

**COMPLIANCE, ENFORCEMENT AND PROSECUTION
POLICY NO: DE 09**

Our Vision

The Nambucca Valley is a vibrant, sustainable, inclusive and connected community that values and respects the Gumbaynggirr culture, its environment and lifestyle, whilst creating opportunities for a safe and meaningful future for all.

1 Introduction

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

This policy distinguishes between a 'report alleging unlawful activity' and a 'complaint'.

For the purposes of this policy, a report alleging unlawful activity is where an individual expresses concern in relation to alleged unlawful activity, or they request service from Council about such matters. Council considers that a response or resolution to a report alleging unlawful activity is explicitly or implicitly expected by the individual, or may be legally required.

A complaint is where an individual expresses dissatisfaction about Council services, staff or the handling of a previous 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 for all internal and external stakeholders and interested parties about Council's position on compliance and enforcement matters in the local government area.

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

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

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

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

3 Organisational approach

Council undertakes compliance and enforcement for the following reasons:

- to prevent or minimise harm to health, welfare, safety, property or the environment
- to improve the safety and amenity of residents and visitors to the area
- for the collective good, the welfare of the community or the public interest
- to promote social policies (eg to preserve or protect the environment)
- to manage risks
- to uphold social order
- to meet the expectations of the community
- to encourage reports about possible unlawful activity from the community
- to make the regulated community aware of their legal obligations and how to comply

The objects section of an Act will often list the specific nature of the harm that is being addressed and explicitly state the regulatory purposes of the legislation. For example, under section 8A of the *Local Government Act 1993* Councils are obliged to ensure that regulatory functions are exercised consistently and without bias.

Council has the authority to regulate many activities, including (but not limited to):

- development and building control
- pollution control
- environmental health
- public health and safety
- noxious weeds
- water and sewer
- septic systems
- control over animals
- food safety
- fire safety
- parking and traffic matters

Council undertakes both proactive and reactive compliance and enforcement activities, including

- regular inspections of food premises, skin penetration premises, pool barriers and onsite sewage management systems
- the provision of information about compliance issues
- audits of commercial properties to check compliance issues
- assessing and investigating reports alleging unlawful activities
- educating people at risk of non-compliance
- issuing warnings, notices, orders and penalty infringement notices
- taking legal action

4 Definitions

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

Complaint

A complaint is an expression of dissatisfaction made about Council services, staff or the handling of a previous complaint, where a response or resolution is explicitly or implicitly expected or legally required.

For the purposes of this policy, a complaint does not include:

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

Enforcement

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

Regulation

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

Report alleging unlawful activity

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

Unlawful activity

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

- terms or conditions of a development consent, approval, permit or 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.

5 Policy objectives

The intent of this policy is to establish clear guidelines and protocols for Council staff in the management of Council's regulatory activities.

It provides workable guidelines on:

- responding to reports alleging unlawful activity
- assessing whether reports alleging unlawful activity require investigation
- deciding on whether enforcement action is warranted
- options for dealing with confirmed cases of unlawful activity
- taking legal action
- implementing shared enforcement responsibilities.

The policy also provides advice and guidance on:

- the role of the Principal Certifying Authority and
- the role of Councillors in enforcement.

6 Application

This policy applies to regulatory issues within Council's area of responsibility including, but not limited to:

- development and building control
- pollution control
- environmental health
- public health and safety
- noxious weeds
- water and sewer
- septic systems
- control over animals
- food safety
- fire safety
- parking and traffic matters

7 Compliance and enforcement principles

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

Accountable and transparent

- acting in the best interests of public health and safety and in the best interests of the environment
- ensuring accountability for decisions to take or not take action

- acting fairly and impartially and without bias or unlawful discrimination
- providing information about compliance and enforcement priorities and reasons for decisions to improve understanding and certainty and promote trust by the regulated community
- ensuring meaningful reasons for decisions are given to all relevant parties, particularly when there is a departure from this policy
- acting on any complaints or concerns about the conduct of compliance officers in accordance with Council's complaints management policy and procedures
- advising people and organisations subject to enforcement action of any avenues available to seek an internal or external review of a decision

Consistent

- ensuring all compliance and enforcement action is implemented consistently
- encouraging reports about possible unlawful activity by acting reasonably in response to the circumstances and facts of each matter.

Proportional

- ensuring the level of enforcement action is proportionate to the level of risk and seriousness of the breach
- making cost-effective decisions about enforcement action
- taking action to address harm and deter future unlawful activity.

Timely

- ensuring responses to reports alleging unlawful activity and decision making in relation to those is timely

8 Responsibility

Council receives information about alleged unlawful activity from members of the public, contact from other government agencies and information gathered by its officers during proactive inspections.

All Council staff who deal with reports alleging unlawful activity are responsible for implementing this policy. Council staff are also responsible for ensuring that any other possible unlawful activity identified as a result of an inspection, proactive enforcement or other activity is brought to the attention of the appropriate business unit of Council.

Council staff are required to:

- treat all relevant parties with courtesy and respect
- communicate with all relevant parties and provide feedback on the progress of an investigation and any reasons for delay without compromising the integrity of the investigation
- make full and proper records in relation to the assessment and investigation of reports alleging unlawful activity, including reasons for any decisions
- inform all relevant parties of reasons for decisions
- provide as much information as possible to all relevant parties about the outcomes of investigations to show that adequate and appropriate action was taken and/or is proposed to be taken in response to a report of alleged unlawful activity
- provide information to all relevant parties about any avenues to seek an internal or external review of a decision.

All reports alleging unlawful activity are to be entered into Council's customer service request system and directed to the appropriate officer in a timely manner by Council's Business Services Unit.

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

9 Responding to concerns about unlawful activity

How reports alleging unlawful activity will be dealt with by Council

Council will record and assess every report alleging unlawful activity.

Council will respond to every such report 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 report is anonymous.

Generally speaking, Council's objectives when dealing with reports alleging unlawful activity are to:

- 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 priorities and any resource limitations
- consider the report fairly and impartially.

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

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

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

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

While there are certain statutory requirements that must be met in relation to notices and orders, Council staff will ensure that all explanatory communications are made in plain English and explain any technical language the law requires to be used.

Confidentiality of people who report allegations of unlawful activity

People who report allegations of unlawful activity should not expect that their identities will remain confidential from the subject of their report in all circumstances. Council may have to disclose information that identifies them in the following cases:

- the disclosure is necessary to investigate the matter
- their 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.

Council will take seriously any concerns an individual may have about their physical safety being endangered as a result of making a report. However, this may limit Council's ability to investigate the matter.

What Council expects from people who report allegations of unlawful activity

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

- providing a clear description of the problem (and the resolution sought, if relevant)
- giving all available and relevant information to Council, including any new information about the alleged activity that may become known to the person following the making of their report
- not giving any information that is intentionally misleading or wrong
- cooperating with Council's inquiries and giving timely responses to questions and requests for information
- treating Council's staff with courtesy and respect
- allowing the investigation to be completed without prematurely taking the matter to other agencies unless referred to by Council.

If these expectations of the individual are not met, Council may need to set limits or conditions on the continuation of the investigation or may need to restrict any further communications with the individual.

Any unreasonable conduct will be dealt with in accordance with the principles of the NSW Ombudsman's *Managing Unreasonable Complainant Conduct Manual* 2012 and any applicable Council policy.

What parties can expect from Council staff

People 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 allegation reported, including a full explanation of the reasons why that outcome was considered to be reasonable in the circumstances
- clearly explain decisions in plain English
- 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 further action will be taken.

Complaints about Council's enforcement actions

Any complaints about Council's handling of reports alleging unlawful activity will be recorded separately and handled in accordance with Council's complaints management policy and procedures.

Where a person or organisation subject to enforcement action merely disputes Council's decision to take enforcement against them, they will be directed to make representations in accordance with any relevant internal and external appeal processes.

Council staff will act on any complaints about the conduct of compliance officers in accordance with Council's complaints management policy and procedures and the code of conduct.

Anonymous reports

Anonymous reports will be recorded and assessed in accordance with the above requirements. However, because it is not possible to seek clarification or additional information about a matter, it may be more difficult to evaluate the allegations and therefore these reports are less likely to warrant investigation.

Unlawful activity outside business hours

Unlawful activity can occur outside business hours. In particular, Council may receive reports about matters such as offensive noise and failure to comply with limitations on hours of operation during nights and weekends.

Due to resource and operational capability restraints on Council, investigations into alleged unlawful activity outside business hours will be assessed on the basis of risk of *harm to health, welfare, safety, property or the environment* or if it is in the public interest to take such action.

Neighbour disputes

Council will at times receive reports from parties involved in neighbour disputes seeking Council's involvement. When a dispute between two neighbours is a civil matter, Council will often have no authority to resolve the issue in dispute. Some reports will raise several matters, some of which will require Council's involvement and some of which will be personal to the parties.

Council staff will thoroughly assess such reports to determine whether there is evidence of any possible unlawful activity requiring action by Council. Care will be taken to explain which aspects of a report Council can deal with and which cannot be dealt with and why. Where possible, individuals will be provided with information about how to resolve neighbour disputes including referral information resources such as LawAccess NSW and Community Justice Centres.

It is possible that one party will provide further information about a matter which changes Council's decision about whether it will become involved. In such circumstances, Council staff will carefully consider the matter before taking action and document reasons for the new decision. Relevant parties will be advised about the reasons Council has changed its position on a matter. Council staff will not change a decision about whether or not Council should be involved purely as a response to the conduct of an individual such as persistent demands or threats.

Please refer to Council's website for information on how Council will typically respond to common reports, including overgrown properties and stormwater runoff issues.

10 Investigating alleged unlawful activity

Not all reports alleging unlawful activity will warrant investigation. A preliminary assessment of all matters will be made to determine whether investigation or other action is required. Council will prioritise matters on the basis of risk to public safety, human health and environment.

Please refer to Appendix 3 – *Prioritising Council's response* for information about how Council categorises reports about various activities.

If there is insufficient information in the report to undertake a preliminary assessment, further information may need to be sought from the person who made the report or an inspection undertaken. Staff may also need to consult Council records and other internal business units to understand the relevant history and context of a matter.

Circumstances where no action will be taken:

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

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

- the relevant manager, director or the general manager determines that investigation or other action would have an unreasonable impact on resources and/or is unlikely to achieve an outcome sufficient to justify the expenditure of resources.

Relevant factors guiding decisions as to whether to take action:

When deciding whether to investigate, Council will consider a range of factors including whether:

- the activity is having a significant detrimental effect on the environment or it constitutes a risk to public safety
- the report is premature as it relates to some unfinished aspect of work that is still in progress
- the activity or work is permissible with or without permission
- all conditions of consent are being complied with
- much time has elapsed since the events the subject of the report took place
- another body is a more appropriate agency to investigate and deal with the matter
- it appears there is a pattern of conduct or evidence of a possible widespread problem
- the person or organisation reported has been the subject of previous reports
- the report raises matters of special significance in terms of the Council's existing priorities
- there are significant resource implications in relation to an investigation and any subsequent enforcement action
- it is in the public interest to investigate the report.

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

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

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

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

11 Taking enforcement action

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

Considerations about the alleged offence and impact:

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

Considerations about the alleged offender:

- any prior warnings, instructions, advice that was issued to the person or organisation reported or previous
- enforcement action taken against them

- whether the offence was committed with intent
- whether the person or organisation reported has been proactive in the resolution of the matter and assisted with any Council requirements and instructions
- any mitigating or aggravating circumstances demonstrated by the alleged offender
- any particular circumstances of hardship affecting the person or organisation reported.

Considerations about the impact of any enforcement action:

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

Considerations about the potential for remedy:

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

A further explanation of the above considerations is provided in Appendix 1.

Legal or technical issues

Where legal and/or technical issues are in question, Council staff will consider whether legal advice or professional advice from duly qualified staff or other experts should be obtained and considered. Council may also require a person subject to possible enforcement action to obtain professional advice in relation to issues of concern to Council for assessment as to whether further action is required.

Requirements of Council staff considering enforcement action

Prior to taking enforcement action, Council staff will take into account the above considerations as well as the evidence gathered during their investigation. Council staff must act impartially, be mindful of their obligations under Council's code of conduct and not act as a decision-maker in relation to any matter in which they have a personal interest. Enforcement action will not be taken purely as a response to the conduct of an individual such as persistent demands or threats.

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

Council staff will take steps to ensure that any enforcement action is taken against the correct person or organisation. Where there are multiple possible parties to an alleged unlawful activity, it will generally not be appropriate to take enforcement action against every person who may be liable for the alleged unlawful activity. In such circumstances, Council staff will be guided by legal advice in determining the appropriate persons to pursue.

Please see Appendix 2 for information about what type/s of enforcement action is likely to be undertaken for particular activities. Please note that each case will be dealt with on its merits and different actions may be taken by Council as a result.

12 Options for dealing with confirmed cases of unlawful activity

Council will try to use the quickest and most informal option to deal with unlawful activity wherever possible unless there is little likelihood of compliance with such options. Council staff will use discretion to determine the most appropriate response to confirmed cases of unlawful activity and may take more than one approach. Any enforcement action taken by Council will depend on the full circumstances and facts of each case, with any decision being made on the merits.

At all times, Council's key concerns are:

- to prevent or minimise harm to health, welfare, safety, property or the environment
- to influence behaviour change for the common good and on behalf of the community.

The following enforcement options to be considered by Council are ordered to reflect an escalation in response that is proportionate to the level of risk, the seriousness of the confirmed breach or the need for a deterrent:

Very low:	taking no action on the basis of a lack of evidence or some other appropriate reason; and/or providing information/advice on how to be compliant.
Low:	negotiating with the person to obtain voluntary undertakings or an agreement to address the issues of concern; and/or issuing a warning or a formal caution.
Medium:	issuing a letter requiring work to be done or activity to cease in lieu of more formal action; and/or issuing a notice of intention to serve an order or notice under relevant legislation, and then serving an order or notice if appropriate.
High:	issuing a penalty notice; and/or carrying out the works specified in an order at the cost of the person served with the order.
Very high:	seeking an injunction through the courts to prevent future or continuing unlawful activity; and/or commencing legal proceedings for an offence against the relevant Act or Regulation.

Please refer to Appendix 2 for examples of how these categories may be applied.

Following up enforcement action

All enforcement action will be reviewed and monitored to ensure compliance with any undertakings given by the subject of enforcement action or advice, directions or orders issued by Council. Reports alleging continuing unlawful activity will be assessed and further action taken if necessary. If the unlawful activity has ceased or the work has been rectified, the matter will be resubmitted for follow up action to ensure compliance outcomes are met. Should initial enforcement action be found to have been ineffective, Council staff will consider other enforcement options.

13 Taking legal action

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

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

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

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

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

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

Whether there is a reasonable prospect of success before a court

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

Whether the public interest requires legal action be pursued

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

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

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

Time within which to commence proceedings

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

14 Shared enforcement responsibilities

Some reports 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 and Crown Lands.

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

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

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

15 Role of Council where there is a private certifier

Council retains its regulatory role and enforcement powers where a private certifier has been appointed the Principal Certifying Authority (PCA). However, if a private certifier is appointed the PCA, it is not Council's responsibility to ensure building and construction compliance.

Private certifiers have limited enforcement powers as the PCA. They have the power to issue a notice of intention to issue an order to the owner or builder to comply with the conditions of consent or rectify any breaches. A copy of any notice of intention issued by a private certifier must be provided to Council for assessment as to whether Council will enforce the notice by issuing an order.

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

16 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 authorised Council staff or the Council itself.

Individual Councillors do not have the right 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.

The General Manager may present certain decisions to be ratified by the elected Council if this is necessary or desirable, and the Councillors may also have the right to call for a report about particular issues to a Council meeting.

17 Delegations

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

18 Other resources

The NSW Ombudsman website has the following helpful resources at www.ombo.nsw.gov.au:

- Managing unreasonable complainant conduct – a model policy and procedure
- *Managing Unreasonable Complainant Conduct Manual 2012*
- *The Rights Stuff – Tips for making complaints and solving problems*
- *Effective complaint handling guidelines – 2nd edition*
- Managing information arising out of an investigation – Balancing openness and confidentiality
- *Reporting of progress and results of investigations*
- *Good Conduct and Administrative Practice*
- Options for Redress
- *Investigating Complaints – A manual for investigators*
- *Enforcement guidelines for councils*
- *Better Service and Communication for Council*

See also:

- Commonwealth Director of Public Prosecutions (2014), *Prosecution Policy of the Commonwealth: Guidelines for the making of decisions in the prosecution process*
- NSW Planning (2010), *Prosecution Guidelines*.

History

Department:	Development & Environment	Last Reviewed	Resolution Number
Policy Category	Council	20 October 2010	
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Appendix 1

Taking enforcement action

When deciding whether to take enforcement action in relation to a confirmed case of unlawful activity, Council will consider all the circumstances of the matter. The section below is intended to assist staff by providing a further explanation of matters to be taken into consideration when deciding whether to take enforcement action.

Considerations about the alleged offence and impact:

**The nature, extent and severity of the unlawful activity including whether the activity continued
The harm or potential harm to the environment or public health, safety or amenity caused by the unlawful activity**

Consideration should be given to the nature, extent and severity of any actual or potential impact of the unlawful activity. If there is actual or potential detriment to the natural or built environment, to the health or safety of residents or the amenity of an area, this would normally warrant a decision to take action to remedy or restrain the breach. It is also important to consider whether the unlawful activity is ongoing or has ceased.

The seriousness of the breach, including whether the breach is merely technical, inconsequential or minor in nature

The costs and benefits of taking formal enforcement action as opposed to taking informal or no action

Consideration should be given to whether the likely costs and benefits of any enforcement action is justifiable where breaches result in no material impacts upon any other party or the health, safety and amenity of the environment and community. A breach of a technical, inconsequential or minor nature, in the absence of any other aggravating factor, will generally not warrant a decision to take action to remedy or restrain the breach.

The time period that has lapsed since the date of the unlawful activity.

Legislation may provide time limits in which to commence proceedings and take enforcement action, and sometimes prosecution will be statute barred despite good evidence that unlawful activity has taken place.

In addition, consideration should be given to the time which the offence or breach occurred and the 'reasonableness' of taking enforcement action if a significant time has lapsed since the time of the offence or breach.

Considerations about the alleged offender

Any prior warnings, instructions, advice that was issued to the person or organisation reported or previous enforcement action taken against them

Consideration should be given to the previous history of the offender. If prior warnings, instructions or advice has been issued to the person or organisation reported which was not followed, a more formal and coercive enforcement approach would appear more appropriate.

Whether the offence was committed with intent

Consideration should be given to whether the offence was committed deliberately, recklessly or with gross negligence. It may be appropriate that cases of this nature are more likely to result in prosecution. Where an offence was committed as a result of an accident or genuine mistake, providing education and guidance or a formal warning may be more suitable in achieving desired outcomes.

Whether the person or organisation reported has been proactive in the resolution of the matter and assisted with any Council requirements and instructions

Where the offender has been proactive in the resolution of the matter and has assisted Council in the resolution of the matter, it may be that the public interest would not be best served by prosecuting the offender, especially if the offending conduct or work has been rectified. If the offender has demonstrated a lack of contrition and is uncooperative with the investigation or remediation, a prosecution or monetary penalty would appear more appropriate.

Any mitigating or aggravating circumstances demonstrated by the subject of the report Any particular circumstances of hardship affecting the person or organisation reported.

Consideration should be given to any genuine mitigating circumstances of the offender such as age, physical or mental health, disability and any financial hardship of the offender resulting in an inability to pay.

Considerations about the impact of the enforcement action

The need to deter any future unlawful activity

Consideration should be given to the deterrent effect, both on the offender and others. Prosecutions, because of their great stigma if a conviction is secured, may be appropriate even for minor unlawful activity where they might contribute to a greater level of overall deterrence.

Whether an educative approach be more appropriate than a coercive approach in resolving the matter

When deciding whether to take an educative approach or enforcement approach, consideration should be given to the following matters:

- the reasonable likelihood that the person may have known or should have known the relevant requirements or rules
- the level of contrition shown by the responsible person
- whether the parties have previously been advised of the regulatory requirements or provisions
- whether or not any previous warnings or instructions have been provided
- the apparent level of intent shown by the responsible person.

The prospect of success if the proposed enforcement action was challenged in court

It may not be appropriate to take enforcement action if the chances of success, in the event of an appeal or hearing, are unlikely. In such situations, you would need to identify the causes of that likelihood and address them in the particular case or as a general issue.

The costs and benefits of taking formal enforcement action as opposed to taking informal or no action

Legal proceedings are expensive. When doing a cost-benefit analysis, costs and benefits should be assessed broadly and indirect costs and benefits should also be considered.

What action would be proportionate and reasonable in response to the unlawful activity?

Consideration should be given to what is reasonable in the particular circumstances that apply. This includes a reasonable proportionality between the ends to be achieved and the means used to achieve them.

Consideration is to be given to what is reasonable in the circumstances and ensure the action is not disproportionate to the level of harm or damage arising from the breach.

Whether the Council has created an estoppel situation.

Estoppel is a legal rule which prevents a person from later denying something which may have previously been relied on, and acted upon by another person.

Consideration should be given to whether the actions of Council have created a reasonable expectation that no enforcement action would be taken.

Considerations about the potential for remedy

Whether the breach can be easily remedied.

If there is evidence of a significant issue of unlawful activity and that matter can be easily remedied by some action on the part of the person the subject of the report, there is a less compelling case for enforcement action, depending on the other circumstances of the case such as the conduct of the offender.

Whether it is likely consent would have been given for the activity if it had been sought.

If retrospective approval is possible, it may be reasonable to allow an opportunity to obtain this prior to taking other enforcement action. In some cases, compliance by informal means may be the most efficient way to resolve the matter and other enforcement action may not be necessary.

This needs to be balanced with other considerations such as the public interest in enforcing the law.

Whether there is a draft planning instrument on exhibition that would make the unauthorised use legal.

Appendix 2

Compliance Guideline

Purpose

This appendix is designed to give the public and Council stakeholders a **broad** outline of the way different enforcement powers may be used by Council in different circumstances. It aims to make more transparent the work that Council undertakes and assist officers in achieving consistent outcomes.

The document is a guide only and each case is considered and determined on its merits. Where justified in the individual circumstances of the matter Council is not bound by the Guideline and can depart from it at any time.

This compliance guideline is built on and is consistent with the higher level principles contained within Council's Compliance Enforcement and Prosecution Policy.

Scope

This Compliance Guideline has been drafted to cover the range of works undertaken by Council which includes the following:

- Food safety, including both temporary and permanent food businesses
- Fire safety and essential services
- Compliance with planning legislation, including compliance with conditions of development consent and unapproved works and uses
- Public health matters including skin penetration and swimming pools
- Pollution incidents, including noise and water pollution
- Unsafe structures and unhealthy premises

Responses to issues relating to companion animals, parking offences and abandoned vehicles will be dealt with in accordance with the Companion Animals Act, the Roads Act, the Impounding Act, associated Regulations and other relevant legislation. Accordingly, they are not covered in this Appendix.

Unauthorised building works

Council uses the principles contained within its Compliance Enforcement and Prosecution Policy to address non-compliance. Some examples of how Council officers may decide to act in particular circumstances are outlined below. This table is not comprehensive and each matter will be dealt with following an assessment of the individual circumstances.

Compliance options	Example scenario
Warning	Minor issues such as a small sign.
Advisory letter	Issued for minor non-approved works which have no impact on the amenity of surrounding occupiers. This may include matters in the following categories, assuming there is no ongoing risk to public health or safety: - Pergola that does not present an over shadowing/loss of solar access/loss of view etc. - Non-issue of an Occupation Certificate for a residential house where there is no safety issue or need for Annual Fire Safety Statement.
Penalty Notice	May be issued for any breach where the Officer is satisfied that there has been an intent to knowingly undertake works which would require consent or where the breach is so significant as to require an educative approach for the community to acknowledge that there has been a breach.

	This does not prevent Council from issuing NOI/Orders in order to prevent ongoing unlawful activity.
Notice of intention to give an Order (NOI) and subsequent Order	Issued for unauthorised works which would not be supported and would not be permitted to remain. Likely threat to the general public. Unapproved works to heritage item where the Officer would seek to have the matter returned to its original or improved state (heritage input is required in these matters.) Works being undertaken without Construction Certificate/Complying Development Certificate.
Emergency Order (without NOI)	Structure is compromised and likely to cause imminent threat to the general public e.g. façade failure. Activities without consent which have an immediate environmental impact affecting the safety and amenity of the area (Stop Work Order).

In general Council will not take action on the following matters:

- ~~Encroachment issues~~
- Easement disputes
- Dividing fence issues
- Matters within a residential property that do not impact on the surrounding environment or neighbourhood
- Matters which may be better resolved by Civil actions such as damage to common (private) property or damage to neighbouring properties caused by issues which are present or created by issues on another property.

Role of the Principal Certifying Authority (PCA)

In relation to assessing and approving certain construction works Council is not the only consent authority. Principal Certifying Authorities (PCA) can issue approvals and certification for certain classes of building and construction works. Principal Certifying Authorities can include the Council or an accredited certifier.

Where a breach or issue has been identified in relation to a development approved by a PCA, the initial enforcement action is taken by the PCA. This may include the issuing of warnings or a notice of intention to serve an order. Accredited Certifiers are not authorised to issue orders, penalty notices or initiate court action.

PCAs are required to advise Council of any notice of intention they issue. Council will then undertake its own investigation into the matter and, if required may issue an order or take such other action as it considers appropriate.

Compliance options	Example scenario
Warning	Minor ancillary issues not giving rise to public health or safety issues.
Advisory letter	Occupation of a property without issue of occupation certificate where all works safety completed. Change of use that is not exempt but is of minor impact and requires no upgrade.
Penalty Notice (no further action)	Proven breach which would not require any further action or modification such as; Operation out of hours on one occasion. One off function
Notice of intention to give an Order (NOI) and subsequent Order	Uses which would not be supported on planning grounds. Where Occupation Certificate is not issued and occupation is less than 12 months (such as an Order 15 if development consent is clear on the need for occupation certificate an Order 1 to pursue the issue of the occupation certificate.

	Non-approved boarding house/backpacker or other short term tourist style accommodation where the risk to the residents or amenity effect on the immediate surrounding is high.
Emergency Order (without NOI)	Where life safety is a concern relating to the use, such as a premises being operated for an unauthorised use without appropriate essential fire safety measures.

Food Premises Inspection (including mobile and temporary premises)

Council is an enforcement agency under the *Food Act 2003* and conducts regular inspections of retail food businesses in its local government area to ensure food safety standards are being maintained.

What action may be taken if non-compliance is found?

Compliance options	Example scenario
Warning	• Restock dispenser with single use hand towels (first offence). • Minor cleaning issues for non-food contact surfaces (first offence). • Minor structural issues (first offence)
Improvement notice	• Significant cleaning issues across premises. • Significant temperature control issue (>6 degrees outside of legal requirement). • Cross contamination of ready to eat food.
Local Government Act Notice and Order	• Issued where cleanliness or pest issues extend outside of the premises e.g. common areas, rear yards.
Prohibition order	• Non-compliance with an improvement notice and/or; • Gross hygiene issues throughout premises contributing to pest issue or cross contamination of food. • Severe pest infestation in premises. • Serious temperature control issue.
Penalty notice	• May be issued in conjunction with a notice or order for serious food safety breach or where there has been a history of non-compliance for the same or similar breach. • May also be issued against food handlers for some personal hygiene breaches.
Seizure	• Evidence of unsafe food – microbial, chemical or physical contamination e.g. pest contamination of food • Unsafe food e.g. deliveries left unattended and likely to be contaminated or have been contaminated.
Court attendance notice	• Where there has been an extensive history of serious non-compliance within a food business and notices/orders etc have been previously issued the matter will be referred to Council's Solicitor for the consideration of the commencement of proceedings. • Proceedings may be recommended in the absence of a history of non-compliance for very serious offences such as gross hygiene, temperature abuse, contamination of food and pest issues without a prior history being present. • Matters relating to non-compliance with a prohibition order and obstruction of officers will also be referred for the consideration of proceedings.

Supreme Court Injunction	Unsafe/defective equipment leading to serious sanitation or cross contamination risks will lead to a recommendation being made to Council's Solicitor for an urgent injunction to be sought in the Supreme Court.
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In general Council is not the appropriate regulatory authority for the following matters in relation to food regulation;

- Food borne illness outbreaks (more than 1 person/family)
- Non retail food businesses

The above matters are regulated by the NSW Food Authority

Swimming Pools – Water quality

Council's role as an enforcement agency under the *Public Health Act 2010* includes a responsibility to protect public health and safety in relation to the water quality of public swimming pools and take action against non-compliance.

Council conducts a regular inspection and testing program to ensure commercial pool operators maintain their swimming pools and spas to a standard that does not pose a risk to public health.

What action may be taken if non-compliance is found?

The table below gives a guide to pool water quality levels and likely enforcement action:

Type of organism	Maximum Count Allowable	Action to be taken if greater than allowable levels
Heterotrophic Plate Count	100 Colony Forming Units (CFU) per ml	- Warning letter if levels between 100 and 1000 CFU/mL. - Prohibition order if levels greater than 1000 CFU/mL.
Thermotolerant coliforms	Nil per 100mL	- Warning letter if levels between 0 and 10 CFU/mL. - Prohibition order if levels greater than 10CFU/mL and re-testing.
<i>Pseudomonas aeruginosa</i>	Nil per 100mL	- Warning letter if levels between 0 and 10 CFU/mL. - Prohibition order if levels greater than 10 CFU/mL and re-testing.

NB: Businesses served with a prohibition order cannot re-open their pool for use by the public until the required works have been done, a reinspection by Council has been requested and Council's officer has re-sampled the pool and a compliant water sample has been obtained. Council will then issue a Certificate of Clearance and the pool can be reopened for public use.

Swimming pools – fencing and barriers

Under the *Swimming Pools Act 1992* Council officers have a number of compliance options available to deal with non-compliance.

The below table provides some examples of how Council may exercise its compliance options in particular circumstances.

Compliance options	Example scenarios
Warning	Minor issues that do not yet create an issue but may in near future e.g. fading yet still legible signage, vegetation growth, furniture within climb zone

Notice of Directive	• Non-maintained self-closing mechanism on gate. • Vegetation removal required. • Minor penetration issue.
Directive	Most breaches will result in Directive due to risk to child safety e.g. • Gate failing to latch. • Non-compliant fencing/window opening. • Lack of resuscitation signage.
Penalty notice	Issued for more serious breaches or where previous warnings given. Can be issued in conjunction with a Directive: • Fail to register pool (warning previously given). • Failure to maintain pool barrier. • Fail to keep the pool secure. • Fail to have resuscitation signage (warning previously given). • Fail to comply with a Directive.
Court attendance notice	For numerous serious breaches and/or where there has been history of non-compliance and directives/penalty notices have not achieved compliance the matter will be referred to Council's Solicitor for the consideration of the commencement of proceedings.

Noise Compliance

Council is responsible for the investigation of most noise related matters in its Local Government Area. Other agencies that have some responsibility for noise complaints include the Environment Protection Authority (EPA), the Police and the Office of Liquor, Gaming and Racing.

What action may be taken if non-compliance is found?

Compliance options	Example scenarios
Warning	Generally issued for most offences in the first instance. E.g. noisy air conditioning unit, pool pump, amplified music, domestic alarms.
Noise Abatement Direction	Issued where offensive noise is being or has been emitted from a premises e.g. noisy stereo or amplified music from a residential premises. A penalty notice may be issued for a subsequent failure to comply with Noise Abatement Direction.
Prevention notice	Issued for ongoing issues e.g. mechanical plant and equipment or deliveries or pick-ups which cause offensive noise due to time or nature of the noise. Can also be issued for entertainment noise e.g. concerts, night club music. A penalty notice may be issued for a subsequent failure to comply with Prevention Notice.
Penalty notice	Generally issued for failure to comply with prior warnings or a direction or notice.
Noise control notice	Issued to prohibit the carrying on of an activity or use of an article where noise is a systemic issue e.g. continued loud music constituting offensive noise. A penalty notice may be issued for a subsequent failure to comply with Noise Control Notice.

Court attendance notice	Where there has been ongoing failure to comply with prior notices/directions or penalty notices the matter will be referred to Council's Solicitor for consideration of the commencement of proceedings.
Injunction/Court Order (Land and Environment Court)	Where works specified in Prevention Notice have not been carried out the matter will be referred to Council's Solicitor for consideration of the commencement of proceedings.

Pollution incidents (air, land and water)

Council is not responsible for the investigation of all pollution incidents in its local government area; it shares this responsibility with the Environment Protection Authority (EPA).

In general the EPA is responsible for incidents on Crown Land or major industrial or commercial sites which hold an EPA license.

What action may be taken if non-compliance is found?

Compliance options	Example scenarios
Warning	Generally issued for most minor offences in the first instance.
Clean up notice	Paint spills and short term pollution such as dust and spillages.
Local Government Act Notice or Order	Sewer leaks.
Prevention notice	Issued for ongoing issues such as industrial air pollution (non-licensed premises), noise, and large construction site environmental management.
Penalty notice	Generally issued for failure to comply with prior warnings or notice or where there is prior history for the same or similar offence or a deliberate act which has resulted in land, water or air pollution.
Court attendance notice	For ongoing failure to comply with prior notices/directions and/or matters resulting in significant environmental damage the matter will be referred to Council's Solicitor for consideration of the commencement of proceedings.

Unhealthy Land or Premises

Nambucca Valley Council has a role under the Local Government Act 1993 to investigate complaints received in relation to unhealthy living conditions, public health and/or safety in relation to land or premises.

What action may be taken if non-compliance is found?

Compliance options	Example scenario
Warning	Generally issued for most minor offences in the first instance.
Local Government Act Notice and Order	Issued where a risk to public health/safety has been identified: Accumulation of garbage or other items which are likely to be a harbourage for vermin.
Local Government Act Emergency Order	Issued where risk to public health and safety is very high and it is not appropriate to issue a notice of intention in the circumstances: - Sewer line is damaged or blocked and sewage is discharging onto public land. - Serious cleanliness/sanitation issues e.g. boarding houses.

Penalty notice	Generally issued for failure to comply with a notice/order or where there is prior history for the same or similar offence.
Court Order	Where non-compliance with an order has occurred and the risk to public health/safety requires an Order of the court requiring clean up works to a premises or property the matter will be referred to Council's Solicitor for consideration of the commencement of proceedings. In some circumstances Council may seek an order that enables it to enter premises to undertake works itself when the owner or occupier fails to do so.
Court Attendance Notice	Where there has been a history of non-compliance with previous enforcement action for the same or similar offences the matter will be referred to Council's Solicitor for consideration of the commencement of proceedings.

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Fire safety and essential fire services

To ensure a safe urban environment, Council investigates and takes appropriate action against reported fire safety breaches and fire safety design deficiencies within existing buildings.

Council's building surveyors inspect premises whenever a fire safety issue is raised and, in addition, inspects buildings as part of its proactive fire safety inspection.

Council also manages annual fire safety certification for new or altered buildings. All premises on the Register must provide to Council an Annual Fire Safety Statement (AFSS) at least once within every twelve months, certifying that a properly qualified person has inspected the building, assessed the fire safety measures, and found that the measures are capable of performing to the relevant standards.

What action may be taken if non-compliance is found?

The Council officer will take into account a number of factors in determining any compliance action that needs to be taken. "Risk and cause" are two considerations used in determining the enforcement options taken in the circumstance:

Compliance options	Example scenario
Warning	Minor issues, such as poor housekeeping practices; momentary failure of required fire systems.
Penalty Notice and an action plan	Issued in cases of blatant lack of fire safety management practices: ○ Blocking of exits. ○ Failure to lodge, or late lodgement of an Annual Fire Safety Statement. ○ Fire safety systems incapable of performing to required standards of performance.
Notice/Order	Premises have inadequate provisions for fire safety and require building work to be carried out.
Court Attendance Notice	On expiration of the timeframe given under the Order the Council officer may refer the matter to Council's Solicitor for consideration of the commencement of proceedings for failure to comply with the Order.

Appendix 3

Prioritising Council's response

Timeframes for responding to reports about unlawful activities may vary, however, every effort will be made to ensure that all reports about unlawful activity are actioned within a timely manner and the complainants are given appropriate feedback on the progress of their report.

Council will prioritise notifications of potential non-compliance on the basis of risk to public safety, human health and the environment. The risk category will determine priorities for allocation of Council resources to investigate matters and will also determine response times to complainants.

Examples are as follows, however all cases will be prioritised based on their specific circumstances

DESCRIPTION	REPOSE TIME				
	VERY HIGH	HIGH	MEDIUM	LOW	VERY LOW
	Same day	Within 2 Working Days	7-14 Working Days	15-28 Working Days	Information Only **
BUILDING AND DEVELOPMENT					
Dangerous structure adjoining public land, eg dilapidated awnings		✓			
Swimming pool fencing complaint on private land		✓			
Non-compliance with development consent or construction works – direct environmental impact		✓			
Development not in accordance with consent			✓		
Development carried out without consent / construction certificate			✓		
Right of way and covenant complaints, other than conditions of consent				✓	
Building works carried out which previously required development consent but to which Exempt and Complying Development SEPP now applies			✓		
Boundary fence and retaining wall issues where the Dividing Fences Act applies - Community Justice Centre and the Local Court					✓
Work on the river bank without consent			✓		
COMPANION ANIMALS					
Dog attacks Major - (eg imminent risk to public, where a person has been bitten or serious injury to other animals, or assistance to Police)	✓				
Dog attacks minor (after an event is reported - minor or no injury to persons or animals or risk to public safety)		✓			
Dog - Dangerous, Menacing or Restricted Breed as per Companions Animal Act, no imminent risk to public safety, eg dog contained		✓			
Pick up of seized Dogs contained (Pound operating hours only)			✓		
Domestic roaming dogs - general complaint after the event.			✓		
Dog barking (complaints from 2 or more premises)			✓		
Barking Dogs Anon or one resident complainant only			✓		
Breach of Dangerous Dog Regulations		✓			
Impounding of Cats - Council provides pound facility but no collection service		✓			
Keeping of non-stock animals (refer Local Orders Policy for more information)			✓		
Breach of Companion Animals Act - identification, registration			✓		
FOOTPATH OBSTRUCTIONS					
Footpath obstruction (immediate safety hazard - 8am - 5pm, 7 days per week - after hours Police matter)	✓				
Footpath obstruction, eg builder's material obstructing pedestrian access		✓			
Footpath obstructions, minor or nuisance			✓		
LANDFORM					
Landform modification involving potential flooding impacts or potential property damage		✓			
Landform modification without consent			✓		
NOXIOUS WEEDS					
Noxious weeds			✓		
OTHER ANIMAL COMPLAINTS					
Wild dogs and foxes on Council own land			✓		
Stock on Main Arterial Roads	✓				
Stock on non-arterial sealed roads		✓			
Stock on dirt rural roads			✓		
Stock Complaints General trespassing - Horses, Cattle, Sheep, Donkeys			✓		
OVERGROWN LAND					
Overgrown land which exceeds the following criteria on urban/village/commercial zoned land: a) The average height of grass on the land exceeds 600mm for over 50% of the block, and b) The site has an accumulation of vegetation, rubbish or materials, which may harbour vermin.			✓		
Overgrown land which does not meet the above criteria					✓
PARKING AND VEHICLE OFFENCES					
Parking traffic hazard (8am - 5pm, 7 days per week - after hours Police matter)	✓				
Parking - general complaints			✓		
Abandoned motor vehicles (posing immediate safety hazard, 8am - 5pm, 7 days per week - after hours Police matter)	✓				
Abandoned motor vehicles and articles (public place)			✓		
Road Offences illegal works general – no immediate safety hazard			✓		
POLLUTION					
Air Pollution - from commercial or industrial premises – non-scheduled: immediate threat	✓				
Air Pollution - from commercial or industrial premises – non-scheduled: non-immediate threat			✓		
Air Pollution - burning of prohibited items eg tyres, coated wire, paint and solvent containers	✓				
Air Pollution - Prohibited Lighting of Fires: No Burn areas			✓		
Nuisance from domestic smoke - BBQ's, domestic wood heaters, residential burning off			✓		
Rural and Agricultural nuisances including but not limited to burning of vegetation, noise, soil and erosion control issues (not entering waterways)			✓		
Land Pollution - significant accumulation of waste, dumped or deposited waste on private land			✓		
Land Pollution public lands - rubbish dumping, littering			✓		
Odours - Residential and commercial garbage complaints: location of garbage bins, dog faeces, domestic odours				✓	

Noise Pollution - commercial and industrial impacting on residential areas of significant public interest			✓		
Neighbour to neighbour impact associated with domestic noise pollution complaints - e.g. air conditioners, heat pumps, amplified sound equipment, musical instruments, power tools, lawn mowers, leaf blowers, swimming pool pumps and motor vehicles/trail bikes			✓		
Water Pollution Incidents having an effect on waterways - Environmental degrading substances into waterways e.g. oil, paint - Failing Onsite Sewerage Management System into waterways	✓				
PUBLIC HEALTH					
Urgent Response requests from other Agencies (i.e. NSW Police, HAZMAT, EPA, Ministry of Health, NSW Food Authority), relating to Food Poisoning Outbreak, Major Pollution Incidents, Notifiable Disease Outbreaks and Clandestine Drug Laboratories.	✓				
Complaints relating to regulated premises (food premises, skin penetration/hairdressers, beauty salons, cooling towers/ warm water systems, public swimming and spa pools, caravan parks, water carters)			✓		
Public swimming pool water quality	✓				
Unhealthy Condition of Premises - breeding of mosquitoes, vermin and pests, significant accumulation of waste, failing OSSM			✓		
Domestic green/unclean pools - no evidence of mosquito larvae			✓		
Unsanitary motels including bed bugs			✓		
Unightly premises - condition of property not deemed a public health risk			✓		
Mould in private residences					✓
SEDIMENT AND EROSION CONTROL					
Inadequate Sediment & Erosion Control, direct flow into waterway		✓			
Inadequate Sediment & Erosion Control not in accordance with consent		✓			
Inadequate Sediment & Erosion Control not direct flow into waterway but nuisance to public place		✓			
Inadequate Sediment and Erosion Control causing nuisance between adjoining neighbours (works not requiring consent)				✓	
SEWER/WATER/STORMWATER					
Urgent Response requests - sewer overflows - private line	✓				
Urgent Response requests - sewer overflows, Council reticulated service	✓				
Overland stormwater flow nuisances (private property) – see fact sheet for criteria for investigation			✓		
Overland stormwater flow nuisances (Council owned property)			✓		
Overland stormwater flow nuisances associated with development consent			✓		
Stormwater nuisance (diversion / downpipes / guttering) – see fact sheet for criteria for investigation			✓		
Water Restriction Breaches		✓			
Trade Waste Agreements - Compliance with conditions of approval			✓		
Water Backflow Agreements - Compliance with conditions of approval			✓		
Private Sewer Pump Station Agreements - Compliance with conditions		✓			
Building in Vicinity of Sewers - Compliance with Council Policy for matters not requiring consent			✓		
Connection to Council's Water, Sewer or Stormwater infrastructure		✓			
Water Carters Agreements - Compliance with conditions			✓		
Water Restriction Hours breaches	✓				
UNAUTHORISED USE OF PUBLIC LANDS					
Illegal Camping public lands			✓		
Public reserve breaches			✓		
Public land licence breaches (fitness, outdoor dining, surf school)			✓		
Illegal signage public place			✓		
USE OF PREMISES					
Unauthorised use of premises (requiring consent)			✓		
Holiday Letting without consent or where prohibited			✓		
Strata property disputes				✓	
VEGETATION REMOVAL					
Non-compliance with development consent governing biodiversity protection (operation machinery)	✓				
Non-compliance with development consent governing biodiversity protection (works ceased)			✓		
Tree Disputes Between Neighbours (not prescribed vegetation under Preservation of vegetation controls)				✓	
Tree removal - public lands (removal in progress)	✓				
Tree removal - public lands (removal completed)			✓		
ROAD APPLICATION COMPLIANCE					
Road Opening Permits - works without a permit or non-compliance with permit		✓			
Driveway Applications - works without a permit or non-compliance with permit			✓		
Damage to local roads/kerb/footpath during construction			✓		
** Note: Very Low consists of: - Referral to Council/Government/Industry website - Posting a pamphlet/information sheet or letter providing information					