

PLANNING &  
ENVIRONMENT

## COMPLIANCE & ENFORCEMENT POLICY

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## 1. Introduction

This policy is intended to provide clarity to the relevant stakeholders including Council staff, the public and customers in relation to the procedures to be implemented when dealing with matters of enforcement relating to activities within the Canada Bay Local Government area.

For simplicity, this policy refers to both an act and/or an omission by an alleged offender as ‘unlawful activity’.

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 entity draws Council’s attention to an alleged unlawful activity, or they request attention from Council about such matters and that Council considers that a response or resolution to a report alleging unlawful activity is explicitly or implicitly expected by the entity, 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 claims 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

This policy provides information to all internal and external stakeholders and interested parties about Council’s procedures in relation to compliance and enforcement matters in the local government area.

It also provides guidance for consistency and transparency in decision making, and to facilitate a proportional approach to compliance and enforcement decisions. It is also intended to assist Council staff to act confidently, 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 action will be undertaken and whether it is appropriate to commence criminal or civil proceedings.

In certain circumstances Council will have shared enforcement responsibilities with other regulatory authorities. This policy seeks out a collaborative and cooperative approach to such circumstances. Advice and guidance is also provided on the role of Council in building and construction compliance matters where there is a private certifier, and under what circumstance elected Councillors may become involved in enforcement.

Council Officers may exercise discretion in the use of certain aspects of this policy upon appropriate consideration of all relevant facts to ensure that the best interests of the community are served.

## 3. Organisational approach

Council as an organisation is charged with the responsibility of representing the community with the aim of maintaining high standards of health, welfare and safety. In this regard, compliance and enforcement are necessary:

- to prevent or minimize harm to health, welfare, safety of people, property or the environment
- to protect the safety and amenity of residents and visitors to the area
- to promote the collective good, and welfare of the community or the public interest
- to promote ecological sustainability
- to manage risks
- to promote confidence in the dealings the community have with Council.

## 4. Definitions

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

### Complaint

A complaint is an expression of dissatisfaction made about Council service in the handling of a complaint, where the complainant believes 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

Action taken in response to contraventions of laws whether deliberate or not.

### Regulation

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

### Report alleging unlawful activity

A genuine communication requesting assistance in relation to alleged unlawful activity.

### Unlawful activity

Any activity (including building work) that has been or is being carried out contrary to the following:

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

### Exempt Development

Development or building work that is otherwise allowed without the approval of Council.

## 5. Policy objectives

The intent of this policy is to establish clear guidelines and protocols for Council officers in the management of Council's regulatory activities, together with guidance for the community as to the process involved relating to regulatory enforcement.

It provides direction on:

- responding to reports alleging unlawful activity
- assessing whether reports alleging unlawful activity require investigation
- assessing the priority of an allegation
- deciding on whether enforcement action is warranted
- options for dealing with confirmed cases of unlawful activity
- taking legal action
- enforcement responsibilities that involve other Authorities

The policy also provides guidance on:

- the role of the Principal Certifying Authority and
- the circumstances in which Councillors are involved in enforcement.

## 6. Application

This policy applies to Council's regulatory responsibilities including, but not limited to:

- development and building control (refer to appendix 2)
- pollution control
- environmental health
- public health and safety
- noxious weeds
- water and sewer matters
- septic systems
- control over animals (refer to appendix 4)
- food safety
- fire safety
- tree preservation
- infringement review panel (refer to appendix 3)
- parking (also refer to Council's Parking & Enforcement Guidelines)

Appendix 1 provides additional information on Council department areas of responsibility.

**Council's internal Parking Enforcement Guidelines address parking enforcement matters separately to this policy.**

Appendix 5 provides additional information regarding Council's free parking agreements for parking enforcement on private land.

## 7. Compliance and enforcement principles

The following are the principles that guide Council actions relating to compliance and enforcement:

- acting in the best interests of public health, safety and the environment.
- ensuring accountability and transparency for investigation and decisions.
- endeavouring to act fairly and impartially and without bias or unlawful discrimination.
- providing information about compliance and enforcement priorities and reasons for decisions to improve understanding by the regulated community.
- ensuring meaningful reasons for decisions are given to all relevant parties.
- Investigating complaints or concerns about the conduct of Council 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 of Council.
- a consistent approach in compliance and enforcement.
- ensuring the level of enforcement action is proportionate to the level of risk and seriousness of the breach.
- deter future unlawful activity.
- ensuring investigations and responses to alleged unlawful activity is timely.
- Accepting the withdrawal of a complaint at no cost where the matter has not escalated.

## 8. Responsibility

Council may be made aware of alleged unlawful activity from members of the public, contact from other government agencies and information gathered by its officers during the course of their normal duties.

All Council officers who are authorized to investigate alleged unlawful activity are responsible for implementing this policy. Council staff are also responsible for ensuring that any other possible unlawful activity observed as a result of an inspection, proactive enforcement or in the course of their normal duty is brought to the attention of the appropriate jurisdiction within Council.

Appendix 1 provides additional information on Council departments and areas of responsibility.

Council staff are required to:

- treat the community with courtesy and respect.
- communicate with all relevant parties and provide feedback on the progress of an investigation without jeopardising or compromising the integrity of the investigation.
- make full and proper records in relation to investigation of alleged unlawful activity, including reasons for any decisions.
- inform all relevant parties of the outcome of the investigations and the reasons for decisions where requested.
- provide information to all relevant parties about any avenues to seek an internal or external review of a decision.

## 9. Responding to concerns about unlawful activity

### 9.1 How reports alleging unlawful activity will be dealt with by Council

Council will record and assess every submission or reporting of alleged unlawful activity.

Council will respond to every submission 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 submission is anonymous.

When dealing with reports alleging unlawful activity Council will generally:

- 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 Management Plan/Futures Plan 20.
- consider the report fairly and impartially.

Not all submissions will sustain an investigation. A preliminary assessment of all matters will be made to determine the veracity of the allegation, and whether investigation or other action is or is not required.

An investigation of alleged unlawful activity may require significant resources, particularly where the issues are complex. If Council decides to investigate, the investigating officer will give the person(s) or organisation who reported the alleged unlawful activity feedback on the progress of the investigation. 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 as to whether an allegation of unlawful activity should be investigated or acted upon will depend on the circumstances of the individual situation and the overall harm caused by the unlawful activity. Council will always strive to resolve the matter in the most efficient and cost effective manner without compromising the statutory obligations to uphold the law.

Council staff will endeavour to manage the expectations of people who report alleged unlawful activity, and in particular explain that where there is an absence of sufficient evidence of unlawful activity. Council may be unable to take further action. They will also explain that Council must balance the resources to be expended on an action against the public and the benefit of such action. 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.

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

People who report allegations of unlawful activity must understand that their identities may not remain confidential from the subject of their report in all circumstances. Council may be unable to maintain confidentiality in cases where:

- the disclosure is essential to pursue the matter.
- their identity has already been disclosed 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.
- the matter proceeds to court.
- their identity is surmised by the nature of the report.

Council will take seriously any concerns an individual may have about their physical safety being endangered as a result of making a report.

### 9.3 What Council expects from customers who report allegations of unlawful activity

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

- Providing a clear description of the breach.
- Disclosing relevant information to Council, including any additional information about the alleged activity that may become known to the person following the making of their initial report.
- Not providing false or misleading information.
- Assist Council by providing as much information as possible in relation to any allegation.
- Failure to assist Council with the above may compromise Council's ability to properly investigate a matter and may result in Council concluding its investigation.
- Disclosing any existing personal disputes or disharmony.

Any unreasonable conduct will be dealt with in accordance with the principles of the NSW Ombudsman's Managing Unreasonable Complainant Conduct Manual and Council's Complaint Handling Policy.

### 9.4 What customers can expect from Council staff

Council will make every effort to investigate an allegation within the following timeframes:

- Urgent and life threatening matters will be actioned as a matter of priority following receipt of the complaint. Examples include unsafe building works, collapsed building/wall, food safety issues and public health and safety matters etc. As a guide these matters should be investigated on the day of receipt of the complaint.
- General compliance matters will be dealt with on a priority basis having regard to the relative seriousness of the matter and resources available. Examples include works not in accordance with consent or construction without consent, illegal use, noise and food complaints.
- Action for nuisance matters should commence within 3-5 working days; examples include domestic noise matters, minor non-compliance such as overgrown land or other matters in which there are no likely immediate health, safety or property damage implications.

Customers who report alleged unlawful activity, as well as individuals or businesses that are subject to investigation and any enforcement action, can expect that Council staff will:

- treat them with courtesy and respect.
- advise them of the outcome of the investigation, including an explanation of the reasons why that outcome was considered to be appropriate in the circumstances.
- clearly explain decisions in appropriate terms.
- provide information about any relevant internal and external appeal processes that may be available.
- carefully assess any new information provided by any party after a decision has been made and advise whether a review can be undertaken.

### 9.5 Complaints about Council's enforcement actions

Any complaints about Council's handling of reports alleging unlawful activity will be handled in accordance with Council's Complaint Handling Policy.

Where a person or organisation subject to enforcement action merely disputes Council's decision to take enforcement against them, they will be directed to the relevant review/ appeal processes.

Complaints about the conduct of officers will be investigated in accordance with Council's Complaint Handling Policy and/or Code of Conduct Policy.

### **9.6 Anonymous reports**

Anonymous reports will be recorded and assessed in accordance with the above requirements. Because it is not possible to seek clarification or additional information about an allegation, it may be more difficult to evaluate the information and therefore Council's ability to properly investigate the matter may be compromised and possibly terminated.

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

Council may receive reports about matters such as offensive noise and failure to comply with limitations on hours of operation outside normal hours of operation. Such matters 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 at the time of the allegation.

Further, Council recognizes in some instances that dispensation may be applied for breaches of limitations of hours and therefore those matters will be considered on a case-by-case basis. Examples include applications for concrete pours that run overtime on development sites, emergency works and organized events. Dispensation will be applied by the relevant manager and will be appropriately recorded in Council's systems. Such matters will be for a short duration and any ongoing departure must be subject to formal approval.

### **9.8 Neighbour disputes**

Council will at times receive reports from customers involved in neighbourhood disputes but only where the matter is such that it is a regulatory breach. When a dispute between two neighbours is considered a civil matter, Council will often have no authority to resolve the issue in dispute. Some allegations will raise several matters, some of which may require Council's involvement and some of which will be private to the parties.

Council staff will assess such reports to determine whether there is evidence of unlawful activity requiring action by Council. Care will be taken to explain which aspects of a report Council can deal with and those it cannot. Customers will be provided with information about how to resolve neighbour disputes including referral to LawAccess NSW and Community Justice Centres.

## **10. Investigating alleged unlawful activity**

An assessment of all allegations will be made to determine whether investigation or other action is required. Council will prioritise matters on the basis of risk to public safety, health, environment and potential property damage. Not all reports alleging unlawful activity will justify investigation.

If there is insufficient information in the allegation to undertake an assessment, further information may need to be sought.

The processes Council use when investigating incidents of alleged unlawful activity are:

- determine the veracity/bona-fides of the allegation.
- identify the offender.
- assess and determine if there has been a contravention of law, policy or standards.
- gather evidence to the required standard to support any required enforcement action.
- decide what action is necessary to negate the possibility of a reoccurrence of similar incidents.

## 11. Gathering of evidence

Council will gather an appropriate amount of evidence to prove or disprove the elements of a particular offence or matter. To enable further action to be taken the evidence gathered must be sufficient to allow council to proceed in accordance with the options outlined within 5.12 of the policy.

It is therefore prudent for officers to ensure that sufficient evidence has been gathered to defend a matter.

A range of techniques can be employed to gather evidence including taking photographs and videos, direct deployment of CCTV cameras, witness statements, samples and measurements, seek expert opinion, formal interviews, note taking and collecting documentation relevant to the investigation.

The use of CCTV cameras in public places will be undertaken in accordance with the NSW policy statement and guidelines for the establishment and implementation of closed circuit television (CCTV) in public places. Footage obtained from CCTV cameras may be forwarded to other government agencies to assist with the investigation & prosecution of matters.

### Circumstances where no action will be taken

Council may take no further action if, following an investigation, it is identified that:

- Council is not the appropriate authority to take action on the issues raised in which case Council may bring the matter to the attention of the appropriate authority or provide information and contact details to the customer. For example NSW WorkCover for workplace safety matters and Community Justice Centres NSW for personal disputes.
- the report relates substantially to a matter previously investigated by Council and no new or compelling information is presented which would cause Council to change its earlier decision. In this case, no further action will be taken.
- the allegations relate to a lawful activity (e.g. where there is an existing approval or the activity is permissible without Council approval or consent being required) e.g. Exempt Development
- the allegation is not supported with satisfactory information/evidence ie has no substance.
- Council determines that investigation or other action would create an unjustifiable burden on Council resources and/or is unlikely to achieve an outcome.
- the allegation is anonymous or otherwise and insufficient information is provided to justify an investigation/ action.
- the report is unjustified as it relates to some unfinished aspect of activity that is still in progress.
- the activity or work is permissible either with or without consent e.g. Exempt Development.

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

When deciding whether to take action following an investigation, Council will consider a range of factors including whether:

- the activity is having a significant detrimental effect on structures on adjoining lots, Council's infrastructure, the natural or built environment or it constitutes a risk to public health and safety.
- 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 or action.
- 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 and take action.

The above are factors for Council to consider and weigh in making a determination to take action. Council staff will be guided in their use of discretion by these considerations and may decide to take action based on these and other factors.

Any decision not to follow through with an investigation of an allegation of unlawful activity will be recorded and the reasons for that decision clearly stated in accordance with this policy.

## 12. Taking enforcement action

When deciding whether to take enforcement action in relation to an allegation of unlawful activity, Council will consider the circumstances and facts of the matter and the public interest. The following considerations will assist Council 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.
- the harm or potential harm to the environment, public health, safety, amenity or property damage caused by the unlawful activity.
- the seriousness of the breach, and whether the breach is merely technical, inconsequential or minor in nature.
- the time period that has lapsed since the date of the unlawful activity and whether Council is statute barred.
- whether the breach was unavoidable to avert a more significant health and safety or environmental situation.

### Considerations about the alleged offender

- whether there were any prior warnings, instructions or advice issued to the person or organisation reported or previous enforcement action taken against them.
- whether the activity is continuing despite instructions to cease.
- whether the offence was committed with intent or malice.
- whether the person or organisation reported has been proactive in the resolution of the matter and assisted with any Council investigations and directions.
- any mitigating or aggravating actions by the alleged offender.
- any particular circumstances of mental impairment affecting the person.

### Considerations about the impact of any enforcement action

- the need to deter any future unlawful activity.
- whether the outcome is 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.
- whether the action would have dire health, environmental or financial hardship.

### Considerations about the potential for remedy

- whether the breach can be easily remedied.
- whether an educative approach would be more appropriate than a punitive approach in resolving the matter.
- the prospect of success if the proposed enforcement action was challenged in court.
- whether it is likely consent would have been given for the activity had it been sought.
- whether there is a draft planning instrument or policy on exhibition that may render the unlawful activity legal.

## 12.1 Legal or technical issues

Where legal and/or technical issues are in question, Council will consider whether advice from duly qualified experts should be obtained and considered. Any professional legal advice sought and received by Council will remain privileged.

## 12.2 Requirements of Council considering enforcement action

Prior to taking enforcement action, Council will take into account the above considerations as well as the evidence gathered during their investigation. Council will be impartial and be mindful of the obligations under Council's Code of Conduct.

Council is required to maintain formal records about investigations and decision-making processes in relation to reports alleging unlawful activity and any enforcement action, as well as records of interactions with relevant parties.

However, Council will always take enforcement action against the responsible person or organisation for the unlawful activity. Where there are multiple parties to an alleged unlawful activity, Council staff will be guided by legal/professional advice in determining the appropriate person/s to initiate proceedings against.

## 13. Options for dealing with confirmed cases of unlawful activity

Council will try to use the most effective method to deal with unlawful activity wherever possible. Council will use discretion to determine the most appropriate response to confirmed cases of unlawful activity and may take more than one approach.

Refer to Appendix 2 for further information when dealing with matters associated with unauthorised building works.

Any enforcement action taken by Council will depend on the circumstances and facts of each case, with any decision being made in the interest of the community.

At all times, Council's key concerns are:

- to prevent or minimise harm to health, welfare, safety, property or the environment.
- to discourage poor behaviour.
- to educate the community and other stakeholders.

The following enforcement options will be considered by Council that is proportionate to the level of risk to the community, the seriousness of the breach and the need for a deterrent:

### Level of risk: very low

#### Enforcement options

- take no action on the basis that the breach is minor and does not pose a threat to the health and safety of the community, property and the environment.
- educate the offender on their responsibilities and duties as a member of the community.

### Level of risk: low

#### Enforcement options

- verbally negotiating with the person to obtain voluntary undertakings or an agreement to address the issues of concern if considered necessary.
- issuing a letter requiring work to be done or activity to cease in lieu of more formal action.
- issuing a warning or a formal caution.

### Level of risk: Medium

#### Enforcement options

- issuing a letter requiring work to be done or activity to cease where more formal action may be considered excessive.

- issuing a notice of intention to serve an order or notice under relevant legislation, and then serving an order or notice if appropriate.
- issuing a penalty infringement notice as a deterrent.
- issue a Compliance Cost Notice.

#### Level of risk: High

##### Enforcement options

- issuing a penalty infringement notice or commence legal proceedings.
- issuing a notice of intention to serve an order or notice under relevant legislation, and then serving an order or notice if appropriate. In this regard an emergency order may be considered.
- carrying out the works specified in an order at the cost of the person served with the order.
- issue a Compliance Cost Notice.

#### Level of risk: Very High

##### Enforcement options

- issue a Penalty Infringement Notice.
- issue an emergency order requiring rectification.
- commence legal proceedings for an offence against the relevant Act or Regulation.
- seeking an injunction through the courts to restrain future or continuing unlawful activity.
- issue a Compliance Cost Notice.

### 13.1 Following up enforcement action

All enforcement action will be reviewed and monitored to ensure compliance with any undertakings given by the subject of the enforcement action or advice, directions or orders issued by Council. Reports alleging continuing unlawful activity or where initial enforcement action was found to have been ineffective will be reassessed and escalated if necessary. If the unlawful activity has ceased or the work has been rectified, the matter will be considered complete.

## 14. Taking legal action

The Council will be guided by legal/professional advice in deciding whether to commence legal proceedings in relation to an alleged unlawful activity and will consider the following:

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

### 14.1 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.

### 14.2 Whether there is a reasonable prospect of success before a court

Given the expense of legal action Council will not proceed with legal action unless there is a real prospect of success before a court. In making this assessment, Council 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.

### 14.3 Whether the public interest requires legal action 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 following factors may also be considered:

- whether all other avenues of negotiation have failed or are ignored.
- the availability of any alternatives to legal action.
- whether an urgent resolution is required.

- 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.
- to discourage poor behaviour in the wider community.
- Whether a prosecution may be useful.

#### 14.4 Time within which to commence proceedings

There are statutory time limits within which penalties or prosecution proceedings must be commenced. In this regard these will be considered prior to instigating legal action.

### 15. Appeals

Where Council has determined a course of action and issued either a Notice of Intention to serve an Order or a Penalty Infringement Notice, there are avenues available to the recipient to have the matter reviewed or reconsidered.

When a Notice of Intention to serve an Order is issued for an unlawful activity, the recipient may make written representations to Council as to why the proposed Order should not be given or the terms of the Order or period of compliance with the Order.

Where Council has issued a Penalty Infringement Notice for unlawful activity, the recipient may request a review of the Penalty. The request may be made to the State Debt Recovery Officer (SDRO) or Council in exceptional circumstances;

Refer to Appendix 3 in relation to Penalty Infringement reviews.

Where Council has issued an Order in relation to an unlawful activity, there is the ability for the recipient to appeal against the terms of the Order. Where there is an appeal against the order, the matter will then be dealt with by the appropriate Court jurisdiction.

### 16. Shared enforcement responsibilities

Some allegations will raise matters involving shared regulatory responsibilities between Council and other authorities including the Environment Protection Authority, the NSW Police Force, the Office of Liquor, Gaming and Racing, NSW Fair Trading, NSW Food Authority, Department of Industry, WorkCover, Building Professionals Board and Fire Rescue NSW.

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 will liaise with relevant authorities to establish:

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

Council will reasonably endeavour to respond to requests for information or assistance on joint regulatory matters in a timely manner however co-operation/collaboration with other authorities will always be balanced against the available Council resources.

### 17. Role of Council where there is a Private Principal Certifying Authority (PCA)

Council retains its regulatory role and enforcement powers where a private certifier has been appointed as the Principal Certifying Authority (PCA). However, if a private certifier is appointed as the PCA, it is their role to ensure that the development is generally consistent with the consent. In this regard, the customer making the allegation of unlawful activity (whether verbally or in writing) regarding a site under the responsibility of a Private PCA, will be advised to refer

the allegation to the Private PCA in the first instance. Council may, with the permission of the customer making the allegation forward the details of the allegation to the private certifier registered in Council's records.

Council will investigate matters where:

- The Private PCA fails to or is unable to appropriately action a matter or where it is in the immediate public interest for Council to intervene;
- The Private PCA has fulfilled their role under the legislation, but the offence continues or re-occurs despite any action by the Private PCA;
- Where the complaint relates to Council property; and/or
- Where the complaint relates to an environmental pollution incident or site management issues.

Private certifiers have limited enforcement powers as the PCA. They have the power to issue a notice of intention to issue an Order to comply with the development consent or rectify any breaches. A copy of any notice of intention issued by a private certifier must be provided to Council.

Council will work together with Private PCA's 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 customers understand which agency performs which role.

## 18. 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 delegated Council staff and may extend to the elected Council itself.

Individual Councillors do not have the power to direct Council staff in their day-to-day activities. Councillors can help individuals who raise concerns with them by satisfying themselves that their Council's policies are being carried out correctly, however they cannot ignore or alter a policy in order to satisfy the demands of special groups.

## 19. Delegations

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

## Appendix 1 – Responsibilities within Council

The following regulatory issues are covered, but not limited, by this policy and the relevant business unit responsible for the investigation is as follows:

| <b>Issue</b>                        | <b>Business Unit Responsible</b>                           |
|-------------------------------------|--|
| Development and building control    | Building & Compliance                                      |
| Pollution control                   | Environmental Health/Law Enforcement/Building & Compliance |
| Environmental/health related issues | Environmental Health                                       |
| Public health and safety            | Environmental Health/Law Enforcement/Building Compliance   |
| Noxious weeds                       | Parks & Gardens  |
| Water and sewer                     | Environmental Health/Building Certification                |
| Septic systems                      | Environmental Health                                       |
| Control over animals                | Law Enforcement  |
| Food safety                         | Environmental Health                                       |
| Fire safety                         | Building Certification                                     |
| Tree preservation                   | Parks & Gardens  |

## Appendix 2 – Unauthorised building works

### A2.1. Scope of Council role

Council's role as a regulatory authority under the Environmental Planning and Assessment Act 1979 and Local Government Act 1993 is to protect public health and safety. Council may also be responsible for certification where we are engaged as the certifying authority and nominated as the Principal Certifying Authority. Council also has a role to play in ensuring compliance with building standards and fire safety requirements. Council deals with reports alleging unlawful activity and takes action where appropriate.

Council's officers are authorised to inspect premises and structures for compliance with the legislation.

### A2.2. Relevant legislation and standards

Environmental Planning and Assessment Act 1979

- Local Government Act 1993
- National Construction Code – Volumes 1, 2 and 3 (includes the Building Code of Australia)
- State Environmental Planning Policy – Exempt and Complying Development Codes
- Relevant Local Environmental Plan
- Swimming Pools Act 1992

### A2.3. What action may be taken on confirmed cases of unlawful activity

Council assesses allegations of unlawful activity in accordance with this policy.

Council recognises that persons or organisations who may have carried out unlawful works may apply for a Building Certificate under Section 149A-E of the Environmental Planning & Assessment Act. However, should Council choose to issue a Building Certificate for unlawful works, it should not be seen as validation for an unlawful action. Even where a Building Certificate is issued for building works, a Penalty Infringement Notice or prosecution may be required.

Council will consider when determining a Building Certificate application for unlawful works whether:

- development consent would have been granted for the works had it been applied for prior to the unlawful work.
- has the unlawful works affected the natural or built environment.
- amenity impacts of the unlawful works on surrounding properties.
- the unlawful works are structurally sound and deemed fit and safe for occupation.

In accordance with the provisions of the Environmental Planning & Assessment Regulation, Council is permitted to and will charge a fee equivalent to that required had a Development Application, Complying Development Certificate and Construction Certificate been lodged.

## Appendix 3 – Infringement Reviews

Council has entered into a PREMIUM servicing agreement with the State Debt Recovery Office (SDRO) for the processing and adjudication of all infringements.

Generally the SDRO accepts and processes all representations in accordance with their review guidelines. The SDRO review guidelines can be found at [www.sdro.nsw.gov.au](http://www.sdro.nsw.gov.au). There is a link to this site on Council's website.

Under the Premium Servicing agreement, Council has the right to consider direct representations and advise the SDRO of decisions made. Council's decision is final notwithstanding whether the decision has had regard to the SDRO guidelines.

Where direct representations are made in relation to penalty notices the following procedure applies:

- The representation may be considered by the internal Infringement Review Panel or alternatively forwarded to the State Debt Recovery Office.
- Details of the offence will be obtained from PINFORCE database/hand written notice and the issuing officer.
- The Manager may consult other staff to determine the representation.
- The Manager advises SDRO by email of the decision.
- The Manager advises the defendant of the decision.

Where parking infringements are Court elected, the matter is dealt with by the Police Prosecutor to conclusion under Council's Premium agreement with SDRO. Other matters court elected will be forwarded to Council's legal representatives for review and advice.

## Appendix 4 - Dog attack procedure within CCB Local Government area

### A4.1. Definitions

- Companion Animal means a dog, a cat or any other animal prescribed by the regulations.
- LEO means Law Enforcement Officer/or Ranger.
- NOI Notice of Intention to issue an Order.
- CAR means Companion Animal Register.
- The ACT means Companion Animals Act 1998.

### A4.2. Purpose /Objectives

This procedure is developed to provide a consistent and lawful approach in undertaking all duties in relation to the investigation of a dog attack.

### A4.3. Scope

This procedure applies to all circumstances where an Officer is required to investigate concerns raised regarding a dog attack.

### A4.4. Procedure

| Step | Responsible Officer                         | Action   |
|------|---|--|
| 1    | Customer Service Contact Centre             | Resident/Complainant/Police calls Council and advises of dog attack.   |
| 2    | Customer Service/<br>Administration Officer | Administration officer allocates job to LEO. Administration Officer relays all relevant details to LEO including location, complainant phone number, type of dog (if known), time of incident and any other relevant information.  |
| 3    | Law Enforcement Officer                     | <p>LEO will contact the dog owner/victim to:</p> <ol style="list-style-type: none"> <li>1. Ensure the dog is currently secure. If the dog is not secure LEO will immediately attend to secure the animal.</li> <li>2. Arrange an inspection of the dog owner's property to ensure the dog can be adequately secured. If the dog is unable to be secured on the property the dog will be seized in accordance with S.18 of The ACT.</li> <li>3. If the dog owner is not able to be identified the dog will be impounded.</li> <li>4. LEO advises relevant parties (including Manager, Coordinator and the victims) of the possible outcomes and responsibilities as required by The ACT due to the attack.</li> <li>5. Commence investigation of the incident obtaining all relevant evidence that may include photos, statutory declarations, dog details (obtained from scanning the animal) and witness statements.</li> <li>6. LEO will have regard to the serious nature of the incident and the disposition of the animal owners as a result of the attack. (e.g. death of the pet or hospitalisation)</li> </ol> |
| 4    | Law Enforcement Officer                     | <p>Officer to:</p> <ol style="list-style-type: none"> <li>1. Record incident in the CAR within 72 hours.</li> <li>2. Check CAR for animal identification and any previous history.</li> <li>3. Complete investigation report of the matter for the review of the Coordinator Law Enforcement &amp; Parking.</li> </ol>   |
| 5    | Coordinator Law Enforcement &               | Coordinator will consider the Officers report having regard to the provisions  |

|    |                         |   |
|----|-------------------------|---|
|    | Parking                 | of The ACT and provide the investigating officer with a final determination.  |
| 6  | Law Enforcement Officer | Officer informs relevant parties of Councils determination in writing which may include the issue of a NOI, infringement notice, legal action, warning or no action. Such action to be taken as soon as practicable and LEO to continue to monitor to ensure conditions are met by the dog owner. |
| 7  | Coordinator             | Coordinator to highlight any representations concerning Council action with the Manager who in turn will ensure compliance with the Compliance & Enforcement Policy.  |
| 8  | Law Enforcement Officer | Officer will proceed with the determination as advised by the Manager/Coordinator advising the dog owner of Councils determination. Officer will update CAR as required.  |
| 9  | Law Enforcement Officer | If dog is declared dangerous Officer will monitor the property ensuring all milestones are met as per the provisions of The ACT. Officer to update all relevant parties.  |
| 10 | Law Enforcement Officer | Officer to seize the dog in accordance with S.52 of The ACT if control requirements are not met.  |

## Appendix 5 - Free Parking Agreements

Section 650 of the Local Government Act, 1993 enables Council to enter into a 'Free Parking Agreement' with a private landowner for the purpose of undertaking parking enforcement.

Council will assess any application received having regard to the NSW Office of Local Government Guidelines for 'Free Parking Area Agreements'.

Prior to entering into any agreement the Manager will consider the merit of any request and determine whether to proceed with the application. Should the Manager determine to proceed with the application a report will be prepared and forwarded for consideration to the general Council meeting for endorsement. Applicants will be advised in writing should it be determined not to proceed with an application and the reasons why.

All applications endorsed at the Council meeting will be subject to the following administration fee structure to cover costs associated with the formal assessment of the application should the applicant wish to proceed with entering into an agreement with Council.

- |                             |           |
|-----------------------------|-----------|
| • Less than 20 parking bays | \$500.00  |
| • 21 to 50 parking bays     | \$1000.00 |
| • 51 or more parking bays   | \$1500.00 |