

Compliance and Enforcement

November 2022

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1 Purpose

- 1.1 The Compliance and Enforcement Policy (the “**Policy**”) provides information to all internal and external stakeholders and interested parties about the City of Newcastle’s (“**CN**”) position on compliance and enforcement matters within the local government area.
- 1.2 The Policy 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 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 The 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 The Policy applies to the compliance and enforcement activities carried out by CN in respect of 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, and
 - 2.2.8 fire safety.
- 2.3 When new legislative requirements and associated regulatory responsibilities are introduced, CN will assess these responsibilities to determine the prioritisation of resources across the new and existing regulatory functions of CN. If new regulatory functions are to be performed, new systems, procedures and processes may need to be created and associated staff training completed. In some cases, new regulatory functions may not be commenced due to resourcing constraints and potential impacts upon other regulatory functions and associated service commitments to the community. Where there is overlap in responsibilities and functions between regulatory agencies (ie. NSW EPA, NSW Police or Liquor & Gaming NSW) CN prioritise those functions which are the highest priority for CN, and for which CN has sole regulatory responsibility.

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 complaints or concerns about the conduct of CN staff in accordance with CN's complaints management policy and procedures, and
- 3.1.1.7 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, and
- 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, and
- 3.1.3.3 taking action to address harm and deter future unlawful activity.

3.1.4 Timely

- 3.1.4.1 Ensuring timely responses to reports alleging unlawful activity whilst recognising that complex matters may require more time for detailed investigation or legal advice before decisions are made and action is taken.

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 authorisations and/or 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 information, considering the requirements of NSW privacy legislation, 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, and
- 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 our customer service charter. 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 CN's discretion, having regard to this Policy and related policies and procedures.
- 5.3 CN will endeavour to provide clear and transparent information on how we generally respond to reports of alleged unlawful activity through the provision of information via our website and advice via our Customer Contact Centre. This will include information on reports related to low risk matters or matters which may not warrant further investigation.
- 5.4 CN does not have unlimited resources to investigate all reports received which allege unlawful activity. The Policy and associated procedures assist staff in the appropriate allocation of investigation and legal resources.
- 5.5 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:
 - 5.5.1 providing a clear description of the problem (and the resolution sought, if relevant),
 - 5.5.2 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,
 - 5.5.3 not giving any information that is intentionally misleading or wrong,
 - 5.5.4 cooperating with CN's inquiries and giving timely responses to questions and requests for information,
 - 5.5.5 treating CN's staff with courtesy and respect,
 - 5.5.6 allowing the investigation to be completed without prematurely taking the matter to other agencies unless referred to by CN,
 - 5.5.7 attending court to give evidence regarding the unlawful activity, including any impact it has had on them personally, if required.
- 5.6 If these expectations are not met, CN may terminate an investigation, set limits or conditions on the continuation of the investigation or may restrict further communications with the individual.
- 5.7 Any unreasonable conduct will be dealt with in accordance with the principles of the NSW Ombudsman's "Managing Unreasonable Conduct by a Complainant" Manual 2021 and [CN's Customer Complaints Handling Policy](#).

6 Investigating alleged unlawful activity

- 6.1 A preliminary assessment of all matters will be made to determine the priority for a response, and whether further investigation or other action is required. Not all reports alleging unlawful activity will need to be actioned after this preliminary assessment.
- 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, and
 - 6.3.4 determine any necessary action to mitigate the possibility of reoccurrence of similar incidents.
- 6.4 Any decision not to further investigate an allegation of unlawful activity will be recorded and the reasons for that decision clearly stated.
- 6.5 CN's risk management framework and relevant procedures and processes are 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 minor, low, moderate, high and extreme.
- 6.7 CN allocates required resources to the investigation of allegations of "extreme" and "high" risk activities as first priority over all other requests.
- 6.8 Allegations of activities that fall within CN's "low" and "medium" risk categories are allocated resources when available and if necessary, after application of any specific internal procedures to address these concerns. These activities may include, but are not limited to:
 - 6.8.1 Unauthorised development that has a low environmental impact, which may include:
 - 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, and
 - 6.8.1.4 residential 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,
 - 6.8.6 tree pruning
 - 6.8.7 Noise impacts associated with business operations permissible under the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.
- 6.9 In relation to "low" to "medium" risk activities, CN 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.
- 6.10 When a dispute between two neighbours is a civil matter, CN will often have no authority to resolve the issue in dispute.
- 6.11 Anonymous reports will be recorded and risk assessed for investigation in accordance with this Policy. 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 may be less likely to warrant further investigation.
- 6.12 CN often receives reports related to matters that fall under the regulatory responsibility of a state or federal government agency. People making such reports will be advised to contact the relevant agency and that no further investigative action is required to be taken by CN.

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, public safety, human health and/or the environment, and the public interest.
- 7.1.1 The following considerations will assist CN in determining the most appropriate response:
- 7.1.2 considerations about the alleged offence and impact, including the nature, extent and severity of the unlawful activity; the harm or potential harm to the environment or public health, safety or amenity caused by the unlawful activity, and the seriousness of the breach,
- 7.1.3 considerations about the alleged offender, including any prior warnings or previous enforcement action taken against them, any mitigating or aggravating circumstances,
- 7.1.4 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,
- 7.1.5 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, and
- 7.1.6 whether the taking of enforcement action will have an unreasonable impact on CN's resources and/or is unlikely to achieve an outcome sufficient to justify the expenditure of resources.

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 Council staff will use discretion to determine the most appropriate response to confirmed cases of unlawful activity. 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 Enforcement action will be reviewed and monitored, commensurate to the risk level, to determine whether there has been compliance with the required action. Continuing unlawful activity will also be risk assessed and actioned in accordance with this Policy.

9 Voluntary compliance

- 9.1 CN encourages voluntary compliance by providing information and education 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, and the relevant PCA should be contacted directly to advise of any alleged unlawful activities.
- 10.2 PCA's have a mandatory obligation to act on non-compliant aspects of a development. Once the PCA becomes aware that there is a likely non-compliance, the PCA must issue a written directions notice (**WDN**) to the person responsible within 2 days. If the responsible person fails to comply with the WDN the PCA must provide a copy of the completed WDN and supporting evidence to CN within two days after the follow-up inspection was carried out.
- 10.3 Once the PCA refers the completed WDN to Council any further enforcement action is Council's responsibility. Any enforcement action Council takes will be determined in accordance with this Policy.

11 Procedural fairness

- 11.1 CN staff 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 – staff 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, and
 - 11.1.4 CN staff are to have regard to the 'good practice' NSW Ombudsman's "Enforcement guidelines for councils" (December 2015).
- 11.2 In accordance with the NSW Ombudsman's "Enforcement guidelines for councils", staff 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

- 12.1.1 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:

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

Annexure A - Definitions

CEO means the 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 an 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, or
- A required development consent, approval, permission or licence.

Document control

Policy title	Compliance and Enforcement
Policy owner	Manager Planning, Transport & Regulation
Policy expert / writer	Environmental Health Coordinator / Paul McMurray
Associated Procedure Title (if applicable)	
Procedure owner (if applicable)	N/A
Prepared by	Planning, Transport and Regulation
Approved by	Elected Council
Date approved	To be completed by Legal
Policy approval form reference	ECM#
Commencement Date	To be completed by Legal
Next revision date (date policy will be revised)	25/06/2022
Termination date	To be completed by Legal (one year post revision date)
Version	Version number (versions mean adopted versions only)
Category	Governance
Keywords	Compliance, regulation, law enforcement, illegal activities
Details of previous versions	City of Newcastle (September 2019) Compliance Policy
Legislative amendments	N/A
Relevant strategic direction	Protected and Enhanced Environment
Relevant strategy	N/A
Relevant legislation / codes (reference specific sections)	<p>This policy supports CN's compliance and enforcement functions associated with a wide range of legislation and codes, including reference within:</p> <p>City of Newcastle - Register of Delegations and Authorisations</p>

Other related policies / documents / strategies	Newcastle City Council (September 2021) Customer Complaints Handling Policy CN Customer Service Charter City of Newcastle (March 2019) Internal Review Guidelines for Penalty Notices under the Fines Act 1996 NSW Ombudsman's Model Compliance and Enforcement Model Policy
Related forms	N/A
Required on website	Yes
Authorisations	N/A