

# Enforcement Policy

## 1 Document Information

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<b>Author</b>	General Manager
<b>Owner</b> <i>(Relevant director)</i>	General Manager
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## 2 Summary

Council's regulatory responsibilities are applicable to actual unlawful activity, as well as a failure to take action where directed.

For the purposes of this policy, a report alleging unlawful activity is where:-

- an individual expresses concern in relation to alleged unlawful activity; or
- an individual requests service from council about unlawful activity; or
- Council considers that a response or resolution to a report alleging unlawful activity is explicitly or implicitly expected by the individual, or legally required; or
- where Council becomes aware of a compliance matter through other means of notification.

## 3 Approvals

Title	Date Approved	Signature

## 4 History

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Minute No.	Summary of Changes	New Version Date
19/08/19	Adopted by Council	27 August 2019

## 5 Reason

The intent of this policy is to establish clear guidelines and protocols for Council staff in the management of Council compliance responses and actions. It provides workable guidelines on:

- responding to reports alleging unlawful activity;
- assessing whether reports alleging unlawful activity require investigation;
- deciding on whether enforcement action is warranted;
- options for dealing with confirmed cases of unlawful activity;
- taking legal action;
- implementing shared enforcement responsibilities.

Council's objectives when dealing with reports alleging unlawful activity are 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;
- consider the report fairly and impartially;
- fulfil Council's Legislative responsibilities.

This policy is supported by guidelines to assist council officers in implementing the policy.

## 6 Scope

This policy applies to all areas within the Cabonne Council local government area and the officers who are authorised to investigate unlawful activity and proactive compliance monitoring including but not limited to:

- development and building control
- pollution control
- environmental health
- public health and safety
- onsite sewage management systems
- weeds control (Biosecurity)
- companion animals
- roads and footpaths
- parks and reserves
- food safety
- fire safety
- tree preservation
- illegal dumping
- waste management practices

## 7 Associated Legislation

Council staff may be delegated to initiate various levels of enforcement action under the following Acts and associated regulations:

- Environmental Planning and Assessment Act, 1979
- Local Government Act, 1993
- Protection of the Environment Operations Act, 1997
- Impounding Act, 1993
- Companion Animals Act, 1998
- Companion Animals Regulation, 2008
- Roads Act 1993

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- Road Rules Act, 2014
- Roads Transport Act 2013
- Food Act, 2003
- Public Health Act, 2010
- Swimming Pools Act, 1992
- Swimming Pools Regulation 2008
- Traffic Act, 1909
- Summary Offences Act, 1998
- Biodiversity Conservation Act, 2016
- Biosecurity Act, 2015
- Rural Fires Act, 1997
- Plumbing and Drainage Act, 2011
- Contaminated Land Management ACT 1997
- Pollution To The Environment Operations (Clean Air) Regulation 2010
- Pollution To The Environment Operations (Noise Control) Regulation 2017
- Pollution To The Environment Operations (Waste) Regulation 2014
- Crown Land Management Regulation 2018
- Cemeteries and Crematoria ACT 2013

## 8 Definitions

### Complaint

Means an expression of dissatisfaction made about Council services, staff or the handling of a request for service/ notification of unlawful activity, where a response or resolution is explicitly or implicitly expected or legally required.

For the purposes of this policy, a complaint does not include:

- a report alleging unlawful activity (*see definition below*)
- a request for information about a Council policy or procedure
- a request for an explanation of actions taken by Council
- a request for internal review of a Council decision

**Council** means Cabonne Council.

**Enforcement** means actions taken in response to serious or deliberate contraventions of laws.

**Officer** means a Council officer delegated and if required authorised to undertake proactive compliance programs and unlawful activity compliance and enforcement investigations.

**Proactive compliance monitoring** means a proactive inspection program which is either a one-off or on-going.

**Regulation** means using a variety of tools and strategies to influence and change behaviour to achieve the objectives of an Act, Regulation or other statutory instrument administered by Council.

**Report alleging unlawful activity** means 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** means any activity or work that has been or is being carried out contrary to and/or failure to take required action in order to be compliant with:

- the 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.
- signage regulating a particular activity.

## 9 Responsibilities

### 9.1 General Manager

The General Manager is responsible for ensuring compliance with this policy.

### 9.2 Employees

Council staff who deal with written and verbal complains or action request with response to unlawful activity are responsible for implementing this policy.

### 9.3 Others

Council consultants and contractors authorised to carry out functions on behalf of council must also comply with this policy.

### 9.4 Community

Council expects that people who report allegations of unlawful activity will cooperate and act in good faith in respect of any investigations conducted by Council. This includes:

- providing a clear description of the problem (and the resolution sought, if relevant);
- giving all available and relevant information to Council, including any new information about the alleged activity that may become known to the person following the making of their report;
- not giving any information that is intentionally misleading or wrong;
- cooperating with Council's inquiries and giving timely responses to questions and requests for information;
- treating 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;
- being prepared to engage in mediation where requested.

If these expectations of the individual are not met, Council may set limits or conditions on the continuation of the investigation or restrict any further communications with the individual. Any unreasonable conduct will be dealt with in accordance with the principles of the NSW Ombudsman's Managing Unreasonable Complainant Conduct Manual 2012 and any applicable Council Policy.

### 9.5 Councillors

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Decision making relating to the investigation of reports alleging unlawful activity and enforcement action is the responsibility of appropriately authorised Council staff or the Council itself. Individual councillors do not have the right to direct council staff in their day-to-day activities. Councillors can help individuals who raise concerns with them by satisfying themselves that Council's policies are being carried out correctly, however they cannot ignore or alter a policy in order to satisfy the demands of special groups or individuals.

Councillors are not an appeal body and all appeals need to be directed to the General Manager as Councillors cannot become involved in the management of regulatory or compliance actions.

## 10 Related Documents

Document Name	Document Location
NSW Ombudsman 'Enforcement Guidelines for Council'	<a href="https://www.ombo.nsw.gov.au/news-and-publications/publications/guidelines/state-and-local-government/enforcement-guidelines-for-councils">https://www.ombo.nsw.gov.au/news-and-publications/publications/guidelines/state-and-local-government/enforcement-guidelines-for-councils</a>
Complaints Handling Policy	Records Management System Doc ID 936211
Customer Service Policy	Records Management System Doc ID 937250
Limits on Service and Communication Policy	Records Management System Doc ID 937235

## 11 Policy Statement

Council is committed to:

- acting in the interest of protecting community health, safety and or the environment;
- acting consistently, fairly, impartially and transparently;
- preventing discrimination on the basis of race, religion, sex, national origin, political association or other personal reason/s;
- ensuring the proposed enforcement action is in keeping with the guidelines of the Policy;
- ensuring enforcement action is taken against the right person for the correct offence.

In addition to responding to requests and enquiries about alleged unlawful activity Council also provides a number of proactive compliance programs around high risk regulatory areas. These areas include (but not limited to):

- Food premises
- Cooling towers (and the like)
- Public swimming pool water quality monitoring
- Onsite sewage management systems (septic tanks)
- Fire safety
- Swimming pool safety

Compliance action may be initiated where non-compliance is identified in the course of a proactive compliance inspection, in which case the principles outlined in this policy will also be applied.

### Confidentiality of people who report allegations of unlawful activity

There are times when dealing with allegations of unlawful activity that the identities of people who report such matters are unable to remain confidential from the subject of their report in all circumstances. Council may be required to disclose information that identifies those who report such matters in the following cases:

- the disclosure is necessary to investigate the matter;
- their identity has already been disclosed to the subject of their report directly or in a publicly available document;
- the 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.

Council will take seriously any concerns an individual may have about their physical safety being endangered as a result of making a report. However, this may limit Council's ability to investigate the matter.

#### Investigating unlawful activities

All matters regarding unlawful activities will be reviewed to determine whether the matter requires enquiry or investigation. Further enquiries/investigation will not be initiated where:

- the matter has already been investigated and resolved, or
- the matter does not fall within the jurisdiction of Council has no jurisdiction;
- the activity is determined to be lawful without an investigation; or
- The activity presents a clear danger to the health and wellbeing of council staff and contractors though further action is required.

Anonymous reports will not be investigated.

#### Neighbourly Disputes

In cases where investigation reveals that the report of alleged unlawful activity is the result of a neighbourly dispute, involved parties will be encouraged to undertake mediation with the Community Justice Centre NSW or further reports regarding the same matter may not be investigated.

#### Taking enforcement action

When deciding whether to take enforcement action in relation to a confirmed case of unlawful activity, Council will consider the full circumstances and facts of the matter and the public interest. The following common considerations will assist Council staff in determining the most appropriate response in the public interest.

#### Considerations about the alleged offence and impact:

- the nature, extent and severity of the unlawful activity, including whether the activity is ongoing;
- 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; and
- the time period that has lapsed since the date of the unlawful activity.

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 alleged offender; and
- any particular circumstances of hardship affecting the person or organisation reported.

Considerations about the impact of any enforcement action:

- the need to deter any future unlawful activity;
- the prospect of success if the proposed enforcement action was challenged in court; and
- what action would be proportionate and reasonable in response to the unlawful activity.

Considerations about the potential for remedy:

- whether the breach can be easily remedied; and
- whether there is a draft planning instrument on exhibition that would make the unauthorised use legal.