

Policy

Compliance and Enforcement

June 2019

Table of contents

1	Purpose	1
2	Scope.....	1
3	Principles	1
4	Responsibility.....	2
5	Responding to concerns about unlawful activity.....	3
6	Investigating alleged unlawful activity.....	3
7	Taking enforcement action	4
8	Options for dealing with confirmed cases of unlawful activity.....	5
9	Voluntary compliance	5
10	Role of CN where there is a private certifier	5
11	Procedural fairness.....	6
12	Confidentiality	6
	Annexure A - Definitions	7
	Document control	8

1 Purpose

- 1.1 This Policy provides information to all internal and external stakeholders and interested parties about City of Newcastle's (CN) position on compliance and enforcement matters in the local government area.
- 1.2 It outlines how CN conducts compliance and enforcement activities in a fair and equitable manner; and establishes a framework to guide the most efficient and effective use of CN resources to achieve the best environmental, health and safety outcomes for the community.
- 1.3 The Policy is modelled on the NSW Ombudsman's Model Compliance and Enforcement Model Policy. In implementing the Policy, CN will have regard to compliance and enforcement guidelines developed by the NSW Ombudsman.
- 1.4 The compliance and enforcement activities of CN play an important role in achieving [CN's Community Strategic Plan](#) (CSP). The CSP is a shared community vision and it includes a number of key objectives for the city.
- 1.5 This Policy assists CN to achieve the shared objective of protecting and enhancing our environment and ensuring we have a liveable environment.
- 1.6 CN's current compliance and enforcement activities are outlined in [CN's Delivery Program and Operational Plan](#).

2 Scope

- 2.1 This Policy applies to all the compliance and enforcement activities carried out by CN, associated with the broad range of legislation, regulations, guidelines, codes and standards that CN is delegated and responsible to administer and enforce. Specific legislation and delegations are outlined in [CN's register of delegations and authorisations](#).
- 2.2 This includes regulatory functions, including, but not limited to:
 - 2.2.1 development and building control
 - 2.2.2 pollution control
 - 2.2.3 environmental health
 - 2.2.4 public health and safety
 - 2.2.5 animal control
 - 2.2.6 food safety
 - 2.2.7 parking and traffic.

3 Principles

- 3.1 The following principles underpin CN's approach to compliance and enforcement:
 - 3.1.1 Accountable and transparent
 - 3.1.1.1 acting in the best interests of public health and safety and in the best interests of the environment
 - 3.1.1.2 ensuring accountability for decisions to take or not take action
 - 3.1.1.3 acting fairly and impartially and without bias or unlawful discrimination

- 3.1.1.4 providing information about compliance and enforcement priorities and reasons for decisions to improve understanding and certainty and promote trust by the regulated community
- 3.1.1.5 ensuring meaningful reasons for decisions are given to all relevant parties, particularly when there is a departure from this Policy
- 3.1.1.6 acting on any complaints or concerns about the conduct of compliance officers in accordance with CN's complaints management policy and procedures advising people and organisations subject to enforcement action of any avenues available to seek an internal or external review of a decision.
- 3.1.2 Consistent
 - 3.1.2.1 ensuring all compliance and enforcement action is implemented consistently
 - 3.1.2.2 encouraging reports about possible unlawful activity by acting reasonably in response to the circumstances and facts of each matter.
- 3.1.3 Proportional
 - 3.1.3.1 ensuring the level of enforcement action is proportionate to the level of risk and seriousness of the breach
 - 3.1.3.2 making cost-effective decisions about enforcement action
 - 3.1.3.3 taking action to address harm and deter future unlawful activity.
- 3.1.4 Timely
 - 3.1.4.1 ensuring responses to reports alleging unlawful activity and decision making in relation to those is timely.

4 Responsibility

- 4.1 CN receives numerous requests from members of the public, and various other parties and authorities to investigate concerns regarding non-compliant or unlawful activities.
- 4.2 All CN staff who deal with reports alleging unlawful activity are responsible for implementing this Policy. CN staff are also responsible for ensuring that any other possible unlawful activity identified as a result of an inspection, proactive enforcement or other activity is brought to the attention of the appropriate Service unit of CN.
- 4.3 Only CN staff with appropriate delegations can undertake investigations or compliance and enforcement action in relation to this Policy.
- 4.4 CN staff are required to:
 - 4.4.1 treat all relevant parties with courtesy and respect
 - 4.4.2 communicate with all relevant parties and provide feedback on the progress of an investigation and any reasons for delay without compromising the integrity of the investigation
 - 4.4.3 make full and proper records in relation to the assessment and investigation of reports alleging unlawful activity, including reasons for any decisions
 - 4.4.4 inform all relevant parties of reasons for decisions
 - 4.4.5 provide as much information as possible to all relevant parties about the outcomes of investigations to show that adequate and appropriate action was taken and/or is proposed to be taken in response to a report of alleged unlawful activity
 - 4.4.6 provide information to all relevant parties about any avenues to seek an internal or external review of a decision.

5 Responding to concerns about unlawful activity

- 5.1 All concerns received are initially received and assessed by CN's Customer Contact Centre or Records Section in accordance with [CN's Customer Service Request Policy](#). Concerns of a serious nature can be referred immediately to the relevant sections of CN for further assessment and appropriate response.
- 5.2 Decisions about what action should be taken by CN are made at the CN's discretion.
- 5.3 CN will endeavour to manage the expectations of people who report alleged unlawful activity. In the absence of sufficient evidence of unlawful activity, CN may be unable or at its discretion choose not to take further action. CN does not have unlimited resources and powers to deal with reports alleging unlawful activity.
- 5.4 CN expects that people who report allegations of unlawful activity will cooperate and act in good faith in respect of any investigations conducted by CN. This includes:
 - 5.4.1 providing a clear description of the problem (and the resolution sought, if relevant)
 - 5.4.2 giving all available and relevant information to CN, including any new information about the alleged activity that may become known to the person following the making of their report
 - 5.4.3 not giving any information that is intentionally misleading or wrong
 - 5.4.4 cooperating with CN's inquiries and giving timely responses to questions and requests for information
 - 5.4.5 treating CN's staff with courtesy and respect
 - 5.4.6 allowing the investigation to be completed without prematurely taking the matter to other agencies unless referred to by CN.
- 5.5 If these expectations of the individual are not met, CN may need to set limits or conditions on the continuation of the investigation or may need to restrict any further communications with the individual.
- 5.6 Any unreasonable conduct will be dealt with in accordance with the principles of the NSW Ombudsman's Managing Unreasonable Complainant Conduct Manual 2012 and [CN's Customer Complaints Handling Policy](#).

6 Investigating alleged unlawful activity

- 6.1 Not all reports alleging unlawful activity will need to be investigated. A preliminary assessment of all matters will be made to determine the priority for a response, and whether investigation or other action is required.
- 6.2 An investigation of alleged unlawful activity may take a significant amount of time to complete, particularly where the issues are complex.
- 6.3 The objective of the processes CN uses when investigating incidents of alleged unlawful activity is to:
 - 6.3.1 determine the cause of the incident
 - 6.3.2 determine if there has been a contravention of law, policy or standards
 - 6.3.3 gather evidence to the required standard to support any required enforcement action
 - 6.3.4 determine any necessary action to mitigate the possibility of reoccurrence of similar incidents.
- 6.4 Any decision not to investigate an allegation of unlawful activity will be recorded and the reasons for that decision clearly stated.

- 6.5 CN's risk management framework is used to guide the assessment and prioritisation of alleged unlawful activities. CN will prioritise matters on the basis of risk to public safety, human health and/or the environment.
- 6.6 CN's risk rating categories are low, medium, high and extreme.
- 6.7 CN allocates required resources to the investigation of extreme and high-risk activities as first priority over all other requests. Response to medium risk activities are actioned as soon as practical depending on available resources allocated to higher risk investigations.
- 6.8 Low risk activities are only allocated resources when available and after application of any specific procedures for common low risk concerns. Low risk activities include allegations relating to:
 - 6.8.1 unauthorised development with low impact
 - 6.8.1.1 signs (with no safety or heritage impacts)
 - 6.8.1.2 building non-compliance
 - 6.8.1.3 home occupation/business/industry
 - 6.8.1.4 family member living in shed / garage / caravan
 - 6.8.2 stormwater nuisance
 - 6.8.3 residential (domestic) noise and odour
 - 6.8.4 dog barking and defecating
 - 6.8.5 cat nuisance.
- 6.9 Specific internal procedures and publicly available information to assist the community have been developed for the following common low risk concerns:
 - 6.9.1 [stormwater nuisance \(problem solving between neighbours\)](#)
 - 6.9.2 [nuisance \(barking\) dogs](#)
 - 6.9.3 [neighbourhood \(residential\) noise.](#)
- 6.10 Procedures and information provided in relation to these low risk concerns may direct community members to other relevant authorities or agencies that can assist them or to other action that they may choose to take to resolve the matter.
- 6.11 When a dispute between two neighbours is a civil matter, CN will often have no authority to resolve the issue in dispute.
- 6.12 Anonymous reports will be recorded and assessed in a similar manner. However, because it is not possible to seek clarification or additional information about a matter, it may be more difficult to evaluate the allegations and therefore these reports are less likely to warrant investigation.

7 Taking enforcement action

- 7.1 When deciding whether to take enforcement action in relation to a confirmed case of unlawful activity, CN will consider the full circumstances and facts of the matter and the public interest.
- 7.2 The following considerations will assist CN in determining the most appropriate response in the public interest:
 - 7.2.1 considerations about the alleged offence and impact, including the nature, extent and severity of the unlawful activity and the seriousness of the breach
 - 7.2.2 considerations about the alleged offender, including any prior warnings or previous enforcement action taken against them, any mitigating or aggravating circumstances

- 7.2.3 considerations about the impact of any enforcement action, including the need to deter any future unlawful activity and whether the costs and benefits of taking formal enforcement action as opposed to taking informal or no action
- 7.2.4 considerations about the potential for remedy, including whether the breach can be easily remedied and whether it is likely consent would have been given for the activity if it had been sought.

8 Options for dealing with confirmed cases of unlawful activity

- 8.1 Enforcement options which may be appropriate for breaches determined to be of low, medium or high significance are set out below. It is important to remember that the following is a guide only and each case must be assessed on the particular circumstances and facts, with any decision being made on the merits.

Enforcement action	Significance of breach		
	High	Medium	Low
Prosecution	*		
Court Order	*		
Penalty Notice	*	*	*
Notice / Order / Direction	*	*	*
Letter requesting undertaking	*	*	*
Negotiated outcome		*	*
Formal caution		*	*
Warning letter		*	*
Record breach			*

- 8.2 In some cases, it may be appropriate to use more than one enforcement option. If initial enforcement action does not achieve a satisfactory outcome, it may be necessary to proceed to a higher level of enforcement response.
- 8.3 All enforcement action will be reviewed and monitored to ensure compliance with any undertakings given by the subject of enforcement action or advice, directions or orders issued by CN. Reports alleging continuing unlawful activity will be assessed and further action taken if necessary.

9 Voluntary compliance

- 9.1 CN encourages voluntary compliance by providing information to specific regulated communities that:
- 9.1.1 removes barriers to compliance, such as lack of knowledge, regarding legislative requirements and responsibilities.
 - 9.1.2 increases awareness and understanding within the regulated community on how to comply, and how levels of compliance are assessed.
 - 9.1.3 outlines the consequences of non-compliance in relation to relevant issues such as loss of reputation, health and safety and environmental impacts, financial penalties and legal action.

10 Role of CN where there is a private certifier

- 10.1 If a private certifier is appointed the Principal Certifying Authority (PCA), CN is not responsible to ensure building and construction compliance. Private certifiers have the

power to issue a notice of intention to issue an order to the owner or builder to comply with the conditions of consent or rectify any breaches. A copy of any notice of intention issued by a certifier must be provided to CN.

11 Procedural fairness

11.1 CN officers are to act in accordance with the principles of natural justice (or procedural fairness) which include:

- 11.1.1 providing a fair hearing – allowing a person whose interests may be adversely affected by a decision to present their case
- 11.1.2 impartiality in the decision-making process – officers are to be unbiased and not hold a vested interest in the outcome of a process
- 11.1.3 decisions based on evidence – decisions must be based on the evidence provided, not on irrelevant issues, and there must be a rational basis upon which the decision maker has decided to accept the evidence as credible
- 11.1.4 officers are to have regard to the ‘good practice’ NSW Ombudsman’s enforcement guidelines.

11.2 In accordance with the NSW Ombudsman’s enforcement guidelines, Officers will apply discretion in an impartial, consistent and fair manner, with the public interest in mind. Discretion only extends to the scope and purpose for which delegation is provided.

12 Confidentiality

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

- 12.1.1 the disclosure is necessary to investigate the matter
- 12.1.2 their identity has already been disclosed to the subject of their report directly or in a publicly available document
- 12.1.3 the individual was consulted following receipt of a Government Information (Public Access) Act 2009 application and did not object to the disclosure
- 12.1.4 the individual consents in writing to their identity being disclosed
- 12.1.5 the disclosure is required to comply with principles of procedural fairness
- 12.1.6 the matter proceeds to court.

Annexure A - Definitions

CEO means Chief Executive of the CN and includes their delegate or authorised representative.

References to the Chief Executive Officer are references to the General Manager appointed under the Local Government Act 1993 (NSW).

City of Newcastle (CN) means Newcastle City Council.

Compliance is the act of adhering to, and demonstrating adherence to, laws, regulations, conditions, standards and policies.

Council means the elected Council.

Enforcement activities refer to actions taken in response to contravention of laws, regulations, conditions, standards and policies.

NSW Ombudsman model policy means the Model Compliance and Enforcement Model Policy in the NSW Ombudsman's Enforcement guidelines - December 2015.

Regulated community means a community defined by their common responsibility to comply with particular laws, regulations or policies.

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

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

- Terms or conditions of a development consent, approval, permit or licence
- An environmental planning instrument that regulates the activities or work that can be carried out on particular land
- A legislative provision regulating a particular activity or work
- A required development consent, approval, permission or licence.

Document control

Policy title	Compliance and Enforcement
Policy owner	Director Governance / Manager Regulatory, Planning and Assessment
Policy expert / writer	Environmental Health Coordinator
Associated Procedure Title (if applicable)	Stormwater nuisance (problem solving between neighbours) Nuisance (barking) dogs Neighbourhood (residential) noise
Procedure owner (if applicable)	N/A
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Approved by	Elected Council
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Category	Governance
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Legislative amendments	N/A
Relevant strategic direction	Protected and Enhanced Environment
Relevant strategy	N/A
Relevant legislation / codes (reference specific sections)	This policy supports CN's compliance and enforcement functions associated with a wide range of legislation and codes see: The City of Newcastle - Register of Delegations and Authorisations

Other related policies / documents / strategies	Newcastle City Council (October 2016) Customer Complaints Handling Policy The City of Newcastle (2010) Customer Service Policy City of Newcastle (March 2019) Internal Review Guidelines for Penalty Notices under the Fines Act 1996
Related forms	N/A
Required on website	Yes
Authorisations	N/A