

**FILE NO:** PSC2013-00406

**TITLE:** COMPLIANCE POLICY

**POLICY OWNER:** DEVELOPMENT ASSESSMENT AND COMPLIANCE SECTION  
MANAGER

**PURPOSE:**

The purpose of this policy is to outline Port Stephens Council's general approach to compliance and enforcement. The policy relates to the regulation of development activity, pollution control, regulation of parking, natural resource management, environmental health, the control over the keeping of animals and other regulatory issues within Council's area of responsibility as listed in the community strategic plan.

**CONTEXT/BACKGROUND:**

As compliance is a challenging area with typically high levels of community interest, a policy is required to set the framework to assist staff and provide clarity for the community. The policy was first developed in 2007 and has been updated/amended a number of times since. The policy provides the context around council officers using their discretion and factors to consider when handling compliance matters.

**SCOPE:**

This policy provides guidance for all compliance related matters in the Port Stephens local government area. The policy particularly applies to, or is useful for persons the subject of a compliance investigation, the complainant/submission maker, the general public and Council staff.

The NSW Ombudsman's Enforcement Guidelines for Council's have been used as the basis of framing this policy and for developing operational procedures to address compliance issues.

**DEFINITIONS:**

Discretion	Discretion relates to a Council officers consideration in deciding whether to take enforcement action or not, or what extent of action to take.
Principles	The considerations and value to which Council staff consider any compliance matter against as mentioned in this policy.

**Risk based approach** In a public and environmental context, risk is measured in terms of the likelihood of an event occurring and the risk of harm to human health and the environment.

## **POLICY STATEMENT:**

Council will carry out its compliance responsibilities in a fair and equitable manner. Council will ensure the relevant principles are considered in compliance investigations and decisions are made in an environmentally and socially responsible manner.

- 1) The initiation of a process of education and creation of awareness within the community in relation to the reasons for and importance of compliance.
- 2) The investigation and enforcement of complaints about unlawful activity or failure to comply with the terms or conditions of approval, notices, licences or breaches of legislation which Council is responsible for enforcing.
- 3) Cooperation with other Government Agencies responsible for enforcing legislation that relates to unlawful activities within Port Stephens.
- 4) To establish clear guidelines for the exercise of discretion in dealing with action requests or complaints about unlawful activity and to assist Council staff.
- 5) Council will consider the guiding principles/considerations in **Appendices 1** to assist Council staff in meeting the above policy statements to act promptly, consistently and effectively to allegations of unlawful activity.

## **POLICY RESPONSIBILITIES:**

- 1) The policy is implemented primarily via the Manager Development Assessment and Compliance.
- 2) All Council staff that deal with written or verbal requests or complaints alleging unlawful activity are responsible for following the policy framework.
- 3) All formal notifications of alleged unlawful activity will be lodged in Council's customer request system and directed to the responsible officer

## **RELATED DOCUMENTS:**

- 1) *Local Government Act, 1993.*
- 2) *Environmental Planning and Assessment Act, 1979.*
- 3) *Protection of the Environment Operations Act, 1997.*
- 4) *Roads Act, 1993.*
- 5) *Companion Animals Act, 1998.*
- 6) *Public Health Act, 2010.*
- 7) *Swimming Pools Act, 1992.*
- 8) *Rural Fires Act, 1997.*
- 9) *Road Transport Act, 2013.*

- 10) *Food Act, 2003.*
- 11) *Impounding Act, 1993.*
- 12) *Noxious Weeds Act, 1993.*

**CONTROLLED DOCUMENT INFORMATION:**

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<b>RM8 container No</b>	PSC2013-00406	<b>RM8 record No</b>	16/440919
<b>Audience</b>	Council staff, the general public.		
<b>Process owner</b>	Manager Development Assessment and Compliance		
<b>Author</b>	Manager Development Assessment and Compliance		
<b>Review timeframe</b>	Three years	<b>Next review date</b>	1/12/2019
<b>Adoption date</b>	28/03/2017		

**VERSION HISTORY:**

Version	Date	Author	Details	Minute No.
V1	28/08/2007	Manager Development and Building	Policy adopted by Council	235
V2	26/11/2013	Manager Development Assessment and Compliance	Amended	344
V2.1	28/03/2017	Development Assessment and Compliance Section Manager	Updated to new template	065



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## APPENDICES 1 - COMPLIANCE PRINCIPLES / CONSIDERATIONS

### Education Awareness and Cooperation

Council will educate the community in relation to regulatory issues and their responsibilities in this regard, taking a proactive role in obtaining cooperation with the community to minimise the occurrence of non-compliances.

Council will encourage the public to try to resolve problems as they arise or come to notice before they escalate into significant issues.

Whilst prior warning is encouraged prior to pursuing a development or environment compliance matter, this is assessed on a case by case basis e.g. on the impacts and severity of alleged offence.

### Council's response

Council's regulatory role requires that it identifies and responds appropriately to unlawful activities that it has responsibility for regulating. In some instances, using a risk based framework, no further investigation or action may be an appropriate response. If a decision is made not to investigate a complaint beyond a certain stage, the decision and the reasons for it must be recorded and appropriately documented.

Based on the circumstances of the alleged offence, Council respond in a way that reflects public interest, resource implications and whether the compliance issue poses a significant risk to public safety, health or to the environment.

All action requests or complaints about alleged unlawful activities should be acknowledged at the earliest opportunity and in any event no later than 7 business days. The response should indicate that Council is investigating the complaint and that a report will be forwarded as soon as possible and no later than a further 28 business days. As soon as possible and within a further 28 business days, a further report should be forwarded to the complainant indicating progress in the matter and where applicable council's decision. It is noted that some compliance matters, by their nature require an exhaustive and lengthy process of information gathering and reporting, hence there is an expectation some compliance matters will be ongoing.

### Councils Approach

Council will ensure confidentiality and respect privacy requirements when dealing with matters of compliance.

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The Council will ensure procedural fairness in matters dealing with non-compliance.

Council will act in a manner that is impartial and objective when investigating matters of alleged non-compliance.

### **Anonymous Complaints**

These are complaints made by persons that do not wish to identify themselves but they are required to identify the issue. The complainants need to provide sufficient information to enable Council to identify the activity, its location and nature. In some cases anonymous complaints are not able to be investigated as the follow up action is not able to be reported back to the complainant.

### **Using Discretion**

In regulatory matters, discretion relates to Council's discretion in deciding whether to take enforcement action or not. Council must exercise this discretion in the context of its broad regulatory responsibilities and experience and the merits of the particular case.

### **Prioritising unlawful activity**

Council uses a risk based approach in assessing compliance matters and priorities.

Applying a risk based approach enables Port Stephens Council to make informed regulatory decisions that ensure its compliance focus is on the biggest risks to the public.

As a means to assist in screening and prioritising complaints, council utilises the following methodology. The methodology is not intended to be exhaustive but is guide to ensure the efficient use of Council resources when considering a response to a compliance issue, given the urgency or seriousness of the complaint. Not all complaints will warrant immediate or extensive investigation.

**Compliance Methodology/Considerations**

<b>CRITICAL</b> Response time within one (1) business day	<b>MODERATE</b> Response time within seven (7) business days	<b>MINOR</b> Response time within twenty eight (28) business days
Nature <ul style="list-style-type: none"> <li>Requires immediate action</li> <li>The issue is so urgent it needs to be attended to now.</li> </ul>	Nature <ul style="list-style-type: none"> <li>Important but not urgent.</li> <li>The non-compliance does not involve any life threatening issue.</li> <li>It is not critical that the issue be resolved immediately.</li> </ul>	Nature <ul style="list-style-type: none"> <li>Needs attention but is not urgent</li> <li>May escalate to moderate if left unaddressed.</li> <li>In some cases (but not always) it may be resolved without any regulatory intervention.</li> </ul>
Public safety/health issue <ul style="list-style-type: none"> <li>Can involve significant public safety issues, likelihood or serious injury or death.</li> </ul>	Public safety/health issue <ul style="list-style-type: none"> <li>Can include moderate, actual or potential public safety issues.</li> </ul>	Public safety/health issues <ul style="list-style-type: none"> <li>Public safety aspects are minimal or unlikely.</li> </ul>
Environmental harm <ul style="list-style-type: none"> <li>May involve significant pollution or environmental harm.</li> </ul>	Environmental harm <ul style="list-style-type: none"> <li>Can include moderate or potentially serious impacts on the environment.</li> </ul>	Environmental harm <ul style="list-style-type: none"> <li>Environmental harm is minimal or unlikely.</li> </ul>
Examples <ul style="list-style-type: none"> <li>Actions that have or are likely to result in some human harm</li> <li>Can include criminal acts and significant civil breaches.</li> <li>Can include environmental issues that result in long term significant impacts.</li> </ul>	Examples <ul style="list-style-type: none"> <li>Situations that if left could adversely affect human health, safety or the environment over time.</li> </ul>	Examples <ul style="list-style-type: none"> <li>Aesthetic issues</li> <li>Breach of regulation but no immediate or likely adverse impacts</li> <li>Can include neighbour disputes</li> <li>Minor localised issues</li> <li>Technical breaches of legislation.</li> </ul>
Possible responses <ul style="list-style-type: none"> <li>Immediate investigation and action.</li> <li>Some remedy or restoration may be necessary.</li> <li>Intervention may include some legal instruments (may include stop work, prohibition, injunction, clean up order, etc.).</li> </ul> The last resort is typically court action.	Possible responses <ul style="list-style-type: none"> <li>Depending on the particular issue, it may be necessary to gather evidence immediately.</li> <li>Investigations, actions and intervention may be required.</li> <li>Some remedy or restoration may be necessary.</li> <li>Education and awareness may be an option.</li> <li>Warnings may be issued.</li> <li>Stop work orders, clean up notices, infringement notices and other legal instruments may be required.</li> </ul>	Possible responses <ul style="list-style-type: none"> <li>Investigations/enquiries.</li> <li>Written warning/advice.</li> <li>Follow up actions.</li> <li>Education and awareness may be an option.</li> <li>Remediation/compensation may be required.</li> <li>Legal measures would rarely be used for minor compliance issues, however infringement notices may be used in some cases.</li> </ul> No action may be acceptable.



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## Considerations when considering compliance action

Council will consider a range of factors when deciding the extent to which a matter will be investigated and enforced. The considerations below guide the decision making of Council staff.

### Technical breach

Is a minor breach of a regulatory instrument that does not result in any material damage or impact on human health or the environment? It relates primarily to administrative matters, which are in themselves illegal however due to the nature no regulatory action is required.

### Jurisdiction

Is the matter in question within the jurisdiction of Council? Is there another body that is a more appropriate regulatory agency 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 been obtained regardless if it was sought? Is the proposal of the scale similar to exempt or complying development?

Is it possible to determine from the information available to Council whether the activity or work is permissible without consent or whether all conditions of consent are being complied with?

### Timing issues

Is the complaint premature eg does it relate to some unfinished aspect of work that is still in progress? Has too much time elapsed since the events, the subject of the complaint, took 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? The potential or actual risk of environmental harm caused by the incident. When was the unlawful activity carried out and for how long? 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? Would consent have been given to the party if it had been sought for this particular issue? Can the breach be easily remedied?

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 wide spread problem? Has the person, the subject of the complaint, received a previous warnings? Is contrition or remorse shown? Cooperation with the Council by the offender and 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? What would be in the public interest?

Alternative approaches

Would an educative approach be more appropriate than a coercive 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 was challenged in Court? Is there a Draft Planning Instrument or policy on exhibition that would make the unauthorised use legal?