

POLICY NAME

Compliance and Enforcement Policy

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RESPONSIBLE DEPARTMENT

Environmental Health and Compliance



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1. Purpose

The purpose of this Policy is to support Council's regulatory functions to enable Council:

- to act promptly, effectively and consistently in response to the allegations of unlawful activity or when undertaking proactive investigation of unlawful activity;
- to ensure those functions are exercised proportionally, without bias, and in accordance with legislation; and
- to improve compliance management and reduce the impact of unlawful activity on the community and the environment.
- To ensure that Council's officers exercise their discretion in relation to unlawful activity in an appropriate manner and that Council's resources to deal with unlawful activity are appropriately allocated in a manner consistent with the public interest

This Policy will not limit Council's authorised officers in their use of discretion and exercise of official functions. The full circumstances and facts of each case will need to be considered and a decision made on the merits.

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

2. Policy statement

The Policy applies a risk-based approach to compliance management to ensure resources are focused on those matters posing the biggest risk to the community and environment. This approach is applied to both proactive compliance activities and also in response to reports alleging unlawful activity (reactive compliance). Council will undertake enforcement action where appropriate in accordance with this Policy document.

3. Scope

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

The purpose of this Policy is to provide structure for consistency and transparency in decision making, and to facilitate a proportional approach to compliance and enforcement. It is also intended to assist Council staff to act promptly, effectively and consistently in response to allegations of unlawful activity.

This Policy outlines matters to be considered at the various stages of the enforcement process from the receipt and investigation of reports alleging unlawful activity, through to what enforcement option Council will consider and whether to commence criminal or civil proceedings.

In certain circumstances Council will have shared enforcement responsibilities with

other regulatory authorities. Advice and guidance is also provided on the role of Council in building and construction compliance matters where there is a Private Certifier, and the role of Councillors in enforcement.

Responsible Council staff are not limited by this Policy in their use of discretion and exercise of official functions. The full circumstances and facts of each case need to be considered and a decision made on the merits.

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

This policy applies to all compliance, enforcement and certification actions including but not limited to:

- Unattended property/vehicles
- Building Information Certificates
- Companion Animals
- Environmental protection
- Fire safety
- Food safety
- Non-compliance with development consent conditions
- Overgrown properties
- Public health and safety
- Pollution control and waste
- Safety issues and offences in public spaces
- Swimming pools
- Unauthorised development
- Unauthorised land use including premises on land
- Illegal waste dumping
- Illegal parking

4. Objective

The objectives of this Policy are:

1. To establish clear guidelines and protocols for Council staff in the management of Council's regulatory activities.
2. To provide a framework to facilitate a responsive and risk based approach to proactive and reactive compliance and enforcement matters.
3. To improve compliance management and reduce the impact of unlawful activity on the community and our environment.

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

5. Compliance and Enforcement Principles

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

Principle	Action
Accountable and transparent	<ul style="list-style-type: none"> • Acting in the best interests of public health and safety and in the best interests of the environment • Ensuring accountability for decisions to take or not take action • Acting fairly and impartially and without bias or unlawful discrimination • Providing information about compliance and enforcement priorities and reasons for decisions to improve understanding and certainty and promote trust by the regulated community • Ensuring meaningful reasons for decisions are given to all relevant parties, particularly when there is a departure from this Policy. • Acting on any complaints or concerns about the conduct of compliance officers in accordance with council's complaints management policy and procedures • Advising people and organisations subject to enforcement action of any avenues available to seek an internal or external review of a decision
Consistent	<ul style="list-style-type: none"> • Ensuring compliance and enforcement action is implemented consistently • Encouraging customer reports about possible unlawful activity by acting reasonably in response to the circumstances and facts of each matter
Proportional	<ul style="list-style-type: none"> • Ensuring the level of enforcement action is proportionate to the level of risk and seriousness of the breach • Making cost effective decisions about enforcement action • Taking action to address harm and deter future unlawful activity
Timely	<ul style="list-style-type: none"> • Ensuring responses to reports alleging unlawful activity and decision making in relation to those is timely.

6. Risk Based Regulation

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

Risk based regulation works on the basis that the type of compliance action chosen will be dependent on an evaluation of the degree of risk, and the impact of the non-compliance on Council's ability to achieve its objectives. It is a way to target resources where they are most needed and where they will produce the most effective impact.

Council is committed to developing and implementing both proactive and reactive strategies to achieve effective and efficient risk-based compliance enforcement programs. To this end, Council uses intelligence gained from its customer management systems to determine the most appropriate strategy.

Proactive compliance monitoring assists Council in meeting its statutory requirements, respond to common complaints and maintain a positive monitoring presence. The aim of proactive strategies is to reduce the amount of reactive incidents requiring a Council response.

Education and awareness raising activities are both proactive approaches to preventing breaches of the law and can be very cost effective in achieving compliance. Providing information to the public through media releases, Council's website, workshops with target groups and brochures together with incentives e.g., financial/awards, are all strategies Council will explore to determine the best fit for the areas of focus.

Reactive compliance enforcement incorporates a risk-based approach which categorises the request into low, medium and high having regard to Council's Risk Category Guidelines (refer Appendix C).

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

7. Responsibility

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

Only Council staff with appropriate delegations from the General Manager can

undertake investigations or compliance and enforcement action in relation to this Policy. Council staff are required to:

- Act in a fair and impartial manner without bias or unlawful discrimination and be able to recognise, manage and avoid conflicts in line with Council's Code of Conduct
- treat all relevant parties with courtesy and respect
- assess if they have necessary powers to inspect premises, to obtain or view documents and to obtain information from other sources;
- comply with privacy laws and confidentiality and not disclose any personal information about another person unless the disclosure is required by law and/or in connection with the lawful exercise of official functions
- gather reliable evidence to prove each element of the offence
- understand the basic rules of evidence such as relevance, hearsay, opinion evidence, giving caution and standard of proof
- conduct site inspections, which is the key investigative step in reactive as well as proactive investigation
- communicate with all relevant parties and provide feedback on the progress of an investigation and any reasons for delay without compromising the integrity of the investigation
- make full and proper records in relation to the assessment and investigation of reports alleging unlawful activity, including reasons for any decisions
- inform all relevant parties of reasons for decisions
- provide as much information as possible to all relevant parties about the outcomes of investigations to show that adequate and appropriate action was taken and/or is proposed to be taken in response to a report of alleged unlawful activity
- provide information to all relevant parties about any avenues to seek an internal or external review of a decision

All reports alleging unlawful activity are to be entered into Council's customer request system and actioned within the appropriate risk based time frame by the appropriate business unit.

8. Submitting reports of unlawful activity

Reports alleging unlawful activity will be recorded in Council's customer request systems and will be allocated a unique reference number. The report will be referred to the relevant Council Officer to commence any necessary action.

The name, address and contact details of the person submitting the report will also be recorded. This information is critical as Council may need to rely on evidence from the complainant to prove any alleged offence and commence enforcement action. Council will advise any complainants of the action, if any, taken or the reasons why no action was taken in the circumstances.

Council generally seeks to keep confidential, personal information identifying a complainant. However, Council may be required to disclose this information in a variety of circumstances including the following:

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

Also, in some circumstances it may be possible to ascertain the identity of the person submitting the report by the nature of the allegation.

What Council expects from people who report allegations of unlawful activity.

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

This includes:

- providing a clear description of the problem (and the resolution sought, if relevant)
- providing a clear description/account of the impact that the alleged activity is having
- 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
- Providing Council with information on Legal, Civil or Tribunal actions relevant to the customers and properties. This includes but not limited to Criminal, Legal Proceedings, Civil and Administrative Tribunal (NCAT), Community Justice Centre (CJC)
- 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

9. Responding to concerns about unlawful activity

Council will record every report alleging unlawful activity.

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

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

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

Council staff will endeavour to manage the expectations of people who report alleged unlawful activity, and in particular explain that in the absence of sufficient evidence of unlawful activity, Council may be unable to take further action. Council does not have unlimited resources and powers to deal with reports alleging unlawful activity.

10. 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 therefore these reports are less likely to warrant investigation.

Unreasonable Complaint Conduct

Council has an obligation to use resources efficiently and effectively. While Council acknowledges a customer's entitlement to make requests and complaints, it reserves the right to cease responding to customers that continually exhibit unreasonable customer behaviour including:

- A. requests that place unreasonable demands on Council's staff
- B. requests that place unreasonable demands on Council's resources
- C. unreasonable persistence
- D. unreasonable lack of cooperation
- E. requests or complaints based on unreasonable arguments

In the context of the above situations officers will follow Council's Policy on Managing Difficult Customer Behaviour.

If there is a concern about a customer's conduct the General Manager, Director Development and Regulatory Services, Chief Governance Officer or Public Officer will write to the customer with a proposed course of action. The customer will be given an opportunity to make representations to the General Manager or authorising officer about Council's proposed course of action.

11. Investigating alleged unlawful activity

A preliminary assessment of all requests will be made to determine whether investigation or other action is required. Council will prioritise matters based on the Compliance and Enforcement Principles (Section 5).

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

Circumstances where no action will be taken

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

- the report is not supported with evidence or appears to have no substance.
- Council does not have jurisdiction to investigate or is not the appropriate authority to take action on the issues raised. Where there is another appropriate authority or course of action, Council may bring the matter to the attention of the authority or provide information and contact details to the individual. For example, NSW WorkCover for workplace safety matters, the NSW Environment Protection Authority (EPA) for possible environmental offences and Community Justice Centres NSW for personal disputes.
- the report relates substantially to a matter previously determined by Council and no new or compelling information is presented which would cause Council to change its earlier decision. In this case, staff will acknowledge the report and advise that no further action will be taken as no new information had been provided (other than where the person has previously been advised they would receive no further response).
- the allegations relate to a lawful activity (eg where there is an existing approval or the activity is permissible without Council approval or consent being required).
- the relevant 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 will consider a range of factors including whether:

- the activity is having a significant detrimental effect on the environment or it constitutes a risk to public safety
- the report is premature as it relates to some unfinished aspect of work that is still in progress
- the activity or work is permissible with or without permission
- all conditions of consent are being complied with
- much time has elapsed since the events, the subject of the report, took place

- another body is a more appropriate agency to investigate and deal with the matter
- it appears there is a pattern of conduct or evidence of a possible wide spread problem
- the person or organisation reported has been the subject of previous reports
- the report raises matters of special significance in terms of the Council's existing priorities
- there are significant resource implications in relation to an investigation and any subsequent enforcement action
- it is in the public interest to investigate the report.

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

The objective of the processes Council staff use when investigating incidents of alleged unlawful activity, is to:

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

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

12. Deciding whether or not to take enforcement action

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

Considerations about the alleged offence and impact:

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

Considerations about the alleged offender:

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

Considerations about the impact of any enforcement action:

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

Considerations about the potential for remedy:

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

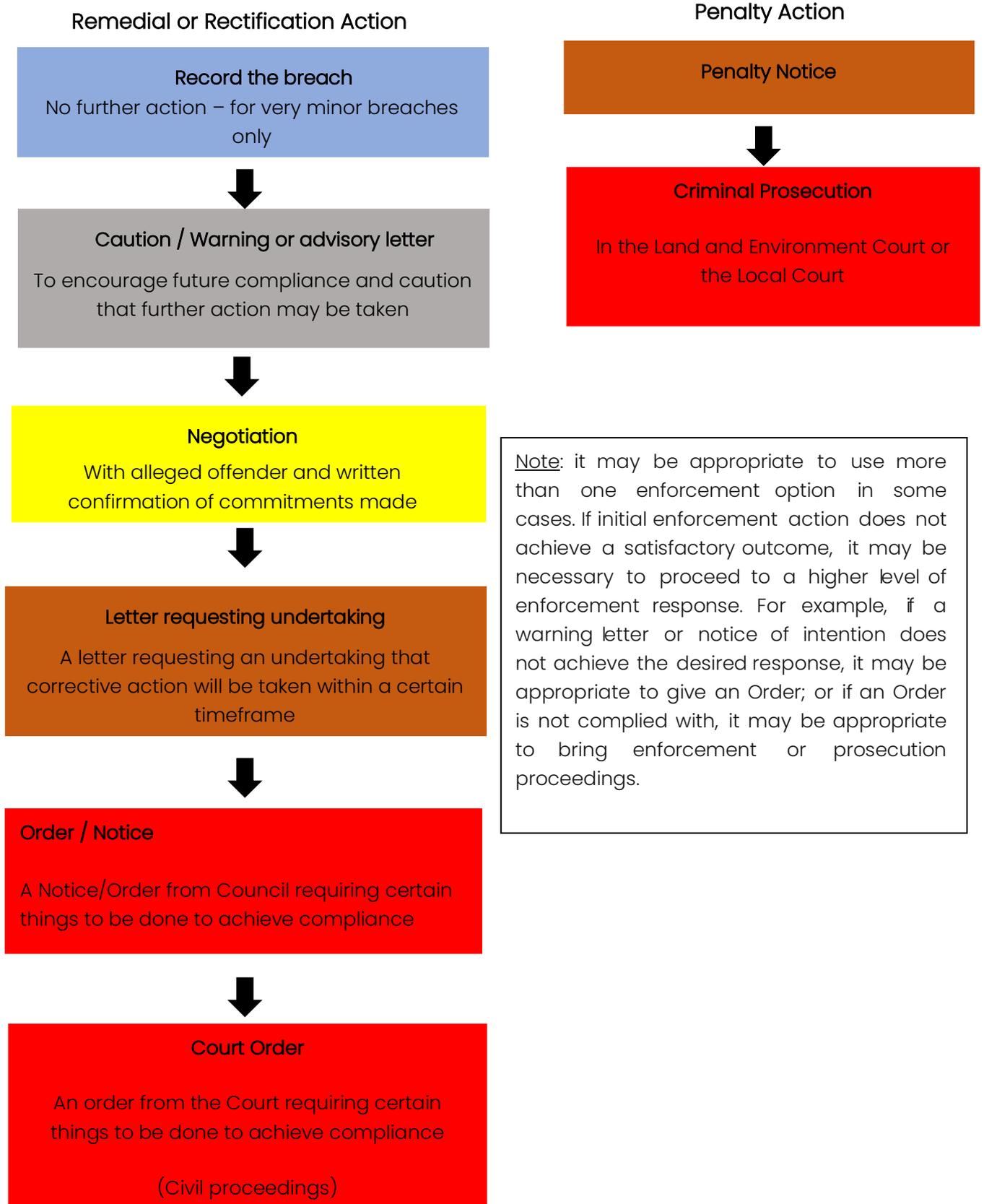
13. Options for dealing with confirmed cases of unlawful activity

Council will use the most effective, informal 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. There are a range of enforcement actions available as shown below in Figure 1.

Enforcement options are not necessarily mutually exclusive: for example, in some circumstances it may be appropriate to simultaneously issue an Order and a Penalty Notice.

Figure 1: Enforcement actions available to Council



Following up enforcement action

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

Decisions of authorised officers to investigate or not investigate and/or to take or not take enforcement action may be subject of:

- an internal review following submissions put forward by a party to a matter, which may relate to the following:
 - directions, declarations, notices and orders
 - penalty notices
 - other matters, including decisions not to investigate or take enforcement action or the general conduct of Council during the enforcement process; and/or
- any applicable appeal rights to a court of competent jurisdiction.

Internal reviews may be undertaken by the Environmental Health and Compliance Manager and/or the Director Development and Regulatory Services. Once a matter has been subject to an internal review the outcome of that review is final and will not be subject of a further review by Council.

15. Directions, Notices and Orders

All representations in relation to directions, declarations, notices and orders should be made to the issuing authorised officer quoting the Council reference number displayed on the direction, declaration, notice or order. Representations that are addressed to any other person within Council, including Council's Chief Executive Officer, Mayor or Councillors will be formally responded to in writing.

The decision making process in respect of the representations will be recorded on Council's record system and the reasons for that decision clearly stated and communicated to the person making the representations.

Lodgement of the representations does not affect the legislative timeframes of any appeal rights and the person making the representations must ensure that their appeal rights to a court of competent jurisdiction are exercised within those applicable timeframes. Council will inform the person of their appeal rights and the relevant

timeframes in the directions, declarations, notices or orders, if applicable.

16. Penalty Notices

As penalty notices issued by Council are processed and enforced by Revenue NSW, all representations in relation to a review of these penalty notices must be made directly to Revenue NSW to stop the enforcement process to enable completion of the review. If representations are received by Council, the person making them will be advised to make the representations directly to Revenue NSW. Representations that are addressed to any person within Council, including Council's Chief Executive Officer, Mayor or Councillors will be referred back to Revenue NSW.

Where Revenue NSW refers penalty notice representations to Council for recommendation, the representations will be dealt with in accordance with Council's internal review processes and appropriate recommendations will be recorded on Council's record system and provided back to Revenue NSW.

Revenue NSW will inform the person making the representations of the outcome of the review and will inform the person of their appeal rights (i.e. a right to court elect the penalty notice and have the matter heard by a Local Court Magistrate).

17. Taking legal action

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

- whether there is sufficient evidence to establish a case to the required standard of proof
- whether there is a reasonable prospect of success before a Court
- whether the public interest warrants legal action being pursued
- time within which to commence proceedings

Whether there is sufficient evidence to establish a case to the required standard of proof

Council considers the decision to take legal action a serious matter, and as such will only initiate and continue proceedings once it has been established that there is admissible, substantial and reliable evidence to the required standard of proof.

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

In **civil** enforcement proceedings, Council will require sufficient evidence to satisfy the Court that an actual or threatened breach has occurred on the balance of probabilities.

Whether there is a reasonable prospect of success before a Court

Given the expense of legal action Council will not take legal action unless there is a reasonable prospect of success before a Court. In making this assessment, Council staff will consider the availability, competence and credibility of witnesses, the admissibility of the evidence, all possible defences, and any other factors which could affect the likelihood of a successful outcome.

Whether the public interest requires legal action to be pursued

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

The following considerations relate more specifically to the decision to commence legal proceedings and will assist Council and its delegated staff in making this determination:

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

Time within which to commence proceedings

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

18. Shared enforcement responsibilities

Some reports will raise matters involving shared regulatory responsibilities between Council and other authorities including the Environment Protection Authority, NSW Police, NSW Liquor and Gaming, NSW Fair Trading, NSW Food Authority and Crown Lands.

Council recognises that collaboration and cooperation between authorities to address issues of shared regulatory responsibility is the best approach. To this end, where there are shared legislative responsibilities, Council staff will work with relevant authorities to establish:

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

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

19. Role of Council where there is a Private Certifier

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

Private Certifiers have limited enforcement powers of which they can use 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 subject to an initial assessment by the Certifier. Council may then determine if they will enforce the notice by issuing an Order.

Persons making complaints regarding a site under the supervision of a Private Certifier will be advised to contact the Private Certifier in the first instance. This will give the Private Certifier an opportunity to address the issues and take appropriate action.

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

It must be noted that Council is not the regulator of Private Certifiers. In any situation where it is considered a Principle Certifying Authority has acted incorrectly, improperly and/or unprofessionally, the matter may be referred to NSW Fair Trading subject to the approval by the Environmental Health and Compliance Manager. A customer may report their concerns regarding a Registered Certifier directly to NSW Fair Trading.

Council will endeavor to work with Private Certifiers to resolve any issues when they arise to achieve compliance with the development consent or complying development certificate. Council staff will take steps to ensure individuals are clear about which agency performs which role.

20. Building Information Certificates

Council recognises that persons who may have carried out unlawful building works may, as an option, apply for a Building Information Certificate under Division 6.7 of the Environmental Planning and Assessment Act to retain the structure. If a Building Information Certificate is issued Council cannot ask for demolition or alterations unless after 7 years of fair wear and tear.

It is Council's policy however that such applications should not be encouraged to justify unlawful works. Irrespective of whether or not a Building Information Certificate is applied for, Council may take action against a person who carried out an unlawful works.

The action may include the issuing of a penalty notice or in conjunction with criminal proceedings, where it is considered appropriate and necessary for punitive action to also

be taken, having regard to the restriction provisions provided under Section 127 (7) of the EP&A Act.

21. Role of Councillors in enforcement

Compliance and enforcement matters are sensitive and easily susceptible to allegations of impropriety, bias or inconsistency. Gathering of evidence can be a matter that is complex and subject to information not being able to be admitted into evidence because of the way it was gathered.

In order to manage those risks, and consistent with the Council's Code of Conduct, and Councillors/Staff Interaction Policy, Councillors should carefully consider their role and the provisions of the Code of Conduct and Local Government Act.

Councillors can help individuals who raise concerns with them by satisfying themselves that Council's policies are being carried out correctly, however they cannot ignore or alter a policy in order to satisfy the demands of individuals or specific groups.

Section 7.6 of the NSW Model Code of Conduct provides that it is inappropriate for Councillors attending on-site inspection meetings with lawyers and/or consultants engaged by the council associated with current or proposed legal proceedings unless permitted to do so by the council's general manager or, in the case of the mayor or administrator, unless they are exercising their functions under section 226 of the Local Government Act.

Prior to any meeting on site where there is the potential for regulatory action, the Councillor is advised to contact the Director Development and Regulatory Services or the Manager Environmental Health and Compliance to establish the situation. Where an onsite meeting does occur, Councillors are advised to keep an adequate record of the meeting, and this should be forwarded to councillorrecords@penrith.city

Relevant References:

Section 352 of the Local Government Act states *"A member of staff of a council is not subject to direction by the council or by a councillor as to the content of any advice or recommendation made by the member".*

The Model Code of Conduct stated as follows:

7.2 Councillors or administrators must not:

- A. direct council staff other than by giving appropriate direction to the general manager by way of council or committee resolution, or by the mayor or administrator exercising their functions under section 226 of the LGA
- B. in any public or private forum, direct or influence, or attempt to direct or influence, any other member of the staff of the council or a delegate of the council in the exercise of the functions of the staff member or delegate

You must not engage in any of the following inappropriate interactions:

- f) councillors and administrators being overbearing or threatening to council staff

- h) councillors and administrators making personal attacks on council staff or engaging in conduct towards staff that would be contrary to the general conduct provisions in Part 3 of this code in public forums including social media

- i) councillors and administrators directing or pressuring council staff in the performance of their work, or recommendations they should make

- l) councillors attending on-site inspection meetings with lawyers and/or consultants engaged by the council associated with current or proposed legal proceedings unless permitted to do so by the council's general manager or, in the case of the mayor or administrator, unless they are exercising their functions under section 226 of the LGA.

From Part 3

- a. In exercising land use planning, development assessment and other regulatory functions, you must ensure that no action, statement or communication between yourself and others conveys any suggestion of willingness to improperly provide concessions or preferential or unduly unfavourable treatment.

22. Related Policies

- Asbestos Management Policy
- Complaint Management Policy
- Feral and Infant Animal Policy
- Keeping of Animals Local Orders Policy
- Onsite Sewage Management & Grey-water Re-use Policy
- Complaints Management Policy
- Managing Difficult Customer Behaviour Policy

APPENDIX A

The Policy applies but is not limited to, Council's responsibilities under the following Acts, their associated Regulations and any subsequent legislative amendments:

- NSW Road Rules 2014
- Roads Act 1993 and Regulation
- Road Transport Act 2013 and Regulation
- Boarding Houses Act 2012 and Regulation
- National Construction Code of Australia
- Companion Animals Act 1998 and Regulation
- Contaminated Land Management Act 1997 and Regulation
- Crown Lands Act 1989 and Regulation
- Environmental Planning & Assessment Act 1979 and Regulation
- Fines Act 1996 and Regulation
- Food Act 2003 and Regulation
- Government Information (Public Access) Act 2009 and Regulation
- Public Spaces (Unattended Property) Act 2021 and Regulation
- Local Government Act 1993 and Regulation
- Motor Dealers Act 1974 and Regulation
- Biosecurity Act 2015 and Regulation
- Privacy and Personal Information Protection Act and Regulation
- Protection of the Environment Operations Act 1997 and Regulation
- Public Health Act 2010 and Regulation
- Surveillance Devices Act 2007 and Regulation
- Swimming Pools Act 1992 and Regulation
- Rural Fires Act 2008 and Regulation
- Sydney Water Act 1994 and Regulation

APPENDIX B

DEFINITIONS

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

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:

- a report alleging unlawful activity (see definition below)
- a request for information about a council policy or procedure
- a request for an explanation of actions taken by council
- a request for internal review of a council decision.

Enforcement:

Actions taken in response to serious or deliberate contraventions of laws.

Regulation:

Using a variety of tools and strategies to influence and change behaviour to achieve the objectives of an Act, Regulation or other statutory instrument administered by Council.

Report alleging unlawful activity:

An expression of concern or a request for service in relation to alleged unlawful activity, where a response or resolution is explicitly or implicitly expected or legally required.

Unlawful activity:

Any activity or work that has been or is being carried out contrary to the below and/or failure to take required action in order to be compliant with:

- terms or conditions of a development consent, approval, permit or license
- an environmental planning instrument that regulates the activities or work that can be carried out on particular land
- a legislative provision regulating a particular activity or work
- a required development consent, approval, permission or license.

APPENDIX C

RISK CATEGORY GUIDELINES

RISK CATEGORY		
HIGH	MEDIUM	LOW
FEATURES OF CATEGORY		
Matters likely to cause significant risk or harm to the environment and/or public safety (i.e. likely to cause serious and irreversible impacts).	Matters likely to cause moderate risk of harm to the environment and/or public health and safety (i.e. impacts of concern that need to be controlled or mitigated).	Matters likely to cause minimal risk of harm to the environment and/or public health and safety (i.e. low impact, reversible and easily mitigated).
INDICATIVE TIMEFRAME OF INITIAL RESPONSE		
Immediately or within 48 hours	Response within 15 working days	Response within 20 working days
EXAMPLE REPORT TYPES/ISSUES		
<p>Large scale/major pollution incidents</p> <p>Serious public health issues such as food poisoning outbreaks and Legionnaires cases</p> <p>Dangerous Dog attacks, straying stock</p> <p>Clearing or removal of significant trees and vegetation</p> <p>Abandoned vehicles in unsafe locations</p> <p>Collapsed or unsafe building works adjacent to public areas</p> <p>Poor sediment control on building sites</p> <p>Swimming pool with no fence or barrier</p> <p>Significant fire safety issues</p> <p>Urgent asbestos removal</p> <p>Demolition or damage to a heritage item</p> <p>Sewer leaks and overflows</p> <p>Large scale unauthorised landfilling and waste disposal</p>	<p>Roaming dogs, animal registration and general companion animal enquiries</p> <p>Abandoned motor vehicles</p> <p>Minor pollution incidents air, noise, odour and water quality</p> <p>Breaches of Vegetation Permits</p> <p>Swimming pool with non-compliant fence or barrier</p> <p>Commercial or industrial air and noise complaints</p> <p>Food premises complaints e.g. health and hygiene, condition of premises, suspected food poisoning</p> <p>Public Health complaints e.g. condition of swimming pools and spas, skin penetration premises, cooling towers</p> <p>Significant unauthorised / non complying building and land use matters</p> <p>Unauthorised building works where a Private Certifier is appointed</p> <p>Minor landfilling, or rubbish dumping</p> <p>Footpath obstructions</p> <p>On-site Sewage Management Systems failures</p> <p>Reserve encroachments</p> <p>Boarding houses</p> <p>Overland stormwater flow caused by non-complaint works</p>	<p>Barking dogs</p> <p>All other animal related enquiries</p> <p>Domestic noise complaints (power tools, air conditioners, pool pumps, amplified music)</p> <p>Overgrown land</p> <p>Accumulation of rubbish or material on land</p> <p>Home business/home occupation</p> <p>Minor unauthorised /non complying building works (criteria)</p> <p>Smoke nuisance from domestic wood heaters, outdoor BBQ's, burning prohibited items</p> <p>Illegal Parking</p>

Note: The action undertaken by Council in response to a request will be proportionate the quantum of resources available at the time. For example, where the number of requests exceeds the amount of resources available, requests may be actioned using compliance through voluntary action (letters of cooperation). Conversely, when resources are available, more detailed investigations may be conducted.

Document Control

Policy History	Date