

Ku-ring-gai Council

Policy

# Compliance Policy

Version Number 4

Adopted: 13 December 2022

Effective: 14 December 2022



# Compliance Policy

## Table of Contents

<b>Controlled Document Information .....</b>	<b>3</b>
Authorisation Details .....	3
Related Document Information, Standards & References .....	3
Version History .....	4
<b>Policy .....</b>	<b>5</b>
Introduction .....	5
Purpose and objectives .....	5
Scope .....	5
Responsibilities .....	5
<b>Policy Statement .....</b>	<b>6</b>
Organisational Approach .....	6
Definitions .....	7
Policy Intent .....	7
Application .....	8
Compliance and enforcement principles .....	8
Responsibility .....	8
Responding to concerns about unlawful activity .....	9
Investigating alleged unlawful activity .....	12
Taking enforcement action .....	14
The alleged offence and impact: .....	14
The alleged offender: .....	14
The impact of any enforcement action: .....	14
The potential remedy: .....	15
Options for dealing with confirmed cases of unlawful activity .....	16
Taking legal action .....	17
Role of Council where there is a Principal Certifier .....	18
Role of Councillors in enforcement .....	18
Delegations .....	19
<b>Appendix: Schedule of sample compliance practices .....</b>	<b>20</b>
Non complying development/unauthorised works/illegal land use .....	20
General complaints about buildings under construction or demolition .....	22
Breaches of the Swimming Pool Act .....	23
Unclean, unhealthy or unsafe premises .....	23
Barking dogs .....	25
Parking surveillance and enforcement .....	27
Service agreement with Revenue NSW .....	28

## Controlled Document Information

### Authorisation Details

This is a Controlled Document. Before using this document check it is the latest version by referring to Council's Controlled Document Register. Unless otherwise indicated, printed or downloaded versions of this document are uncontrolled.			
<b>Controlled Document Number:</b>	57	<b>TRIM Record No:</b>	2022/306175
<b>Controlled Document Type:</b>	Policy		
<b>Controlled Document Name:</b>	Compliance Policy		
<b>Version Number:</b>	4		
<b>Department:</b>	Development & Regulation		
<b>Distribution:</b>	Internal and External		
<b>Review Period:</b> Max < 4 years	4 years	<b>Next Review Date:</b>	November 2026
<b>Document Status:</b>	Approved		
<b>Approval Type:</b>	Adopted by Council		
<b>Version Start Date:</b>	14 December 2022	<b>Version End Date:</b>	TBC

### Related Document Information, Standards & References

<b>Related Legislation:</b>	<p>Environmental Planning &amp; Assessment Act 1979 and regulations</p> <p>Local Government Act 1993 and regulations</p> <p>Protection of the Environment Act 1997 and regulations</p> <p>Companion Animals Act 1998 and regulations</p> <p>Public Health Act 2010 and regulations</p> <p>Road Transport Act 2005 and regulations</p> <p>Roads Act 1993 and regulations</p> <p>Swimming Pools Act 1998 and regulations</p> <p>Public Spaces (Unattended Property) Act 2021</p> <p>Biosecurity Act 2015</p> <p>Road Rules 2014</p> <p>Roads Regulation 2018</p> <p>Fines Act 1996</p> <p>Food Act 2003</p> <p>Road Transport Act 2013</p> <p>Road Transport (General) Regulation 2021</p> <p>State Environmental Planning Policy (Exempt &amp; Complying Development Codes) 2008</p>
<b>Related Policies (Council &amp; Internal)</b>	<p>Code of Conduct</p> <p>Complaint management policy</p> <p>Providing a service to customer policy</p>
<b>Other References</b>	Ombudsman NSW, Enforcement guidelines for Council, December 2015

*This is a Controlled Document. Before using this document check it is the latest version by referring to Council's Controlled Document Register. Unless otherwise indicated, printed or downloaded versions of this document are uncontrolled.*

## Version History

Version Number	Version Start Date	Version End Date	Author	Details and Comments
1	March 2010	April 2016	Anne Seaton	(first version)
2	24 May 2016	19 November 2019	Anne Seaton	Revised version in line with NSW Ombudsman model document
3	20 November 2019	December 2022	Anne Seaton	Revised version in line with repeal of Noxious Weeds Act and introduction of Biosecurity Act 2015
4	14 December 2022	TBA	Anne Seaton	Readoption by Council within 12 months of election in accordance with Section 165(4) LGA

# Policy

## Introduction

Council's regulatory responsibilities are applicable to actual unlawful activity as well as a failure to take action in order to be compliant with certain legal requirements. For simplicity, this Policy refers to both an act and/or an omission by an alleged offender as "unlawful activity."

This Policy distinguishes between a 'report alleging unlawful activity' and a 'complaint.'

For the purpose of this Policy, a report alleging unlawful activity is where an individual expresses concern in relation to alleged unlawful activity, or they request service from Council about such matters. Council considers that a response or resolution to a report alleging unlawful activity is explicitly or implicitly expected by the individual or may be legally required.

A complaint is where an individual expresses dissatisfaction with Council's service, Council staff or the handling of a complaint by Council. Therefore, a complaint may arise where an individual claims that Council staff have failed to take action in relation to a report alleging unlawful activity. A complaint will be recorded separately and responded to in accordance with Council's Complaints Management Policy and procedures.

## Purpose and objectives

This Policy provides information for all internal and external stakeholders and interested parties about Council's position on compliance and enforcement matters in the local government area.

The purpose of this Policy is to provide structure for consistency and transparency in decision making and to facilitate a proportional approach to compliance and enforcement. It is also intended to assist Council staff to act promptly, effectively and consistently in response to allegations of unlawful activity.

The objectives of this Policy are to:

- help achieve the objectives of relevant legislation and management plans
- maximise compliance with legislation
- enhance the community's capacity to protect the environment and enhance biodiversity

## Scope

The Policy outlines matters to be considered at the various stages of the enforcement process from the receipt and investigation of reports alleging unlawful activity, through to what enforcement option Council will choose and whether to commence criminal or civil proceedings.

In certain circumstances, Council will have shared enforcement responsibilities with other regulatory authorities. This Policy sets out a collaborative and cooperative approach to such matters. Advice and guidance is also provided on the role of Council in building and construction compliance matters where there is a private certifier and the role of Councillors in enforcement.

Responsible Council staff are not limited by this Policy in their use of discretion and exercise of official functions. The full circumstances and facts of each case need to be considered and a decision made on merits.

## Responsibilities

Council receives information about alleged unlawful activity from members of the public, contact from other government agencies and information gathered by its officers during proactive inspections.

---

*This is a Controlled Document. Before using this document check it is the latest version by referring to Council's Controlled Document Register. Unless otherwise indicated, printed or downloaded versions of this document are uncontrolled.*

All Council officers, who have responsibilities for compliance as defined by this Policy, are responsible for its implementation.

Only Council officers with appropriate delegations from the General Manager can undertake investigation and enforcement activities associated with particular legislation.

Council's consultants and contractors, authorised to carry out functions on its behalf, must also comply with this Policy.

## Policy Statement

### Organisational Approach

One of the principal functions of Council is to act as a regulator and an enforcement agency in respect of a large range of legal duties applied by acts of parliament, regulations and orders made under them, including various local policies.

Compliance and enforcement is important:

- to prevent or minimise harm to health, welfare, safety, property or the environment
- to improve the safety and amenity of residents and visitors to the area
- for the collective good, the welfare of the community or the public interest
- to promote social policies (e.g. to preserve or protect the environment)
- to manage risks
- to uphold social order
- to meet the expectations of the community
- to encourage reports about possible unlawful activity from the community
- to make the regulated community aware of their legal obligations and how to comply

The legislation that Council is responsible for enforcing is extensive and cannot be fully listed here, but the following exemplify their range and diversity:

- Environmental Planning & Assessment Act 1979
- Local Government Act 1993
- Protection of the Environment Operations Act 1997
- Public Spaces (Unattended Property) Act 2021
- Companion Animals Act 1998
- Public Health Act 2010
- Roads Transport Act 2005
- Roads Act 1993
- Swimming Pools Act 1998
- Building Code of Australia
- Biodiversity Act 2015
- Food Act 2003
- Australian Road Rules

Copies of all relevant legislation may be found at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au)

## Definitions

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

Term / Abbreviation	Definition
Complaint	<p>A complaint is an expression of dissatisfaction made about council services, staff or the handling of a complaint, where a response or resolution is explicitly or implicitly expected or legally required.</p> <p>For the purpose of this policy, a complaint does not include:</p> <ul style="list-style-type: none"> <li>• a report alleging unlawful activity ( see definition below)</li> <li>• a request for information about a council policy or procedure</li> <li>• a request for an explanation of actions taken by Council</li> <li>• a request for internal review of a Council decision</li> </ul>
Enforcement	Actions taken in response to serious or deliberate contraventions of laws.
Regulation	Using a variety of tools and strategies to influence and change behaviour to achieve the objective of an Act, Regulation or other statutory instrument administered by Council.
Report alleging unlawful activity	An expression of concern or a request for service in relation to alleged unlawful activity where a response or resolution is explicitly or implicitly; or legally required.
Unlawful activity	<p>Any activity or work that has been or is being carried out contrary to the below and/or failure to take required action in order to be compliant with:</p> <p>in terms or conditions of a development consent, approval, permit or license</p> <p>an environmental planning instrument that regulates the activities or work that can be carried out on particular land</p> <p>a legislative provision regulating a particular activity or work</p> <p>a required development consent, approval , permission or licence.</p>

## Policy Intent

The intent of this Policy is to establish clear guidelines and protocols for Council officers in the management of Council's regulatory activities.

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

This Policy also provides advice and guidance on:

- the role of the Principal Certifier and
- the role of Councillors

## Application

This Policy applies to regulatory issues within Council’s area of responsibility, including, but not limited to:

- development and building control
- environmental health
- public health and safety
- biodiversity risks
- water and sewer
- regulated systems
- control over animals
- food safety
- tree preservation
- land use
- traffic and parking matters

## Compliance and enforcement principles

The following are the principles that underpin Council’s actions relating to compliance enforcement:

Principle	Action
Accountable and transparent	<ul style="list-style-type: none"> <li>• acting in the best interests of public health and safety and in the best interests of the environment</li> <li>• ensuring accountability for decisions to take or not take action</li> <li>• acting fairly and impartially and without bias or unlawful discrimination</li> <li>• providing information about compliance and enforcement priorities and reasons for decisions to improve understanding and certainty and promote trust by the community</li> <li>• ensuring meaningful reasons for decisions are given to all relevant parties.</li> <li>• acting on any complaints or concerns about the conduct of compliance officers in accordance with council’s complaints management policy and procedures</li> <li>• advising people and organisations subject to enforcement action of any avenues available to seek an internal or external review of a decision.</li> </ul>
Consistent	<ul style="list-style-type: none"> <li>• ensuring all compliance and enforcement action is implemented consistently</li> <li>• encouraging reports about possible unlawful activity by acting reasonably in response to the circumstances and facts of each matter.</li> </ul>
Proportional	<ul style="list-style-type: none"> <li>• ensuring the level of enforcement action is proportionate to the level of risk and seriousness of the breach</li> <li>• making cost effective decisions about enforcement action</li> <li>• taking action to address harm and deter future unlawful activity.</li> </ul>
Timely	<ul style="list-style-type: none"> <li>• ensuring responses to reports alleging unlawful activity and decision making are timely.</li> </ul>

## Responsibility

Council receives information about alleged unlawful activity from members of the public, contact from other government agencies and information gathered by its officers during proactive inspections and patrols.

All Council officers who deal with reports alleging unlawful activity are responsible for implementing this policy. Council officers are also responsible for ensuring that any other possible unlawful activity

*This is a Controlled Document. Before using this document check it is the latest version by referring to Council’s Controlled Document Register. Unless otherwise indicated, printed or downloaded versions of this document are uncontrolled.*

identified as a result of an inspection, proactive enforcement or other activity is brought to the attention of the appropriate department of Council.

Council officers are required to:

- treat all relevant parties with courtesy and respect
- communicate with all relevant parties and provide feedback on the progress of an investigation any reasons for delay 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 decisions
- inform all relevant parties of reasons for decisions
- 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 an alleged unlawful activity
- provide information to all relevant parties about any avenues to seek an internal or external review of a decision

All reports alleging unlawful activity are to be entered into Council's Customer Request Management System and actioned in a timely manner by the responsible officers having appropriate delegations from the General Manager to undertake the investigation or compliance & enforcement action in relation to this Policy.

## **Responding to concerns about unlawful activity**

### How reports alleging unlawful activity will be dealt with by Council

Council will record and assess every report, alleging unlawful activity where Council is the Authorised Regulatory Authority (ARA).

Council will respond to every such report unless the person raising the matter has indicated they do not wish to receive a response about Council's handling of the matter or the report is anonymous.

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 and any resource limitations
- consider the report fairly and impartially.

Not all reports 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.

An investigation of alleged unlawful activity may take a significant amount of time to complete, particularly where the issues are complex. If Council decides to investigate, its officers will give the person who reported the alleged unlawful activity regular feedback on the progress of the investigation and any reasons for delay. This does not mean that the individual can expect to be given details about every aspect of the investigation or information that would compromise the integrity of the investigation.

Decisions about what actions should be taken by Council are made at Council's discretion. This means the objective is that reports alleging unlawful activity will be resolved to the satisfaction of Council, not necessarily the person raising the matter. Council will generally try to resolve the matters as quickly as and informally as possible so as to avoid the need to take formal action.

Council officers will endeavour to manage the expectations of people who report alleged unlawful activity, and, in particular, explain that in the absence of sufficient evidence of unlawful activity, Council may be unable to take further action. They will also explain that Council does not have unlimited resources and powers to deal with reports alleging unlawful activity. If Council is unable to fully investigate or take action on a matter because it is restricted by any legal or resource limitations this will be explained to the individual concerned.

#### 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. Council may have to disclose information that identifies them 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 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.

Concerns relating to nuisance companion animals will not be accepted on an anonymous basis as Council needs to establish how the animal unreasonably interferes with the peace, comfort or convenience of any person in any premises.

#### What Council expects from people who report allegations of unlawful activity

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 resolution sought, if relevant)
- provide evidence of the unlawful activity where possible such as photos, videos or other evidence
- 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 enquiries and giving timely responses to questions and requests for information
- treating Council officers 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 of the individual are not met, Council may need to set limits or conditions on the continuation of the investigation or may need to 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 Complaint Conduct Manual 2021" and Council's Service to Customer Policy 2010.

#### What parties can expect from Council officers

People who report alleged unlawful activity as well as individuals or businesses that are subject to investigation and any enforcement action, can expect that Council officers will:

- treat them with courtesy and respect
- advise them of the outcome of the allegation reported, including a full explanation of the reasons why that outcome was considered to be reasonable in the circumstances
- clearly explain the decisions in plain English
- provide information about any relevant internal and external appeal processes that may be available
- carefully assess any new information provided by any party after a decision has been made and advise whether further action will be taken.

#### Complaints about Council's enforcement actions

Any complaints about Council's handling of reports alleging unlawful activity will be recorded separately and handled in accordance with Council's Complaints Management Policy and procedures.

Where a person or organisation subject to enforcement action merely disputes Council's decision to take enforcement against them, they will be directed to make written representations in accordance with Council's adopted review process.

Senior Council officers will act on any complaints about the conduct of compliance officers in accordance with Council's Code of Conduct.

#### Anonymous reports

Anonymous reports will be recorded and assessed in accordance with the above requirements. 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.

Note: Complaints regarding nuisance cats and dogs will not be accepted on an anonymous basis as Council needs to establish how the animal unreasonably interferes with the peace, comfort or convenience of any person in any other premises.

#### Unlawful activity outside business hours

Unlawful activity can occur outside business hours. In particular, 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 resources and operational capability restraints on Council, investigations into alleged unlawful activity outside business hours will be assessed on the basis of;

- risk or harm to health, welfare, safety, property or the environment, and
- whether it is in the public interest to take such action

All matters arising will be recorded by Council's After Hours Call Centre and forwarded to an appropriate first response officer for an initial assessment of urgency for response.

Neighbour disputes

Council will at times receive reports from parties involved in neighbour disputes seeking Council’s involvement. When a dispute between two neighbours is a civil matter, Council will often have no authority to resolve the issue in dispute. Some reports will raise several matters, some of which will require Council’s involvement and some of which will be personal to the parties.

Council officers will thoroughly assess such reports to determine whether there is evidence of any possible unlawful activity requiring action by Council. Care will be taken to explain which aspects of a report Council can deal with and which cannot be dealt with and why. Where possible, individuals will be provided with information about how to resolve neighbour disputes including referral information resources such as Law Access NSW and Community Justice Centres.

It is possible that one party will provide further information which changes Council’s decision about whether it will become involved. In such circumstances, Council officers will carefully consider the matter before taking action and document reasons for the new decision. Relevant parties will be advised about the reasons Council has changed its position on the matter. Council staff will not change a decision about whether or not Council should be involved purely as a response to the conduct of an individual such as persistent demands or threats.

The Appendix to this Policy provides a sample of compliance practices.

**Investigating alleged unlawful activity**

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

RISK CATEGORY			
CRITICAL	HIGH	MEDIUM	LOW
<b>Features of category</b>			
Permanent, long term or reoccurring and serious damage to health, property or environment likely or very likely	Moderate, major or severe consequences likely or very likely	Moderate consequences are likely, serious impacts very unlikely	Consequences are minor or moderate and are unlikely or very unlikely to occur.
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 the community	Very high priority issue for Council and the community	Very high priority issue for Council and the community	Very high priority issue for Council and the community
<b>INDICATIVE TIMEFRAME OF INITIAL RESPONSE</b>			
Immediate and urgent response	Response within 24 hours	Response within 10 working days	Response within 15 working days
<b>Example of issues</b>			

*This is a Controlled Document. Before using this document check it is the latest version by referring to Council’s Controlled Document Register. Unless otherwise indicated, printed or downloaded versions of this document are uncontrolled.*

Significant pollution incidents	Unsafe buildings and building works	Nuisance dogs	Noxious Weeds
Abandoned or unlawfully parked vehicles in an unsafe location	Rubbish dumped in an unsafe location / hazardous pollution incidents	Abandoned vehicles	Minor consent breaches
Collapsed or unsafe building works in public areas	Breaches of tree preservation order	Stormwater or drainage issues	Unauthorised signage
Dog attacks	Dangerous / restricted dog complaints	Dumped rubbish (not hazardous)	Unauthorised land use
Sewage Leaks	Single Food borne illness	Breach of consent conditions	Overgrown vegetation
Legionella Outbreak		Poor sediment control on building sites	Aesthetic issues
		Noise complaints affecting several people	Neighbour disputes
			Nuisance complaints (e.g. domestic noise, barking dogs)

If there is insufficient information in the report to undertake a preliminary assessment, further information may need to be sought from the person who made the report or an inspection undertaken. Staff may also need to consult Council's Records section and other internal business units to understand the relevant history and context of the matter.

#### Circumstances where no action will be taken

Council will take no further action if, following a preliminary assessment, it is identified that:

- I. Council does not have jurisdiction to investigate or is not the appropriate authority to take action on the issues raised. Where there is another appropriate authority or course of action, Council may bring the matter to the attention of the authority or provide information and contact details to the individual. For example, SafeWork NSW, for workplace safety matters, the NSW Environment Protection Authority for possible environmental offences and Community Justice Centres NSW for personal disputes.
- II. The report relates substantially to a matter previously determined by Council and no new or compelling information is presented which would cause Council to change its earlier decision. In this case, Council officers will acknowledge the report and advise that no further action will be taken as no new information has been provided (other than where the person has previously been advised they would receive no further response).
- III. The allegations relate to a lawful activity (e.g. where there is an existing approval or the activity is permissible without Council approval or consent being required).
- IV. The report is not supported with evidence or appears to have no substance.
- V. The relevant manager, director or the General Manager 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 on resources.

#### Relevant factors guiding decisions as to whether to take action

When deciding whether to investigate, Council will consider a range of factors including whether:

- the activity is having a significant detrimental effect on the environment or it constitutes a risk to public safety
- the report is premature as it relates to some unfinished aspect of work that is still in progress

- the activity or work is permissible with or without permission
- all conditions of consent are being complied with
- much time has elapsed since the events the subject of the report took place
- another body is a more appropriate agency to investigate and deal with the matter
- it appears there is a pattern of conduct or evidence of a possible wide spread problem
- the person or organisation reported has been the subject of previous reports
- the report raises matters of special significance in terms of the Council's existing priorities
- there are significant resource implications in relation to an investigation and any subsequent enforcement action
- it is in the public interest to investigate the report

The above are factors for Council to consider and weigh in making a determination. Council officers are not limited in their use of discretion by these considerations and may decide to investigate based on these and other factors. The objectives of the processes Council officers use when investigating incidents of alleged unlawful activity 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 or similar incidents

Any decision not to investigate an allegation of unlawful activity will be recorded with the reasons for that decision being clearly stated.

### **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 officers in determining the most appropriate response:

#### **The alleged offence and impact:**

- 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 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 circumstances demonstrated by the alleged offender
- any particulars circumstances or hardship affecting the person or organisation reported.

#### **The impact of any enforcement action:**

- the need to deter any future 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
- what action would be proportionate and reasonable in response to the unlawful activity
- whether Council is prevented from taking action based on earlier advice given i.e. whether an estoppel situation has been created

#### The potential 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

#### Legal or technical issues

Where legal and/or technical issues are in question, Council officers will consider whether legal advice or professional advice from duly qualified staff or other experts should be obtained and considered. Council may also require a person subject to possible enforcement action to obtain professional advice in relation to issues of concern to Council for assessment as to whether further action is required.

#### Requirements for Council staff considering enforcement action

Prior to taking enforcement action, Council officers will take into account the above considerations as well as the evidence gathered during their investigation. Council officers must act impartially and be mindful of their obligations under Council's Code of Conduct.

Council officers are required to maintain records about critical thinking and decision-making processes in relation to reports alleging unlawful activity and any enforcement action, as well as records of interactions with relevant parties. Council officers will at all times adhere to Council's internal processes prior to the commencement of any enforcement action.

Council officers will take steps to ensure that any enforcement action is taken against the correct person or organisation. Where there are multiple possible parties to an alleged unlawful activity, it will generally not be appropriate to take enforcement action against every person who may be liable for the alleged unlawful activity. In such circumstances, Council officers will be guided by legal advice in determining who are the appropriate persons to pursue.

Permission to engage legal services on behalf of Council for compliance matters must be sought from one of the following nominated staff as appropriate; the General Manager, the Director Development & Regulation, the Corporate Lawyer or the Manager Compliance and Regulation.

#### **Enforcement options**

#### **Example scenario**

Warning

Issued for minor offences. For example, displaying a small sign, minor parking offence or where education is the preferred first option.

Penalty notice

Issued for parking offences, breaches of the food safety standards, disregard of order, minor unauthorised works which have no impact

on the amenity of the surrounding neighbours and there is no ongoing risk to public health or safety, where the breach is a one-off and where the breach is only of such significance to require deterrence from further unlawful activity. For example, an unauthorised pergola, which does not overshadow or cause loss of solar access/view, residency without an occupation certificate (where there are no safety risks).

Notice of intention to issue an order	Issued for unauthorised works, which may not be permitted to remain, where there is a threat to public health and safety, works being undertaken without permission. Examples include, renovations undertaken without consent, unauthorised works to a heritage item, environmental and public health matters, noxious weed infestations etc.
Orders, Directions, Notices	Issued where voluntary compliance has not been achieved or when matter is considered to be of such concern that compliance within a specified timeframe or parameter is required.
Emergency order (without notice)	Issued where a building structure is compromised and is likely to cause imminent threat to public health and safety or works are being undertaken without permission. For example, the failure of the façade of a building, unauthorised demolition works.

**Options for dealing with confirmed cases of unlawful activity**

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 officers 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, with each decision being made on the individual merits of the case.

At all times, Council’s key concerns are:

- to prevent or minimise harm to health, welfare, safety, property or the environment
- to influence behavioural change for the common good and on behalf of the community

The following enforcement options to be considered by Council are ordered 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 style="list-style-type: none"> <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 style="list-style-type: none"> <li>• Negotiate with the person to obtain voluntary undertakings or an agreement to address the issue of concern</li> <li>• Issue a warning or a formal caution</li> </ul>
Medium	<ul style="list-style-type: none"> <li>• Issue a letter requiring work to be done or activity to cease in lieu of more formal action</li> </ul>

*This is a Controlled Document. Before using this document check it is the latest version by referring to Council’s Controlled Document Register. Unless otherwise indicated, printed or downloaded versions of this document are uncontrolled.*

- Issue a notice of intention to give an order or notice under relevant legislation, and then serving an order or notice if appropriate
- High
- Issue a penalty notice
  - Carry out the works specified in an order at the cost of the person served with the order
- Very high
- Seek an injunction through the courts to prevent future or continuing activity
  - Commence legal proceedings for an offence against the relevant Act or Regulation

### Following up enforcement action

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 Council. Reports alleging continuing unlawful activity will be assessed and further action taken if necessary. If the unlawful activity has ceased or the work has been rectified, the matter will be resubmitted for follow up action to ensure compliance outcomes are met. Should initial enforcement action be found to have been ineffective, Council officers will consider other enforcement options.

### **Taking legal action**

Council and its delegated officers will be guided by legal advice in deciding whether to commence criminal or civil proceedings and will consider the following:

- whether there is sufficient evidence to establish a case to the required standard or proof
- whether there is a reasonable prospect of success before a court
- whether the public interest warrants legal action

#### Whether there is sufficient evidence to establish a case to the required standard of proof

Council considers the decision to take legal action a serious matter and as such, will only initiate and continue proceedings once it has been established that there is admissible, substantial and reliable evidence to the required standard of proof.

The basic requirement of any criminal prosecution is that the available evidence establishes a prima facie case. The prosecutor is required to prove the elements of the offence beyond reasonable doubt.

In civil enforcement proceedings, Council will require sufficient evidence to satisfy the court that an actual or threatened breach has occurred on the balance of probabilities.

#### Whether there is a reasonable prospect of success before a court

Given the expense of legal action, Council will not take such action unless there is a reasonable prospect of success before a court. In making this assessment, Council officers will consider the availability, competence and credibility of witnesses, the admissibility of the evidence, all possible defences, and any other factors, which could affect the likelihood of a successful outcome.

#### Whether upholding the public interest warrants legal action

The principal consideration in deciding whether to commence legal proceedings is whether to do so is in the public interest. In making this determination, the same factors to be considered when taking enforcement action apply.

The following consideration will assist Council in making the determination:

- 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 counterproductive outcomes of prosecution
- the effective sentencing options available to the court in the event of a conviction
- whether the proceedings of the consequences of any resulting conviction would be unduly harsh or oppressive.

#### Time within which to commence proceedings

Council officers must be aware of legislative time limits in which enforcement proceedings must be commenced. Sometimes legal action will be statute barred despite good evidence that unlawful activity has occurred.

#### Shared enforcement responsibilities

Some reports will raise matters involving shared regulatory responsibilities between Council and other authorities including the Environmental Protection Authority, the NSW Police Force, the Office of Liquor and Gaming NSW, SafeWork NSW, NSW Fair Trading, NSW Food Authority, NSW Health and NSW Crown Lands.

Council recognises that collaboration and cooperation between authorities to address issues of shared regulatory responsibility is the best approach. To this end, where there are shared legislative responsibilities, Council officers 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

Council will reasonably endeavour to respond to requests for information or assistance on joint regulatory matters in a timely manner.

#### **Role of Council where there is a Principal Certifier**

Council retains its regulatory role and enforcement powers where an accredited certifier has been appointed as the Principal Certifier (PC). However, if an accredited certifier is appointed as the PC, it is not only Council's responsibility to ensure building and construction compliance.

Private certifiers have limited enforcement powers as the PC. They have the power to issue a Written Directions Notice to the owner or builder to comply with the conditions of consent or rectify any breaches. A copy of any Written Directions Notice issued by a Principal Certifier must be provided to Council for assessment as to whether Council will enforce the Directions Notice by issuing a Notice of Intention to give an Order.

Council and Principal Certifiers will work together to resolve any issues when they arise to achieve compliance with the development consent or complying development certificate.

#### **Role of Councillors in enforcement**

Decision making relating to the investigation of reports alleging unlawful activity and taking enforcement action is the responsibility of appropriately authorised Council officers or the Council itself.

Individual Councillors may not direct staff in their day-to-day activities. Councillors may help individuals who raise concerns with them by satisfying themselves that their 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.

### **Delegations**

Council officers delegations for taking action under this Policy are included in Council's Delegation Register.

## Appendix: Schedule of sample compliance practices

### Non complying development/unauthorised works/illegal land use

In the assessment of the unauthorised / non complying works or illegal use, the Council officer shall have regard to the scale of the works and categorise as either “minor” or “major”.

If the site is one controlled by a Principal Certifier ( PC), the complaint should be referred to the PC for management. Council should only act if the PC is found to be negligent in their duties or the PC issues a written Directions Notice and then refers the matter to Council for the issue of a Notice of Intention to give an Order.

#### What are minor non complying or unauthorised development works?

- a. These may include works that fall within the parameters of Complying Development but the owner failed to obtain a Complying Development Certificate.
- b. These may include works that fall just outside the parameters of Complying Development where the owner has failed to obtain development consent and the associated Construction Certificate.

#### What are major non complying or unauthorised development works?

- a. These works generally include significant alterations and additions to a development where the owner has failed to obtain prior development consent and associated construction certificate, and where there are substantial structural concerns and changes in land use.

#### Regulatory action for minor works

- a. For works where owner failed to obtain a Complying Development Certificate:
  - Issue a Penalty Infringement Notice
  - Require an application for a Building Information Certificate so as to regularise the structure so that it may remain.
- b. For works that fall just outside the parameters of Complying Development where the owner has failed to obtain development consent and the associated construction certificate:
- c.
  - Issue a Penalty Infringement Notice.
  - Serve a Notice of Intention to give an Order, seeking to have the unauthorised works removed. This gives the recipient the opportunity to make representations as to why the Order should not be served or have the contents of the Order altered.
  - In circumstances where the property owner has indicated they would like to regularise the unauthorised structure, any representations indicating this are referred to a Development Assessment Officer with a request that they carry out an assessment of the works against the heads of consideration as detailed in Section 4.15 of the EP&A Act. (The purpose of this being to determine if support for the works would have been given if appropriate application had been made. This brings transparency to the regulatory process and provides a sound footing if the matter is to progress to court)
  - If the response from the Development Assessment Officer is positive:

*This is a Controlled Document. Before using this document check it is the latest version by referring to Council's Controlled Document Register. Unless otherwise indicated, printed or downloaded versions of this document are uncontrolled.*

- the owner may be required to undertake any other ancillary works that may be recommended, for example landscaping, installation of privacy screen, opaque glazing etc. (This may be done via the issue of a formal order detailing the required works.)
- the owner will be requested to lodge an application for a Building Information Certificate so as to regularise the structure so that it may remain.
- If the response from the Development Assessment Officer is negative, orders shall be issued requiring the removal of the unauthorised works or cessation of the unauthorised activity.
- The order shall have due regard for any representations made against the notice of intention to issue an order.

The recipient of the order may either comply with or appeal the terms of the order.

The order should be checked by the appropriate Council officer at the expiration of the period referred to in the order. If the terms of the order are not complied with the matter is to be referred to Council's solicitors for court action.

d. The non complying works do not substantially alter the development as initially approved:

- Issue a Penalty Infringement Notice.
- Issue a Notice of Intention to give an order, seeking to have the unauthorised works removed. This gives the recipient the opportunity to make representations as to why the order should not be served or have the contents of the order altered.
- Upon issue of the Building Information Certificate the order is cancelled.
- Orders shall be issued requiring the removal of unauthorised works or cessation of unauthorised activity. The order shall have due regard for any representations made against the Notice of Intention to give an Order.

The recipient of the order may either comply or appeal the terms of the order.

The order should be checked by the appropriate officer at the expiration of the period referred to in the order. If the terms of the order are not complied with, the matter is to be referred to Council's solicitors for court action.

#### Regulatory action for major works

For works that include significant alterations and additions to a development where the owner has failed to obtain development consent and associated construction certificate, and/or where there are substantial structural concerns, changes in land use, and/or where the works so substantially alter the development as approved:

- Issue a Notice of Intention to give an Order, seeking removal of the unauthorised works or cessation of an unauthorised/illegal activity. This gives the recipient the opportunity to make representations as to why the order should not be served or have the terms of the order altered.

- Prior to/ or upon receipt of the representations refer the case to a Development Assessment Officer with a request that they carry out an assessment of the works against the heads of consideration as detailed in Section 4.15 of the EP&A Act. (The purpose of this being to determine the level of compliance, if any, with the relevant DCP, amenity issues and any other legislation applicable, that may affect the works, and a comment if support for the works would have been given if appropriate application had been made. This brings transparency to the regulatory process and provides a sound footing if the matter is to progress with court action.)
- The owner should be requested to supply documentary evidence testifying to the structural adequacy of the works and compliance with Building Code of Australia.
- The order should be issued giving consideration to any representations. The recipient has the ability to comply with the order or appeal the terms of the order in the Land & Environment Court. In the event there is no appeal and the order is not complied with, prosecution action to commence. Generally, Class 4 Proceedings seeking orders to remove the unauthorised works and Class 5 proceedings for a monetary penalty are taken in the Land & Environment Court.

### **General complaints about buildings under construction or demolition**

The most common complaints received by Council in respect of building sites relate to noise, dust, hours of work, local traffic problems and concerns with asbestos or unsafe work practices.

If the site is controlled by a private Principal Certifier (PC), the complaint should be referred to the PC for management. Council should only act if the PC is found to be negligent in their duties, or if the PC issues a written Directions Order and then refers the matter to Council for consideration of giving an Order.

If the matter concerns unsafe work practices or hazardous materials it should be referred to WorkSafe NSW.

The following steps should be taken:

- Conduct a field assessment and establish the level of nuisance or non-compliance.
- Issue a verbal direction to cease the offensive activity and make good.
- Issue a POEO Act Clean up Notice.
- Issue a POEO Act Prevention Notice, a statutory administration fee is imposed on this notice. (21 day appeal period is mandatory).
- Issue a Penalty Infringement Notice/s for offences.
- Serve a Notice of Intention to give an Order, seeking to have the nuisance or non-compliance made good. This gives the recipient the opportunity to make representations as to why the Order should not be served or have the terms of the order altered.
- Issue the Order, having due regard for any representations made against the Notice of Intention to give an Order.

The recipient of the Order may either comply or appeal the terms of the order.

The Order should be checked by the appropriate officer at the expiration of the period referred to in the order. If non-compliance continues, the matter is to be referred to Council's solicitors for legal action.

## Breaches of the Swimming Pool Act

Breaches of this Act present a real threat to the safety of young children within the community, for this reason there is no leniency shown in the application of this legislation. All breaches should be dealt with in the following manner:

- Issue an Order, clearly stating the reasons for the order and the defects to be corrected.
- Reinspect at expiration of the period referred to in the Order.
- Issue a Penalty Notice if the order is not complied with.
- Require the Order to be complied with within a further 30 days.
- If non-compliance continues, refer the matter to Council's solicitors.

## Unclean, unhealthy or unsafe premises

The Council officer shall have regard for the scale of the noncompliance and the public interest.

Actions may be pursued under the Local Government Act, Food Act, Public Health Act, Swimming Pool Act or Biosecurity Act, depending on the matter at hand.

Matters usually before officers include regulated activities such as food shops, beauty salons, mobile food vendors, boarding houses, air handling systems, and overgrown, dilapidated and neglected premises. Residential premises considered to be occupied in squalor conditions, may require special assistance from external authorities that provide mental health support for occupants as well.

### Regulatory action for minor breaches

Minor breaches may include, keeping of animals, defective guttering or downpipe not connected, untidy yard, cultivation of pest species plants, etc.

Generally, the following steps should be taken:

- Conduct field assessment and issue verbal or written direction.
- Provide education as to why the situation is unacceptable and what improvements are expected.
- Send letter of warning and seek co-operation in having the matter attended to.
- Serve a Notice of Intention to give an Order seeking to have the premises reinstated into safe, clean and healthy condition. This gives the recipient the opportunity to make representations as to why the Order should not be served or have the terms of the Order altered.
- Assess representations made by the recipient of the order terms.
- Issue Order having due regard for any representations made against the Notice of Intention to give an Order.
- Non-compliance with Order may result in the Issue of a Penalty Infringement Notice.

### Regulatory action for significant breaches

Significant breaches may include broken sewage or stormwater services, overgrown or dilapidated premises, etc.

The following steps should be taken:

- Conduct field assessment and issue verbal or written direction.
- Serve a Notice of Intention to give an Order, seeking to have the premises reinstated into safe, clean and healthy condition. This gives the recipient the opportunity to make representations as to why the order should not be given or have the contents of the order altered.

- Assess representations made by the recipient of the Order.
- Issue the order having due regard for any representations made against the Notice of Intention to give an Order.

The recipient of the order may either comply or appeal the terms of the order.

The order should be checked by the appropriate Council officer at the expiration of the period referred to in the Order. If non-compliance continues, the matter is to be referred to Council's legal team for court action. A Penalty Infringement Notice for non-compliance with the Order may be issued if considered appropriate, alternatively, Council officers may seek to have the court impose a monetary penalty.

If a person fails to comply with an Order, Council officers may wish to carry out the outstanding works. Section 678 of the Local Government Act makes provisions for this but generally this action is taken only with the consent of the Court, in that way Council may recover all expenses incurred by charging as a debt against the property.

### **Breaches of the Food Act**

Council has a responsibility to enforce food safety laws and may take regulatory enforcement action when breaches have occurred. Such action may be as a result of an inspection or from a complaint investigation. Enforcement action is taken in accordance with the NSW Food Authority's publication "Enforcement agency roles and responsibilities."

Council will apply a graduated and proportionate approach to the application of enforcement tools in the first instance and follow with more severe tools should the non-compliant activity continue or if the circumstances are such to be considered a sufficient risk to public health.

Council's Environmental Health Officers have a number of informal and regulatory options for dealing with breaches of the food laws which include the following:

- Providing informal verbal or written warnings and/or provision of educational information - for minor breaches and issued at the discretion of the attending Council officer.
- Issuing an Improvement Notices - a legal document ordering works to be done by a specific date.
- Issuing Penalty Infringement Notices (PINs) - PINs that relate to food hygiene matters are publicly displayed on the NSW Food Authority's Register of Penalty Notices (Name and Shame Register).
- Issuing Prohibition Orders - These can force the food business to close, or stop using a specific piece of equipment, until a further inspection is satisfactory and a Certificate of Clearance has been issued. A Prohibition Order may be issued if an Improvement Notice has not been complied with by the date specified, or to prevent or mitigate a serious danger to public health.
- Issue Seizure Notices - the power to seize food and/or unsuitable equipment in accordance with the requirements of the *Food Act 2003*
- Commence and undertake Prosecution - for more serious or ongoing breaches of the *Food Act 2003*.

Council Officers will select an enforcement response that is proportionate to the identified non-compliance and capable of providing sufficient incentive to the business or person to amend the non-compliant behaviour. Should the circumstances surrounding an offence be considered sufficiently serious (e.g. an imminent risk to public health and safety) then Council may elect to employ multiple enforcement tools at the same time. The overriding consideration in taking enforcement action will always be the protection of the community's health and safety.

## Regulating noise impacts from noisy equipment or activities (not including animals)

The key regulatory tools used by Council officers for managing local environmental Noise impact are provided by the Protection of the Environment Operations Act 1997 (POEO Act) and the POEO (Noise Control) Regulation 2017, and a range of notices, directions orders and penalty notices can be issued in relation to breaches. There are also references to noise in other legislation, which may be applied from time to time depending on the individual circumstances.

Generally speaking, the concerned customer should in the first instance attempt to contact the person responsible for the noise source to advise them of the issue as they may be unaware of a potential noise impact on their neighbours. Should it become necessary for Council officers to become involved, officers will investigate the source of the noise and may undertake a field assessment of the issue which may include the use of a sound level meter.

Should it be determined there is a breach of the relevant legislation, Council officers may employ a number of tools available which may include but is not limited to the following:

- Informal verbal or written warnings and/or provision of educational information - determined at the discretion of the attending officer
- Noise Control Notice – a legal document used to specify noise levels for an article or activity. Can be appealed in the Land and Environmental Court within 21 days of being served.
- Penalty Infringement Notices (PINs) - can be issued for any on the spot offence, but generally used if an offender fails to heed a warning or contravenes a Noise Abatement Direction.
- Noise Abatement Direction - used as a quick response to dealing with offensive noise that is occurring or has occurred in the last 7 days. Stays in force for up to 28 days.
- Prevention Notices - a legal document used to prevent an activity from being carried out in an environmentally unsatisfactory manner. Requires specific actions in the Notice to be undertaken. (This notice can also address other pollution or waste problems).
- Prosecution - for failure to comply with a Noise control Notice or Prevention Notice

The decision regarding which of these instruments to use will depend on the individual circumstances of each noise problem and on the judgement of the officer and if necessary on advice of Council's solicitors. There may also be situations where it is necessary to apply a range of tools available to mitigate the noise impact.

## Regulating noise issues within multi occupancy developments

Residents that live in multi occupancy developments should contact the building owners corporation. Multi occupancy buildings generally have their own individual by-laws about noise. The owner's corporation can investigate the noise complaint and can issue a notice to comply with a by-law. If the noise occurs again within 12 months, the owners corporation can apply to the NSW Civil and Administrative Tribunal (NCAT) for a legally enforceable order to stop it NCAT can also fine the person responsible for making the noise.

## Barking dogs

Under the Companion Animals Act 1998 (the Act), a dog may be declared a nuisance if it is found to be *"making a noise, by barking or otherwise, that persistently occurs to such a degree or extent that it unreasonably interferes with the peace, comfort or convenience of any person in any other premises"*.

Complaints regarding nuisance dogs will not be accepted on an anonymous basis as Council needs to establish how the animal unreasonably interferes with the peace, comfort or convenience of any person in any other premises.

Complaints concerning barking dogs are often a sign of other significant neighbourhood disputes. Care must be taken by the Council officer to ensure an objective assessment is made. The following steps should be taken.

In circumstances where the occupant of an individual premises is affected by noise from a barking dog, the occupant of that individual premises is encouraged to communicate directly with the owner of the dog, informing them of their concern and seek a resolution to his/her concerns prior to involving the Council. The local Community Justice Centre may be able to assist. These government-funded, independent centres specialise in dispute resolution between neighbours via mediation. There is no cost for this service. Generally, concerned persons will need to demonstrate what private actions they have initiated with the dog owner prior to coming to Council.

Generally, Council's authorised officers will consider using their powers under the Companion Animals Act 1998 to issue a "Nuisance Dog Order" when a barking dog affects at least two unrelated premises and sufficient evidence is gathered to satisfy an officer that the barking of a dog constitutes a nuisance, as defined under the Act.

A numerical standard has been adopted within internal operating procedures to assist Council officers with the investigation of barking dog complaints. The standard being: *"A dog may be considered to be a nuisance if it barks, howls or otherwise makes persistent noise for greater than eight minutes in any one daylight hour or four minutes in any night time hour."*

On receipt of the formal complaint, Council officers will generally take the following steps;

- Undertake an initial site inspection of the identified premises to verify details of the complaint, registration status of the dog and issue a written letter to the owner advising them that Council is in receipt of a formal complaint against their dog, setting out the terms of the alleged nuisance.
- Suggest to the owner recommendations on possible remedial behavioural training that may assist barking nuisance behaviours.
- Provide the complainant a "barking dog diary" to complete. The diary is to be completed by the complainant over a two-week period, signed and returned to Council. If the diary is not returned by the due date, the matter will generally be finalised and will not be re-investigated for a period of six months.
- Assess the satisfactorily completed and returned diary to determine if there is any pattern to the dog's behaviour. Using this information Council's officer will commence independent patrols to gather further evidence in respect of nuisance barking. Evidence gathering may include interviews of other surrounding neighbours.
- If the Council officer finds no evidence of nuisance barking to support the claims within the diary, the matter will be finalised.
- If the Council officer determines that the dog is nuisance barking (as defined by the Act), a Nuisance Order will be issued and enforced. Nuisance Orders are enforceable for a period of six months and the dog owner must ensure that the dog does not bark to cause a nuisance within the six-month period. Fines may apply if the Nuisance Order is not complied with.

## Parking surveillance and enforcement

The principal objective of this activity is to achieve an appropriate balance between public safety, traffic flow and equitable access in the management and regulation of vehicle parking facilities available to the general public, for the benefit of the community and local business and people who frequent the Ku-ring-gai local government area.

Council is responsible for both “on-street” and ‘off-street” parking surveillance. “On-street” is parking on public roads, whilst “off-street” relates to parking within Council managed public car parks or other off road areas.

Council’s rangers carry out regular patrols of public parking areas and roads in the local government area, they also respond to complaints from the public in relation to illegally parked vehicles.

Priorities in this surveillance work include:

- Patrolling on street parking around different school zones, randomly selecting different schools on a daily basis during the school term.
- Patrolling all on street parking restrictions on a daily basis.
- Random, daily surveillance of time limits, paid parking and bay markings in off-street parking areas.
- Surveillance to ensure correct use of bus, taxi and loading zones, as well as no stopping zones, especially around Ku-ring-gai’s major transport hubs and town centres.
- Public education of motorists in respect of their obligations under the Australian Road Rules.

Observed offences are generally photographed by Council’s rangers. The photographs are taken for the purpose of ‘supporting evidence’. The captured images are stored in the combined Revenue NSW and Council’s secure record data base for Penalty Infringement Notice processing and are not available for access by unauthorised persons. Individuals whom are infringed may apply to Council or Revenue NSW for a copy of any photo, if held.

Penalty Notices may either be placed on the parked vehicles or posted to the vehicle owner. Ownership details are retrieved from the secure database of “RMS DRIVES .”

Typical offences subject to a penalty notice may include:

- Overstaying sign posted time limits.
- Breaches of on street restrictions applicable to “No Stopping”, Bus, Taxi and Loading zones;
- Parking in accessible (disability) parking spaces without the authority to do so or permit not being displayed as set out in the ‘conditions of use’.
- Breaches of on street parking and restrictions around school zones.
- Failure to comply with conditions of off-street parking., including private carparks monitored under contract by Council.
- Failure to pay in designated “paid parking” spaces

Penalties for parking offences and all other offences are set by legislation and are administered by the NSW State Government and not by Council.

Details of current NSW legislation can be found on the Internet at the following Web address, <http://www.legislation.nsw.gov.au>. Interested persons should check the NSW Road Rules 2008 for on street offences and Local Government Act 1993 for off street offences.

### The use of discretion

Council's rangers have very limited discretion in their enforcement of signposted or marked restrictions in relation to vehicle parking. Failing to take action in relation to an observed offence may create hazards or risks for the community. In addition, it may expose Council and the rangers concerned to accusations of partiality and, potentially, a claim for damages where an unsafe situation has arisen. Such inaction may also be in breach of Council's Code of Conduct.

Council's rangers should exercise limited discretion, including issuing warnings, where obvious exceptional and mitigating circumstances are apparent to the ranger when observing an offence. Critically, however, public safety must *not* be compromised.

### **Service agreement with Revenue NSW**

Council has a commercial agreement with the Revenue NSW for the administration and processing of all Penalty Notices issued, as well as the enforcement of outstanding fines and Penalty Notice amounts.

Under this arrangement, Revenue NSW provides an assessment and review service independent of Council, reducing local administration costs and reducing potential conflicts of interest. Revenue NSW also offers extensive advice to people who have received penalties on relevant issues and appeal options available to them. Guidelines are available at: <https://www.revenue.nsw.gov.au>. The guidelines include matters considered when reviewing an appeal.

All enquires relating to the appeal of a Penalty Infringement Notice should be directed to Revenue NSW in the first instance.

In the event that a person elects to have the matter determined through the Local Court process, Council's reporting officer will usually attend to give evidence. In the event of a written representation where the recipient of the Penalty Notice may have raised unusual circumstances, Revenue NSW may seek advice from Council's Compliance and Regulation Unit and request a review of its decision.

### Handling complaints regarding penalty infringement notices

The administration of all offences and penalty notices is managed under an arrangement with Council and Revenue NSW.

Accordingly, a letter attached to all mailed Penalty Notices issued by Council advises the recipient of the fine to direct all enquiries regarding the Penalty Notice to that organisation. Council's Customer Service staff and rangers also give this advice to the public when they receive phone calls or other representations on penalties issued.

Where a member of the public lodges a complaint with Council about the conduct of a Council officer in connection with enforcement of public parking rules, the complaint will be processed in accordance with Council's Complaint Management Policy.

--