



COMPLIANCE AND ENFORCEMENT POLICY

Dungog Shire Council

2023

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1 PURPOSE

The purpose of this Policy is to provide information about Dungog Shire Council's (Council) general approach to compliance and enforcement matters within the Council's Local Government Area.

This Policy outlines how Council conducts compliance and enforcement activities taking a lawful, fair, equitable, consistent and transparent approach to regulatory matters.

This Policy provides a clear framework for Council to manage an efficient and cost effective use of Council resources to achieve the most favourable environmental, health and safety outcomes for the community.

This Policy is modelled on the NSW Ombudsman's Model Compliance and Enforcement Policy.

2 SCOPE

This Policy applies to all compliance and enforcement activities carried out by Council staff, associated with the broad range of legislation, regulations, guidelines, codes and standards that Council is responsible for administering and enforcing.

The following NSW legislation governs Council regulatory functions: (please note the legislation is not limited to these)

- *Local Government Act 1993*, and regulations
- *Environmental Planning and Assessment Act 1979*, regulations, state environmental planning policies, and environmental planning instruments
- *Companion Animals Act 1998*, and regulations
- *Food Act 2003*, regulations and NSW Food Safety Standards
- *Public Spaces (Unattended Property) Act 2021*, and regulations
- *Protection of the Environment Operations Act 1997*, and regulations
- *Public Health Act 2010*, and regulations
- *Roads Act 1993*, and regulations
- *Swimming Pool Act 1992*, and regulations.

The legislation sets out Council's powers and functions, which include, but are not limited to:

- Powers of entry
- Inspection and investigation powers
- Powers to obtain information and records
- Issuance of notices, orders, Penalty Infringement Notices and/or commencement of proceedings before the Local Court or before the Court in its summary jurisdiction.

3 DELEGATION OF AUTHORITY

Only Council staff with the appropriate delegations from the General Manager can undertake investigations and enforcement activities associated with this Policy.

Delegated Council staff are provided with authority identification cards attesting to the powers and functions they are empowered to act upon under the relevant legislation.

4 PRINCIPLES

The following principles underlie Council's approach to compliance and enforcement matters:

- acting in the best interests of public health and safety and the environment,
- ensuring accountability for decisions and exercising discretion in dealing with regulatory action by Council,
- taking into consideration a risk based approach to all compliance and enforcement matters,
- acting fairly and impartially and without bias or unlawful discrimination,
- providing information to all parties in an open and transparent manner 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,
- ensuring all compliance and enforcement action is implemented in accordance with this Policy and on a merit based assessment,
- 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 deter future unlawful activity,
- ensuring responses to reports alleging unlawful activity are addressed in a timely manner.

5 POLICY STATEMENT

Council acknowledges that it has an obligation under the *Local Government Act 1993* to ensure that the exercise of its regulatory power is carried out with consistency and without bias.

Council's objective when investigating incidents of alleged unlawful activity is to:

- Determine if there has been a breach of law, policy or standards
- Determine the risk to public safety, human health and/or the environment posed by a breach
- Determine the cause of a breach
- Gather evidence to support the taking of regulatory action
- Determine the necessary regulatory action to eliminate or mitigate an

immediate or future risk to public health, human safety or the environment.

6 ROLES AND RESPONSIBILITIES

This Policy is implemented primarily via the Director Planning and Environment.

All formal notifications of alleged unlawful activity will be recorded in Councils customer request system (CRM system) and directed to the responsible staff for investigation.

Only Council staff with the appropriate delegations can undertake investigations or compliance and enforcement action in relation to this Policy.

7 DEFINITIONS

Discretion	<p>Discretion relates to a Council Officers consideration in determining whether to take enforcement action or not, or what extent of action to take.</p> <p>A delegated Council Officers decision to use discretion is not to be fettered by any person including Senior Managers or Councillors.</p>
Procedural fairness (or natural justice)	<p>Procedural fairness, also referred to as 'natural justice' helps to ensure that an investigation and its outcomes are fair and are reasonably perceived to be fair. Procedural fairness ensures that any person who's rights or interests are likely to be affected by a conclusion, finding or decision is entitled to an adequate opportunity to respond.</p>
Principles	<p>The considerations and value to which Council staff consider any compliance matter against as mentioned in this policy.</p>
Risk-based regulation	<p>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 the regulatory agency's ability to achieve its objectives.</p>
Unlawful activity	<p>Any land-use, construction work or other activity that has been or is being carried out contrary to the below and/or fails to take required action in order to be compliant with:</p> <ul style="list-style-type: none"> • Terms of 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, • A required development consent, approval, permission or licence.

Improper complaints	A complaint is made for an improper purpose where it is trivial, frivolous, vexatious or not made in good faith, or where it otherwise lacks merit.
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8 POLICY ADMINISTRATION

Responsible Officer:	Director Planning and Environment
Council or Management:	Council
Adoption date:	02/08/2023
Next review date:	02/08/2027
TRIM ID:	23/19152
Version history:	Nil.
Relevant legislation:	Local Government Act 1993 Environmental Planning and Assessment Act 1979 Protection of the Environment Operations Act 1997 Roads Act 1993 Companion Animals Act 1998 Public Health Act 2010 Swimming Pools Act 1992 Food Act 2003 Boarding Houses Act 2012 Biodiversity Conservation Act 2016 Public Spaces (Unattended Property) Act 2021

ANNEXURE 1 – COMPLIANCE PRINCIPLES

Council's response to complaints/allegations

Council's risk-based framework is used to guide the assessment and prioritisation of alleged unlawful activities. Council will prioritise matters based on the risk to public safety, human health and/or the environment.

Council's risk rating categories are low, medium, high and critical. Examples of the type of requests associated with each category are provided in Annexure 2 of this Policy.

Based on the circumstances and nature of the offence, Council will consider whether the compliance issue at hand poses a significant risk to public safety, health or to the environment and determine what regulatory/enforcement action is warranted whilst considering if it is in the public interest to do so.

Not all requests alleging unlawful activity will need to be investigated. Council reserves the right to not allocate resources to the investigation of low-risk activities when there are unresolved medium, high and critical investigations. Any decision not to investigate an allegation of unlawful activity will be recorded and the reasons for that decision clearly stated.

Timeframes

Timeframes for responding to complaints about unlawful activities may vary, however every effort will be made to ensure that all complaints are actioned within the timeframes provided in Annexure 2.

All customer requests received alleging unlawful activities should be acknowledged at the earliest opportunity and no later than 7 business days from receipt. The response should acknowledge receipt of the customer request, advise the matter is being investigated and that they will be further advised once the matter is finalised.

Council's Approach

Council will consider the full circumstances and facts of the matter, and public interest when deciding whether to take enforcement action in relation to a confirmed unlawful activity.

In determining the most appropriate enforcement response in the public interest, Council will consider:

- The alleged offence and impact, including the severity and risk posed by the unlawful activity and the seriousness of the breach.
- Prior warnings or previous enforcement action taken against an alleged offender, any mitigating or aggravating circumstances.
- The impact of any enforcement action, including the need to deter any future unlawful activity and whether the costs and benefits of taking formal enforcement action as opposed to taking informal or no action.

- The potential for remedy, including whether the breach can be easily remedied and whether it is likely consent would have been given for the activity if it had been sought through the appropriate avenues.
- The willingness of witnesses to attend court and/or provide written evidence to support Council’s legal position and prosecution of a matter.

Enforcement options for dealing with confirmed unlawful activities will be assessed on the particular circumstances and facts of each case, with any decision being made on its own merits. The following is a guide of enforcement options available, when a breach or non-compliance action is identified and proven:

Regulatory Action	Significance of breach and/or risk to public safety, human health and/or the environment			
	Very High	High	Medium	Low
Court Order	X	X	X	
Prosecution	X	X	X	
Penalty Infringement Notice	X	X	X	x
Emergency Order	X	X		
Notice/Order/Direction	X	X	X	x
Verbal direction	X	X	X	x
Letter requesting voluntary compliance			X	x
Voluntary compliance			X	x
No action			X	x

Unauthorised works and development

The regularisation of unauthorised works will not be prioritised over authorised works, and may be referred to an external party, at the cost of the applicant.

Using Discretion

Council will use discretion in considering the most appropriate enforcement action. Discretion will be exercised in the context of Council’s regulatory responsibilities in accordance with the Officers’ delegations and experience. The use of discretionary power must be based on applicable legal requirements, logical reasons, relevant circumstances and give proper, genuine and realistic consideration to the merits of each particular case.

A decision by the responsible officer to use their discretion to carry out (or not to carry out) an investigation shall not be fettered by any third party.

Procedural Fairness

In accordance with the NSW Ombudsman’s enforcement guidelines, Council will be guided by the principles of natural justice (or procedural fairness).

Procedural fairness ensures that any person whose rights or interests are likely to be affected by a conclusion, finding or decision is entitled to an adequate opportunity to respond.

Procedural fairness may require Council to:

- Inform a party whose rights or interests may be adversely affected by the substance of any allegations against them or grounds for adverse comment about them
- Inform people of the substance of any adverse finding proposed to be made about them, and provide them with a reasonable opportunity to put their case forward
- Consider any submissions put forward by a party to a matter
- Make reasonable inquiries or investigations before making decisions
- Act fairly and without bias
- Conduct investigations without undue delay

Anonymous/Informal Complaints

These are complaints made by persons that do not wish to identify themselves. Sufficient information has to be provided to enable Council to identify the activity, its location and nature prior to Council giving consideration to the matter.

The responsible officer may use discretion as to whether an anonymous complaint will or will not be investigated after considering the evidence provided, circumstances and potential risk associated with the matter. Follow up action will not be reported back to the complainant where the complainant is anonymous.

Vexatious Complaints

Where a Council Officer can demonstrate a person/s complaint is made for an improper purpose, the responsible officer may use their discretion and the matter may not be investigated.

Voluntary Compliance and Education Awareness

Voluntary compliance is a regulatory action utilised by Council to manage matters that do not represent a high or critical risk to public safety, human health and/or the environment. Generally, matters deemed to present a low risk will be actioned by voluntary compliance.

Council will educate the community in relation to regulatory issues and their responsibilities in this regard, taking a proactive role in obtaining cooperation from the community to minimise the occurrence of non-compliances. In some instances, Council may provide information in respect to alternate dispute resolution methods available.

Council will promote its compliance and regulatory activities, where

appropriate, on its social media and other media channels.

Confidentiality

Council will endeavour to maintain confidentiality of people who report allegations of unlawful activity.

Council may need to disclose information that identifies a person in the following cases:

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

ANNEXURE 2 – COMPLIANCE RISK CATEGORIES

	RISK CATEGORY			
	CRITICAL	HIGH	MEDIUM	LOW
Features of category	<ul style="list-style-type: none"> • Permanent, long-term or reoccurring and serious damage to health, property or environment likely or very likely • Large scale impacts • Very serious offences • Very high priority issue for Council and Community 	<ul style="list-style-type: none"> • Moderate, major or severe consequences likely or very likely • Medium-large scale impacts • Serious offences • High priority issue for Council and Community 	<ul style="list-style-type: none"> • Moderate consequences are likely, serious impacts are very unlikely • Small-medium scale impacts • Moderate offence severity • Moderate priority issue for Council and Community 	<ul style="list-style-type: none"> • Consequences are minor or moderate and are unlikely or very unlikely to occur • Small scale, isolated impacts • Low level offence severity • Minor priority issue for Council and Community
Timeframe	<ul style="list-style-type: none"> • Immediate and urgent response 	<ul style="list-style-type: none"> • Response within 24 hours 	<ul style="list-style-type: none"> • Response within 7 business days 	<ul style="list-style-type: none"> • Response within 28 business days
Reported incidents/issues	<ul style="list-style-type: none"> • Significant pollution incidents • Large scale clearing of vegetation containing threatened species • Food poisoning incidents • Legionella outbreaks • Abandoned vehicles in a dangerous location • Collapsed or unsafe building works in public areas • Dog attacks • Fire Safety 	<ul style="list-style-type: none"> • Roaming dogs • Unsafe buildings and building works • Rubbish dumped in an unsafe location or hazardous • Pollution incidents • Breaches of tree preservation order • Dangerous/restricted dog complaints • Staying stock on road • Parking breach – safety issue 	<ul style="list-style-type: none"> • Abandoned vehicles • Stormwater or drainage issues (can be shown stormwater has been directed towards neighbouring property) • Dumped rubbish (not hazardous) • Breach of consent conditions • Poor sediment control on building sites • Noise complaints affecting several members of the community • Overgrown land • Unauthorised land use • Air pollution • Unlawful parking – no safety issue 	<ul style="list-style-type: none"> • Noxious weeds • Minor consent breaches • Unauthorised signage • Stormwater nuisance complaints • Dividing fences complaints* • Noise complaints – neighbouring properties • Barking dogs

Referrals to external agencies

Council often receives reports relating to matters that fall under the regulatory responsibility of a state or federal government agency. Customers making such reports will be advised to contact the relevant agency and that no further investigative action is required to be taken by Council.

These matters may include:

- Noise complaints – NSW Police Force, Liquor and Gaming NSW
- Anti-social behaviour – NSW Police Force
- Property damage – NSW Police Force
- Natural Waterway complaints – Natural Resources Access Regulator
- Native vegetation clearing – Local Land Services, NSW Department of Planning and Environment and NSW Biodiversity Conservation Trust.

Customers making such reports will be advised to contact the relevant agency and that no further investigative action is required to be taken by Council.

Civil matters

Council also often receives reports that relate to civil matters that Council will often have no authority to resolve the issue in dispute.

These matters may include:

- Dividing fence complaints
- Neighbour disputes
- Tree pruning.

Customers making such reports will be advised to contact the [NSW Civil and Administrative Tribunal \(NCAT\)](#), Community Justice Centre (CJC) and/or seek independent legal advice. Customer to be advised that no further investigative action is required to be taken by Council.

Privately Certified Developments

Council involvement in privately certified developments only occurs after the Principal Certifying Authority (PCA) has exhausted all avenues to ensure compliance. Any reports of non-compliant issues of a privately certified development should be directed to contact the PCA directly.

ANNEXURE 3 – CONSIDERATIONS WHEN DETERMINING COMPLIANCE ACTION

When deciding the extent to which a matter is to be investigated and/or enforced, Council staff will consider a range of factors. Whilst not providing any particular decision pathway, the considerations below guide the decision making of Council staff through that process.

Technical breach

- Is the matter a minor breach of a regulatory instrument that does not result in any material damage or impact on human health or the environment or pose a risk to the organisation?
- Is the matter relating primarily to administrative matters, which are in themselves illegal however due to the nature/risk no regulatory/enforcement action is required?

Jurisdiction

- Is Council the Appropriate Regulatory Authority (ARA) to investigate and deal with the matter at hand either by legislation or in practical or administrative terms?
- Is there another Appropriate Regulatory Authority (eg: EPA) that is the more appropriate ARA to investigate and deal with the matter?

Permissibility

- Is the activity or work permissible with or without consent?
- If the activity is permissible with consent, is there a consent in place?
- Would consent have likely to have been obtained if it were sought?
- Is the proposal of the scale similar to exempt or complying development?
- Is it possible to determine from the information available whether the activity or work is permissible without consent or whether a breach of conditions of consent has occurred?

Timing issues

- Is the complaint premature e.g. does it relate to some unfinished aspect of work that is still in progress?
- Has there been too much time elapsed since the events of the complaint, taking place?

Magnitude of offence

- Is the complaint trivial, frivolous or vexatious?
- Is the activity having a significant detrimental effect on the environment or does it constitute a risk to public health or safety?
- Are there enforcement measures necessary to ensure compliance and bring about the best environmental outcome?
- What is the potential or actual risk of environmental harm caused by the incident?
- When and how long was the unlawful activity being carried out?
- Why is it so urgent now when/if it has been ongoing before with no action?

Tangible impact

- How has the unlawful activity affected the natural or built environment and the health, safety and amenity of the area?
- Is the activity development, which is permissible in the land use zone?
- Is there an easy remedy to the breach?
- Is the activity prohibited in the land use zone?

Pattern of behaviour

- Does the complaint indicate the existence of a systemic problem, eg if the complaint is one of a series, could there be a pattern to the conduct or a more widespread problem?
- Has the person, the subject of the complaint, received a previous warning?
- Does the offender show contrition or remorse?
- Is the offender cooperating with Council showing their willingness to commit to appropriate remedial actions?

Voluntary actions by the offender to mitigate any impacts

- Are there any particular circumstances of hardship affecting the complainant, or the person the subject of the complaint?

Resource constraints

- Does the complaint have special significance in terms of Council's existing priorities?
- Are there significant resource implications in relation to an investigation and any subsequent enforcement action?
- Is there any precedent, which may be set by not taking action?

Public interest

- Is there a potential for a conflict of interest in the investigation or reaction to a complaint?
- What action would be reasonable and proportionate in this case given the circumstances?
- Is commencing enforcement action in the public interest?

Alternative approaches

- Would an educative approach be more appropriate than an enforcement approach?
- What are the costs and the benefits of taking a formal enforcement action, as opposed to taking informal or no action?

Likelihood of success

- What are the chances of success if the proposed enforcement action is challenged in Court?
- Is there a Draft Planning Instrument or policy on exhibition that would make the unauthorised use legal?



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