



5. COMPLIANCE

Policy 5.4

ENFORCEMENT POLICY

Version 5

5. COMPLIANCE

5.4 COMPLIANCE – ENFORCEMENT POLICY

OBJECTIVE:

To establish clear guidelines for Council staff and the community as to the Council's approach to responding to 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, including a failure to comply with terms or conditions of approvals, consents or orders.
- **Unlawful activity** means any activity, work or use that has been carried out, is being carried out or is likely to be carried out:
 - a. Contrary to a legislative provision or environmental planning instrument that regulates the activity(ies), or work that can be carried out on land or the use of land.
 - b. Contrary to the terms or conditions of a development consent or other approval for which the Council has functions, control, or responsibility.
 - c. Contrary to a legislative provision regulating a particular activity, work, or use.
- The policy covers, but is not limited to, compliance issues in areas such as regulation of development, pollution control, regulation of parking, regulation of food premises and control of animals.

1. COMPLAINTS REGISTRATION¹

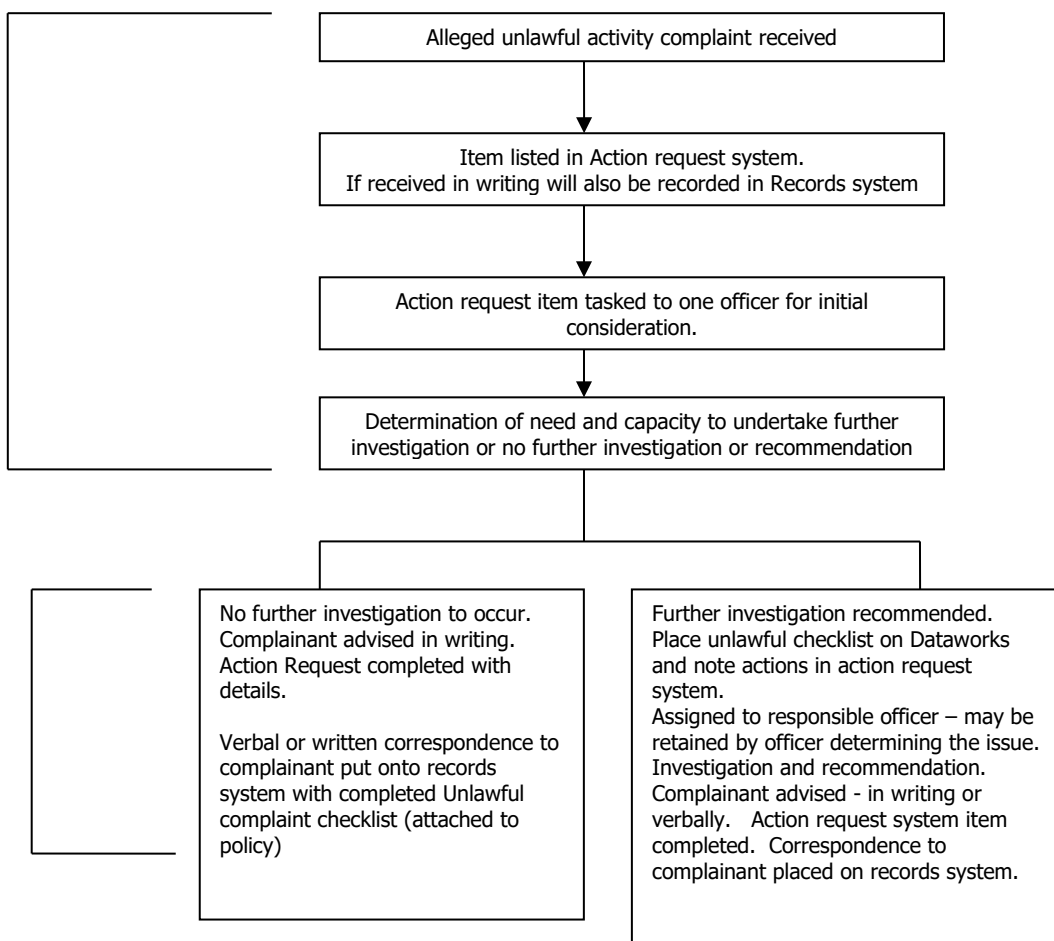
- All alleged unlawful activity complaints are to be registered in the Action Request system.
- Every complaint is to be assigned to one officer for consideration and determination if further investigation should occur. Many complaints received by Council have neighbourhood disputes at their origin and therefore establishing the initial facts is essential before determining if further investigation is needed. Council will not become involved in neighbourhood disputes.
- If the initial responsible officer forms the view that further investigation is warranted, the officer may recommend another department or suitable person undertake investigations or they may continue with the investigation process themselves.
- Anonymous complaints/action requests will not be investigated unless matters of public health or safety are alleged.
- The responsible officer must complete the Action Request item by providing details of the actions and investigations undertaken throughout the process.
- Responses to the complainant will generally be in writing, apart from breaches considered by the relevant officer to be technical or minor.
- 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 given in the Action Request system.
- Responses are to be noted in the Action Request system identifying the content.

¹ In instances where investigation into a matter is triggered by a complaint or customer request
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- Where letters are sent confirming actions, a full copy of all correspondence is to be placed on the Records management system by the responsible officer.
- Response times will be generally in accordance with Council's levels of service. Matters of a serious nature may be escalated for priority treatment.

2. INVESTIGATION PRINCIPLES AND REPORTS

- The checklist attached at Appendix 1 can be completed by the Responsible Officer when investigating unlawful activity to determine the next step and if further investigation is needed.
- The complainant will be responded to indicating the actions proposed to be undertaken by the Council, if any – i.e., if further investigation will occur or not. Where the responsible officer requires additional time to respond to a complainant the responsible officer should inform the complainant of the additional time required.
- The responsible officer shall prepare a report addressing.
 - If the officer recommends no further action be taken, the reasons why that recommendation is made.
 - Otherwise, the officer's recommendation on the actions to be taken regarding the alleged unlawful activity and the need for any further investigation, if required.
- The Council, or a person with appropriate delegation, will consider that report in determining the next steps.



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

Council has discretion as to whether to take action in response to unlawful activity.

The options available to the Council where it considers that an unlawful activity has occurred include, but are not limited to the following:

- Taking no action.
- Giving a written warning.
- Undertaking further investigations and evidence gathering, including by obtaining warrants and / or referral to an external agency for further investigation.
- 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 available to regularise an unlawful activity or to avoid future unlawful activity (e.g., the process of seeking a modification to development consent conditions).
- Issuing a letter advising what must be done or what activity must cease if other enforcement action is to be avoided.
- Issuing a show cause letter inviting representations on why further enforcement action should not be taken.
- Issuing a notice of intention to serve an order or notice under various legislation.
- Issuing a notice or order under various legislation.
- Issuing notice of the Council's intention to commence legal proceedings.
- 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.
- Seeking an urgent injunction, such as from the Land and Environment Court or the Supreme Court.
- Issuing a Court Attendance Notice 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 Environmental Planning and Assessment Act or Local Government 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.

4. TAKING ENFORCEMENT ACTION

The Council may decide to take enforcement action in response to an unlawful activity. When deciding what enforcement action to take, and in taking enforcement action, Council will consider the circumstances of the breach, including the following:

- The scale, nature and likely impacts of the suspected unlawful activity. This may include:
 - The likely effects of the unlawful activity having regard to the local area taking into consideration the impact on amenity, health, safety, environmental issues, for example.
 - Whether the breach is a technical one only. For example a minor or inconsequential change to the plans done during construction.
 - If prior consent had been sought, whether it would likely have been given.
 - The outcome of steps taken to prevent future non-compliance. For example, if there is a draft local environmental plan or other planning instrument on exhibition that would allow the activity in the future, the

Council will consider deferring any actions to give the owner time to lodge an application that would be compliant with the new instrument.

- When the alleged unlawful activity occurred, and whether it is continuing.

- Prospects and public interest

This may include:

- the reasonableness and proportionality of different enforcement options.
- the public interest.
- the likely costs and resources required to take enforcement action.
- whether another person or entity is able or better placed to respond.
- If considering Court action, the nature of the admissible evidence, whether there is a reasonable prospect of success and whether there are discretionary factors to consider.

- The nature of the offender

- Whether there are circumstances of hardship which should be considered.
- Whether the person who is the subject of the complaint has shown due contrition and recompense.
- Whether the person has a history of non-compliance.

The Council may adopt multiple methods of enforcement. It may also evaluate and vary its approach in the course of undertaking enforcement action, for example, by;

- resolving litigious matters by settlement or consent.
- striking plea bargains.
- withdrawing penalty infringement notices, court attendance notices or summons'.
- discontinuing civil proceedings.
- withdrawing or reissuing orders or notices.
- reaching settlement, or pursuing, costs owed to it.

5. DELEGATIONS

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

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Attachments:	1. Unlawful Activity Complaint checklist				

UNLAWFUL ACTIVITY COMPLAINT CHECKLIST

Issue: _____

Officer investigating: _____ **Date:** _____

DA number: _____

Property number: _____

Customer Acton request number: _____ **ECM 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 to public health and 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	If yes proceed with investigation. 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.

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 ____ / ____ / ____ ECM Doc number: _____

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