

Central Coast Council

Regulatory Policy



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Policy No.: CCC125



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1. Policy Objectives

- 1.1. The objectives of this Policy are to:
 - 1.1.1. establish Council as a responsive, evidence-led, outcomes-focused and risk-based regulator,
 - 1.1.2. provide a structure for consistent and transparent decision making,
 - 1.1.3. empower the use of discretion by staff involved in regulatory decisions where appropriate,
 - 1.1.4. provide our community and other Central Coast stakeholders with clarity on Council's approach to regulation (including compliance and enforcement) across the Central Coast Local Government Area (**LGA**),
 - 1.1.5. protect human health and the environment,
 - 1.1.6. protect Council and community assets (human-made and natural),
 - 1.1.7. enhance Council's reputation and standing within the community based on sound regulatory decision-making while ensuring a level playing field, as far as possible, across the LGA underpinned by the concepts of fairness and equity, and
 - 1.1.8. drive improved compliance with the various items of legislation, regulations, rules and other instruments or requirements administered and/or enforced by Council across the LGA over time.
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2. Policy Scope

- 2.1. This Policy applies to all regulatory, compliance and enforcement functions undertaken by Council staff across the LGA in response to alleged unlawful activity that Council contends constitutes an alleged offence under the legislation, regulations or rules administered and/or enforced by Council.
- 2.2. This Policy does not apply to regulatory, compliance and enforcement functions undertaken by Federal or State jurisdictions and their agencies within the LGA where Council is not the appropriate regulatory authority.
- 2.3. Where there is jurisdictional overlap (e.g., a Development Approval issued by the NSW Government for State Significant Infrastructure or State Significant Development but where Council regulates day to day pollution matters under the *Protection of the Environment Operations Act 1997* (**POEO Act**), Council may consider deferring to the enacting mechanism, for e.g., the issued Development Approval where that mechanism is best place to address the matter. This does not prevent Council from taking action if and as required.
- 2.4. This Policy relates to complaints about alleged offences for which Council regulates, not complaints about Council. Any reference made to a complaint or complainant in this Policy is distinct from a complaint or complainant handled under Council's [Complaints and Feedback Management Policy](#).

3. Policy Statement

- 3.1. Regulation is complex and requires a range of approaches and responses to address alleged offences to stop improper conduct while promoting changes in societal attitudes that drive behavioural change across the LGA.
- 3.2. Regulation is not solely about punishment. It is about ensuring that people do not impact people, property, assets and the environment in a detrimental manner. Council's preference is that those living, working, visiting or otherwise interacting within the LGA comply with legislative provisions at all times.
- 3.3. Council therefore undertakes a range of proactive intervention activities such as educational or outreach activities as well as proactive audits and inspections to promote compliance and prevent harm rather than relying solely on strict punitive action. However, there are unfortunately times when strong punitive action, including prosecution, is warranted.
- 3.4. Council, like many regulatory agencies over time, are under increasing pressure and demands, many of which are often contradictory in nature: "do more but with limited resources, be effective yet be less intrusive, be responsive but don't be captured by the regulated community, provide a quick resolution but be careful to follow the rules"¹ and so on. Fit-for-purpose and adaptive regulation protects individuals, communities and Council assets while boosting living, social and environmental standards. These considerations are at the heart of this Policy and our regulatory activities and guide our work/actions at all times.

4. Regulatory Principles

- 4.1. Council will apply the following principles when undertaking and discharging its regulatory functions:
 - 4.1.1. internal policies relating to the conduct of staff, such as Council's Code of Conduct, are complied with at all times,
 - 4.1.2. regulatory staff will always act within the law,
 - 4.1.3. the established legal practice concepts of Natural Justice and Procedural Fairness are followed at all times,
 - 4.1.4. regulatory action will consider both strategic and risk-based factors while prioritising action for alleged unlawful activity that causes, or has the potential to cause, harm (see Section 5),
 - 4.1.5. regulatory action will not be swayed by outside external influence,
 - 4.1.6. regulatory action will be timely and proportionate, firm but fair,
 - 4.1.7. regulatory staff are empowered to use discretion where warranted, and

¹ Sparrow, M; The Regulatory Craft (2000)

5. Regulatory Considerations

5.1. In keeping with the objectives and principles of this Policy, Council will consider the following factors when determining what an appropriate and proportionate approach is when addressing any alleged offence:

<p style="text-align: center;">Harm</p>	<ul style="list-style-type: none"> • seriousness of the alleged offence based on actual or potential harm to individuals, the community, public health and safety and the environment. • seriousness of the alleged offence based on actual or potential harm to Council property and assets which are property and assets for the benefit of our community. This includes hazards on private property that have the potential to impact assets such as road reserves and public places.
<p style="text-align: center;">Public Interest</p>	<ul style="list-style-type: none"> • the applicability of any other Council policies or resolutions that may be of relevance and the community expectations on the nature of the alleged offence and expected action. • ensuring consistency in decision making where matters are substantially the same, noting that there are other factors that can result in deviation. • whether a decision not to take action would undermine public confidence in Council. • whether action is necessary to clarify or test a grey area in the law or the laws applicability.
<p style="text-align: center;">Offenders Culpability</p>	<ul style="list-style-type: none"> • compliance history of the alleged offender both in general and with respect to the alleged offence. • whether it was reasonable for the alleged offender to have knowledge of the alleged offence. <i>Note: while this is not required for strict liability offences, it is a factor for consideration.</i> • motivation of the alleged offender, including whether the action leading to the alleged offence was for financial gain or some other form of material gain. • whether the alleged offender's behaviour is/was deliberate, reckless or consistently careless and whether the alleged offender has made false or misleading statements about the non-compliance.
<p style="text-align: center;">Offenders Attitude</p>	<ul style="list-style-type: none"> • whether the alleged offender self-reported the alleged offence (if and as required) or otherwise proactively tried to address the alleged offence with Council.

<p style="text-align: center;">Offenders Attitude (continued)</p>	<ul style="list-style-type: none"> • whether the alleged offender undertook voluntary remedial action to address the alleged offence, mitigate any harm and put in place appropriate mechanisms to prevent a recurrence in future where a repeat may occur. • whether the alleged offender cooperated with directions/orders and displayed a willingness to cooperate with Council, or whether they obstructed/hindered Council. • whether the alleged offender threatened and/or intimidated Council staff at any time.
<p style="text-align: center;">Other</p>	<ul style="list-style-type: none"> • the need for specific or general deterrence to prevent the alleged offence occurring again. • the age, physical or mental health or special infirmity of the alleged offender. • whether the consequences of a prosecution would be unduly harsh or oppressive. • time since the alleged offence. • whether the offence is a continuing and/or repeat offence. • the strength and admissibility of the evidence. • the strength of any relevant witnesses and their presentation to court. • potential lawful defences. • whether, if legislative provisions have changed, the conduct giving rise to the alleged offence is no longer unlawful. • the costs incurred by Council in prosecuting a matter with a low probability of success. • the strategic value in taking action. • the precedent which may be set in not taking action.

Table 1: Regulatory considerations

6. Further Considerations

6.1. There are several other factors for consideration when deciding what regulatory action to take, or not to take, in responding to complaints and/or instances of alleged unlawful activity. These further considerations may include elements taken from the following items:

- 6.1.1. State government directives or initiatives,
- 6.1.2. Legislative/statutory requirements,
- 6.1.3. Councils Community Strategic Plan,
- 6.1.4. Council’s Delivery and Operational Plan and resulting sub-plans,
- 6.1.5. Complaint data,
- 6.1.6. Other intelligence,

- 6.1.7. Internal Audits and Reviews, and
 - 6.1.8. State of the Environment Reports.
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7. Regulatory Outcomes

- 7.1.** Council can respond to instances of alleged unlawful activity in a number of ways as outlined in the image below noting that this image outlines, from bottom to top, what is known as an increasing regulatory response.

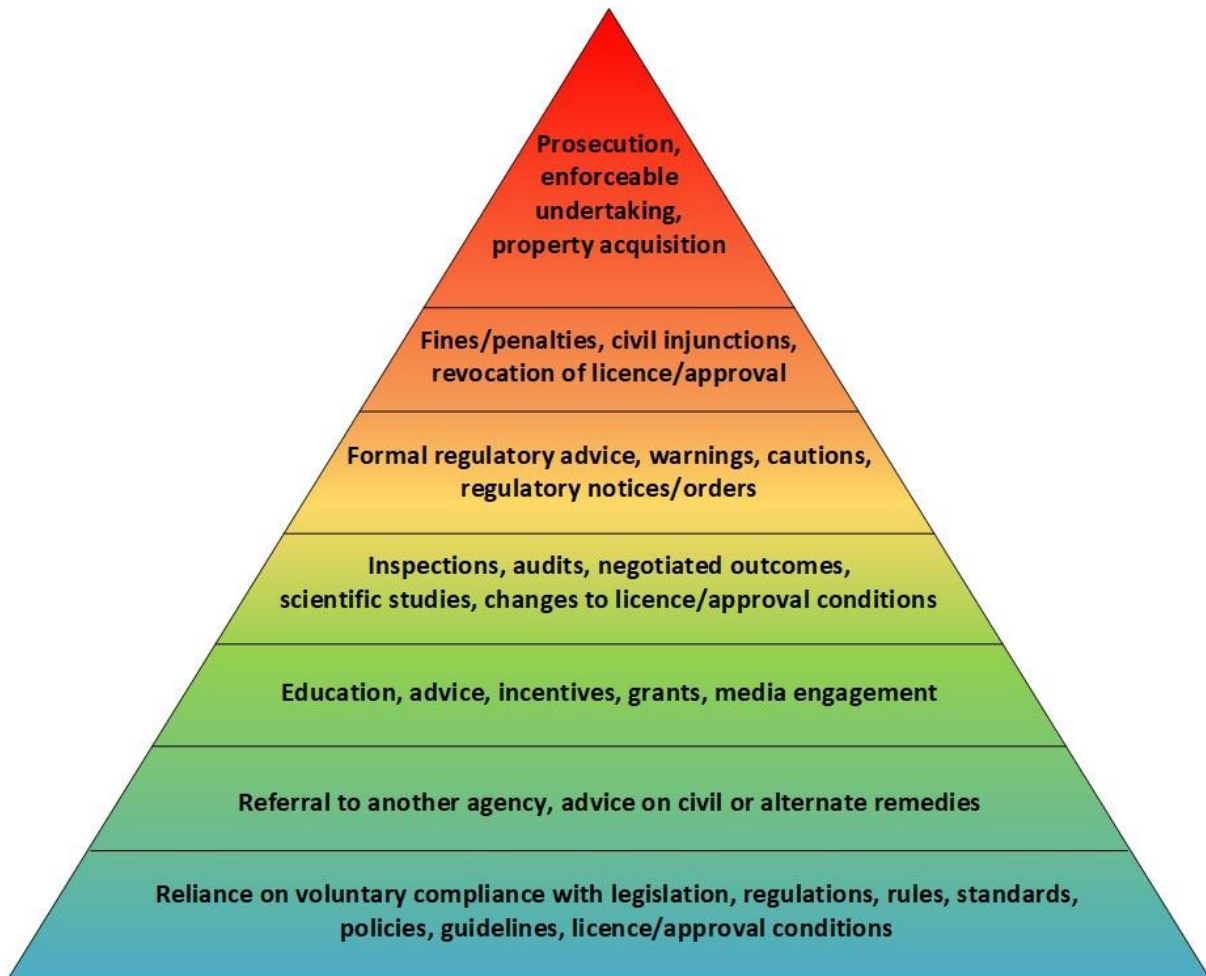


Image 1: Escalating Regulatory Pyramid

- 7.2.** Image 1 above is a guide only and does not purport to show all possible action available to Council. For example, there are times when a verbal discussion is sufficient to resolve a minor issue. This is Council's preferred approach in dealing with minor instances of alleged unlawful activity where the degree of harm is negligible, public interest is low, the alleged offender has little to no prior history and where the alleged offender takes immediate action to resolve the issue in a timely and appropriate manner.
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8. Exercising Discretion

- 8.1.** Council's regulatory staff have a range of regulatory options available to them when responding to alleged offences. It is important to note that an alleged

offence does not always automatically result in punitive action being taken and this is at the heart of the use of discretion – choosing the most appropriate response to the alleged offence being investigated. In some cases, no action may be an appropriate outcome.

9. Councillors Roles

- 9.1. Decision making relating to the outcome of an investigation of alleged unlawful activity is the responsibility of appropriately authorised Council Officers and relevant line management. Individual Councillors have no authority to direct Council officers in their day-to-day activities and the discharge of their regulatory functions. Councillors may assist individuals who raise concerns by satisfying themselves that policies are being carried out correctly. Councillors cannot ignore or alter a policy in order to satisfy the demands of special groups.
 - 9.2. The Chief Executive Officer may present certain decisions to be ratified by the elected Council if required in accordance with relevant legislation, regulations, external directives (e.g., from the NSW Office of Local Government) or policies.
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10. Proper Delegations/Appointments

- 10.1. Council Officers involved in regulatory activities will have the proper legislative delegations and appointments commensurate with their role.
 - 10.2. Such delegations and appointments are issued by the Chief Executive Officer.
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11. Making Complaints that Assist Council Action

- 11.1. Complaints of alleged unlawful activity are one of the primary ways in which Council becomes aware of such activities across the LGA. Due to the LGA's large geographical area (over 1600km²), it is impossible for Council staff to be everywhere at all times and therefore it is important that complaints assist Council as far as possible in reviewing and responding to those complaints.
- 11.2. Complaints can be made in a variety of ways including by phoning Council on 02 4306 7900, by emailing ask@centralcoast.nsw.gov.au or by lodging a self-service complaint via the online [Customer Services Centre](#). Complaints should be made in real time or as close to real time as far as possible. This assists in the preservation and collection of evidence which will assist Council staff.
- 11.3. Provided below is a list of items to include with a complaint to assist Council to investigate/action:
 - 11.3.1. complainant's name and contact details.
 - 11.3.2. date and time of the alleged unlawful activity,

- 11.3.3. who undertook the alleged unlawful activity (if known) – this could include a description of the alleged offender such as gender, height, weight, clothing etc or vehicle registrations associated with the person(s),
 - 11.3.4. location where the alleged unlawful activity took place,
 - 11.3.5. details of the alleged unlawful activity (i.e., what does the complaint relate to), and
 - 11.3.6. other details or evidence that may assist’s Council action such as photographs and video footage (where that evidence has been collected lawfully e.g., no trespassing).
- 11.4.** Council may request further details from a complainant to assist with investigations (e.g., provision of a barking dog diary).
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12. Triaging Complaints

- 12.1.** Complaints will be triaged to determine whether further investigation is warranted by Council staff. Such triaging will consider a range of factors including those factors contained within this Policy, including, but not limited to, the Regulatory Considerations, the Further Considerations, and the Regulatory Priorities, and those not included in this Policy, such as whether the complaint is vexatious in nature or relates to a known civil dispute.
- 12.2.** Complainants will be advised as to whether no further action is proposed or whether the complaint continues on to investigation.
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13. Anonymous Complaints

- 13.1.** Complaints are an important way for Council to become aware of an alleged offence that requires immediate or other action. Having a name with relevant contact details is important as it allows Council staff to make contact with the complainant to gather further details and evidence where appropriate that can assist Council in assessing what action is required and furthermore, can prevent frivolous complaints being made to Council.
- 13.2.** In general, Council will not investigate anonymous complaints unless there is an overriding public interest to do so. Council will give consideration to potential “harm” and any “public interest” considerations when making this determination.
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14. Privacy Considerations

- 14.1.** Council has in place a [Privacy Management Plan](#) that has been prepared in accordance with the *Privacy and Personal Information Protection Act 1998* and the *Government Information (Public Access) Act 2009*.
 - 14.2.** Council may only disclose personal information if the individual has consented to its disclosure, or the disclosure is required or authorised by law (including Court Orders or subpoenas), or where it is necessary to prevent or lessen a serious and imminent threat to that person's life, health or safety.
 - 14.3.** For the purposes of this Policy, complainant information is not disclosed to the party(s) that the complaint relates to (unless required under clause 13.2) and as indicated further above, the specific action taken by Council when responding to a complaint is also generally not provided to the party who made the complaint. Confidentiality is of utmost importance to Council.
 - 14.4.** It is important to note that where Council does pursue punitive action such as the issuing of fines or the commencement of prosecutions, subpoenas or Court Orders may require Council to disclose certain information that it generally would not otherwise disclose.
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15. Regulatory Priorities

- 15.1.** Council does not have infinite resources and must prioritise when and where to apply them. Council's regulatory functions are no exception.
- 15.2.** Council will publish on a financial year basis, its regulatory priorities via a Regulatory Priorities Statement. Council will consider those matters outlined in the "Regulatory Considerations" and "Further Considerations" sections above when developing this Regulatory Priorities Statement. This will also have the added benefit of advising the community on what Council's regulatory priorities will be and where an increasing regulatory response may be applied. Council may seek community input into its regulatory priorities to ensure that any matters of significant community concern are adequately taken into consideration.

Note: It is expected that this initiative will be implemented from the 24/25 Financial Year.

16. Regulatory Achievements

- 16.1.** Council will look to publicise relevant regulatory achievements based on the priorities identified within the Regulatory Priorities Statement. This is expected to drive broader voluntary compliance and subsequently focus limited regulatory resources on remaining non-compliant activities.

- 16.2.** Such achievements may also be shared with relevant stakeholders, including the media, to drive improvements over time. It is expected that Council's ability to report on these achievements will mature over time.

Note: It is expected that this initiative will be implemented from the 25/26 Financial Year.

17. Regulatory Partnerships

- 17.1.** Council will look for opportunities to leverage regulatory partnerships to improve its regulatory performance and outcomes.
- 17.2.** This may include partnerships with adjoining local councils where a common boundary is shared, or joint regulatory activities with State and Federal government agencies that may have a common interest (e.g., local councils and the NSW Environment Protection Authority (**EPA**) share regulatory functions under the POEO Act to protect and enhance the natural and built environments).
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18. Natural Justice, Procedural Fairness and Review and Appeal Rights

- 18.1.** Council's regulatory staff will follow the concepts of Natural Justice (i.e., innocent until proven guilty) and Procedural Fairness (e.g., provided with sufficient information to understand the alleged offence being actioned and being provided with an opportunity to comment on a regulatory notice/order (except in emergencies) at all times) that may impose an imposition.
- 18.2.** When taking regulatory action, Council's regulatory staff will generally provide the reasons for decisions to the recipient of the regulatory action (except for low value enforcement action (i.e., penalty amounts less than \$1000 e.g., parking enforcement).
- 18.3.** In most cases, internal and external review processes exist with some enshrined in legislation. If a person has been subject to regulatory action, the options for review are found in the documentation provided to that person, or that person can contact Council directly for more information.
- 18.4.** Council generally does not provide specific details/outcome of its investigations to third parties for privacy reasons, but also because the action taken may be subject to appeal.
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19. Responsibilities

Compliance, monitoring and review

- 19.1.** The Unit Manager Environmental Compliance Services is responsible for the implementation, monitoring and continuous improvement of this Policy and its related processes and procedures.

- 19.1.1. This Policy aligns with Council's applicable legislative obligations and objectives in the Community Strategic Plan,
- 19.1.2. This Policy will be reviewed regularly to evaluate its continuing effectiveness and relevance, and
- 19.1.3. All Council staff responsible for regulatory, compliance and enforcement functions across the LGA will be issued with the appropriate sub delegations, instruments of appointment and authorisations to enable them to lawfully carry out their duties including use of discretionary powers in compliance with this Policy.

Reporting

- 19.2. Reporting in respect to the functions outlined within this policy are the responsibility of the Unit Manager Environmental Compliance Services in accordance with relevant legislation and as per organisational requirements for decision-making, including the Regulatory Priorities Statement outlined in clause 15.2 above.

Records management

- 19.3. Staff must maintain all records relevant to administering this protocol in accordance with Council's [*Information and Records Management Policy*](#).
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20. Policy Definitions

- 20.1.** Most terms specific to this Policy have been defined within this Policy as far as possible. Where they have not and are of relevance, further definition has been provided below.

<p>Alleged Offence</p>	<p>Is any action, activity, behaviour or work that is alleged to have been or is being carried out:</p> <ul style="list-style-type: none"> • contrary to the terms or conditions of a development consent, approval, permit or licence, • contrary to any Council specific requirements including signage erected under Section 632 of the <i>Local Government Act 1992</i>, and • contrary to the legislation, regulations and rules of New South Wales that Council administers and enforces. <p>Council uses the term alleged offence to delineate the fact that the alleged offence has not been heard or determine in a Court. This does not prevent Council taking punitive or regulatory action.</p>
<p>Complainant</p>	<p>A person or agency who notifies Council of an alleged offence. This is the person/agency Council will liaise with regarding the matter including requests for additional information and/or response on what action was taken in relation to the matter.</p> <p>Any reference made to a complaint or complainant in this Policy is distinct from a complaint or complainant handled under Council's Complaints and Feedback Management Policy.</p>
<p>Council</p>	<p>Means Central Coast Council.</p>
<p>Natural Justice</p>	<p>Natural justice is a fundamental concept in law that refers to the basic principles of fairness and equity. The concept of natural justice is deeply rooted in the idea that every person is innocent until proven guilty, has the right to be treated fairly, and that they should not be subjected to arbitrary or unjust treatment.</p>
<p>Procedural Fairness</p>	<p>A process by which decisions are made adhering to the principles of justice and equality.</p> <p>The rules of Procedural Fairness require:</p> <ul style="list-style-type: none"> • a hearing appropriate to the circumstances, • lack of bias, • evidence to support a decision, and • inquiry into matters in dispute.
<p>Punitive Action</p>	<p>Enforcement action that involves financial penalties.</p>

Regulatory Action	Regulatory action that do not involve financial penalties such as fines or prosecutions but encompasses warnings, cautions, regulatory notices and orders and other like action.
Vexatious	A complaint instituted without real grounds, chiefly to cause annoyance

21. Policy Administration

Business Group	Environment and Planning
Responsible Officer	Unit Manager Environmental Compliance Services
Associated Procedure (if any, reference document(s) number(s))	Procedures will be developed following adoption of this Policy.
Policy Review Date	Every four years unless legislated otherwise.
File Number / Document Number	D15787667
Relevant Legislation (reference specific sections)	Refer to Related Policies / Protocols / Procedures / Documents below.
Link to Community Strategic Plan	Theme 4: Responsible Goal G: Good governance and great partnerships R-G3: Provide leadership that is transparent and accountable, makes decisions in the best interest of the community, ensures Council is financially sustainable and adheres to a strong audit process.
Related Policies / Protocols / Procedures / Documents (reference document numbers)	<ul style="list-style-type: none"> ▪ Code of Conduct ▪ Information and Records Management Policy ▪ Privacy Management Plan ▪ Unreasonable Complainant Conduct Policy ▪ Complaints and Feedback Management Policy <p>Related legislation, regulations or similar (not exhaustive):</p> <ul style="list-style-type: none"> ▪ <i>Biodiversity Conservation Act 2016</i> and its Regulation(s), ▪ <i>Biosecurity Act 2015</i> and its Regulation(s), ▪ <i>Boarding Houses Act 2012</i> and its Regulation(s), ▪ <i>Companion Animals Act 1998</i> and its Regulation(s), ▪ <i>Environmental Planning and Assessment Act 1979</i> and its Regulation(s), ▪ <i>Evidence Act 1995</i> and its Regulation(s), ▪ <i>Food Act 2003</i> and its Regulation(s),

	<ul style="list-style-type: none"> ▪ <i>Government Information Public Access Act 2009</i> and its Regulation(s), ▪ <i>Interpretation Act 1987</i> and its Regulation(s), ▪ <i>Local Government Act 1993</i> and its Regulation(s), ▪ <i>Privacy and Personal Information Protection Act 1998</i> and its Regulation(s), ▪ <i>Protection of the Environment Operations Act 1997</i> and its Regulation(s), ▪ <i>Public Health Act 2010</i> and its Regulation(s), ▪ <i>Public Spaces (Unattended Property) Act 2021</i> and its Regulation(s), ▪ <i>Roads Act 1993</i> and its Regulation(s), ▪ <i>Road Rules 2014</i>, ▪ State Environmental Planning Policies (including the Central Coast Local Environmental Plan 2022). ▪ <i>Security of Critical Infrastructure Act 2018 (Cth)</i> and its Regulation(s), ▪ <i>Smoke-free Environment Act 2000</i> and its Regulation(s), ▪ <i>Swimming Pools Act 1992</i> and its Regulation(s), ▪ <i>Tattoo Parlours Act 2012</i> and its Regulation(s), and ▪ <i>Water Management Act 2000</i> and its Regulation(s).
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22. Policy Authorisations

No.	Authorised Function	Authorised Business Unit / Role(s)
TBA	Use of discretionary powers when carrying out regulatory and enforcement functions	All regulatory staff of Council

23. Policy History

Revision	Date Approved / Authority	Description Of Changes
1	26 March 2024 Min No. 60/24	Creation and adoption of Policy

24. Appendices

Nil.