



5. COMPLIANCE

Policy 5.4

ENFORCEMENT POLICY

Version 3

5. COMPLIANCE

5.4 COMPLIANCE – ENFORCEMENT POLICY

OBJECTIVE:

To establish clear guidelines for dealing with alleged or suspected unlawful activity or failure to comply with terms of conditions of approvals, consents or orders.

POLICY:

- The Policy applies to the investigation and enforcement of alleged or suspected unlawful activity or failure to comply with terms or conditions of approvals, consents or orders.
- **Unlawful activity** means any activity or work that has been or is being carried out:
 - a. Contrary to an environmental planning instrument that regulates the activity(ies) or work that can be carried out on particular land;
 - b. Contrary to the terms or conditions of a development consent or other approval under the control of council;
 - c. Contrary to a legislative provision regulating a particular activity or work
 - d. Without a required development consent or other approval.
- The policy covers, but is not limited to, compliance issues in areas such as regulation of development activity, pollution control, regulation of parking, regulation of food premises and control of animals.

1. COMPLAINTS REGISTRATION¹

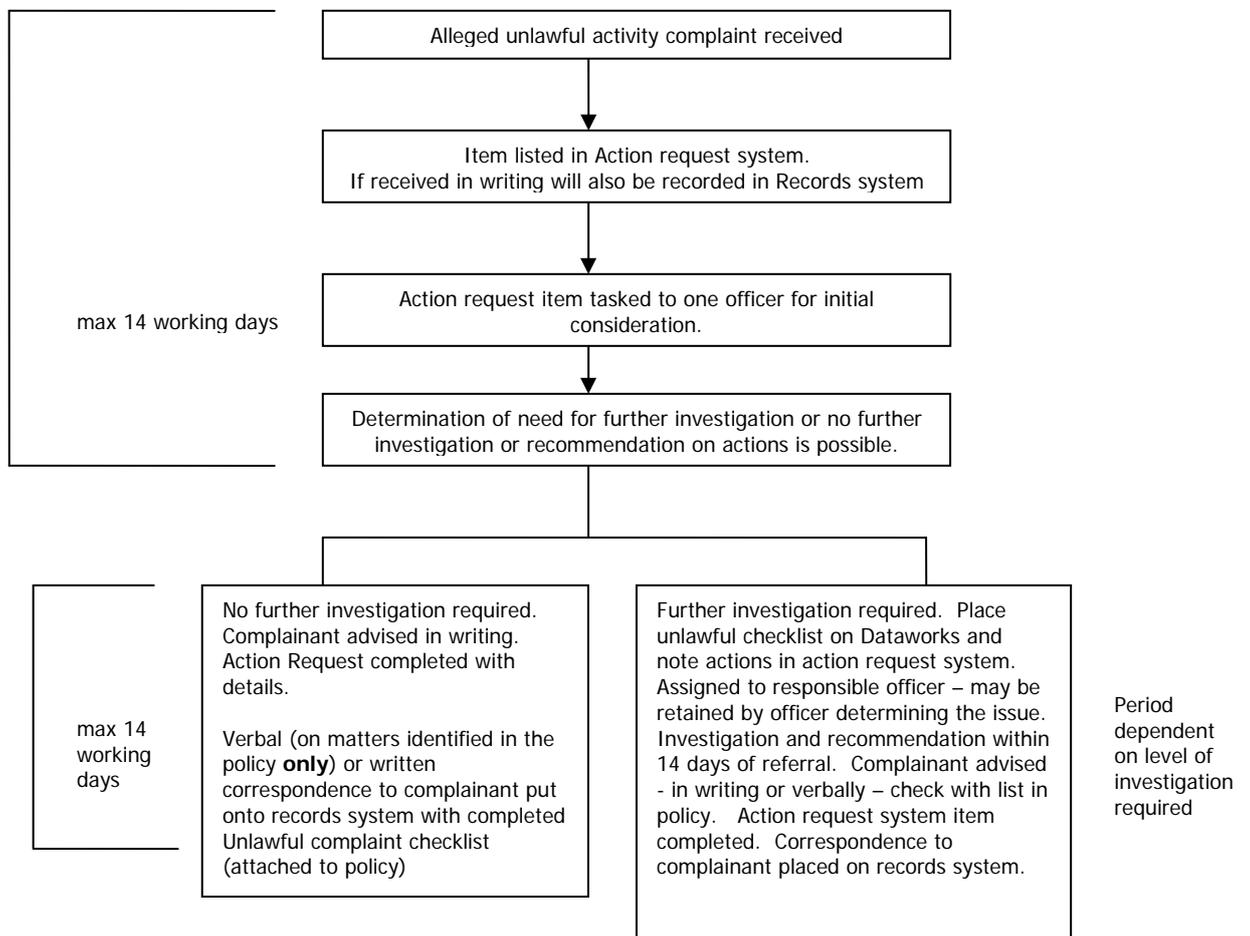
- All alleged unlawful activity complaints are to be registered in the Action Request system.
- Every complaint is to be assigned to one officer for consideration and determination if further investigation is required. Many complaints received by Council have neighbourhood disputes at their origin and therefore establishing the initial facts is essential before determining if further investigation is needed;
- If further investigation is required, the officer may recommend another department to undertake the task and nominate who is to become the responsible officer or continue with the process themselves;
- The responsible officer should conduct investigations into alleged unlawful activity in accordance with this policy;
- As a complaint proceeds, the responsible officer must complete the Action Request item by providing details of the actions and conclusion of the investigation throughout the processes undertaken;
- Responses to the complainant will be in writing with the exception of minor items specifically listed in Appendix 2.
- Where a verbal response is given to a complainant, the officer providing the information is to record the date, their name and the content of the advice in the Action Request system including specifically identifying the advice was given verbally.
- At all times Council must observe privacy and not provide information to any party that could identify another party.
- Responses are to be noted in the Action Request system identifying the content;
- Where letters are sent confirming actions, a full copy or all correspondence is to be placed on the Records management system by the responsible officer.

¹ In instances where investigation into a matter is triggered by a complaint or customer request
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- Response times will be in accordance with Council's levels of service, however, matters of a serious nature may be escalated for priority treatment.

2. INVESTIGATION PRINCIPLES AND REPORTS

- The checklist attached is to be completed when investigating unlawful activity to determine the next step and if further investigation is needed.
- The complainant will be responded to within 14 days of the reporting of unlawful activity indicating the actions to be undertaken – i.e. if further investigation will occur or not;
- The responsible officer shall provide a report to their immediate supervisor within 14 days of the report of alleged unlawful activity and this report shall include their recommendation on actions, if any are to be taken, regarding the alleged unlawful activity and the need for further investigation if required.
- Council will establish if there is a need for further investigation after the initial consideration of an allegation of unlawful activity. Council may seek an external body's comments but will not rely solely on those comments without satisfying itself of the facts in the issue.
- Anonymous complaints/action requests will not be investigated unless matters of public health or safety are alleged.
- Conflicts of interest will be considered in investigation processes.
- Privacy and confidentiality will be considered in the investigation processes used.
- The principle of procedural fairness will be observed and applied to ensure those who allegations are made against are made aware of the allegations and full investigation and establishment of facts are pursued.



3. ACTIONS AVAILABLE TO COUNCIL IN CASES OF ALLEGED UNLAWFUL ACTIVITY

Consideration of the principles of reasonableness will be at the heart of the actions taken – options include:

- A warning may be given prior to the issuing of any enforcement action in some situations. Appendix 2 lists such instances;
 - Matters where actions without warning will be taken are listed in Appendix 3;
 - Referral to an external agency for further investigation or prosecution;
 - Taking no action on the basis of a lack of information or evidence;
 - Counselling the person or persons subject of the investigation to educate them on the relevant council requirements;
 - Negotiating a course of actions to address the areas of concern;
 - Advising of the processes of seeking a modification to the development consent conditions;
 - Issuing a letter advising the work to be done or the activity to cease in lieu of more formal action;
 - Issuing a notice of intention to serve an order or notice under relevant legislation followed by the serving of that notice;
 - Issuing a notice requiring work to be done under various legislation;
 - Recommendations may include starting legal action such as proceedings in the Land and Environment Court for an order to remedy or restrain a breach of the relevant Act or Regulations;
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- Seeking an injunction from the Land and Environment Court or the Supreme Court;
 - Issuing a summons in the Local Court;
 - Issuing a penalty infringement notice;
 - Taking proceedings for an offence against the relevant Act or Regulation;
 - Carrying out the works specified in an order under the Local Government Act, Environmental Planning and Assessment Act; notice under the Protection of the Environment Operations Act; notice or order under the Food Act at the cost of the person served with the notice or order;
 - All enforcement actions will be monitored and a decision made in relation to non-compliance within a 2 week period of any deadline imposed.

4. TAKING ENFORCEMENT ACTION

When taking enforcement action. Council will consider the circumstances of the case, including these issues:

- Has the Council created an estoppel situation? ²
- Council will consider the reasonableness and proportionality of actions and consider the issue in terms of the public interest;
- The effects of the unlawful activity will be considered with regard to the local area taking into consideration the impact on amenity, health, safety, environmental issues for example.
- Is the breach a technical one only? For example a minor or inconsequential change to the plans done during construction.
- If considering prosecution action, Council will consider if there is admissible evidence that establishes the offence beyond all reasonable doubt, is there a

² Estoppel prevents a person from later denying conduct or words which have been relied upon previously. For example, if Council had previously advised no action would be taken, or despite being advised of the issue no action was taken.

reasonable prospect of conviction and are there discretionary factors to consider?

- If consent had been sought, would it have been given? This would be a particular consideration if the owner has sought approval of their own volition.
- Are there particular circumstances of hardship which should be considered?
- Does the person who is the subject of the complaint show due contrition?
- Council will consider if an educative process would yield better results, however, will continue to monitor the situation to ensure it is satisfied with the case.
- If there is a draft local environmental plan or other planning instrument on exhibition that would allow the activity the Council will consider deferring any actions giving the owner time to lodge an application that would be compliant with the new instrument.

5. DELEGATIONS

Delegations of Council staff are reflected in their individual delegations and authorities.

Maintained by Department:	Environment and Development	Approved by:	Council		
Reference:	Dataworks: Policy Register	Council Policy No:	5.4	Effective Date:	11/5/09
Min No:	V1 - 07-542 V2 – 09-189 V3 - 14-131	Version No:	3	Reviewed Date:	Oct 2013
Attachments:	<ol style="list-style-type: none"> 1. Unlawful Activity Complaint checklist 2. Offences where a warning may be given 3. Offences where a warning will not be given 				

UNLAWFUL ACTIVITY COMPLAINT CHECKLIST

Issue: _____

Officer investigating: _____ **Date:** _____

DA number: _____ **Property number:** _____

Customer Acton request number: _____ **Dataworks doc number:** _____

Issue	Y/N – circle one	Response/comments
Is the matter within the jurisdiction of the Council?	Y / N	If yes proceed with investigation checklist. If no note and ensure complainant is advised in writing and if possible identify for them who is the appropriate authority.
Is the complaint premature – eg does it relate to some unfinished aspect of work that is still in progress?	Y / N	If yes, identify is premature note on Action Request system. It may highlight the need for a follow up inspection and the officer should note that for future action and schedule in their diary. The complainant is to be notified in writing and a copy of the correspondence placed in the Council's records system. If not premature proceed with investigation assessment.
Is the activity or work permissible with or without consent?	With consent / without consent	If permissible without consent note on the Action Request system and provide written confirmation of this to the complainant File on Council's Records system a copy of the correspondence. If requires consent check to determine if consent has been given.
Is the complaint frivolous, vexatious or trivial?	Y / N	If yes identify as such noting on the Action Request system and providing written confirmation of this to the complainant. A copy of the written correspondence needs to be authorised by the departmental manager and placed on the Records system. Actions are to be completed with 7 days of complaint.
How much time has elapsed since the events the subject of the complaint took place?	Note number of days/weeks	_____ days / weeks have elapsed
Is the activity having a significant detrimental environmental effect?	Y / N	If yes review in terms of relevant legislation to determine appropriate action and immediacy
Is the activity causing a risk of public safety?	Y / N	If yes review in terms of relevant legislation to determine appropriate action and immediacy
Does the complaint indicate one of a series of complaints on the same or similar matters?	Y / N	If yes, this may establish a pattern of conduct that requires immediate attention by the officer depending on the issues involved.

Is there a public interest to investigate the complaint?	Y / N	<p>If yes proceed with investigation.</p> <p>Even if the answer to this is no, there may be a Council priority or policy that indicates this is an area of focus and the investigation should proceed.</p>
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RECOMMENDATION:

Is further Investigation needed? YES NO

If yes, Who will undertake the further investigation?

Date issue tasked to the officer: _____ / _____ / _____

If no, What reason(s) is (are) noted for not proceeding:

Signed: _____ Position: _____

ACTION REQUEST SYSTEM FILES COMPLETED:

Date: ___ / ___ / ___ Officer completing: _____

CORRESPONDENCE TO COMPLAINANT:

If verbal advice given: Date: ___ / ___ / ___ Noted on Action Request:

Letter sent: Date ___ / ___ / ___ Datworks Doc number: _____

Action request system item completed: Date ___ / ___ / ___

Offences which may result in prior warning being given before enforcement action is taken.

Council **may** determine to issue a warning before any enforcement action in the form of the service of an order or notice or penalty infringement notice or court action in the following matters:

Advice to the **Complainant** on the actions Council will take/has taken will be in writing except in the following circumstances, which are of a minor nature, where advice may be given verbally. All verbal advice is to be noted (date, time, officer advising, advice given) in the Council's Action Request system:

- Advertising signs without approval or that are unsightly
- Air pollution – smoky chimney
- Barking/Roaming/Unregistered dog
- Commercial swimming pool not properly maintained
- Erosion or sediment control matters
- Noise pollution arising from air conditioner, intruder alarm, musical instruments or sound equipment, power tools, motor vehicles on residential premises or the use of refrigeration equipment fitted to a motor vehicle –each requires a warning to be issued.
- Obstruction of a public place/road where is a minor matter
- Residential swimming pool issue – not serious (example – failure to display resuscitation chart)
- Deposit litter from a vehicle
- Deposit litter/ Dumping rubbish
- Dilapidated building
- Fire hazard threatening an asset
- Land clearing of a minor nature
- Littering
- Not complying with condition of development consent/ approval to operate
- Open burning without approval or not in accordance with an approval or cause excessive smoke
- Pollute waters
- Parking offences
- Remove and or damage trees
- Swimming pool fence/gate open
- Street trading without consent
- Minor hygiene or cleanliness non-compliance for Skin Penetration Premises
- Minor food premises matter.

With regard to the person alleged to have been acting unlawfully, Council **may** determine to issue a warning before any enforcement action in the form of the service of an order or notice or penalty infringement notice or court action in the following matters:

- Annual Fire Safety Statement – non-submission by owner – subject to submission within 7 days of request
- Advertising signs without approval or that are unsightly – subject to lodgement of DA within 7 days and/or removal
- Air pollution – smoky chimney
- Barking/Roaming/Unregistered dog
- Commercial swimming pool not properly maintained – subject to compliance in 7 days

- Development/Activity without consent or not in accordance with consent conditions where there is minor development or an old unauthorised development or where there is a minor breach of conditions
- Erosion or sediment control matters (owner/builder/ no prior warning) – subject to compliance in 14 days
- Fire hazard of a minor nature
- Noise pollution arising from air conditioner, intruder alarm, musical instruments or sound equipment, power tools, motor vehicles on residential premises or the use of refrigeration equipment fitted to a motor vehicle –each requires a warning to be issued
- Non compliance with an Order/Notice/Direction where works partially completed and demonstrated mitigating circumstances can be specified which have caused delay in completion
- Obstruction of a public place/road where is a minor matter
- Residential swimming pool issue – not serious (example – failure to display resuscitation chart)
- Revocation of approval – example footpath dining/ public place entertainment – subject to compliance in 7 days
- Minor non-compliance with Food Standards Code provided no previous warning given
- Failure to have wastewater system serviced in accordance with approval to operate – subject to service report received with 7 days of requests and no previous warning.
- Onsite wastewater system not registered.\
- Minor hygiene or cleanliness non-compliance for Skin Penetration Premises

Note : this list is indicative – all offences will be considered on the merits established in the policy.

Offences where no warning will be given

Council **may** determine not to issue a warning before any enforcement action in the form of the service of an order or notice or penalty infringement notice or court action in the following matters:

- Dangerous Dog Order/ Attacking Dog/Restricted Dog
- Dangerous awning/building
- Dangerous waterhole
- Deposit litter from a vehicle
- Development not in accordance with consent that gives cause to a risk to safety, health, bush fire protection compromise or where notice of intention is issued by PCA
- Deposit litter/ Dumping rubbish
- Dilapidated building
- Environmental damage of a significant nature
- Erosion and sediment control matters
- Fire hazard threatening an asset
- Food safety matters of a serious nature
- Failure to pay clean up fee/ Prevention Notice fee
- Failure to comply with notice/order/cease use of premises/ failure to comply with order regarding development consent/ demolish remove unlawful building/ threatening life/ public safety/ environment/ amenity protection/ fence land/ keeping of birds and animals/ remove object from public place/ contravene noise control notice/ noise pollution.
- Land clearing of a significant nature
- Littering
- Noise abatement direction
- Noise pollution generally after prescribed mandatory warning
- Not comply with condition of development consent/ approval to operate
- Nuisance Dog Order
- Obstruction of road/ public places – involving safety
- Obstruction/ intimidation/ assault of a council officer
- Open burning without approval or not in accordance with an approval or cause excessive smoke
- Pollute waters
- Parking offences
- Pollution incident – failure to notify
- Remove and or damage trees
- Swimming pool fence/gate open
- Street trading without consent/ approval

Note : this list is indicative – all offences will be considered on the merits established in the policy.