

FILE NO: PSC2013-00406-0075

TITLE: COMPLIANCE POLICY

OWNER: DEVELOPMENT AND COMPLIANCE SECTION MANAGER

1. PURPOSE:

1.1 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.

2. CONTEXT/BACKGROUND:

2.1 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 amended a number of times since. ~~The policy provides the content around council offices using their discretion and factors to consider when handling compliance matters.~~

2.2 This policy is derived from the NSW Ombudsman 'Model Compliance and Enforcement Policy 2015' and industry best practice guidelines. This policy outlines the methodology, requirements and services associated with compliance based services undertaken by Port Stephens Council. This policy provides information for the public, along with all internal and external stakeholders.

3. SCOPE:

3.1 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 that are the subject of a compliance investigation, the complainant/submission maker, the general public and Council staff.

3.2 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.

Compliance and enforcement principles:

3.3 Accountable and Transparent.

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

3.4 Consistent and Proportional:

- a) Encouraging reports about possible unlawful activity by acting reasonably in response to the circumstances and facts in regards to each matter.
- b) Ensuring the level of enforcement action is proportionate to the level of risk associated with the breach.
- c) Making cost and resource efficient decisions regarding regulatory action.
- d) Providing educational response for matters categorised as minor to moderate.

Policy objectives:

3.5 This policy is to establish clear guidelines and protocols for internal and external stakeholders and provide the following workable guidelines on:

- a) Categorisation of reports of unlawful activities.
- b) Assessing if reports alleging unlawful activities warrants an investigation.
- c) Determining if enforcement/regulatory action is required.
- d) Investigation/Enforcement options available to Council.
- e) Review of determinations.
- f) Discretion of Officers.
- g) Allocation of Compliance Resource.
- h) The role of Principal Certifier.
- i) Considerations with anonymous reports.
- j) Information provided by concerned party/witness.
- k) Neighbourhood Disputes and Mediation Options.
- l) Procedural fairness.

Regulatory process:

3.6 Assessment and Investigation:

- a) A preliminary assessment of all matters will be undertaken to determine:
 - i. If Council are the Appropriate Regulatory Authority
 - ii. If there is sufficient information in the lodgement to warrant investigation
 - iii. An initial risk categorisation is to be undertaken in accordance with Risk Categorisation.
- b) Investigations are to be assigned by the relevant Delegated Officer
- c) Compliance investigations may be required to undergo reassessment of risk classification as investigations are undertaken.

3.7 No Action or Educational Approach:

- a) Council does not have jurisdiction.
- b) Matter has been previously assessed and no additional information or impacts have been presented.
- c) The allegations are a lawful action.
- d) The allegation is not supported with evidence or substance.
- e) The matter has been categorised as Minor in accordance with Council's risk categorisation.
- f) The matter is considered to be civil in nature and best to be mediated in a private manner.
- g) The relevant; Coordinators, Managers, Directors, General Manager or equivalent has deemed that undertaking action would unreasonably impact on resources and/or is unlikely to achieve an outcome sufficient to justify expenditure of resources.

3.8 Warnings, Education and Voluntary Rectification/Remediation:

- a) Breach is identified to have occurred that is deemed to be Minor to Moderate in accordance with Council's Risk Categorisation.
- b) The investigation is unable to identify substantial evidence or substance to warrant ongoing investigation.
- c) Proactive attempts have been undertaken to remedy the breach.
- d) No remediation/rectification of the breach is required or can be undertaken on an instructional/ voluntary basis.
- e) Development Consent or approval for the activity could be obtained.

3.9 Notices, Orders, Directions, Penalty Infringements:

- a) Breach is identified to have occurred that is deemed to be Moderate to Major in accordance with Council's Risk categorisation.
- b) Prior knowledge of the breach by offender is considered.

c) Specialised remediation/rectification is required.

3.10 Prosecution/Legal Options:

- a) Breach is identified to have occurred that is deemed to be Major in accordance with Council's Risk Categorisation.
- b) Breach is deemed to have long lasting environmental or community effects.
- c) Penalty Infringements are deemed to not be reflective of the breach that has occurred.
- d) Council has obtained sufficient evidence to support a legal procedure.

Review of determinations:

3.11 A review can be requested by the concerned party following a determination being made by the assessing/delegated officer.

3.12 The request for review is to be made in writing to the relevant Council Directorate.

3.13 The request is to provide details as to why a review is required.

3.14 The review is to be undertaken by the assessing/delegated officers supervisor (or relevant).

Discretion:

3.15 Responsible Officers are not limited by this policy in their use of discretion and exercise of official functions as required.

3.16 In the event that Officers utilise their discretionary power, the full circumstances and facts of each case need to be considered and the decision made on the merits.

3.17 Decisions about what action should be taken by Council are made at the Council's discretion.

- a) The objective is that reports alleging unlawful activity will be resolved to the satisfaction of Council, not always necessarily to the person raising the matter. Council will try to resolve matters efficiently to best manage Council resources.

Allocation of compliance resources:

3.18 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 formal enforcement action to remedy or restrain the breach.

3.19 This Policy acknowledges the costs and benefits of taking enforcement action or instituting proceedings should also be considered where breaches are solely of a minor technical nature or resulting in no material impacts upon any other

party or the health, safety and amenity of the environment and community. (i.e cost of proceedings and allocation of Council resources compared to the likely outcome and proportionate to the impact).

3.20 Council's initial risk categorisation and associated assessment are to be carried out to ensure that Council's resources are being allocated to matters that are or are likely to cause a significant adverse environmental or community impact.

The role of principal certifier:

3.21 In the event that concerns are received regarding a property in which an active Consent is present and a Principal Certifier has been appointed to the works/property the following may occur:

- a) Should the matter have been categorised as Minor to Moderate in accordance with Council's risk categorisation, the concerns will be notified to the Principal Certifier and the concerned party will be provided with the contact details of the Principal Certifier.
- b) Should the matter have been categorised as Major in accordance with Council's risk categorisation, the concerns will be notified to the Principal Certifier and additional assessment will be undertaken by the relevant Team Leader or Compliance Officer to determine if intervention or assistance is required to be provided by Port Stephens Council.

Considerations with anonymous reports:

3.22 Anonymous reports will be recorded and assessed in accordance with this policy.

3.23 In the event of anonymous concerns where Compliance Officers are unable to obtain adequate information and/or witnessed evidence (i.e witness statements, images or event details), Council may be less likely to progress an investigation.

Information provided by concerned party/witness:

3.24 To ensure that Council resources are allocated appropriately, Council relies on members of the public to assist with providing information regarding the area in which they wish for an investigation to occur; these details include but are not limited to:

- a) Property address.
- b) Date and time of the incident/activity.
- c) A description of what was observed or has occurred.
- d) Details of any safety concerns that may be applicable.
- e) Details of environmental and personal impacts.

- f) Vehicle registration details, if applicable.
- g) For noise or activity concerns – an impact diary.
- h) If available any video or photographic evidence.

3.25 If the matter proceeds to Court, the concerned party/witness may be required to give oral evidence and any statements, will be tendered in evidence.

3.26 Should the concerns be in relation to an activity or ongoing function, an activity diary may need to be supplied by the affected party to support an investigation and possible compliance action.

- a) Ongoing activity or function can include but is not limited to barking dogs, noise concerns, and disruptive business activities.

Neighbourhood disputes and mediation options:

3.27 Council is unable to act or intervene in neighbour disputes relating to the activities or behaviour of a neighbour or other matters which are of a private or civil nature. Including but not limited to:

- a) Dividing fences.
- b) Shared driveways or assets.
- c) Right of carriage ways.
- d) Trespassing.
- e) Encroachment.
- f) Damage to private property.
- g) Over hanging vegetation.
- h) Natural water overflow.
- i) Behaviour of persons.
- j) Storage of materials.

3.28 The preliminary assessment may identify that matters are best to be addressed directly between neighbours. Therefore in accordance with the NSW Ombudsman Guidelines, Council has adopted the process to request that neighbouring properties to undertake mediation in the first instance for matters including but not limited to:

- a) Barking dogs (first complaint with no clear evidence).
- b) Direction of stormwater.
- c) Overgrown properties.
- d) Impacts from exempt or minor development.
- e) Neighbourhood street parking.
- f) Minor noise concerns.
- g) Minor or inconsequential complaints.

3.29 Mediation also allows for negotiated outcomes, helps to maintain neighbourhood relationships and aims to reach a mutually acceptable agreement that avoids the need for regulatory intervention.

3.30 Concerned parties will be directed by Council Officers where appropriate to information about how to resolve neighbourhood concerns and disputes including – LawAccess NSW and NSW Civil and Administrative Tribunal (or equivalent).

Procedural fairness:

3.31 Procedural fairness or Natural Justice is to be provided where necessary and applicable in regarding concerns regarding a breach of legislation. In this regard, Council will:

- a) Act fairly and without bias.
- b) Inform those whose rights or interests may be adversely affected by the substance of any allegations against them or grounds for adverse comment about them.
- c) Consider any submissions put forward that provide relevant information regarding the matter being investigated.
- d) Council Officers may use their discretionary power in relation to the administration of procedural fairness in events that may be considered an emergency or require immediate determination.

Risk Matrix:

Minor	Moderate	Major
Features of category:		
<ul style="list-style-type: none"> - Consequences are minor in nature - Offence is unlikely to reoccur or cause public/safety concerns - Low level offence severity - Short term impacts may be caused - Matter may not require on-going regulatory monitoring or involvement. 	<ul style="list-style-type: none"> - Consequences are moderate in nature - Serious/ongoing impacts are unlikely - Moderate priority issue for Council and community - Effects numerous members of the community. 	<ul style="list-style-type: none"> - Permanent, long-term, reoccurring or serious damage to health, property or environment are likely or have occurred - Large scale impacts - May require directed/ordered restoration or rectification.



Examples of Actives:		
<ul style="list-style-type: none"> - Aesthetic concerns - Animal nuisances - Abandoned vehicles - Out of Hours works/operations - Minor localised issues - Minor Unauthorised development - Overgrown vegetation - Noise complaints (minor) - Barking dogs - Health and amenity (minor) - Neighbour nuisances - Minor direction of stormwater or overland water flow - Minor, technical or administrative breaches to legislation - Waste storage. 	<ul style="list-style-type: none"> - Animal control (general) - Breach of consent conditions - Minor clearing of vegetation - Construction site management - Major re-direction of stormwater drainage - Noise complaints, following attempted mediation - Pollution incidents - Unauthorised development. 	<ul style="list-style-type: none"> - Significant pollution incidents - Large scale clearing of vegetation or areas that contain threatened species habitat - Immediate threat to public health or safety - Food poisoning incidents - Abandoned vehicles in an unsafe location - Collapsed or unsafe building works in public areas - Aggressive and high impact dog attacks - Swimming pool safety.

4. DEFINITIONS:

4.1 An outline of the key definitions of terms included in the policy.

Breach/Unlawful activity	An act of breaking or failing to comply with a law, agreement, legislative requirement or condition of consent (approval).
Discretion	Discretion relates to a Council officers' consideration in deciding whether to take enforcement action or not, or what extent of action to take.
Risk categorisation	A category applied to each report/request in accordance with the Risk Matrix to determine the appropriate associated response in accordance with this policy.

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.

5. STATEMENT:

5.1 Council will carry out its compliance responsibilities in a fair and equitable manner to ensure:

- a) The relevant details are considered in compliance investigations and decisions are made in an environmentally and socially responsible manner.
- b) That action is proportional and reasonable to the breach that has occurred
- c) Compliance resources are allocated appropriately.
- d) The initiation of a process of education and creation of awareness within the community in relation to the reasons for and importance of compliance.
- e) 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.
- f) Cooperation with other Government Agencies responsible for enforcing legislation that relates to unlawful activities within Port Stephens.
- ~~f) Council considers the guiding principles in (Appendix 1) to assist staff in meeting the above policy statements to act promptly, consistently and effectively to allegations of unlawful activity~~
- g) The establishment of clear guidelines for the exercise of discretion in dealing with action requests or complaints about unlawful activity and to assist Council staff.

6. RESPONSIBILITIES:

- 6.1 The policy is implemented primarily via the ~~Environmental and Health~~ Compliance Coordinator.
- 6.2 All Council staff that deal with written or verbal requests or complaints alleging unlawful activity are responsible for following the policy framework.
- 6.3 All formal notifications of alleged unlawful activity will be lodged in Councils customer request system and directed to the responsible officer.

7. RELATED DOCUMENTS:

- 7.1 Local Government Act 1993.
- 7.2 Environmental Planning and Assessment Act 1979.
- 7.3 Protection of the Environment Operations Act 1997.

- 7.4 Roads Act 1993.
- 7.5 Companion Animals Act 1998.
- 7.6 Public Health Act 2010
- 7.7 Swimming Pools Act 1992.
- 7.8 Rural Fires Act 1997.
- 7.9 Road Transport Act 2013.
- 7.10 Food Act 2003.
- 7.11 Public Spaces (Unattended Property) Act 2021.
- ~~7.11 impounding Act 1993.~~
- 7.12 Biodiversity Conservation Act 2016.
- 7.13 Biosecurity Act 2015.
- 7.14 Vegetation Vandalism Policy.

CONTROLLED DOCUMENT INFORMATION:

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Author	Compliance Coordinator		
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VERSION HISTORY:

Version	Date	Author	Details	Minute No.
1	28/08/2007	Manager Development and Building	Policy adopted by Council	235
2	26/11/2013	Manager Development Assessment and Compliance	Amended.	344

Version	Date	Author	Details	Minute No.
2.1	28/03/2017	Development Assessment and Compliance Section Manager	Updated to new template.	065
3	26/11/2019	Development Assessment and Compliance Section Manager	Minor punctuation and grammatical changes throughout including to: 2.1, 3.1, 3.2, 5.1a, 5.1e, 5.1f. 6.1 Deleted Manager Development Assessment and Compliance and replaced with Environmental Health and Compliance Coordinator. 7.12 Deleted Weeds Act and replaced with Biodiversity Conservation Act 2016.	231
4	13/07/2021	Environmental Health and Compliance Coordinator	Policy updated to new template to reflect current style.	169

5	TBA	Compliance Coordinator	<p>2.1 – Deleted “The policy provides the content around council offices using their discretion and factors to consider when handling compliance matters”.</p> <p>2.2 – Added.</p> <p>3-3 – 3-31 – Added.</p> <p>Risk Matrix – Added.</p> <p>4.1 – Added “Breach/Unlawful activity - An act of breaking or failing to comply with a law, agreement, legislative requirement or condition of consent (approval).”</p> <p>4.1 – Added “Risk categorisation - A category applied to each report/request in accordance with the Risk Matrix to determine the appropriate associated response in accordance with this policy.”</p> <p>4.1 – Deleted “Principles - The considerations and value to which Council staff consider any compliance matter against as mentioned in this policy.”</p> <p>4.1 – Deleted “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.”</p> <p>5.1 – Added ‘b’ and ‘c’</p> <p>5.1 – Deleted ‘f’</p> <p>6.1 – Added “Environmental and Health”</p> <p>6.1 – Added “Compliance Coordinator”</p> <p>7.11 – Deleted “impounding Act 1993.”</p> <p>7.11 - Added “Public Spaces (Unattended Property) Act 2021.”</p>	TBA
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Policy

Version	Date	Author	Details	Minute No.
			7.13 – Added 7.14 - Added	