details

<b>1</b>	<p><b>Application</b></p> <p>This policy applies to regulatory issues within Council's area of responsibility including, but not limited to: public health and safety; development and building control; pollution; environmental health; biosecurity weeds and pests; parking and traffic matters, and companion animals and livestock.</p>
<b>2</b>	<p><b>Legislation</b></p> <p>This policy ensures Eurobodalla Shire Council's compliance with Section 8 of the <i>Local Government Act 1993</i>, and relevant legislation and regulations that Council operates under.</p>
<b>3</b>	<p><b>Compliance process</b></p> <p>The compliance process (see Appendix 1 to 3) establishes the factors that will be considered when determining how a compliance matter will be handled. This process includes the following:</p>
<b>3.1</b>	<p><b>Assessment framework</b></p> <p>Council will record and assess every report alleging unlawful activity.</p> <p>Generally, Council's objectives when dealing with reports alleging unlawful activity are to:</p> <ul style="list-style-type: none"> <li>• maintain the collective good and welfare of the community</li> <li>• prevent or minimise harm to health, welfare, safety, property or the environment</li> <li>• consider the broader public interest having regard to Council's priorities and any resource limitations</li> <li>• consider the report fairly and impartially.</li> </ul> <p>Not all reports alleging unlawful activity will warrant investigation. A preliminary assessment of all matters will be made to determine whether investigation or other action is required. Council will prioritise matters based on risk to public safety, human health, and environment.</p> <p>Any decision not to investigate an allegation of unlawful activity will be recorded, and the reasons for that decision clearly stated.</p> <p>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 customer who reported the alleged unlawful activity, regular feedback on the progress of the investigation, and any reasons for the 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.</p> <p>Decisions about what action should be taken by Council are made at Council's discretion. 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 to avoid the need to take formal compliance and/or enforcement action, depending on the nature of the breach.</p> <p>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. They will also explain that Council has limited resources and powers to deal with reports alleging unlawful activity. If</p>

	<p>Council is unable to fully investigate or take action on a matter because it is restricted by legal or resource limitations, this will be explained to the individual.</p> <p>When there are specific statutory requirements that must be met in relation to notices and orders, Council staff will provide all explanatory communication in plain English and explain any technical language the law requires.</p>
<b>3.2</b>	<p><b>Investigation process</b></p> <p>The objective of these process that Council staff use when investigating incidents of alleged unlawful activity, is to:</p> <ul style="list-style-type: none"> <li>• determine the cause</li> <li>• determine if there has been a contravention of law, policy or standards</li> <li>• determine if Council is the appropriate Regulatory Authority (ARA) and if not, the matter will be referred to the ARA for action</li> <li>• gather evidence to the required standard to support any required enforcement action</li> <li>• determine any necessary action to mitigate the possibility of reoccurrence of similar incidents.</li> </ul> <p>Investigation action may include, but is not limited to, any of the following:</p> <ol style="list-style-type: none"> <li>a) a desktop review</li> <li>b) assessment of likely environmental and public harm and safety</li> <li>c) a site inspection</li> <li>d) interviews with any relevant persons.</li> </ol>
<b>3.3</b>	<p><b>Compliance and enforcement options</b></p> <p>Once an investigation has been completed, Council officers will decide whether to take further action based on evidence. Each matter will be considered on a case-by-case basis, considering factors detailed within the compliance framework and enforcement options (see Appendix 2).</p>
<b>3.4</b>	<p><b>Compliance and enforcement principles</b></p> <p>The following are the principles that underpin Council actions relating to compliance and enforcement:</p> <p><b>Accountable and transparent:</b></p> <ul style="list-style-type: none"> <li>• act in the best interests of public health and safety, and in the best interests of the environment</li> <li>• ensure accountability for decisions to take or not take, action</li> <li>• act fairly and impartially and without bias or unlawful discrimination</li> <li>• provide information about compliance and enforcement priorities, and reasons for decisions to improve understanding and certainty and promote trust by the regulated community</li> <li>• ensure meaningful reasons for decisions are given to all relevant parties, particularly when there is a departure from this policy</li> </ul>

	<ul style="list-style-type: none"> <li>• act on any complaints or concerns about the conduct of Compliance Officers in accordance with Council's Complaints Management Policy and procedures</li> <li>• advise people and organisations subject to enforcement action, of any avenues available to seek an internal or external review of a decision.</li> </ul> <p><b>Fair and consistent:</b></p> <ul style="list-style-type: none"> <li>• ensure all compliance and enforcement action is implemented consistently</li> <li>• encourage reports about possible unlawful activity by acting reasonably in response to the circumstances and facts of each matter.</li> </ul> <p><b>Proportional:</b></p> <ul style="list-style-type: none"> <li>• ensure the level of enforcement action is proportionate to the level of risk and seriousness of the breach</li> <li>• make cost-effective decisions about enforcement action</li> <li>• take action to address harm and deter future unlawful activity.</li> </ul> <p><b>Timely:</b></p> <ul style="list-style-type: none"> <li>• ensure responses to reports alleging unlawful activity and decision-making in relation to those is timely.</li> </ul>
4	<p><b>Councillors' involvement</b></p> <p>As per the provisions of the <i>Local Government Act 1993</i> and Council's <i>Code of Conduct</i> (which is in accordance with the <i>Model Code of Conduct for Local Councils in NSW</i> under s440 of the <i>Local Government Act 1993</i>), councillors should not be involved during investigations on compliance matters.</p> <p>Investigations of alleged unlawful activities are operational tasks to be carried out by Council staff. Councillors may not direct or influence a Council officer in carrying out their statutory duties associated with compliance and enforcement. Any involvement of councillors in compliance or enforcement matters will be reported to the General Manager by the relevant Director.</p> <p>Councillors should not act as witnesses for individuals during investigations to avoid or minimise allegations that the councillor:</p> <ol style="list-style-type: none"> <li>a) has a conflict between personal or private interests and the councillor's public duty, and/or</li> <li>b) the councillor is biased (or there is an apprehension of bias) because the councillor has formed an opinion about the matter prior to receiving all the relevant information, and/or</li> <li>c) the councillor has been inappropriately influenced by representations made by the individual and could not make an impartial decision about the matter.</li> </ol> <p>This is particularly important if, at a later stage, the matter is formally put to Council for a decision about whether compliance and enforcement action should be taken. Councillors are entitled to speak to their constituents and visit sites at any other time, and they may make enquiries about the progress or status of compliance matters through the General Manager or staff approved by the General Manager. The General Manager and staff will make all efforts to respond within a timely manner to enquiries made by councillors about compliance</p>

	<p>matters. The General Manager and staff will also arrange confidential briefings to councillors, where it is considered by the General Manager to be appropriate.</p> <p>Councillors may, through the accepted processes:</p> <ul style="list-style-type: none"> <li>ask questions of the General Manager through formal written submission</li> <li>ask questions to be answered in Council meetings about compliance matters, and</li> <li>put Motions before the Council for resolution.</li> </ul> <p>Councillors are entitled to attend any public legal proceedings in Court, however, are not entitled to direct Council's legal advisers or lawyers, unless expressly permitted to do so by the General Manager.</p>
5	<p><b>Confidentiality</b></p> <p>Council will respect the privacy and confidentiality of information received in accordance with its <a href="#">Privacy and Information Protection Policy</a>. However, due to statutory obligations and other requirements, confidentiality cannot always be guaranteed. Council may have to disclose information that identifies them in the following cases:</p> <ul style="list-style-type: none"> <li>the disclosure is necessary to investigate the matter</li> <li>their identity has already been disclosed to the subject of their report directly, or in a publicly available document</li> <li>the individual was consulted following receipt of a <i>Government Information (Public Access) Act 2009</i> application, and did not object to the disclosure</li> <li>the individual consents in writing to their identity being disclosed</li> <li>the disclosure is required to comply with principles of procedural fairness</li> <li>the matter proceeds to Court. If a matter proceeds to prosecution or legal proceedings, the complainant may be contacted and requested to provide witness statements or affidavits.</li> </ul> <p>Council will take seriously, any concerns an individual may have about their physical safety being endangered as a result of making a report. However, this may limit Council's ability to investigate the matter.</p>
6	<p><b>Vexatious or anonymous complaints</b></p> <ol style="list-style-type: none"> <li>Vexatious complaints will not be investigated by Council. Vexatious complaints are complaints which are clearly made with the sole intent of annoying a person, or complaints which are without substance made frequently by the same individual or entity.</li> <li>Anonymous complaints will not generally be investigated by Council. The nature of the alleged breach may require some level of investigation however, in the main, anonymous complaints will not be investigated.</li> </ol>

7	<p><b>Shared enforcement responsibilities</b></p> <p>Some reports will raise matters involving shared regulatory responsibilities between Council and other authorities such as, but not limited to: NSW Department of Planning, Industry and Environment; Environment Protection Authority; Police Force; Office of Liquor, Gaming and Racing; Fair Trading; Food Authority, RSPCA and Crown Lands.</p> <p>Council recognises that collaboration and cooperation between authorities to address issues of shared regulatory responsibility is the best approach. To this end, where there are shared legislative responsibilities, Council staff will liaise with relevant authorities to establish:</p> <ul style="list-style-type: none"> <li>a) which authority will take the leading role in any joint investigation</li> <li>b) which activities each authority will carry out</li> <li>c) responsibilities for updating an individual, where relevant</li> <li>d) protocols for exchanging confidential information between the relevant authorities.</li> </ul> <p>Council will reasonably endeavour to respond to requests for information or assistance on joint regulatory matters in a timely manner.</p>
8	<p><b>Role of Council where there is a Private Certifier</b></p> <p>If a private certifier is appointed the Principal Certifier (PC), Council is not responsible to ensure building and construction compliance. Private certifiers have the power to issue a Notice of Intention to Issue an Order to the owner or builder to comply with the conditions of consent or rectify any breaches. A copy of any Notice of Intention issued by a certifier must be provided to Council.</p>
9	<p><b>Neighbourhood disputes</b></p> <ul style="list-style-type: none"> <li>a) Council will, at times, receive reports from parties involved in neighbour disputes seeking Council's involvement. When a dispute between two neighbours is a civil matter, Council will often have no authority to resolve the issue in dispute.</li> <li>b) Council staff will assess such reports to determine whether there is evidence of any possible unlawful activity requiring action by Council. Care will be taken to explain which aspects of a report Council can deal with, and which cannot be dealt with and why. Where possible, individuals will be provided with information about how to resolve neighbour disputes, including referral information resources such as LawAccess NSW and Community Justice Centres.</li> <li>c) It is possible that one party may provide further information about a matter which changes Council's decision about whether it will become involved. In such circumstances, Council staff will consider the matter before acting, and the relevant parties will be advised about the reasons Council has changed its position on a matter.</li> <li>d) Council staff will not change a decision about whether Council should be involved purely as a response to the conduct of an individual such as persistent demands or threats.</li> </ul>

<b>10</b>	<b>Advance publicity and media statements (prosecutions)</b> <p>No public statements are to be made by the Mayor, councillors or Council staff in connection with any case involving Council, where legal proceedings are before the Court or are under investigation and may go before the Court.</p>
<b>11</b>	<b>Fees and fines</b> <p>Council may issue orders or notices which incur administration costs. Additional inspection fees will also apply where Council is to commit staff resources to enforce compliance by way of notices, orders and/or follow-up inspections. Fees are listed in Council's adopted fees and charges and will be applied where appropriate. Some fees are identified in the legislation being enforced and are charged accordingly. Failure to pay fees and fines is an offence and may result in further costs or legal action.</p>

## Implementation

Requirements		Responsibility
<b>1</b>	<b>Compliance process</b> <p>This policy is implemented via Council's Compliance Process (Appendix 2) which specifies the actions, procedures and matters to be considered.</p>	Council officers
<b>2</b>	<b>Management of process</b> <p>Procedural complaints are to be reviewed by the relevant Divisional Manager who bears the responsibility for all outcome decisions (with the exception of criminal prosecutions). If the Divisional Manager supports a prosecution or legal proceedings, then the matter is referred to the General Manager through the relevant Director for a decision on whether to proceed.</p>	Divisional Manager
<b>3</b>	<b>Staff</b> <p>Under supervision, relevant Council staff will be responsible for ensuring that this policy is implemented appropriately within their work area, after they have received appropriate training to do so.</p>	Council officers
<b>4</b>	<b>Concerns</b> <p>Public concerns communicated to Council in relation to this policy will be recorded on Council's records system and handled in accordance with Council's Customer Service or Complaints Policy. These records will be used to determine any follow-up actions and analyse the history of reported public concerns.</p>	Council officers
<b>6</b>	<b>Consultation</b> <p>Any consultation deemed necessary will occur as required with key stakeholders, which may include (but not be limited to) the community, other agencies, and statutory and industry bodies. Public submissions regarding this policy are invited for consideration during the exhibition period.</p>	As applicable

## Review

This policy will be reviewed every four years. It may also be reviewed and updated as necessary if:

- legislation requires it  
or
- when Council's related policies, functions, structure, or activities change  
or
- when technological advances or new systems change the way that Council manages compliance matters.

The policy may be revoked at the expiration of 12 months after the declaration of the poll for the next general NSW local government election unless Council updates or revokes it sooner.

**Note:** *The next general local government election is expected to be held in September 2024.* Reviews of the effectiveness of this policy could include the following:

Performance indicator	Data source(s)
Delivery program/operational plan outcomes achieved	Council reporting
Concerns or complaints registered	Council records
Customer feedback, survey responses	Surveys
Internal or external review	Audit

## Definitions

Word/acronym/phrase	Definition
ARA	Appropriate regulatory authority
Complaint	A complaint is an expression of dissatisfaction made about Council services, staff, or the handling of a complaint, where a response or resolution is explicitly or implicitly expected or legally required. For the purposes of this policy, a complaint does not include: <ul style="list-style-type: none"> <li>• a report alleging unlawful activity (see definition below)</li> <li>• a request for information about a Council policy or procedure</li> <li>• a request for an explanation of actions taken by Council</li> <li>• a request for internal review of a Council decision.</li> </ul>
Enforcement	Actions taken in response to 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:

	<ul style="list-style-type: none"> <li>• terms or conditions of a development consent, approval, permit or licence</li> <li>• an environmental planning instrument that regulates the activities or work that can be carried out on particular land</li> <li>• a legislative provision regulating a particular activity or work</li> <li>• a required development consent, approval, permission, or licence.</li> </ul>
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## Governance

This policy should be read in conjunction with any related legislation, codes of practice, relevant internal policies and guidelines.

### *Related legislation and policies*

Name	Link
Privacy and Information Protection Policy	<a href="https://www.esc.nsw.gov.au/data/assets/pdf_file/0003/138603/Privacy-and-Information-Protection-Policy.pdf">https://www.esc.nsw.gov.au/data/assets/pdf_file/0003/138603/Privacy-and-Information-Protection-Policy.pdf</a>
Local Orders Policy	<a href="https://www.esc.nsw.gov.au/data/assets/pdf_file/0009/138591/Local-Orders-Policy-LOP-Keeping-of-Animals.pdf">https://www.esc.nsw.gov.au/data/assets/pdf_file/0009/138591/Local-Orders-Policy-LOP-Keeping-of-Animals.pdf</a>
Complaints Policy	<a href="https://www.esc.nsw.gov.au/data/assets/pdf_file/0008/138563/Complaints-Policy.pdf">https://www.esc.nsw.gov.au/data/assets/pdf_file/0008/138563/Complaints-Policy.pdf</a>
Council Fees and Charges	<a href="https://www.esc.nsw.gov.au/council/plans-and-reporting/current-fees-and-charges">https://www.esc.nsw.gov.au/council/plans-and-reporting/current-fees-and-charges</a>
<i>Local Government Act 1993</i>	<a href="https://legislation.nsw.gov.au/view/html/inforce/current/act-1993-030">https://legislation.nsw.gov.au/view/html/inforce/current/act-1993-030</a>

### *Related external references*

Name	Link
The Office of Local Government	<a href="http://www.olg.nsw.gov.au">www.olg.nsw.gov.au</a>
NSW Ombudsman	<a href="http://www.ombo.nsw.gov.au">www.ombo.nsw.gov.au</a>

### *Supporting documents*

Name	Link
NSW Ombudsman Model Compliance and Enforcement Policy	<a href="http://www.ombo.nsw.gov.au/data/assets/pdf_file/0004/29920/Model-Compliance-and-Enforcement-Model-Policy.pdf">www.ombo.nsw.gov.au/data/assets/pdf_file/0004/29920/Model-Compliance-and-Enforcement-Model-Policy.pdf</a>
NSW Ombudsman Enforcement Guidelines for Councils	<a href="http://www.ombo.nsw.gov.au/data/assets/pdf_file/0003/29856/Enforcement-Guidelines-for-councils.pdf">www.ombo.nsw.gov.au/data/assets/pdf_file/0003/29856/Enforcement-Guidelines-for-councils.pdf</a>

### *Change history*

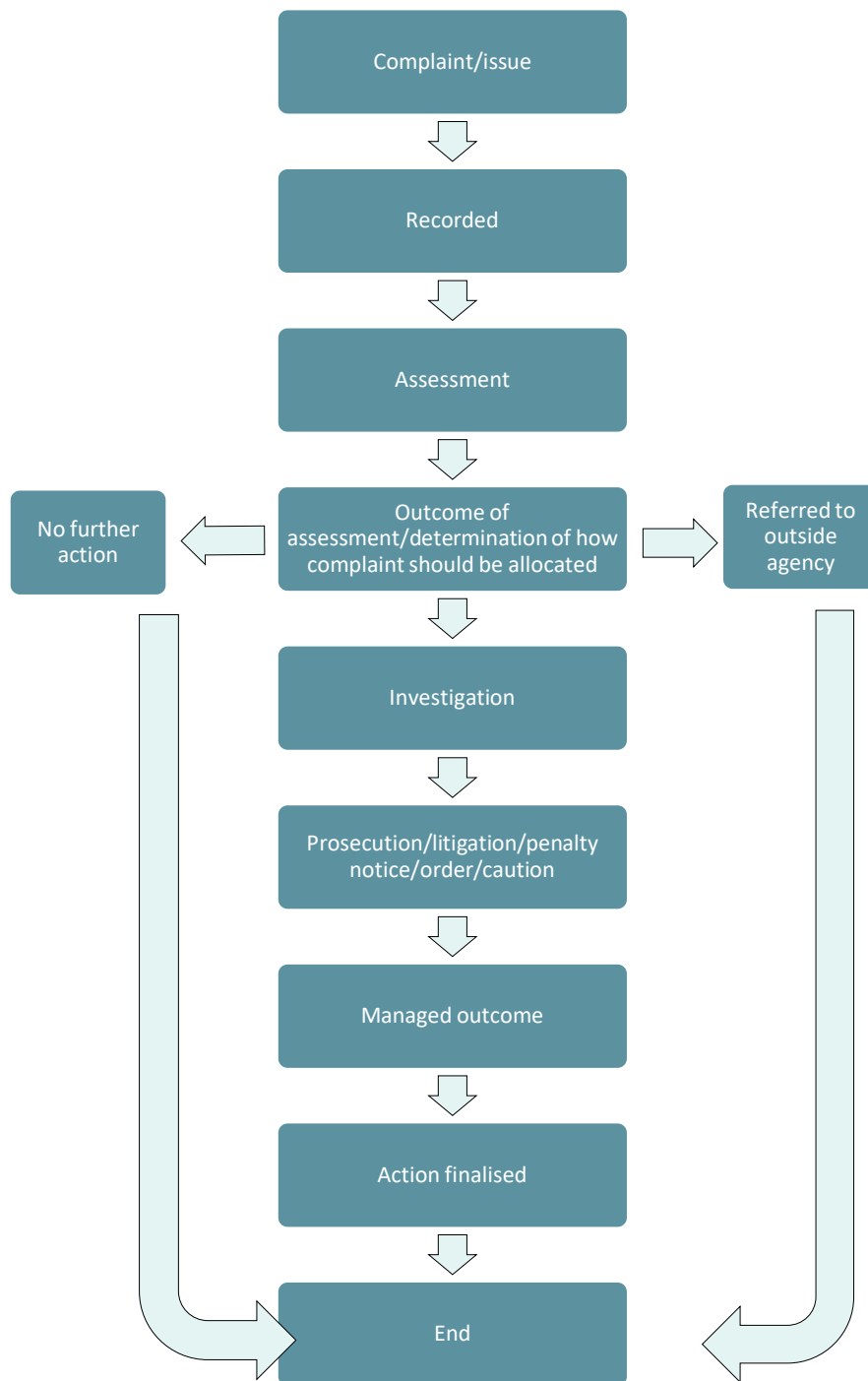
Version	Approval date	Approved by	Min No	File No	Change
1	19 Dec 2006	Council	06/4687	06.0381 06.0445	Policy adopted
2	22 Sep 2009	Council	09/291	E06.0381 E09.3419	Policy reviewed and adopted – Report G09/99
3	28 July 2011	Council	11/163	E06.0381 E09.3419	Policy reviewed and updated; name changed – report O11/124

4	23 July 2013	Council	13/172	E06.0381 E13.7095	Updated policy template, updated review date, updated references and links – report O13/112
5	11 Apr 2017	Council	17/99	E06.0381 E16.0297	Reviewed and updated at start of new Council term. GMR17/011.
6	14 June 2022	Council	22/138	E06.0381 E16.0297	Reviewed and updated at start of new Council term. Report GMR22/063

*Internal use*

Responsible officer		Director, Planning and Sustainability Services		Approved by	Council
Minute	22/138	Report	GMR22/063	Effective date	14 June 2022
File	E06.0381 E16.0297	Review date	March 2022	Pages	15

## Appendix 1. Compliance flow chart



★ Although no further enforcement or compliance action may be taken, the complaint may be referred to another Council section for consideration or retained to provide evidence/intelligence for proactive enforcement at a later date.

## Appendix 2. Compliance process

The compliance process establishes the factors that will be considered when determining how a compliance matter will be handled. This includes the following:

1. assessment framework
2. investigation process
3. compliance and enforcement options.

### 1. Assessment framework

The assessment framework establishes the factors that will be considered when determining how complaints will be initially considered by Council, and whether a complaint will lead to further detailed investigation by Council.

#### 1.1. Details of assessment

All matters will be assessed in accordance with the priorities outlined below:

Factors	Description
Incident type	Broad description of the complaint.
Legislative responsibility	Is the matter within the jurisdiction and responsibility of Council?
Impact on community	A rating of the perception of community interest in the matter.
Impact on Council	How does the matter affect the operations of Council?
Impact on complainant	How does the matter affect Council's customer?
Possible outcome	What will a more detailed investigation be likely to achieve? What are the possible outcomes of a detailed investigation? What are the potentials for remedy?
Response required	Broad description of the urgency of the matter.
Resources available	Does Council have the available skills and equipment to properly investigate the complaint?
Value	What is the potential, likely or actual environmental, social and economic impact of the incident/activity being complained about?
Appropriate defendant	Who is the most appropriate defendant? (It could be the landowner, contractor, occupier or multiple defendants).
WHS risk	Risk to Council staff and/or public safety.

#### 1.2. Rating of community/complainant impacts:

High	Immediate threat to persons, environment, property, business, Council assets etc.,
Medium	Significant risk of adversely impacting persons, the environment, property, business, Council assets etc.,
Low	Some risk of adversely impacting persons, the environment, property, business, Council assets etc.,
Special	Other considerations specific to the circumstances.

## 1.3. Rating of Council impacts:

Critical	Immediate risk to Council assets, structure, staff etc,.
Significant	Legislative responsibility of Council, significant resource implications.
Routine	Requires attention in the normal process of business.
Special	Other considerations specific to the circumstances.

## 1.4. Types of responses and target times:

Priority	Classification	Initial response time
1	Very high	24 hours
2	High	48 hours
3	Medium	7 days
4	Low	21 days, if resources are available

Response times are linked with Council's customer service request targets.

## 1.5. Outcome of assessment

Outcome	Reasons
No further action	Not in Council's jurisdiction, not a matter requiring attention, low impact, no resources available to attend.
Referred to other agency	Not in Council's jurisdiction and in the province of another agency.
Referred to other Council section	Does not require compliance or enforcement action or falls under the jurisdiction of another section within Council.
Received for information	Complaint minor in nature and will not be actively investigated. May afford intelligence for proactive enforcement at a later date.
Investigation action	Satisfies all factors and will be investigated. See Step 2 – investigation process.

## 2. Investigation process

Investigation action may include, but is not limited to, any of the following:

- a) a desktop review
- b) assessment of likely environmental and public harm and safety
- c) a site inspection including interviews with any relevant persons.

All investigative procedures are for the purposes of gathering information and evidence to determine if a breach has occurred, and who may be responsible for the breach. Evidence may include: digital surveillance; videos; photographs; samples and physical evidence; witness statements; file notes, and records of any interviews. The procedure and type of investigation carried out by Council will depend on the facts and circumstances of each case.

Investigating officers are to carry out their investigation in a professional manner, that is:

- a) objective, fair and impartial, accountable, and transparent
- b) consistent with the presumption of innocence
- c) proportional and timely
- d) within their delegated authority
- e) in accordance with the law.

If an investigating officer forms the belief that there is sufficient evidence to establish an individual has committed an offence, when questioning that individual, the investigating officer must caution the individual that he or she does not have to say or do anything, but that anything the individual does say or do may be used in evidence.

### 3. Compliance and enforcement options

Once an investigation has been completed, Council officers must decide whether to take enforcement and prosecution action on the basis of evidence or unauthorised activity. The significance of the breach is taken into consideration. The same factors for consideration set out in the assessment framework will be reviewed when determining the compliance and enforcement action that will be taken. Each matter will be considered on a case-by-case basis, taking into account the factors set out below and outcomes, which include:

No action	The decision is taken not to proceed, even though the possible offence has been established.
Managed outcome	An agreed settlement, in writing, usually involving some reinstatement or restitution that does not preclude further action, should there be any failure to comply, or subsequent offences.
Caution verbal	Verbal advice to an individual advising them of the offence and cautioning them that action will be taken on further breaches.
Caution written	Letters and/or pre-formatted notes addressed to an individual or business advising them of the offence and cautioning them that action will be taken on further breaches.
Orders	Written or verbal directions, notice or orders enforceable by law requiring some action by the identified party.
Penalty Infringement Notice (PIN)	The issue of a fine prescribed by the relevant Regulation for the identified offence.
Prosecution or civil enforcement proceedings before a Court	The submission of a brief of evidence via a supervisor to Council's solicitor or the nominated prosecutor, so they may undertake a prosecution or civil enforcement proceedings on Council's behalf.

#### 3.1. Factors to be considered when choosing an option

Available remedies of law	What remedies are available under the relevant legislation, eg, orders, fines, prosecution etc?
Seriousness of the breach	What type of offence has been committed? How seriously would this breach/unlawful activity impact the community in terms of time/cost/inconvenience? Is the matter trivial or technical in nature?
Precedent	What actions has Council previously taken in similar circumstances?

History of Council dealings with person	Has this person come to the notice of Council for other, the same or similar offences? What were the outcomes/results of such dealings?
Contrition	Does the person or corporation exhibit remorse for the offence? In some cases, it will be appropriate to have regard to the offender's apparent willingness to prevent a recurrence of the offence.
Council's actions	Have the actions of Council created an expectation that no action would be taken in a specific set of circumstances? Has the person responsible been advised that no action would be taken? Has Council contributed to the offender's actions, eg, by providing advice/approval to the activity?
Discretion to not take action based on the facts in issue and relevant material	Is a managed outcome a better alternative? No bias, actual or perceived, should influence the decision to exercise discretion. Should discretion be exercised, the reasoning should be recorded to support the decision. Council's authorised officers can exercise discretion based on their delegations and authority.
Procedural fairness/natural justice	Has the offender been informed of the nature of the issue and allowed a right of reply? Due consideration of the reply is to be given and the investigation is to be conducted objectively.
Timing and delay	Is the offending action recent? Has there been significant delay in the investigation? Is the proposed action within the statutory limitation period for the offence?
Public interest (costs vs. benefits, likely success, effects – social and environmental)	Are there any mitigating circumstances which will impact on the outcome of any prosecution/legal proceedings? What Council resources will be affected and how?