



# Draft Policy

## Compliance

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## 1 Introduction

The Tweed Shire Council (TSC) is the regulatory and enforcement authority under several different pieces of legislation, which requires Council staff to make decisions about appropriate enforcement action when non-compliance is identified.

This policy outlines both the enforcement options available to the TSC and the factors that will be taken into account when staff determine what enforcement action is appropriate in the given circumstances. This Policy is intended to make compliance activities more transparent and facilitate greater consistency.

This policy distinguishes between a 'report alleging unlawful activity' and a 'complaint'. For the purposes of this policy, a report alleging unlawful activity is where an individual expresses concern in relation to alleged unlawful activity, or they request service from Council about such matters. Council considers that a response or resolution to a report alleging unlawful activity is explicitly or implicitly expected by the individual, or may be legally required.

A complaint is where an individual expresses dissatisfaction about Council services, staff or the handling of a complaint. Therefore, a complaint may arise where an individual claim that council staff have failed to take action in relation to a report alleging unlawful activity. A complaint will be recorded separately and responded to in accordance with council's complaints management policy and procedures.

## 2 Purpose and Scope

The purpose of this policy is to:

- Ensure that TSC's regulatory functions are exercised consistently and without bias, in accordance with its obligations under section 8 of the Local Government Act 1993
- Assist those council staff in responding promptly, consistently and effectively in relation to allegations of unlawful activity whilst ensuring that the principles of natural justice are respected
- Provide information for all internal and external stakeholders about the TSC's position in relation to the enforcement of compliance with legislation, including the circumstances which will be taken into account when assessing different enforcement options
- Ensure TSC best exercises its discretion as to the appropriate allocation of resources when determining whether to take enforcement action consistent with the public interest, its policy objectives and current regulatory issues.

## 3 Relative Legislation

A major role of the Council is to monitor and enforce compliance with various legislation, including (but not necessarily limited to) the provisions of:

- Companion Animals Act 1998
- Contaminated Land Management Act 1997
- Environmental Planning & Assessment Act 1979
- Impounding Act 1993
- Local Government Act 1993
- Protection of the Environment Operations Act 1997
- Road Transport (General) Act 2005
- Roads Act 1993
- Swimming Pools Act (Amended) 2012

## 4 Organisational Approach

TSC considers compliance and enforcement is important for the following reasons:

- to prevent or minimise harm to health, welfare, safety, property or the environment
- to improve the safety and amenity of residents and visitors to the area
- for the welfare of the community or the public interest
- to manage risks
- to meet the expectations of the community
- to encourage reports about possible unlawful activity from the community
- to ensure the community is aware of their legal obligations and how to comply through positive education
- to ensure a liveable Shire

## 5 Definitions

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

Term	Meaning
Complaint	<p>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:</p> <p>For the purposes of this policy, a complaint does not include:</p> <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; and</li> <li>• a request for internal review of a Council decision.</li> </ul>
Enforcement	Actions taken in response to serious or deliberate contraventions of laws.
Regulation	Using a variety of tools and strategies to influence and change behaviour to achieve the objectives of an Act, Regulation or other statutory instrument administered by Council.
Report alleging unlawful activity	<p>An expression of concern or a request for service in relation to:-</p> <ul style="list-style-type: none"> <li>• an alleged unlawful activity, or</li> <li>• a nuisance which unreasonably interferes with the peace, comfort of a person.</li> </ul> <p>Where a response or resolution is explicitly or implicitly expected or legally required.</p>
Unlawful activity	<p>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:</p> <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; and</li> <li>• a required development consent, approval, permission or licence.</li> </ul>
Compliance Action Panel (CAP)	Consists of three Council Authorised Officers (including Team Leader Compliance but excludes the investigating officer) who review proposed enforcement action to ensure decisions are not affected by apprehended bias.

## 6 Policy Objectives

The key objective of this policy is to establish clear protocols and guidelines for council staff in the management of regulatory activities. It provides information on:

- How staff assess whether reports alleging unlawful activity require investigation;
- Options available to Council staff when dealing with unlawful activity; and
- How staff decide whether enforcement action is warranted and what type of enforcement action is appropriate in the particular circumstances.

The policy also provides advice and guidance on:

- the role of the Principal Certifying Authority and
- the role of councillors in enforcement.

## 7 Application

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

- development and building controls (consent conditions and illegal development)
- overgrown lots
- development approvals
- control over animals
- essential services breaches
- ~~tree~~ preservation [of trees and/or vegetation](#)
- parking control
- road related matters/parking controls
- impounding (vehicles, belongings)
- illegal camping

## 8 Compliance and Enforcement Principle

When undertaking investigations or regulatory action, council officers are committed to the following principles relating to compliance and enforcement:

Principle	Action
Accountable and Transparent	<ul style="list-style-type: none"><li>• acting in the best interests of public health and safety and in the best interests of the environment;</li><li>• ensuring accountability for decisions to take or not take action;</li><li>• acting fairly and impartially and without bias or unlawful discrimination;</li><li>• providing information about compliance and enforcement priorities and reasons for decisions to improve understanding and certainty and promote trust by the regulated community;</li><li>• ensuring meaningful reasons for decisions are given to all relevant parties, particularly when there is a departure from this policy;</li><li>• acting on any complaints or concerns about the conduct of compliance officers in accordance with council's complaints management policy and procedures; and</li><li>• advising people and organisations subject to enforcement action of any avenues available to seek an internal or external review of a decision.</li></ul>
Consistent	<ul style="list-style-type: none"><li>• ensuring all compliance and enforcement action is implemented consistently; and</li><li>• encouraging reports about possible unlawful activity by acting</li></ul>

Principle	Action
Proportional/discretion	<p>reasonably in response to the circumstances and facts of each matter</p> <ul style="list-style-type: none"> <li>ensuring the level of enforcement action is proportionate to the level of risk and seriousness of the breach;</li> <li>making cost-effective decisions about enforcement action; and</li> <li>taking action to address harm and deter future unlawful activity</li> </ul>
Timely	<ul style="list-style-type: none"> <li>ensuring responses to reports alleging unlawful activity and decision making in relation to those is timely</li> </ul>

## 9 Responsibility

All Council staff who deal with written or verbal requests or complaints alleging unlawful activity and those staff members who are involved in the enforcement of relevant legislation are responsible for implementing this policy.

All complaints alleging unlawful activity should be logged in the Council's Customer Request Management system as soon as possible upon receipt and directed to a responsible officer in the appropriate unit. Details of all instances of unlawful activity identified by staff in the course of their duties should be recorded in Council's Customer Request Management system. Council staff responsible for the investigation of matters are responsible for keeping a full and complete record of their actions, including reasons for all decisions made in relation to an investigation.

Council staff dealing with the investigation of an unlawful activity are also responsible for ensuring that any other unlawful activity, particularly as it relates to life or fire safety, identified during the course of their investigation is immediately brought to the attention of the appropriate section where applicable.

Furthermore, Council staff are required to:

- treat all relevant parties with courtesy and respect;
- communicate with all relevant parties and provide feedback on the progress of an investigation; and any reasons for delay without compromising the integrity of the investigation;
- make full and proper records in relation to the assessment and investigation of reports alleging unlawful activity, including reasons for any decisions;
- inform all relevant parties of reasons for decisions;
- provide as much information as possible to all relevant parties about the outcomes of investigations to show that adequate and appropriate action was taken and/or is proposed to be taken in response to a report of alleged unlawful activity; and
- ensure they have the appropriate delegations from the General Manager to undertake investigations or compliance and enforcement action in relation to this policy.

## 10 Responding to Reports About Unlawful Activity

### How reports alleging unlawful activity will be dealt with by council

Council staff will record and assess every report alleging unlawful activity. Council staff will respond to every such report unless the person raising the matter has indicated they do not wish to receive a response about Council's handling of the matter, or the report is anonymous.

Generally speaking, Council's objectives when dealing with reports alleging unlawful activity are to:

- maintain the collective good and welfare of the community;
- prevent or minimise harm to health, welfare, safety, property or the environment;



- consider the broader public interest having regard to council's priorities and any resource limitations;
- consider the report fairly and impartially; and
- ensure that an evidence based decision making processes is utilised.

Not all reports will need to be investigated. A preliminary assessment of all matters will be made to determine the priority for a response, and whether investigation or other action is required.

An investigation of alleged unlawful activity may take a significant amount of time to complete, particularly where the issues are complex. If council decides to investigate, staff will give the person who reported the alleged unlawful activity feedback on the progress of the investigation, and any reasons for delay. This does not mean that the individual can expect to be given details about every aspect of the investigation or information that would compromise the integrity of the investigation.

Decisions about what action should be taken by Council are made at the Council's discretion. This means the objective is that reports alleging unlawful activity will be resolved to the satisfaction of Council, not necessarily the person raising the matter. Council will generally try to resolve matters as quickly and informally as possible so as to avoid the need to take formal action.

Council staff will endeavour to manage the expectations of people who report alleged unlawful activity, and in particular explain that in the absence of sufficient evidence of unlawful activity, council may be unable to take further action. They will also explain that Council does not have unlimited resources and powers to deal with reports alleging unlawful activity. If council is unable to fully investigate or take action on a matter because it is restricted by any legal or resource limitations this will be explained to the individual.

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

### **Confidentiality of people who report allegations of unlawful activity**

Council will maintain strict confidentiality where possible of the identity of those who report unlawful activity in recognition of the sensitivities that may arise in community relations, but people who report allegations of unlawful activity should not expect that their identities will remain confidential from the subject of their report in all circumstances. Council may have to disclose information that identifies them in the following cases:

- the disclosure is necessary to investigate the matter;
- their identity has already been disclosed to the subject of their report directly or in a publicly available document;
- the individual was consulted following receipt of a Government Information (Public Access) Act 2009 application and did not object to the disclosure;
- the individual consents in writing to their identity being disclosed;
- the disclosure is required to comply with principles of procedural fairness; and
- the matter proceeds to court.

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.

### **What Council expects from people who report allegations of unlawful activity**

Council expects that people who report allegations of unlawful activity will cooperate and act in good faith in respect of any investigations conducted. This includes:

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

If these expectations of the individual are not met, Council staff may need to set limits or conditions on the continuation of the investigation or may need to restrict any further communications with the individual. Any unreasonable conduct will be dealt with in accordance with the principles of the NSW Ombudsman's Managing Unreasonable Complainant Conduct Manual 2012 and any applicable Council policy.

#### **Complaints about Council's enforcement actions**

Any complaints about Council staff handling of reports alleging unlawful activity will be recorded separately and handled by Council's Governance Section in accordance with Council's Complaints Management Policy and Procedures. Where a person or organisation subject to enforcement action merely disputes Council's decision to take enforcement against them, they will be directed to make representations in accordance with any relevant internal and external appeal processes.

#### **Anonymous reports**

Anonymous reports will be recorded and assessed in accordance with the above requirements. However, because it is not possible to seek clarification or additional information about a matter, it may be more difficult to evaluate the allegations and provide a sound basis for enforcement action. It is therefore probable these reports are less likely to warrant investigation.

#### **Unlawful activity outside business hours**

Unlawful activity can occur outside business hours. Due to resource and operational capability restraints on council, investigations into alleged unlawful activity outside business hours will be assessed on the basis of risk of harm to health, welfare, safety, property or the environment or it is otherwise in the public interest to take such action. The report will be generally actioned the next day.

#### **Neighbour disputes**

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. Some reports will raise several matters, some of which will require council's involvement and some which will not.

Council staff will assess reports and determine whether there is evidence of unlawful activity and take action accordingly. Complainants will be advised which aspects of a report council can deal with and which cannot be dealt with. Where possible Council staff will provide information regarding better ways to handle neighbour disputes.

## 11 Investigating Alleged Unlawful Activity

All reports of alleged unlawful activity will be reviewed to determine whether an investigation required. Council staff will prioritise matters on the basis of risk to public safety, human health and environment.

The following table of risk categories will be used to make that assessment.

RISK CATEGORY			
CRITICAL	HIGH	MEDIUM	LOW
<b>FEATURES OF CATEGORY</b>			
<ul style="list-style-type: none"> <li>Permanent, long-term or reoccurring and serious damage to health, property or environment likely or very likely</li> <li>Large scale impacts</li> <li>Very serious offences</li> <li>Very high priority issue for council and community</li> </ul>	<ul style="list-style-type: none"> <li>Moderate, major or severe consequences likely or very likely</li> <li>Medium-large scale impacts</li> <li>Serious offences</li> <li>High priority issue for council and community</li> </ul>	<ul style="list-style-type: none"> <li>Moderate consequences are likely, serious impacts are very unlikely</li> <li>Small-medium scale impacts</li> <li>Moderate offence severity</li> <li>Moderate priority issue for council and community</li> </ul>	<ul style="list-style-type: none"> <li>Consequences are minor or are unlikely or very unlikely to occur</li> <li>Small scale, isolated impacts</li> <li>Low level offence severity</li> <li>Low priority issue for council and community</li> </ul>
<b>INDICATIVE TIMEFRAME OF INITIAL RESPONSE</b>			
Immediate and urgent response	Response within 24 hours	Response within 5 working days	Response within 10 working days
<b>EXAMPLE REPORT TYPES/ISSUES</b>			
<ul style="list-style-type: none"> <li>Large scale clearing of <u>trees and/or vegetation</u> containing threatened species</li> <li>Abandoned vehicles left in an unsafe location</li> <li>works in public areas</li> <li>dilapidated/unsafe building</li> <li>Dog attacks</li> <li><u>Straying stock on roads</u></li> </ul>	<ul style="list-style-type: none"> <li>Roaming dogs</li> <li>Unsafe buildings and building works</li> <li>Dumped rubbish (hazardous location)</li> <li><u>Removal or damage to Breaches of trees and/or vegetation preservation order</u></li> <li>Dangerous/restricted dog complaints</li> <li><u>Straying stock on roads</u></li> </ul>	<ul style="list-style-type: none"> <li>Abandoned vehicles</li> <li>Stormwater or drainage issues</li> <li>Dumped rubbish (not Hazardous location)</li> <li>Breach of consent conditions</li> <li>Poor sediment control on building sites</li> </ul>	<ul style="list-style-type: none"> <li>Overgrown lots</li> <li>Minor consent breaches</li> <li>Unauthorised signage</li> <li>Unauthorised land use</li> <li>Neighbour disputes</li> <li>Nuisance report (eg barking dogs)</li> </ul>

If there is insufficient information in the report to undertake a preliminary assessment, further information may need to be sought from the person who made the report or an inspection undertaken. Staff may also need to consult council records and other internal business units to understand the relevant history and context of a matter.

### Circumstances where no action will be taken:

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

- Council does not have jurisdiction to investigate or is not the appropriate authority to take action on the issues raised. Where there is another appropriate authority or course of action, Council may bring the matter to the attention of the authority or provide information and contact details to the individual. For example, NSW WorkCover for workplace safety matters, the NSW Environment Protection Authority for possible environmental offences and Community Justice Centres NSW for personal disputes;
- the report relates substantially to a matter previously determined and resolved by council and no new or compelling information is presented which would cause Council to change

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its earlier decision. In this case, staff will acknowledge the report and advise that no further action will be taken as no new information had been provided (other than where the person has previously been advised they would receive no further response);

- the allegations relate to a lawful activity (eg where there is an existing approval or the activity is permissible without Council approval or consent being required);
- the report is not supported with evidence or appears to have no substance; and
- the relevant Manager, Director or the General Manager determines that investigation or other action would have an unreasonable impact on resources and/or is unlikely to achieve an outcome sufficient to justify the expenditure of resources.

#### **Relevant factors guiding decisions as to whether to take action:**

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

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

The above are factors staff consider when making a determination. Council staff are not limited in their use of discretion by these considerations and may decide to investigate based on these and other factors.

Key objectives considered by Council staff when investigating reports of an alleged unlawful activity include:

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

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

## **12 Taking Enforcement Action**

When deciding whether to take enforcement action in relation to a confirmed case of unlawful activity, council will consider the full circumstances and facts of the matter and the public interest. The following common considerations will assist council staff in determining the most appropriate response in the public interest:

**Considerations about the alleged offence and impact:**

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

**Considerations about the alleged offender:**

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

**Considerations about the impact of any enforcement action:**

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

**Considerations about the potential for remedy:**

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

**Legal or technical issues**

Where legal and/or technical issues are in question, Council staff will consider whether legal advice or professional advice from duly qualified staff or other experts should be obtained and considered. Council may also require a person subject to possible enforcement action to obtain professional advice in relation to issues of concern to Council for assessment as to whether further action is required.

**Requirements of Council staff considering enforcement action**

Prior to taking enforcement action, Council staff will take into account the above considerations as well as the evidence gathered during their investigation. Council staff must act impartially, be mindful of their obligations under Council's code of conduct and not act as a decision-maker in relation to

any matter in which they have a personal interest. Enforcement action will not be taken purely as a response to the conduct of an individual such as persistent demands or threats.

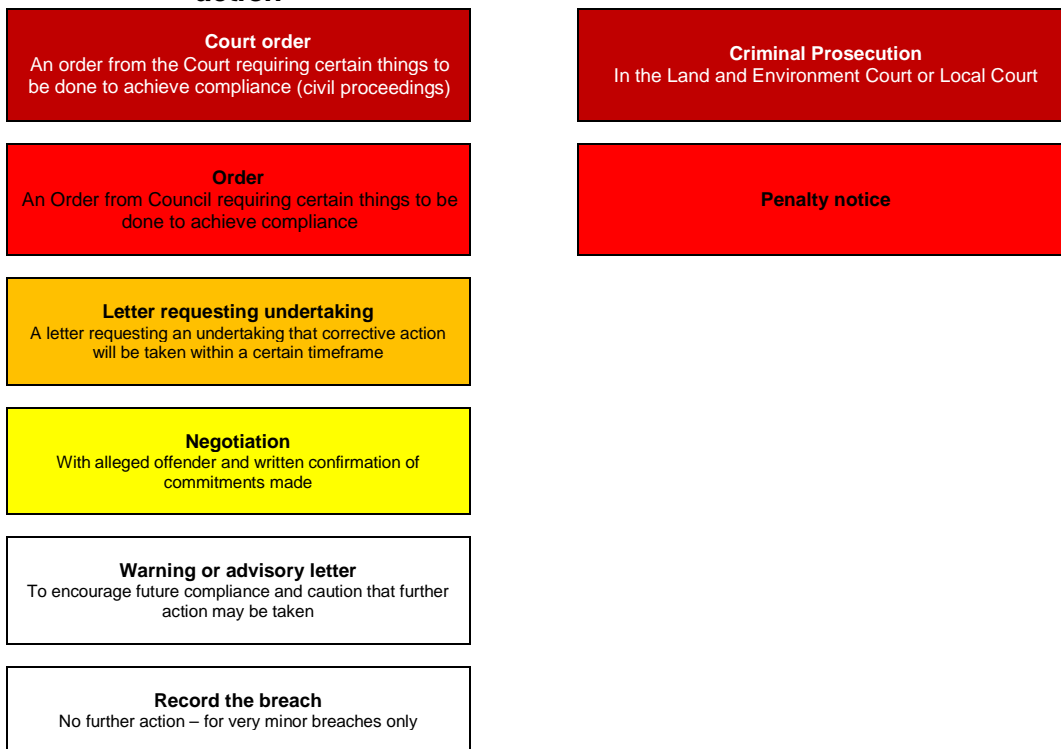
Council staff are required to maintain records about critical thinking and decision-making processes in relation to reports alleging unlawful activity and any enforcement action, as well as records of interactions with relevant parties. Council staff will at all times adhere to council's internal approval processes prior to the commencement of any enforcement action.

Council staff will take steps to ensure that any enforcement action is taken against the correct person or organisation. Where there are multiple possible parties to an alleged unlawful activity, it will generally not be appropriate to take enforcement action against every person who may be liable for the alleged unlawful activity. In such circumstances, council staff will be guided by legal advice in determining the appropriate persons to pursue.

The range of enforcement options available to Council in descending order of significance is shown in the figure below. Enforcement options are not necessarily mutually exclusive; for example in some circumstances it may be appropriate to contemporaneously issue an Order and a penalty notice.

### ***Remedial or rectification action***

### ***Penalty action***



### 13 Options for Dealing with Confirmed Cases of Unlawful Activity

Council will try to use the most efficient and effective option to deal with unlawful activity wherever possible unless there is little likelihood of compliance with such options. Council staff will use discretion to determine the most appropriate response to confirmed cases of unlawful activity and may take more than one approach. Any enforcement action taken by council will depend on the full circumstances and facts of each case, with any decision being made on the merits.

At all times, Council's key concerns are:

- to prevent or minimise harm to health, welfare, safety, property or the environment; and
- to influence behaviour, change for the common good and on behalf of the community.

The following enforcement options to be considered by council are ordered to reflect an escalation in response that is proportionate to the level of risk, the seriousness of the confirmed breach or the need for a deterrent:

Level of risk	Enforcement options & outcomes
Very low	<ul style="list-style-type: none"><li>• take no action on the basis of a lack of evidence or some other appropriate reason</li><li>• provision of education/information/advice on how to be compliant</li></ul>
Low	<ul style="list-style-type: none"><li>• negotiating with the person to obtain voluntary undertakings or an agreement to address the issues of concern</li><li>• issuing a warning or a formal caution</li></ul>
Medium	<ul style="list-style-type: none"><li>• issuing a letter requiring work to be done or activity to cease in lieu of more formal action</li><li>• issuing a notice of intention to serve an order or notice under relevant legislation, and then serving an order or notice if appropriate</li></ul>
High	<ul style="list-style-type: none"><li>• issuing a penalty notice</li><li>• carrying out the works specified in an order at the cost of the person served with the order</li><li>• commence legal investigation and intervention, if required</li></ul>
Very high	<ul style="list-style-type: none"><li>• seeking an injunction through the courts to prevent future or continuing unlawful activity</li><li>• commence legal proceedings for an offence against the relevant Act or Regulation.</li></ul>

#### Following up enforcement action

All enforcement action will be reviewed and monitored to ensure compliance with any terms given by enforcement action or advice, directions or orders issued by Council. Reports alleging continuing unlawful activity will be assessed and further action will be taken if necessary. If the unlawful activity has ceased or the work has been rectified, the matter will be resubmitted for follow up action to ensure compliance outcomes are met. Should initial enforcement action be found to have been ineffective, Council staff will consider other enforcement options.

### 14 Taking Legal Action

Council and its delegated staff will be guided by legal advice in deciding whether to commence criminal or civil proceedings and will consider the following:

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

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

### **Time within which to commence proceedings**

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

## **15 Shared Enforcement Responsibilities**

Some reports will raise matters requiring input from other authorities/agencies. Where there are shared legislative responsibilities, council staff will liaise with relevant authorities to establish:

- which authority will take the leading role on any joint investigation;
- which activities each authority will carry out; and
- responsibilities for updating an individual where relevant protocols for exchanging confidential information between the relevant authorities.

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

## **16 Role of Council Where There is a Private Certifier**

Council retains its regulatory role and enforcement powers where a private certifier has been appointed the Principal Certifying Authority (PCA). However, if a private certifier is appointed the PCA, it is not Council's primary responsibility to ensure building and construction compliance.

Private certifiers have limited enforcement powers as the PCA. They 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 private certifier must be provided to Council for assessment as to whether council will enforce the notice by issuing an order.

## **17 Role of Councillors in Enforcement**

Decision making relating to the investigation of reports alleging unlawful activity and taking enforcement action is the responsibility of appropriately authorised Council staff or the Council itself.

Individual Councillors do not have the right to:

- direct Council staff other than by giving appropriate direction to the General Manager in the performance of Council's functions by way of council or committee resolution or by the Mayor or administrator exercising their power under section 226 Local Government Act 1993;
- direct or influence or attempt to direct or influence Council staff at any public or private forum;



- contact a member of Council staff on Council related business unless in accordance with the policy and procedures governing the interaction of Councillors and Council staff that have been authorised by the Council and the General Manager;
- contact or issue instructions to any of Council's contractors or tenderers, including Council's legal advisers, unless by the Mayor or administrator exercising their power under section 226 of the Local Government Act 1993;
- seek any of the above via a third party.

Any matters involving litigation where Council is considering a prosecution and/or remedy orders will be reported to Council for endorsement prior to the action being instigated.

A report will be presented to Council at the end of each quarter on the current compliance matters.

## 18 Delegations

Council staff delegations for taking action under this policy are included in council's Delegation Register.

## 19 Approval

This policy was approved at Council's meeting [REDACTED]

## 20 Review

This policy is to be reviewed every four years [REDACTED]

## 21 Acknowledgements

It is acknowledge that materials and assistance in writing this policy was sourced from the following:

1. Ombudsman New South Wales Enforcement guidelines for Councils
2. Ombudsman New South Wales – Model Compliance and Enforcement Model Policy
3. Ashfield Municipal Council – Enforcement Policy 2007
4. City of Sydney – Compliance Guidelines 2013, Compliance Policy 2014, Prosecution and Civil Enforcement Policy 2014
5. Hunter and Central Coast Regional Management Strategy (HCCREMS) – Guideline Enforcement Options 2012, Guideline Investigations 2012, Guideline Managing Reports of Non Compliance 2012, Model Compliance Assurance Policy 2012
6. Lismore City Council – Fact Sheet Information for Complainants

**Version Control:**

<b>Version History</b>		
<b>Version #</b>	<b>Summary of changes made</b>	<b>Date changes made</b>
<i>Eg: 1.1</i>	<i>Brief overview of changes made: Eg: Amended legislation, Major Re-write to enhance content, etc.</i>	<i>dd/mm/yyyy</i>