### A vibrant and sustainable Central Coast





# POLICY FOR COMPLIANCE AND ENFORCEMENT



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#### CERTIFIED A TRUE COPY OF POLICY ADOPTED BY COUNCIL

AUTHOR SIGNATURE

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#### 1. INTRODUCTION

Central Coast Council's (Council) regulatory responsibilities apply to actual unlawful activity, as well as a failure to take action. The *Policy for Compliance & Enforcement* (the Policy) aims to guide Council's roles in managing service requests and notifications alleging an act and/or an omission resulting in an unlawful activity or occurrence.

To manage the roles, Council will consider how:

- To prevent or minimise harm to health, welfare, safety, property or the environment
- To improve the safety and amenity of the community
- For the collective good, the welfare of the community or the public interest
- To promote social policies and the environment
- To manage risks
- To uphold social order
- To aim to meet the expectations of the community
- To encourage reports of possible unlawful activity from the community
- To make the regulated community aware of their legal obligations and how to comply
- To consider details of any other relevant strategic planning

The Policy is based on the 'Model Policy' developed by the NSW Ombudsman dated December 2015.

#### 2. PURPOSE AND SCOPE

The Policy distinguishes between a report alleging unlawful action or activity and a complaint indicating dissatisfaction of Council service or staff handling of a complaint. A report alleging unlawful actions or activities will be managed in accordance with the Policy. A complaint alleging dissatisfaction of Council's actions or staff will be managed in accordance with Council's Policy for Complaint and Feedback Management.

The Policy provides information for internal and external stakeholders and interested parties about Council's position on compliance and enforcement matters in the Council area. It aims to provide structure, consistency and transparency in decision making, and facilitate a proportional approach to compliance and enforcement actions.

The Policy outlines matters for consideration at the various stages of the compliance and enforcement process from the receipt, investigation to determination of the procedure.

In certain circumstances Council may have shared enforcement responsibilities with other regulatory authorities. The Policy promotes a collaborative and cooperative approach to enforcement and compliance matters.

The policy allows scope for use of discretion to enable exercise of official functions and the need for merit based decisions.

The objectives section of an Act often

The objectives section of an Act often lists specific nature of the harm that is being addressed and explicitly states the regulatory purposes of the legislation. Council will ensure that regulatory functions are exercised consistently and without bias.

#### 3. POLICY STATEMENTS

The Policy applies to all elected members of Council, all personnel employed by Council, any person or organisation contracted to or acting on behalf of Council. It also applies to a person or organisation employed to work on Council premises or facilities and all activities of the Council.

The Policy does not confer any delegated authority upon any person other than those as granted by the Chief Executive Officer.

# 4. POLICY IMPLEMENTATION PROCEDURES

The Policy should be read in conjunction with:

- Council's Code of Conduct
- Council's Policy for Records Management
- Council's Policy for Complaint and Feedback Management

It is the responsibility of all Council employees and agents to have knowledge of, and to ensure compliance with the Policy.

#### 5. **DEFINITIONS**

The following are the definitions of key terms in the Policy:

Term Dilapidated works	Meaning Refers to sites that have fallen into a state of disrepair or deteriorated
Enforcement	Actions taken in response to serious or deliberate contraventions of law
Incomplete works	Sites where consent or an appropriate approval has been granted, work has commenced and is not completed
Regulation	Use of a variety of methods to influence and a change of behaviour to achieve the objectives of an Act, Regulation or other statutory instrument administered by Council
Unlawful activity	Any activity or action that has been or is being carried out contrary to or not compliant with:  Terms or conditions of a development consent, approval, permit or licence  An environmental planning instrument  A legislative provision regulating the particular activity or work  A required approval and or permission or licence under legislation.
Visually prominent areas	Refers to sites that are located within urban areas particularly along major thoroughfares and/or areas considered to be of scenic value

#### 6. POLICY OBJECTIVES

The intent of the Policy is to establish guidelines and protocols for Council in the management of enforcement and compliance activities.

It provides for:

- Responding to reports alleging unlawful activity
- Assessing whether reports alleging unlawful activity require investigation
- Determining whether enforcement action is warranted
- Options for managing cases of alleged unlawful activity
- Commencement of legal action
- Coordination of shared enforcement responsibilities where appropriate

The Policy provides advice and guidance on:

- The role of the Principal Certifying Authority and
- The role of Councillors

#### 7. APPLICATION

The Policy applies to management of compliance and enforcement 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
- Tree preservation

# 8. COMPLIANCE AND ENFORCEMENT PRINCIPLES

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

Principle	Action
Accountability •	Acting in the best interests of public
and transparency	health and safety and in the best
	interests of the environment
•	Ensuring accountability for decisions to
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•	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 The Policy
•	Acting on any complaints or concerns
	about the conduct of compliance
	officers in accordance with Council's
	Complaints and Feedback
	Management Policy
•	Advising people and organisations
	subject to enforcement action of any
	avenues available to seek an internal
	or external review of a decision.
	or external review of a decision.
Consistency •	Ensuring all compliance and
	enforcement action is implemented
	consistently
	Encouraging reports about possible
	unlawful activity by acting
	reasonably in response to the
<b>黎、民华民党会会会</b>	circumstances and facts of each
	matter.
	matter.
Diliev	Ensuring the level of enforcement
Proportionality •	_
	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.
Timeliness •	Ensuring responses to reports alleging
	unlawful activity and decision making
	in relation to those is timely.
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#### 9. RESPONSIBILITY

Council will investigate alleged unlawful activity and implement the Policy as required. The actions will aim to ensure any unlawful activity identified is brought to the attention of the appropriate business unit of Council.

#### Council will:

- Treat all relevant parties with courtesy and respect.
- Communicate with all relevant parties and provide feedback on the progress of an investigation 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.
- Provide as appropriate to relevant parties about the outcomes of investigations.
- Provide information to relevant parties of any avenues to seek an internal or external review of a decision.

All reports alleging unlawful activity will be recorded in accordance with:

- Procedure for Complaints and Feedback Management
- Council's Policy for Records Management

# 10. RESPONDING TO CONCERNS ABOUT UNLAWFUL ACTIVITY

Council will generally attempt to resolve matters as quickly and informally as possible while avoiding formal legal action.

When dealing with reports alleging unlawful activity Council's objective will be 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.

Decisions about enforcement and compliance action are discretionary and the objective is resolved to the satisfaction of Council not necessarily the person raising the matter. Council will generally conduct a preliminary assessment to determine a priority for a response and whether further investigation or other action is appropriate.

An investigation of alleged unlawful activity may take a significant amount of time and resources to complete, particularly where the issues are complex. Where Council decides to investigate, Council may give the person who reported the alleged unlawful activity feedback on the progress of the investigation, and any reasons for delay. Feedback may not include all details of the investigation or information where it could compromise the integrity of the investigation or potential legal action. Any response will be dependent upon verifiable evidence. Where verifiable evidence is not available further action may not be possible.

Council will record and assess every report alleging unlawful activity. A response will be provided to the person raising the matter unless the person indicates they do not wish to receive a response or the report is anonymous.

#### Confidentiality

A person who reports allegations of unlawful activity should not expect that their identities will remain confidential. Council may have to disclose information that identifies them in the following cases where:

- Disclosure is necessary to investigate the matter.
- The identity has already been disclosed.
- An 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.

In determining whether to disclose confidential information Council may consider:

- Concerns an individual may have about their physical safety being endangered as a result of making a report.
- Any potential limitations of Council's ability to investigate the matter.

Where legal action is undertaken, the person should expect their identity will be disclosed.

#### **Council expectations**

Council expects that a person who reports allegations of unlawful activity will:

- Provide a clear description of the alleged unlawful activity and any resolution sought.
- Provide all available and relevant information to Council.
- Provide any new information about the alleged unlawful activity that may become known following the making of the report.
- Not giving intentionally misleading or incorrect information.
- Cooperating with Council's inquiries and giving timely responses to questions and requests for information.
- The person will treat Council 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 are not met, Council may limit continuation of the investigation or may restrict further communications with the person.

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

#### **Expectations of Council**

A person who reports alleged unlawful activity can expect Council staff will:

- Treat them with courtesy and respect.
- Assess any information provided when making any decisions.
- Review any decision where further information is identified.
- Provide appropriate advice on the outcome of the allegation reported, including an explanation of the reasons for the outcome.
- Attempt to explain decisions in a manner that is capable of being understood.
- Provide information about any relevant internal and external appeal processes that may be available.

#### **Action disputes**

Where a person disputes the actions taken, the person will be advised of Councils Policy for Complaints and Feedback Management.

#### **Anonymous report**

Anonymous reports will be recorded and assessed in accordance with the Policy. As it is not possible to seek clarification or additional information about a matter, it may be more difficult to evaluate the allegations and therefore limit the investigation.

#### **Business hours**

Unlawful activity can occur outside business hours. As an example 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 restraints Council investigations may be limited due to an assessment of risk of harm to health, welfare, safety, property or the environment or whether it is otherwise in the public interest to take such action outside normal business hours.

#### Neighbourhood disputes

Where Council determines a dispute between two neighbours is a civil matter, Council will assess the report to determine if there is evidence of unlawful activity requiring Council action. Where the issue is outside Council's control, information may be provided about how to resolve the dispute including referral to other resources such as LawAccess NSW and/or the Community Justice Centre.

#### Incomplete works & dilapidated buildings

Incomplete works and dilapidated buildings may have a negative impact on the amenity of an area and potentially cause public safety issues. Council acknowledges circumstances may delay the completion of works or a property may fall into disrepair.

While it is desirable that all works be completed within a reasonable timeframe and properties are maintained, the following are actions that, under appropriate circumstances, may reduce the impact of incomplete works or dilapidated buildings:

- Hoardings to protect and/or screen sites
- Maintenance and/or improved hoardings
- Provision of screen landscaping
- Painting or other external maintenance and restoration.

To ensure that public safety is secured and that approved works are completed in a timely manner, Council aims to address the impact of incomplete works and dilapidated buildings. To resolve these issues, Council may require submission of an implementation or a Plan of Management for the maintenance of the site.

#### 11. RISK ASSESSMENT

Not all reports alleging unlawful activity will warrant investigation. A preliminary assessment of all reports may 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.

Section 22 provides a Risk Category Guide to assist determination of risk.

#### 12. INVESTIGATION PROCESS

The objectives of the processes are 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.

When determining to investigate or take action, Council may consider a range of factors, including:

- If the activity is having a significant detrimental effect on the environment or does it constitute a risk to public safety?
- If the report is premature as it relates to some unfinished aspect of work that is still in progress?
- If the activity or work is permissible with or without permission?
- Is there compliance with development consent conditions?
- What time has elapsed since the events took place?
- Is another regulatory agency the more appropriate to investigate and deal with the matter?
- Does it appear there is a pattern of conduct or evidence of a possible wide spread problem?
- Has the person or organisation reported been the subject of previous reports?
- Does the report raise matters of special significance in terms of Council's current priorities?
- Are there significant resource implications in relation to an investigation and any subsequent action?
- It is in the public interest to investigate the report?

The above factors are a guide and not intended to limit any investigation.

Council may take no enforcement or compliance action if, following an assessment, it is identified that:

- Council does not have jurisdiction to further investigate or is not the appropriate authority to take action on the issues raised.
- The assessment identifies the report relates substantially to a matter previously determined and no new or compelling information is presented.
- The allegations relate to a lawful activity.
- The report is not supported with evidence or there appears to be no substance to the claims
- A relevant management officer 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.

To demonstrate the decisions made in relation to an investigation, Council will document reasons for the determination in accordance with Council's Policy for Records Management.

#### 13. ENFORCEMENT ACTION

When determining whether to take enforcement action in relation to any alleged unlawful activity, Council will consider the circumstances and facts of the matter and the public interest. Common considerations in determining the most appropriate response in the public interest may include:

#### **Action objectives**

Council will take into account the above considerations including any evidence gathered during their investigation. Council will aim to:

- Act impartially.
- Be mindful of obligations under Council's Policy for Conduct During Business Hours.
- Not act as a decision-maker in relation to any matter in which they have a personal interest.
- Not take enforcement action purely as a response to the conduct of an individual such as persistent demands or threats

 To ensure any enforcement action is taken upon the persons responsible for the alleged unlawful action

#### Impact of the alleged unlawful activity:

- 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
- The impacts of the alleged unlawful activity.

#### Alleged offender:

- Has any prior warnings, instructions, advice been issued to the person or organisation reported or has any previous enforcement action been taken against them?
- Whether the offence was committed with intent
- Whether the person or organisation reporting the unlawful activity have 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 hardship circumstances affecting the person or organisation reported.

#### Impact of any enforcement action:

- Is there a need to deter any future similar unlawful activity?
- What action would be proportionate and reasonable in response to the 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?

 Whether Council is prevented from taking action based on earlier advice given, i.e, whether an estoppel situation has been created?

Remedy or action options:

- 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?

Section 21 provides an Action Guide.

#### Legal or technical issues

Where legal and/or technical issues are in question, Council may consider whether legal advice or professional advice is warranted. Council may also invite a person subject to possible enforcement action to obtain independent professional advice in relation to issues of concern to Council.

#### Council records

Council will maintain records about the decision-making processes in the enforcement process where alleging unlawful activity is reported. Maintenance of records will be in accordance with Council's Policy for Records Management.

## 14. UNLAWFUL ACTIVITY OPTIONS

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 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 and any decision being made on the merits.

At all times, Council's key concerns will be:

- 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.

Options for enforcement action may include:

- Mediation
- Cooperative agreements
- Payments to rectify damage
- Service of Penalty Infringement Notice
- Legal action

The following guide will be considered by Council 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:

Level of risk	Enforcement options
Very low	<ul> <li>Take no action on the basis of a lack of evidence or some other appropriate reason.</li> <li>Provision of information/advice on how to be compliant.</li> </ul>
Low	<ul> <li>Negotiating with the person to obtain voluntary undertakings or an agreement to address the issues of concern.</li> <li>Issuing a warning or a formal caution.</li> </ul>
Medium	<ul> <li>Issuing a letter requiring work to be done or activity to cease in lieu of more formal action.</li> <li>Issuing a notice of intention to serve an order or notice under relevant legislation, and then serving an order or notice if appropriate.</li> </ul>
High	<ul> <li>Issuing a penalty notice.</li> <li>Carrying out the works specified in an order at the cost of the person served with the order</li> </ul>
Very high	<ul> <li>Seeking an injunction through the courts to prevent future or continuing unlawful activity.</li> <li>Commence legal proceedings for an offence against the relevant Act or Regulation.</li> </ul>

All enforcement action may be reviewed and monitored to ensure compliance with the Policy. Reports alleging continuing unlawful activity will be assessed and further action taken where necessary. Where continuing unlawful activity is reported, previous decisions may be reviewed and where found to have been ineffective, further enforcement actions undertaken.

#### 15. LEGAL ACTION

Council may be guided by legal advice in deciding whether to commence criminal or civil proceedings. Determination may be dependent upon:

#### **Evidence adequacy**

Any evidence needs to be admissible, substantial, verifiable and reliable. Evidence to the required standard of proof as required by the Court.

The basic requirement of any prosecution is that the available evidence must establish a *prima facie* case. The evidence must prove the elements of the offence beyond reasonable doubt or on the balance of probabilities. Council will require sufficient evidence to satisfy the court that an actual or threatened alleged unlawful activity has occurred.

Where a person provides evidence, the person should expect to assist Council as far as reasonably possible. Where support is withheld, the person will be advised that Council's ability to pursue action may be limited.

#### Success assessment

Given the expense of legal action, Council will aim to only take legal action where there is a reasonable prospect of success before a court. In making this assessment, Council will consider:

- The availability, competence and credibility of witnesses
- · The admissibility of the evidence
- Any possible defences
- Any factor which could affect the likelihood of a successful outcome

#### **Public interest**

A principal consideration in deciding whether to commence legal proceedings is whether it is in the public interest to do so. To consider the public interest, Council may consider:

- 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.

#### Commencement time

Council will give consideration to legislative time limits in which enforcement proceedings must be commenced. Legal action will only be commenced where it is within any statute barred guideline or requirement.

#### 16. SHARED RESPONSIBILITIES

Council recognises collaboration and cooperation with other authorities is a preferred approach. Where there are shared legislative responsibilities, Council 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
- Timeframes for appropriate response and/or actions

# 17. PRIVATE CERTIFIERS INTERACTION

Council retains a regulatory role and enforcement responsibilities where a private certifier has been appointed the Principal Certifying Authority (PCA).

Where the PCA issues a Notice of Intention to Issue an Order to require compliance with conditions of consent or rectify any breaches, the PCA must provide a copy to Council.

Council will cooperate with the PCA to resolve

any issues when they arise to achieve compliance with the development consent, a complying development certificate or building standards.

#### 18. COUNCILLORS ROLES

Decision making relating to the investigation of reports alleging unlawful activity and taking enforcement action is the responsibility of appropriately authorised Council officers or Council itself. Individual Councillors have no authority to direct Council officers in their day-to-day activities.

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.

The Chief Executive Officer may present certain decisions to be ratified by the elected Council if necessary or desirable, and the Councillors may call for a report about particular issues to a Council meeting.

#### 19. DELEGATIONS

Council staff delegations as granted by the Chief Executive Officer.

#### 20. 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
- Reporting of progress and results of investigations
- Good Conduct and Administrative Practice
- Options for Redress

- Investigation 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.

#### 21. ACTION GUIDE

When deciding whether to take enforcement action in relation to an alleged unlawful activity, Council will consider the circumstances of the matter. The section below provides assistance by providing a list of items that may be taken into consideration

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

- Consider the nature, extent and severity of any actual or potential impact of the unlawful activity. Is 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, it would normally warrant a decision to take action to remedy or restrain the breach? Consider whether the unlawful activity is ongoing or has ceased.
- Consider 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, may not warrant a decision to take action to remedy or restrain the breach.
- Legislation time limits in which to commence proceedings and take enforcement action.

#### 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 subject of the report
- Any particular circumstances of hardship affecting the person or organisation reported.

- Consider 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.
- Consider whether the offence was committed deliberately, recklessly or with gross negligence. Would cases of this nature be more likely to result in a successful prosecution. Was the offence committed as a result of an accident or genuine mistake? Would providing education and guidance or a formal warning be more suitable in achieving desired outcomes?
- Was the offender proactive in resolving the matter or assisted Council in the resolution of the matter? Consider if public interest would be best served by prosecuting the offender, especially if work has rectified the issue. If the offender has demonstrated a lack of contrition and is uncooperative with the investigation or remediation, consider if prosecution or monetary penalty would be more appropriate.
- Consider if there are 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
- Whether an educative approach 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 the Council has created an estoppel situation.

Consider 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.

Determine whether to take an educative approach or enforcement approach.

Consider 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

#### Considerations about the impact of the enforcement action

• the apparent level of intent shown by the responsible person.

It may not be appropriate to take enforcement action if the chances of success are unlikely. In such situations, consider the causes of that likelihood and address in the particular or general nature.

Consider if there is any reasonable proportionality between the ends to be achieved and the means used to achieve them.

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

Legal proceedings are expensive. When considering a cost-benefit analysis, costs and benefits should be assessed broadly.

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.

Consider 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.
- 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.

Is there verifiable evidence of the unlawful activity and can the matter be easily remedied by some action on the part of the person who is the subject of the report? Is there a less compelling case for enforcement action, depending on the other circumstances of the case such as the conduct of the offender?

If retrospective approval or certification is possible? It may be reasonable to allow an opportunity to obtain appropriate approvals or certification prior to taking other enforcement action. Compliance by informal means may be the most efficient way to resolve the matter.

Actions need to be balanced with other considerations such as the public interest in enforcing the law.

# 22. RISK CATEGORISATION GUIDE

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Critical	High	Medium	Гом
Features of categories			
Permanent, long term or reoccurring	Moderate, major or severe	Moderate consequences are	Consequences are minor or moderate and
and serious damage to health, property or environment likely or very	consequences likely or very likely	likely, serious impacts are very unlikely	are unlikely or very unlikely to occur
likely			
Large scale impacts	Medium-large scale impacts	Small-medium scale impacts	Small scale, isolated impacts
Very serious offences	Serious offences	Moderate offence severity	Low level offence severity
Very high priority issue for Council and community	High priority issue for council and community	Medium priority issue for council Low priority issue for council or and community	Low priority issue for council or community

	RISKGATIEG	RISK CATTEGORY EXAMPLES	
Issue	High	Medium	<b>Low</b>
Pollution incidents	Significant pollution incidents	Poor sediment control on building sites	Minor discharges
Dumped rubbish	Dumped hazardous wastes or large scale dumping incident	Dumped wastes in a sensitive location	Dumped wastes low hazardous area
Clearing of vegetation containing threatened species	Serious breaches of tree preservation order	Greater than 10 trees removed	Less than 10 trees removed
Food poisoning incidents	More than 10 people affected	5 to 10 people affected	Less than 5 people affected

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Issue	High	Medium	Low
Abandoned vehicles	Abandoned vehicle. Highly risk area	Abandoned vehicle. Unsafe location	Abandoned vehicle. Low risk location
Unsafe buildings and building works	Collapsed or unsafe building works in public areas	Stable unsafe or dilapidated building	Secure unoccupied building
Noise complaint	Affecting a neighbourhood or greater	Affecting several people	Affecting immediate neighbours only
Dog complaints-roaming	Roaming dangerous or restricted dog	Roaming dog, dangerous breed roaming in a prohibited area	Roaming dog, not dangerous breed
Dog complaints- noise (Barking)		Barking affecting 2 or more neighbours	Barking affecting a single neighbour
Dog attack	Attack causing serious injury or death to a person or animal. Attack in progress	Attack causing minor injury to person or animal	Attack causing no physical injury
Development sites	Sediment leaving site, off site safety such as traffic movements	Sediment leaving site into drainage infrastructure	Visual or other impacts limited to the site
Kerbside incidents	Kerbside placement or dumping hazardous material eg asbestos	Kerbside placement or dumping in excess of collection entitlement	Kerbside placement or dumping wastes not acceptable for collection



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