

## Regulatory Enforcement Policy

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### 1. Scope

1.1 This Policy applies to all areas within the City of Parramatta local government area (LGA), and to City of Parramatta Council (Council) Employees who are authorised to investigate Reports Alleging Unlawful Activity pertaining to matters such as, but not limited to:

- (a) development and building control;
- (b) fire safety;
- (c) swimming pools;
- (d) public health and safety;
- (e) food safety;
- (f) pollution control;
- (g) environmental health;
- (h) animal control;
- (i) tree preservation;
- (j) roads and footpaths;
- (k) parking;
- (l) parks and reserves;
- (m) illegal dumping; and
- (n) water supply and sewerage work.

1.2 This Policy does not apply to the handling of Complaints regarding Council services, the process for which is set out under Council's Complaints Handling Policy.

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## 2. Purpose

- 2.1 This Policy sets out Council's approach to compliance and Enforcement processes, for regulatory matters as outlined in the Scope. It provides a framework to ensure the investigation and detection of any breach of legislation will be conducted by Council in a fair, lawful, consistent, transparent, and professional manner, and with thorough consideration of all available facts.
- 2.2 This Policy outlines how Council will meet its obligation to duly investigate all Service Requests alleging Unlawful Activity. The Policy provides clear guidelines for an effective Service Request handling system, where staff consistently address Service Requests through a clear and transparent decision-making process.
- 2.3 This Policy further aims to support Regulatory Services Employees in undertaking their duties for safeguarding the built and natural environments in the LGA, with a view to ensuring they are maintained and used in a compliant manner, providing a healthier and safer environment for the community.

## 3. Policy

### Guiding principles for Enforcement

- 3.1 Prior to making a decision to enforce or prosecute, Authorised Persons acting on behalf of Council will give consideration to the following guiding principles:
- 3.1.1 Use of discretion: decide whether to take Enforcement or prosecution action in response to evidence of Unlawful Activity.
- 3.1.2 Procedural fairness: ensure that Council's Enforcement and prosecution processes afford natural justice.
- 3.1.3 Previous conduct: ensure that communication is clear in relation to Council's previous actions and how these actions impact on a specific circumstance, prior to deciding the taking of Enforcement or prosecution action.
- 3.1.4 Nature of the activity: consider the nature and extent of the activity, prior to making a decision to take Enforcement or prosecution action, including:

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- (a) if the breach was of a Trivial or technical nature;
- (b) if there were any aggravating circumstances; and
- (c) if there was any third-party harm or serious environmental harm.

3.1.5 Delay in taking action: ensure that decisions to take Enforcement or prosecution action are made without undue delay. Notwithstanding, Service Requests with a higher priority of potential risk will be addressed before lower priority matters, when Service Request volumes are high.

3.1.6 Public interest: the resulting benefit of taking Enforcement or prosecution action in circumstances where the non-compliance can be easily remedied, or where Council approval could have been obtained, needs to be balanced against the cost of any action.

3.1.7 Impartiality: ensure Enforcement decisions will not be influenced by:

- (a) an individual's race, religion, sex, nation of origin or political associations, activities, or beliefs;
- (b) possible political advantage or disadvantage to Council, or any other party;
- (c) the possible impact of the decision on the personal or professional circumstances of any party;
- (d) possible media or community reaction to the decision; or
- (e) a conflict of interest (real or perceived), as set out by Council's Code of Conduct.

3.1.8 Reputation of Council: any decision regarding Enforcement or prosecution action must be made in a sound and ethical manner so as not to damage, harm, or tarnish Council's professional reputation.

3.2 Whilst it is intended that the principles in this Policy will have general application, there may be cases where the circumstances justify departure from these principles. Any departures will be subject to the authorisation of Council's Group Manager, Regulatory Services.

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## Enforcement methods and considerations

3.3 Council will always seek to achieve voluntary compliance with the legislation it administers, through education, advice, and guidance to individuals and businesses. However, Council will be vigilant in monitoring compliance with applicable legislation, and will take Enforcement action where individuals or businesses are unwilling to comply or deliberately commit an Unlawful Activity. Council has a range of enforcement methods available to address breaches of legislation. The specific enforcement method will be chosen to ensure that the level of regulatory response is proportionate to the level of risk and seriousness of the breach, by employing the following responsive regulation model:

### BEHAVIOUR

Attitude to compliance

### LEVELS OF INTERVENTION

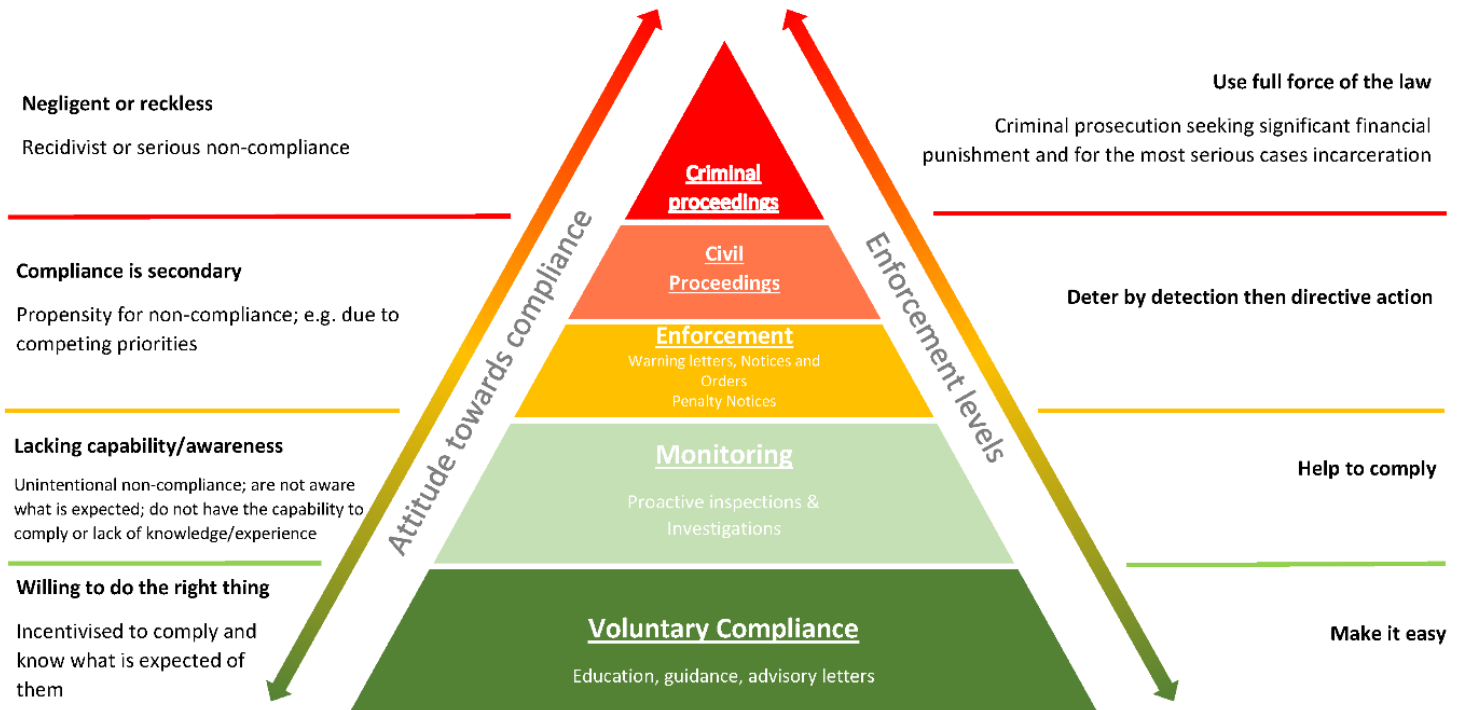


Figure based on Ian Ayres and John Braithwaite, *Responsive Regulation: Transcending the Deregulation Debate* (Oxford University Press, 1992)

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3.4 Where appropriate, the following methods may be used in an escalatory manner, in accordance with clause 3.3 of this Policy:

3.4.1 Non-coercive methods, which may include:

- (a) education, on the requirements of the relevant legislation, Council policies, or codes. This option may be taken for a single minor breach that would not result in risk to life/property/health or the environment; the breach can be rectified immediately; and the Offender has shown contrition and rectified the matter immediately;
- (b) warning letter, to formally advise of the requirements of the relevant legislation, Council policies, or codes. This option may be taken where there are one or more minor breaches that may result in risk to life/property/health or the environment; the breaches may require some time to rectify; and a reinspection is required to confirm compliance;
- (c) formal notices, Orders, or directions, to provide specific details of what work must be undertaken, or that an activity must cease in order to comply with relevant legislation, Council policies, or codes. This option may be taken where a breach is likely to cause risk to life/property/health or the environment; the breach will require time/resources to rectify; and a reinspection is required to confirm compliance; or
- (d) Council carrying out the uncompleted work specified in an Order and recovering the cost of such action from the Offender. This option may be taken when the recipient of an Order/direction from Council has made no attempt to complete the works and/or is incapable of completing the required works and there is a risk to life/property/health or the environment by not completing the works.

3.4.2 Coercive methods, which may include issuing a:

- (a) Penalty Notice, as a fixed financial reprimand for an offence to serve as a deterrent, used when:
  - i. the offence is a minor breach of legislation, where the facts alleged are not complex;
  - ii. the behaviour is isolated and unlikely to be repeated; and/or
  - iii. the Penalty Notice amount is likely to be a sufficient deterrent; or
- (b) Court Attendance Notice, to pursue more extensive fines for breaches, or Court orders to remedy a situation, such as prosecution in the:

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- i. Local Court, used when:
  - a. the amount of any fine imposed is unlikely to exceed the jurisdictional limit of the Local Court;
  - b. the factual circumstances of the offence are not complex;
  - c. a Penalty Notice has previously been issued to the Defendant;
  - d. the offence is one where the environmental harm is considered not serious enough to take it to the Land and Environment Court; and/or
  - e. the matter can be more efficiently dealt with in the Local Court; or
- ii. Land and Environment Court, used when:
  - a. the monetary penalty imposed is likely to exceed the jurisdictional limit of the Local Court;
  - b. the offence is one that has caused substantial environmental damage or harm;
  - c. the offence is one that has been committed previously by the Defendant and Court action has failed to act as a deterrent; and/or
  - d. the offence is one where Council is, in addition to seeking a monetary penalty, seeking orders requiring the Defendant to undertake remedial work, where allowed by the relevant legislation.

3.5 Where Council is not the appropriate regulatory authority under specific legislation, Council will refer the matter to the appropriate agency or forum, including referring the:

- (a) Report Alleging Unlawful Activity to an external agency for further action (e.g., police or the relevant NSW Government Department); or
- (b) disputing parties to an external mediator (e.g., the Community Justice Centre or NSW Civil and Administrative Tribunal).

3.6 Where Council incurs costs in undertaking Enforcement and/or prosecution action, it will recover such costs in accordance with the relevant legislation. For instance, Council may issue compliance costs notices pursuant to section 104 of the *Protection of the Environment Operations Act 1997* (NSW) and section 37 of Schedule 5 to the *Environmental Planning and Assessment Act 1979* (NSW).

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#### 4. Delegation

4.1 There are Administrative and/or Legislative Delegations applicable to this Policy, which are provided for in Council's Delegations Manual.

#### 5. Procedure

5.1 This Policy must be read in conjunction with any presiding direction applicable to the matter subject to Council investigation under this Policy, including Council's Local Orders Policy and legislation such as, but not limited to, the:

- (a) *Biosecurity Act 2015 (NSW)*;
- (b) *Boarding Houses Act 2012 (NSW)*;
- (c) *Building Professionals Act 2005 (NSW)*;
- (d) *Companion Animals Act 1998 (NSW)*;
- (e) *Contaminated Land Management Act 1997 (NSW)*;
- (f) *Environmental Planning and Assessment Act 1979 (NSW)*;
- (g) *Fines Act 1996 (NSW)*;
- (h) *Food Act 2003 (NSW)*;
- (i) *Local Government Act 1993 (NSW)*;
- (j) *Privacy and Personal Information Protection Act 1998 (NSW)*;
- (k) *Protection of the Environment Operations Act 1997 (NSW)*;
- (l) *Public Health Act 2010 (NSW)*;
- (m) *Public Spaces (Unattended Property) Act 2021 (NSW)*;
- (n) *Roads Act 1993 (NSW)*;
- (o) *Roads Transport Act 2013 (NSW)*;
- (p) *Rural Fires Act 1997 (NSW)*; and
- (q) *Swimming Pools Act 1992 (NSW)*.

5.1.1 This Policy must be read in conjunction with Council's Parking Enforcement Policy, which sets out specific Enforcement provisions for parking matters in the LGA.

#### Service Requests

5.2 Council will record all Service Requests raised by the public. The investigation of each Service Request will be conducted on the merits and accuracy of the information provided. Investigation of Service Requests will be on a risk basis, where matters that pose a risk to life/property/health and the environment are investigated as a priority.

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Not every Service Request will require an investigation by Council. Low risk cases may be recorded but no action taken. If the situation in relation to a Service Request changes throughout the investigation, Council may alter the Service Request's priority.

- 5.3 Where the nature of a Service Request also relates to a matter of concern to a State agency or where there is an increase in the number of a particular request type, Council may investigate using a more focused approach. Where this approach is used, all available resources are focused on the resolution of that matter (e.g., unlawful boarding houses).
- 5.4 Members of the public wishing to request Council to investigate a potentially Unlawful Activity can do so by contacting Council's Customer Service Centre on (02) 9806 5050 or 1300 617 058, or by lodging an online request on the Service Portal on Council's website.

#### Employee and Councillor responsibilities

- 5.5 Employees, where relevant to their role, are expected to:
- effectively participate in training related to implementation of this Policy;
  - report any barriers or concerns relating to implementation of this Policy to their Team Leader, without undue delay;
  - make decisions relating to the investigation of alleged Unlawful Activity, with the support of their Team Leader; and
  - read this Policy in conjunction with any relevant Council standard operating procedures relevant to the regulatory activity they are undertaking.
- 5.6 Team leaders, where relevant to their role, are expected to:
- effectively train, guide, and monitor Employees in implementation of this Policy;
  - effectively respond to reported barriers or concerns related to implementation of this Policy;
  - be an active advocate for effective implementation of this Policy; and
  - review decisions relating to the investigation of alleged Unlawful Activity made by an Authorised Person.
- 5.7 The Group Manager, Regulatory Services, is expected to:

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- (a) effectively respond to reported barriers or concerns related to implementation of this Policy; and
- (b) be an active advocate for effective implementation of this Policy.

5.8 Councillors are expected to:

- (a) not make decisions around the way Unlawful Activities are investigated and/or prosecuted;
- (b) avoid involvement in Council's day-to-day operational and management decisions around Enforcement and prosecution; and
- (c) assist individuals who raise concerns with them to understand Council's policies and procedures.

6. Definitions

Authorised Person	An Employee of Council generally or specially authorised by Council in respect of or whose duty it is to deal with, or to act in regard to, any acts, matters, or things in relation to which the expression is used.
Complaint	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.  For the purposes of this Policy, a complaint does not include:  (a) a Report Alleging Unlawful Activity; (b) a request for information about a Council policy or procedure; (c) a request for an explanation of actions taken by Council; or (d) a request for internal review of a Council decision.
Court Attendance Notice	Means a Court Attendance Notice issued and filed in accordance with the <i>Criminal Procedure Act 1986</i> (NSW), which may be used to commence summary proceedings in the local court. A Court Attendance Notice specifies the offence and its essential particulars, as well as the address of the court where the matter is to be heard. If a person does not attend court on the day specified in a Court Attendance Notice, a warrant may be issued for the arrest of the person, or the matter may be dealt with in the absence of the person.
Defendant	Means a person who is charged with a criminal offence.

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Employee	A person who is directly employed by Council on a full time, part time, temporary, or casual basis.
Enforcement	Means actions taken in response to serious or deliberate contraventions of laws.
Offender	Means a person who does or is alleged to have done something wrong, causes problems, or commits or is alleged to have committed an illegal act.
Order	An authoritative direction or instruction given by Council.
Penalty Notice	Means a notice issued under a statutory provision to the effect that:  <ul style="list-style-type: none"> <li>(a) the person to whom the notice is issued has committed the penalty notice offence specified in the notice, and</li> <li>(b) if the person does not wish to have the matter determined by a court, the person may pay, within the time and to the person specified in the notice, the amount for the offence specified in the notice.</li> </ul> <p>A Penalty Notice may be issued to a person personally, or by post, or in an approved electronic manner (as specified in section 4A of the <i>Fines Act 1996</i> (NSW)).</p>
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.
Service Request	For the purposes of this Policy, refers to a Report Alleging Unlawful Activity lodged through Council's Service Request system, via Council Customer Service or the Service Portal on Council's website.
Trivial	Means of little value or importance.
Unlawful Activity	Means 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:  <ul style="list-style-type: none"> <li>(a) terms or conditions of a development consent, approval, permit, or licence;</li> <li>(b) an environmental planning instrument that regulates the</li> </ul>

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	<p>activities or work that can be carried out on particular land;</p> <p>(c) a legislative provision regulating a particular activity or work; or</p> <p>(d) a required development consent, approval, permission, or licence.</p>
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<b>REFERENCES</b>	<p><i>Biosecurity Act 2015 (NSW)</i></p> <p><i>Boarding Houses Act 2012 (NSW)</i></p> <p><i>Building Professionals Act 2005 (NSW)</i></p> <p><i>Companion Animals Act 1998 (NSW)</i></p> <p><i>Contaminated Land Management Act 1997 (NSW)</i></p> <p><i>Criminal Procedure Act 1986 (NSW)</i></p> <p><i>Environmental Planning and Assessment Act 1979 (NSW)</i></p> <p><i>Fines Act 1996 (NSW)</i></p> <p><i>Food Act 2003 (NSW)</i></p> <p>Ian Ayres and John Braithwaite, <i>Responsive Regulation: Transcending the Deregulation Debate</i> (Oxford University Press, 1992)</p> <p><i>Local Government Act 1993 (NSW)</i></p> <p><i>Privacy and Personal Information Protection Act 1998 (NSW)</i></p> <p><i>Protection of the Environment Operations Act 1997 (NSW)</i></p> <p><i>Public Health Act 2010 (NSW)</i></p> <p><i>Public Spaces (Unattended Property) Act 2021 (NSW)</i></p> <p><i>Roads Act 1993 (NSW)</i></p> <p><i>Roads Transport Act 2013 (NSW)</i></p> <p><i>Rural Fires Act 1997 (NSW)</i></p> <p><i>Swimming Pools Act 1992 (NSW)</i></p>
<b>ASSOCIATED POLICIES</b>	<p>Code of Conduct</p> <p>Complaints Handling Policy</p> <p>Local Orders Policy</p> <p>Parking Enforcement Policy</p>
<b>ATTACHMENTS</b>	Nil

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