

# compliance & enforcement policy

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# introduction

## 1.1 THE POLICY

This policy is the council's Compliance and Enforcement Policy.

## 1.2 COMMENCEMENT

This policy commences on the date council adopted the policy and replaces council's enforcement policy previously adopted by council on 25 August 2022.

## 1.3 ABOUT COUNCIL

The legislation under which council operates and pursuant to which the council exercises regulatory powers is numerous. The most applied statutes are the *Environmental Planning and Assessment Act (EPA Act)*, *Protection of the Environment Operations Act 1997 (POEO Act)*, *Local Government Act 1993 (LGA Act)*, *the Companion Animals Act 1998 (CA Act)*, *the Food Act 2003 (F Act)* *the Public Spaces (Unattended Property) Act 2021 (PS(UP) Act)*, *Public Health Act 2010 (PH Act)* and *the Swimming Pools Act 1992 (SP Act)*.

Council undertakes compliance and enforcement in an endeavor to maintain acceptable community, environmental and public interest outcomes. As part of this role, council may collaborate with agencies at the state and commonwealth level, with the extent of their jurisdiction on land and development application matters such as on Crown Land and NSW government state developments

## 1.4 POLICY STATEMENT

Council is opposed to unlawful activity at any time or under any circumstances. Council will consider enforcement action in accordance with this policy.

## 1.5 PURPOSE

This policy assists council officers to act promptly, consistently, and effectively in response to allegations of unlawful activity and provides information for all internal and external stakeholders and interested parties of council's position, regarding compliance and enforcement activities in the shire.

## 1.6 POLICY OBJECTIVE

The aim of this Policy is to establish clear guidelines for the management of unlawful activity, having regard to all the relevant information, including the available evidence, cost to the community, the circumstances of the individual case, public interest and precedent considerations.

The Policy:

- Provides a framework to assist council in making decisions in its enforcement functions.
- Specifies the criteria which the council will take into consideration when deciding:
  - (a) if enforcement action is necessary; and
  - (b) the most appropriate type of action and or resolution
- Provides information to the public about council's role, expectations, and policy on enforcement; and
- Determines any enforcement process is conducted efficiently and with minimal delay as the available resources and demand enables.

This Policy does not limit council officers' discretion in the exercise of their enforcement functions. The full circumstances and facts of each case need to be considered and decisions made on the merits of those circumstances.

### 1.7 APPLICATION

This policy applies to regulatory issues including investigation, compliance, and consistent enforcement, within council's area of responsibility including, but not limited to:

- development and building control
- swimming pool safety
- cultural heritage
- environmental heritage and heritage conservation
- tree preservation
- fire safety
- public health and safety
- pollution control including breaches of noise restrictions
- water and sewer
- onsite sewerage management
- animal control
- food safety
- environmental health
- sediment and erosion
- regulation of public spaces (including seizure of unattended property), and
- regulation of parking.

This policy does not apply to the issuing of immediate on the spot fines by council's rangers or parking enforcement officers in the proper exercise of their functions under the various applicable acts.



## 1.8 COMPLIANCE AND ENFORCEMENT PRINCIPLES

The following are the *principles* which support council actions in relation to compliance and enforcement:

PRINCIPLE	ACTION
<b>ACCOUNTABLE AND TRANSPARENT</b>	<ul style="list-style-type: none"><li>• Acting in the best interests of public health, safety and 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, certainty and to promote trust by the community</li><li>• Ensuring reasons for decisions are given to relevant parties, particularly when there is a departure from this policy, and</li><li>• Acting on any complaints or concerns about the conduct of enforcement and compliance officers in accordance with council's Complaints Management Policy.</li></ul>
<b>CONSISTENT</b>	<ul style="list-style-type: none"><li>• Ensuring compliance and enforcement action is implemented consistently, and</li><li>• Encouraging reports about possible unlawful activity by acting reasonably in response to the circumstances and facts of each matter.</li></ul>
<b>PROPORTIONAL</b>	<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, and</li><li>• Taking action to address wrongdoing and deter future unlawful activity.</li></ul>
<b>TIMELY</b>	<ul style="list-style-type: none"><li>• Ensuring council's responses and decision making in respect of reports alleging unlawful activity is timely.</li></ul>

It is important compliance action is carried out in a responsible manner, with integrity and recognising that Council's resource capacity, is a factor in determining compliance and enforcement action.

## 1.9 RESPONSIBILITY

Generally, only Council officers with appropriate delegations or authorisations from the General Manager or another statutory authority will undertake investigations or compliance and enforcement action in relation to this policy.



## *responding to reports about unlawful activity*

### 2.1 HOW REPORTS ALLEGING UNLAWFUL ACTIVITY WILL BE DEALT WITH BY COUNCIL

Council will act in accordance with the principles at section 1.8 when dealing with reports alleging unlawful activity and will endeavour to address reports alleging unlawful activity, unless the report is anonymous, or the person has indicated they do not require a response.

Council will conduct a preliminary assessment of every report it receives to determine the priority for a response, and whether investigation or other action is required.

Investigations into alleged unlawful activity may take a significant amount of time to complete, particularly where the issues are complex. If council investigates a report alleging unlawful activity, council officers will, subject to appropriate confidentiality requirements, provide updates of the key actions taken, to the person who reported the matter, including:

- a decision not to investigate the matter
- a decision not to take any enforcement action
- a decision to take enforcement action in respect of the matter, including a decision to prosecute or issue enforcement notices, order, directions, and
- the outcome of the investigation.

Council will not provide details of an investigation that would compromise the integrity of the investigation, unless required under legislation or it is determined that there is an overriding public interest basis for the release of the information. Any investigation or enforcement action which council undertakes with respect of alleged unlawful activity is at the discretion of council.

### 2.2 CONFIDENTIALITY OF PEOPLE WHO REPORT ALLEGATIONS OF UNLAWFUL ACTIVITY

Council will look to take all reasonable measures to protect the privacy of the person submitting the report alleging unlawful activity.

However, council may be required to disclose information, which may identify the person under the following circumstances:

- the disclosure is necessary to investigate the matter, even though the complainant's identity could still be inferred from the circumstances
- the individual was consulted following receipt of a GIPA Act application and did not object to the disclosure (and the public interest considerations in favour of disclosure otherwise outweigh the considerations against)
- the individual consents in writing to their identity being disclosed
- the disclosure is required by any law
- the disclosure is required to comply with principles of procedural fairness, and
- the matter proceeds to court.

Council will seriously consider any concerns an individual may have about their physical safety being endangered because of making a report. However, at times this may limit council's ability to investigate the matter.

**Threats of, or actual physical violence or abuse are matters for the Police and should be reported by the concerned party to their nearest police station (not council), without delay.**

### 2.3 ANONYMOUS REPORTS

Anonymous reports will be recorded and assessed in accordance with section 2.1, however because it is not possible to seek clarification or additional information about a matter, council's ability to properly investigate the matter will likely be limited.

### 2.4 WHAT COUNCIL EXPECTS FROM PEOPLE WHO REPORT ALLEGATIONS OF UNLAWFUL ACTIVITY

Council expects people, who report allegations of unlawful activity will cooperate and act in good faith in respect of any investigations conducted by council, which may include:

- providing a clear description of the problem (and the resolution sought, if relevant)
- giving all relevant information to council, including any new information about the activity, as it becomes known to the person
- not giving any information that is intentionally misleading, overstated or incorrect
- cooperating with council's enquiries and giving timely responses to questions and requests for information
- treating council's staff with courtesy and respect; and
- allowing the investigation to be completed without prematurely taking the matter to other agencies unless referred to by council.

If these expectations cannot be met, then it may impact council's ability to properly investigate the matter.

### 2.5 WHAT PARTIES CAN EXPECT FROM COUNCIL OFFICERS

People who report alleged unlawful activity, as well as individuals or businesses who are subject to investigation and any enforcement action, can reasonably expect council officers will act at all times in accordance with the standards prescribed by Council's Code of Conduct

- treat all parties with courtesy and respect
- reasonably endeavour to communicate with all parties as set out at section 2.1 above
- explain decisions in plain English, and
- generally, carefully assess any new information provided by any party after a decision has been made and advise whether further action will be taken.

Additionally, council has a duty to act fairly and in accordance with the principles of procedural fairness and natural justice, and will:

- provide information on the substance of the complaint to the alleged offender at an appropriate stage in the investigation
- provide an opportunity for the alleged offender to make any representations to council in respect of their conduct. This may not be necessary if there is a serious risk to personal or public safety or risk of serious environmental harm
- consider any submission put forward by the parties to the matter
- make reasonable inquiries or investigations before making a decision
- make full and proper records in relation to the assessment and investigation of reports alleging unlawful activity, including reasons for any decisions
- ensure no person decides a case in which they have an interest, as detailed in Council's Code of Conduct, and
- act fairly, without bias and within their delegations.



## 2.6 NEIGHBOURHOOD DISPUTES

Council will often receive reports from various parties involved in neighbourhood or other disputes seeking council's involvement. When a dispute between two neighbours or similar circumstances and is a civil matter, council will often have no authority to act and or resolve the dispute.



Generally public resources will not be applied to resolve private disputes unless there are significant public amenity, safety or environmental risks of concern to the broader community, that have an enforcement basis relevant to council's responsibilities and statutory powers.

Council officers will assess such reports to determine whether there is evidence of any possible unlawful activity requiring action by council. Where practicable, individuals will be provided with information about how to resolve neighbouring disputes including referral information on resources that are available or the body which may be able to assist, such as:

- conflict over the management of private trees in neighbouring properties is the responsibility of both neighbours to resolve. Disputes currently may be settled with information provided by LawAccess or under the Trees (*Disputes*

*Between Neighbours*) Act 2006 in the LEC (refer to <https://lec.nsw.gov.au/lec/types-of-cases/class-2---tree-disputes-and-local-government-appeals.html>) and or **the relevant state agency at the time**

- complaints in relation to building works on a building site may need to be referred to the appointed principal Certifier (whose identification sign should be displayed on-site) in the first instance (see section 9) or other relevant state government agencies.

## 2.7 UNREASONABLE COMPLAINANT BEHAVIOUR AND VEXATIOUS REPORTS OF UNLAWFUL ACTIVITY

Most reports of unlawful activity raise legitimate concerns and genuinely seek a resolution. A small proportion of complainants may demonstrate unreasonable or vexatious concerns and unreasonable and uncooperative behaviour. In the unlikely event this occurs, such matters will be managed in accordance with the guidelines issued by the NSW Ombudsman and or Council's *Complaints Management Policy*.

## 2.8 COMPLAINTS ABOUT COUNCIL'S ENFORCEMENT ACTIONS

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 complaints procedures. Refer to Complaints Management Policy.

## *investigating alleged unlawful activity*

Investigations of alleged contraventions of the legislation council administers, is an important part of its regulatory function. Investigations are intentioned to be conducted in accordance with the principles under *section 1.8*.

### 3.1 INVESTIGATION POWERS AND TOOLS

Council investigation officers have a range of legislative powers to conduct site inspections and to investigate potential breaches of the legislation administered by council. Depending on the relevant legislation that has allegedly been contravened, officers may have the power to enter and search premises, conduct interviews, obtain information and records, and require persons to answer questions.

The relevant legislation imposes restrictions, to when council officers can enter residential premises.

The tools that investigation officers use to monitor compliance and detect breaches include:

- reviewing community reports of alleged transgressions
- carrying out site inspections
- considering referrals from other agencies or regulatory authorities, and
- drone surveillance footage, in accordance with the surveillance procedures.

The objective of any investigation conducted by any council officer is to:

- determine the cause of the incident
- determine if there has been a contravention of law, policy, or standards

- mitigate or rectify any harm or impairment
- gather evidence to the required standard to support any appropriate enforcement action, and
- determine any necessary action to prevent the future occurrence of similar incidents.

### 3.2 PRELIMINARY ASSESSMENT OF BREACHES

Not all reports alleging unlawful activity will warrant investigation. Council will carry out a preliminary assessment of all reports to determine whether further investigation, or other action is required. Council will prioritise these matters based on the seriousness of the matter and the risk of harm, including to:

- human life and public safety
- human health and wellbeing
- the environment
- property safety, and
- heritage significance.

Where Council does not have sufficient information to undertake a preliminary assessment, it may seek further information from the person who reported the incident to council, likely carry out a preliminary inspection and or close the matter.



### 3.3 FACTORS TO DETERMINE WHETHER FURTHER INVESTIGATION IS REQUIRED

When deciding whether to investigate unlawful activity, council officers must consider and weigh up a range of factors. The table below sets out the range of factors that council officers must commonly consider. They will generally further investigate the matter, provided one or more of the factors in *Column A* are satisfied or generally resolve not to undertake further investigation, should one or more of the factors in *Column B* be satisfied.

**Council officers, however, are not limited in their use of discretion by these considerations and may decide to investigate based on these and other factors.**

A – FACTORS WHICH SUPPORT FURTHER INVESTIGATION	B – FACTORS WHICH <i>DO NOT</i> SUPPORT FURTHER INVESTIGATION
<ul style="list-style-type: none"> <li>The activity constitutes a potential risk to human life and public safety , within council’s jurisdiction.</li> </ul>	<ul style="list-style-type: none"> <li>The report is premature as it relates to some unfinished aspect of work that is still in progress.</li> </ul>
<ul style="list-style-type: none"> <li>The activity is having a significant detrimental effect on the environment or involves unauthorised demolition or alteration of a heritage item.</li> </ul>	<ul style="list-style-type: none"> <li>The activity or work is permissible with or without permission, or all conditions of consent are being complied with.</li> </ul>
<ul style="list-style-type: none"> <li>It appears there is a pattern of conduct or evidence of a possible widespread problem.</li> </ul>	<ul style="list-style-type: none"> <li>A significant period of time has elapsed since the events the subject of the report took place or council is legislatively time period precluded from taking enforcement action.</li> </ul>
<ul style="list-style-type: none"> <li>The person or organisation reported has been the subject of previous substantiated reports.</li> </ul>	<ul style="list-style-type: none"> <li>Another body is a more appropriate agency to investigate and deal with the matter (e.g., SafeWork NSW for workplace safety matters; the NSW environment protection authority for some environmental offences; the NSW liquor &amp; gaming for disturbance complaints associated with licensed premises and LawAccess information for neighbourhood disputes).</li> </ul>
<ul style="list-style-type: none"> <li>The report raises matters of special significance in terms of the council’s existing priorities (e.g., the activity is carried out on a heritage item and may adversely affect heritage significance).</li> </ul>	<ul style="list-style-type: none"> <li>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.</li> <li>The report is not supported with evidence or appears to have no substance.</li> </ul>
<ul style="list-style-type: none"> <li>It is in the public interest to investigate the report.</li> </ul>	<ul style="list-style-type: none"> <li>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 of resources.</li> </ul>

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

## taking enforcement action

Once Council officers have investigated and confirmed an activity is unlawful, they have discretion to determine what, if any, enforcement action should be taken.

The outcomes of enforcement action are, broadly, to:

- restrain or remedy a breach
- penalise an offender for breaking the law (by imposing a penalty or commencing prosecution proceedings)
- prevent and provide a deterrent to potential future breaches
- preserve the integrity of the relevant legislative system, and
- consider the public interest and expectations.



Based on the evidence collected during the investigation, council officers will determine what enforcement action may be taken having regard to:

- the seriousness of the breach
- what is the appropriate enforcement outcome to ensure that any impacts to the community or environment are minimised or rectified
- discouraging re-offending, and
- serving the public interest.

Should council resolve not to commence proceedings under the EPA Act, LG Act or POEO Act, any person (member of the public) may commence their own proceedings for an order to remedy or restrain a relevant breach.

## 4.1 MATTERS TO CONSIDER

### 4.1.1 DETERMINING THE SERIOUSNESS OF THE BREACH

In determining the seriousness of the breach, council officers will give consideration to:

- the level of actual or potential harm caused by the breach, and
- the accountability of the offender (compliance history, intention, predictability, financial benefit, timeframe of the non-compliance, whether the impact is ongoing or has been reduced or rectified).

Council officers will use the tables on the next pages to assist them in determining each of these matters, and to form their decision of what, if any, enforcement action should be taken in the circumstances.

#### 4.1.1.1 Determining the level of harm

CATEGORY	FACTORS TO CONSIDER
LOW	<ul style="list-style-type: none"><li>• The breach is merely technical, very minor or administrative.</li><li>• Nil or negligible harm or potential harm to the environment and no actual or potential human health impacts.</li><li>• Any harm is easily rectified or created a short-term only impact to amenity.</li><li>• Minimal impact on the integrity of the relevant legislative system.</li></ul>
MEDIUM	<ul style="list-style-type: none"><li>• An impact of low to medium extent that has caused some actual or potential harm to the environment, safety or amenity of some individuals.</li><li>• The duration of the impact is medium-term, localised and may require remediation.</li><li>• An impact of low to medium extent on the integrity of the legislative system.</li></ul>
HIGH	<ul style="list-style-type: none"><li>• A large or very large impact that has caused a high degree of actual or potential harm to the environment, safety or amenity or any impact on the health of many individuals.</li><li>• The impact has medium to long-term or permanent environmental impact that will require remediation and or mitigation works, or compensatory offsets in some cases.</li><li>• A significant impact on the integrity of the relevant legislative system.</li></ul>

#### 4.1.1.2 Determining the accountability of the offender

CATEGORY	FACTORS TO CONSIDER
LOW	<ul style="list-style-type: none"><li>• No history of non-compliances, the non-compliance was of short duration caused by unforeseen circumstances or genuine misunderstanding of requirements.</li><li>• Operational standards at the time of the incident were high.</li><li>• Harm was avoided or was quickly remedied.</li><li>• Promptly reported the incident to council.</li></ul>
MEDIUM	<ul style="list-style-type: none"><li>• Past non-compliances (reported or determined).</li><li>• Harm was unintended, yet there was a disregard for controls or conditions to prevent harm.</li><li>• Non-compliance was of short or medium duration and operational standards were satisfactory at the time of the incident.</li><li>• Any harm was quickly abated or rectified.</li><li>• Incident was not promptly reported to council.</li></ul>
HIGH	<ul style="list-style-type: none"><li>• The offender has been subject to past enforcement activities (including given prior warnings, advice, fines, or legal action has been taken).</li><li>• Did they or should they have known that harm or potential harm to the environment or community could result from their actions.</li><li>• Harm has not been abated or remediated, or the breach has not been rectified.</li><li>• Reckless or willful disregard of statutory requirements or involved misleading or dishonest conduct.</li><li>• The offender has obtained an economic benefit from their actions.</li><li>• Incident was not reported or significant delay in reporting.</li></ul>



#### 4.1.2 CONSIDERATIONS ABOUT THE IMPACT AND PUBLIC INTEREST OF ANY ENFORCEMENT ACTION

Having assessed the matter against the above tables, council officers will consider what is the appropriate enforcement actions to:

- ensure any impacts to the community or environment are minimised or rectified
- prevent re-offending; and
- serve the public interest.

Council officers will use the table below to assist them in establishing these matters and to resolve what, if any, enforcement action should be taken in the circumstances.

CATEGORY	FACTORS TO CONSIDER
LOW	<ul style="list-style-type: none"><li>• An educative approach is more appropriate to resolve the matter than a coercive approach.</li><li>• The prospects of success if the proposed enforcement action was challenged in court are low.</li><li>• The costs and resources required to take formal enforcement action greatly outweigh any benefit that would be obtained by issuing a fine or obtaining a court order.</li><li>• There is no need for specific or general deterrence.</li><li>• The period for commencing the taking of enforcement action has legislatively expired.</li></ul>
MEDIUM	<ul style="list-style-type: none"><li>• There is a need for specific deterrence because of the seriousness of the breach, or the offender's compliance history, or there is a need to deter others from the same conduct.</li><li>• The costs and resources required to take formal enforcement action are appropriate given the circumstances of the case, including the seriousness of the breach, serving the public interest and council's enforcement objectives.</li><li>• Council has good prospects of success if the proposed enforcement action was challenged in court.</li></ul>
HIGH	<ul style="list-style-type: none"><li>• Council has good prospects of success if the proposed enforcement action was challenged in court.</li><li>• There is a significant need for specific deterrence because of the seriousness of the breach, or the offender's compliance history, or there is a significant need to deter others from the same conduct.</li><li>• The costs and resources required to take formal enforcement action are appropriate given the circumstances of the case, including the seriousness of the breach, serving the public interest and council's enforcement objectives.</li><li>• There is a reasonable community expectation that legal action would be commenced in respect of the offence.</li></ul>

## 4.2 ENFORCEMENT OPTIONS

Based on the council officer's determination of the matters in *sections 4.1.1* and *4.1.2*, council's enforcement response will escalate on the grounds of the seriousness of the breach and appropriateness of enforcement action in the circumstances.

Depending on whether the circumstances of the breach fall within the '**Low**', '**Medium**' or '**High**' categories in the tables in *sections 4.1.1* and *4.1.2*, council will generally take the following enforcement actions in respect of an incident:

**LOW:** no enforcement action, informal action, warnings, education or a fine or notices/order/directions may be issued.

**LOW – MEDIUM:** informal action, a fine or notices/order/directions may be issued, or prosecution proceedings may be commenced in the local court, or notices/order/direction proceedings commenced in the LEC.

**MEDIUM – HIGH:** Prosecution proceedings may be commenced in the local court or the LEC, and or notices/order/direction proceedings commenced in the LEC.

Council's enforcement options, and the circumstances in which they may be exercised, are further detailed on the following pages.

### 4.2.1 NO BREACH/NO ENFORCEMENT ACTION

Council will not take formal enforcement action where the outcome of an investigation is that a breach has not occurred or there is insufficient evidence to establish there has been an infringement and/or who committed the non-compliance.

### 4.2.2 INFORMAL ACTION

#### 4.2.2.1 Non-compliance recorded

For very minor non-compliances, which are administrative and do not deflect from the integrity of the relevant legislative system, or for other minor non-compliances that result in no or minimal impacts on the community or the environment, informal action might be appropriate.

These non-compliances are generally voluntarily reported, rectified, and have controls put in place to prevent any recurrence.

#### 4.2.2.2 Warning letter

A verbal warning, warning letter and or informal caution is given where the breach is of a minor nature, and it is determined that no formal enforcement action is necessary.

This may arise in situations where the degree of harm and the liability of the offender are low, the offender has no history of non-compliances, and the offender has remedied the incident quickly.

### 4.2.3 FORMAL ACTION (CRIMINAL)

#### 4.2.3.1 Official caution

A formal caution under the Fines Act 1996 may be used when a fine could have been issued for the incident.

This may include instances where the seriousness of the matter is low, a person has no history of non-compliance, the breach has resulted in no harm, the impact on the integrity of the legislative system is low, or where the event is promptly rectified.

The written caution would outline any further transgressions could lead to escalating enforcement action, such as issuing a fine.

Official cautions shall be issued in accordance with the **Caution Guidelines under the Fines Act 1996** issued by the NSW attorney general or any similar replacement legislation at the time.

#### 4.2.3.2 Fine

A fine is a financial penalty issued for specific breaches of legislation, which is required to be paid by a certain date, and then when settled, there is no criminal conviction recorded.

A fine can be contested (*Court Elect*) in the Local Court, and then the onus is on Council to prove the offence. Council generally issues fines in the following circumstances:

- the cause of and responsibility for the offence is clear
- the seriousness of the issue is low to medium
- a financial penalty is considered an effective deterrent to future instances, and
- the investigation officer has sufficient evidence to prove all elements of the offence beyond a reasonable doubt.

Fines are normally not appropriate for more serious offences where the infringement is:

- causing or is likely to cause significant harm to the community or environment
- ongoing and not within the alleged offender's capacity to remedy quickly and
- warranting a higher penalty than the fine prescribed for an offence.

#### 4.2.3.3 Prosecution

Prosecution proceedings are commenced for the more serious offences where there is sufficient evidence, there is a significant incident or non-compliance and the reason to prosecute serves the public interest.

The offender may have been subject to other enforcement actions, who has failed to avert further infringements, or the matter may have had such a significant impact on the integrity of the relevant legislative system, for which council is responsible for upholding.

Council's decision to prosecute will be made in accordance with *section 6* below.

Most prosecution proceedings will be undertaken in the local court, where the maximum penalty (at the time of adoption) the court can impose, is \$110,000.

However, where land and environment court proceedings are chosen, upon conviction they can impose:

- impose financial penalties of up to \$5 million for a corporation or \$1 million for an individual
- publicly name and shame offenders; and
- **require restoration of any damage caused.**

#### 4.2.4 FORMAL ACTION (CIVIL)

##### 4.2.4.1 Civil enforcement order (directions, notices, and orders)

A significant range of *Directions, Notices and Orders* are available for council to utilise under various pieces of legislation. Council will issue these enforcement measures to address issues which have occurred or is about to occur. These courses of action can be issued relatively quickly to respond to a wide range of subject matters, and it is an offence not to comply with the requirements

of these instruments. Some typical examples include, but are not limited to:

- POEO Act – Clean-up Notices, Prevention notices, Noise abatement directions.
- EPA Act – Notices, Development Control Orders
- LG Act – s124 Orders.
- Companion Animals Act 1998 – Notices, Directions, Orders
- Food Act 2003 – Notices, Directions, Orders.
- Public Health Act 2010 – Notices, Directions, Orders
- Public Spaces (Unattended Property) Act 2021 – Directions
- Roads Act 1993 – Notices, Directions, Orders.
- Swimming Pools Act 1993 – Directions.

#### 4.2.4.2 Civil proceedings to remedy or restrain breaches

Council may bring proceedings in the LEC to remedy or restrain an incident or non-compliance (or threatened or apprehended breach) of the EPA Act or POEO Act (or regulations made under those Acts).

These civil proceedings may be instigated for several reasons, including:

- to obtain or enforce an order the Respondent either to do, or stop doing something to prevent harm from occurring, or
- to achieve an outcome quickly and more cost-efficiently than through prosecution, or where a disciplinary outcome is not required.

#### 4.2.4.3 Enforceable undertakings and dispute resolution

For criminal offences under the EPA Act, council can recommend the Planning Secretary (or delegate) accept an enforceable undertaking under s 9.5 of the EPA Act. An enforceable undertaking

allows the offender to acknowledge issues involved in the contravention and propose solutions to address the conduct.

Council may seek to use an enforceable undertaking or dispute resolution mechanism in the case of matters, which would otherwise be grounds for civil proceedings or prosecution.

It provides an alternative to litigation where it is the public interest to propose extensive remedies to address the issues, resulting in a more efficient and timelier outcome.

Consideration, of this form of an alternative dispute resolution, is generally expected by the NSW courts, as an adjudicated hearing before a judge or commissioner, may not suit all problems or be in the best interest of the public and saves time.

This option focuses on the outcome to be achieved by civil proceedings or criminal prosecution and whether that outcome can be achieved through mediation, conciliation, or negotiation.

When considering this option, council will have regard to:

- the practical matters involved in achieving a resolution is in the best interests of the community
- the seriousness of the conduct
- the impact of the alleged contravention on the environment and or community
- the compliance history of the company or individual involved
- the good faith of the company or individual involved, and
- the prospect for a rapid resolution and remediation of the matter.

#### 4.3 REVIEW OF ENFORCEMENT ACTION

Council will endeavour and or as resources permit, review any enforcement action it instigates to ensure compliance with any undertakings, directions or orders issued by council or a court. Reports alleging continuing unlawful activity will be assessed and further action taken, if necessary. We will also strive to review any unlawful activity that has ceased, or rectification works to ensure compliance outcomes have been met. If initial enforcement action has not been effective, council officers will consider escalating enforcement options, including legal proceedings.



#### 4.4 LEGAL OR TECHNICAL ISSUES

Where legal and or technical issues are in question, council officers will consider whether legal advice or other professional advice is required (*see section 5 Commencing legal proceedings*).

#### 4.5 REQUIREMENTS OF COUNCIL OFFICERS CONSIDERING ENFORCEMENT ACTION

Council officers shall undertake the following when considering enforcement action:

- consider the requirements of this Policy
- act impartially, be mindful of their obligations under council's code of conduct and not act as a decision-maker in relation to any matter in which they have a personal interest
- not be influenced by the race, gender, religion, national origin or political associations, activities or beliefs of the alleged offender or any other person involved
- not take any enforcement action as a response to the behaviour of an individual such as making persistent demands or threats
- maintain records about decision-making processes in relation to reports alleging unlawful activity and any enforcement action, as well as records of interactions with relevant parties
- take all necessary steps to ensure that any enforcement action is taken against the correct person or organisation.
- not be influenced by possible media or community reaction to the decision, and
- act within their respective delegations.

# commencing legal proceedings

## 5.1 MATTERS TO CONSIDER

Where considered necessary, council officers will obtain legal advice and be guided by the legal advice in deciding whether to commence criminal or civil court proceedings and consider the following:

- the outcome that is sought, i.e., there is a need to restrain or remedy a breach, or to take disciplinary action
- the significance of the desired penalty or deterrence
- the actual type of legal action and jurisdiction proposed for the individual situation
- whether there is sufficient evidence to establish a case to the required standard of proof
- whether there is a reasonable prospect of success before a Court, and
- whether the public interest warrants legal action being pursued.



### 5.1.1 THE OUTCOME THAT IS SOUGHT

In determining whether to commence criminal or civil proceedings, council officers must consider the factors under *sections 4.1.1 and 4.1.2*, as well as, when a prosecution and or civil proceedings are appropriate as set out at *sections 4.2.3.3 and 4.2.4.2*.

### 5.1.2 REASONABLE PROSPECTS OF SUCCESS

The decision, in conjunction with the *public interest* to commence legal civil or criminal proceedings is a serious matter, and council will generally only commence legal proceedings if:

- Council has sufficient evidence to establish the contravention to the required standard of proof (i.e., beyond a reasonable doubt for a criminal prosecution, and on the balance of probabilities for a civil enforcement proceeding), and
- Council has reasonable prospects of success, considering:
  - the availability, competence, and credibility of witnesses
  - the existence or otherwise of evidence to support any defence that may be raised by the defendant
  - similar cases that have occurred in the past
  - the current law in force at the relevant time, and
  - any other factors, which may affect the likelihood of a successful outcome.



### 5.1.3 WHETHER THE PUBLIC INTEREST REQUIRES LEGAL ACTION BE PURSUED

The additional consideration in deciding whether to commence legal proceedings, is in the public interest. In making this determination, council officers must consider the factors under *sections 4.1.1 and 4.1.2*, together with considering the following factors that relate more specifically to the decision to commence legal proceedings:

- whether there are any available alternatives to legal action and have they been exhausted
- whether an urgent resolution, such as an interlocutory injunction is required (general court proceedings may take some time)
- the possible length and expense of court proceedings
- any possible counter-productive outcomes of a prosecution
- what the effective sentencing options are available to the respective Courts in the event of conviction
- whether the proceedings or the consequences of any resulting conviction would be unduly harsh or oppressive, and
- whether educative deterrence of the offence is appropriate.

### 5.1.4 TIME WITHIN WHICH TO COMMENCE PROCEEDINGS

Council officers can only commence prosecution proceedings within the permitted relevant Statute legislative time periods and sometimes actions won't be able to be taken despite strong evidence where the statute period has expired.

For example, criminal proceedings for an offence under the EPA Act must be commenced within two years of the offence being committed or within two years from the date when evidence of the offence, first came to the attention of an authorised officer (see section 9.57 of the EPA Act).

It is therefore essential to properly record the date on which evidence of an alleged offence initially came to the notice of the authorised and or investigative officer.

### 5.2 RECOVERY OF LEGAL COSTS

Prior to commencing legal proceedings, council will generally obtain legal advice as to whether there are reasonable prospects of success for the proceedings.

The council's policy for recovery of its costs in the **land and environment court (LEC)** is that council will:

- seek to recover its fair and reasonable costs in all matters where costs are recoverable, either by consent or by court order
- seek to recover the penalty imposed by the court where such penalty is imposed, and
- adopt the recommendations of its solicitors to accept a lesser amount than the full legal costs incurred by the council if, in the circumstances, the acceptance of such an offer will result in the council not incurring further and unnecessary legal costs.

Similarly, the council's policy for recovery of costs in the **local court** is that council will:

- seek to recover its fair and reasonable costs in all matters where costs are recoverable, either by consent or by order of the court, and
- seek to recover the penalty imposed by the court where such penalty is imposed.

## *prosecutions – additional matters*

Council considers prosecution a strong regulatory response to a breach of the legislation, because of the criminal liability that may be imposed. However, given the time and expense of prosecutions, the decision whether prosecution action is the most appropriate enforcement response is made on a case-by-case basis with respect to the circumstances of the matter being dealt with.

Generally, council will consider taking prosecution action for serious breaches of the legislation, or in situations where other enforcement actions have been ineffective. The decision of whether to prosecute is generally made by the council officer with the appropriate delegation or authorisation having regard to the investigative officer's report and recommendation.



### 6.1 WHO MAY BE PROSECUTED?

#### 6.1.1 SELECTING DEFENDANTS

A wide range of persons who may have participated in or contributed to an offence may be liable under the relevant legislation. Several persons may have committed an offence arising out of a single incident. However, it is not always appropriate to prosecute every person who may be liable for an offence.

Council will subsequently determine who is the appropriate defendant(s) (e.g., owners, contractors, consultants or other professionals) by having regard to:

- who is primarily responsible for the alleged offence, that is:
  - who was primarily responsible for the acts or omissions giving rise to the alleged offence
  - who was primarily responsible for the material circumstances leading to the alleged offence, and
  - who formed any relevant intention in committing the offence.
- the effectiveness of any court orders which might be made against the proposed defendant(s), especially for remedying the situation.

### 6.1.2 CORPORATE AND DIRECTOR/MANAGER LIABILITY

Where an offence is committed by employees, agents or officers of a corporation in the course of their employment, proceedings will usually be commenced against the corporation. However, if the offence has occurred because the employee, agent or officer has embarked on a venture of their own making and volition, outside the scope of their employment, proceedings may be instituted against the employee, agent or officer.

Managers and directors may also be held personally liable under the legislation for offences because of their acts or omissions. This generally requires the relevant person to be a director of the corporation, or an individual involved in the management of the corporation, and in a position to influence the conduct of the corporation in relation to the commission of the offence.

### 6.1.3 EMPLOYEE / WORKER LIABILITY

Council may bring proceedings against an employee, agent or worker where an offence has occurred, regardless of whether that person has embarked on a venture of their own making and volition, or one that is outside the scope of their employment or engagement.

Council may charge an employee where their degree of responsibility in committing the offence is high. Council will assess the degree of accountability pertaining to the following:

- whether the employee knew or should have known, the activity in question was illegal
- the seniority of the employee and the scope of the employee's employment duties, and
- whether, having regard to the employee's seniority and employment duties, the employee had taken reasonable steps to prevent the commission of the offence.

### 6.2 DETERMINING CHARGES

Once Council resolves to deal with an alleged contravention of the legislation by way of prosecution, Council will select offences which are consistent with the seriousness of the incident and can be prosecuted successfully (*see section 5.1*).

Council by practice does revise its case, to avoid laying duplicate or multiple charges for the same alleged offence (e.g., laying charges under two separate statutes for the same conduct) and to be cost effective.

### 6.3 COURT ELECTION OF PENALTY NOTICES

Where a fine issued by council is court elected, council will review the matter against parts 5 and 6 of this policy and will only proceed with the penalty fine/prosecution if:

- there are reasonable prospects of success
- there are any discretionary factors that suggest the matter should proceed.

## accountability

Enforcement activities necessarily involve the use of discretion by council officers. To ensure the appropriate oversight, only officers with the appropriate appointment or delegations are authorised to approve an enforcement action. Further, council may seek legal advice prior to proceeding with more serious enforcement actions, such as prosecution.

Council officers are also required to comply with this policy and council's code of conduct when investigating allegations of unlawful activity and or taking enforcement action. These policies require council officers to act consistently, behave in an ethical and timely manner, together with formally disclosing conflicts of interest.



Public disclosure is an integral part of both specific and general deterrence. The disclosure of information relating to council's compliance and enforcement activities is undertaken in accordance with the requirements of the GIPA Act and Regulation.

Council will endeavour to continue to improve community awareness of compliance and enforcement matters by providing advice on its website, publishing media releases and information brochures as necessary, in accordance with the *compliance and enforcement media communication guidelines*. (See appendix 2).

Council will review its application of this policy every four years and or with each newly elected council, to determine whether it is being applied consistently and is effective.

## *shared enforcement responsibilities*

Some reports of unauthorised activity will raise matters involving shared regulatory responsibilities between council and other authorities including but not limited to, the environment protection authority, NSW department of fair trading, secretary of the department of customer service, NSW police force, liquor and gaming and other ARA authorities.



Where there are shared legislative responsibilities, council will facilitate a collaborative and co-operative approach, and council officers will liaise with the 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, and
- protocols for exchanging confidential information between the relevant authorities, consistent with the applicable legislation at the time.

Council will always reasonably endeavour to respond to requests for information or assistance on joint regulatory matters in a timely manner. However, the regulatory action by another authority does not preclude council from undertaking action in response to an offence of the legislation.

## role of the principal certifier

Where a private certifier is appointed the *Principal Certifier* for a development (as is the case for the majority of development in the Ballina Shire local government area), the principal certifier is responsible for making sure the building work complies with the development consent and construction certificate(s). **It is not council's responsibility** to ensure building and construction compliance where a private certifier (not council) has been appointed.



Any concerns about non-compliance need to be directed to the principal certifier in the first instance. Contact details for the principal certifier are required by law to be displayed on a sign at the front of the building site, so please refer your concerns to the nominated person or company.

Any complaints received by council will be referred to the principal certifier to consider and investigate. Council will notify the complainant of this action and provide the principal certifier's contact details.

Principal certifiers must, under a mandatory obligation, act on non-compliant aspects of a development. Once the principal certifier becomes aware there is a likely non-compliance, the certifier must issue a *Written Directions Notice* (WDN) to the person responsible (i.e., the principal contractor or owner-builder) within two days.

If the responsible person fails to comply with the WDN, the principal certifier must provide a copy of the completed WDN and supporting evidence to council within 2 days after the follow-up inspection was carried out. Once the principal certifier refers the completed WDN to council, consideration of enforcement action may be given.



However, in specific circumstances, council may act on complaints received about building works and development sites where the principal certifying authority is an appointed private certifier, because:

- the work threatens life, safety or damage to property or the environment at the time of the complaint and immediate action is required
- the alleged breach is substantial and there is a likely environmental impact
- the complaint relates to work, which appears not to be part of a development consent and therefore is not the responsibility of the principal certifier
- the principal certifier does not respond, the response to the complaint may be considered inadequate (see further notes) or on occasion council does not concur with the principal certifier's position
- fines or orders are to be issued and/or prosecution proceedings are to be commenced
- the complaint relates to breaches of conditions of consent that are generally enforced by council's compliance team which could include hours of work, (initially contact principal certifier) footpath and roadway obstructions, odours, fumes, noise, dust, sediment control and discharges, and
- it is in the public interest.

The factors council may take into consideration, to determine if a principal certifier's handling of a complaint has been adequate could include:

- whether the principal certifier has undertaken an investigation in reasonable time, having regard to the seriousness of the complaint.
- whether the principal certifier demonstrates a genuine commitment to address the issues.
- the appropriateness of the action taken, including whether a physical inspection has been undertaken and whether any professional reports have been relied on.

**It is important to note**, council is not the regulator of private certifiers, with certifiers being required to be registered by NSW fair trading. Any complaints about the actions or inactions of a private certifier must be lodged directly with NSW fair trading.

## *role of councillors in enforcement*

Decision-making associated with the investigation of alleged unlawful activity and undertaking enforcement action, is the responsibility of lawfully delegated council staff only or the council itself.

The Local Government Act (LGA) envisages the elected Council will primarily be involved in the creation and review of the council's (as defined in the (LGA) Dictionary) policies and objectives relating to the exercise of the council's regulatory functions.

The role of Councillors and the elected Council body is to set the framework through policy in regard to the compliance and enforcement process and decision making.

The elected Council is not involved in the day-to-day aspects of the compliance and enforcement actions carried out by Ballina Shire Council.

The public should note, under the code of conduct, individual councillors must not direct council officers in their daily activities, including the performance of their functions. Councillors can help individuals who raise concerns with them by satisfying themselves council's policies are being carried out properly, but they cannot disregard or change a policy to satisfy the demands of special individuals or groups or intervene in operational facets of the exercise of council's regulatory functions.

The general manager may consider referring certain decisions to be endorsed by the elected Council, if this is appropriate or desirable, notwithstanding councillors also have the right to call to a council meeting, a report about specific issues.

With respect to reporting to the elected Council, matters involving the commencement of criminal prosecution proceedings in the NSW Land and Environment Court, are to be reported to Council for consideration.



## *acknowledgements*

This policy is generally based on the 'Model Policy' developed by the NSW ombudsman and the following documents were used in its preparation.

1. *Model Compliance and Enforcement Model Policy*, NSW Ombudsman (December 2015);
2. *Enforcement Guidelines for Councils*, NSW Ombudsman (December 2015) and
3. *Compliance Policy, Department of Planning*, Industry and Environment (October 2020).

This policy will be reviewed every four years or in accordance with legislative requirements.

This policy may also be changed because of other amendments that are to the advantage of council and or in the spirit of this policy.

Any amendment to this policy must be by way of a council resolution.

# appendix 1 – definitions

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

TERM	MEANING
ARA	Appropriate Regulatory Authority
Ballina LEP	<i>Ballina Shire Council Local Environmental Plans 2012 and 2007</i> , and as amended from time to time.
CAN	A court attendance notice issued and filed in accordance with the <i>Criminal Procedure Act 1986</i> . A CAN may be used to commence summary proceedings in the local court. A CAN specifies the offence and its essential particulars as well as the address of the court where the matter is to be heard.
Council	Ballina Shire Council
Council officers	Council officers who are duly authorised under any act to exercise functions on behalf of the council for investigating contraventions of any law and instigating action resulting from any such contravention.
Defendant	The accused person or company against whom criminal proceedings are brought.
Fine	Sometimes historically referred to as an ‘on-the-spot’ fine or previously a penalty infringement notice (PIN), now known simply as a fine, may only be issued for prescribed offences and the value of the fine is also prescribed by legislation
GIPA Act	Government Information (Public Access) Act 2009, and as amended from time to time.
Heritage significance	As defined in the Ballina LEP meaning historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic value.
LEC	NSW Land and Environment Court
LG Act	Local Government Act 1993, and as amended from time to time.
POEO Act	Protection of the Environment Operations Act 1997, and as amended from time to time.
Respondent	The party against whom civil proceedings are brought in land & environment court proceedings.
Unlawful activity	Any activity or work which has been or is being carried out contrary to the below and/or failure to take required action to be compliant with: <ul style="list-style-type: none"> <li>• terms or conditions of a development consent, approval, permit or licence</li> <li>• an environmental planning instrument that regulates the activities or work that can be carried out on particular land</li> <li>• a legislative provision regulating a particular activity or work</li> <li>• a required development consent, approval, permission, or licence.</li> </ul>

# appendix 2 – compliance and enforcement media communication guidelines

## A PROACTIVE AND REACTIVE MEDIA APPROACH FOR COUNCIL'S COMPLIANCE AND ENFORCEMENT FUNCTIONS

These guidelines have been designed to make it easier to understand the set of circumstances where it may be appropriate for Council to publish information about Compliance and Enforcement activities. This information may identify applicants/ developers/companies and individuals or supply facts of incidents, in relation to Council's Compliance and Enforcement activities.

This approach endeavours to balance the public's right to information, with the need to ensure the work of the Planning and Environmental Health Compliance Section is not compromised.

It is important, Council is recognised for and provides information to inform the community about the compliance activities undertaken, with transparency and public accountability.

To do this, Council may publish information (in the form of media releases, newsletter articles or through another Council channel(s) ) to highlight the value of our programs. This may include information about successful investigations following illegal actions, where the actions have either been remedied and/or disciplinary measures have been taken.

Publicising Council's compliance efforts is important to deter and educate other members of the community and discourage further unauthorised acts.

## CONSIDERATIONS

Before compliance activities and matters are published, Council must assess if publishing the information will:

- Compromise an investigation and breach or prejudice any resultant litigation; or
- Compromise Council's ongoing working relationships with proponents, complainants, other councils, or other stakeholders with current or future incidents.

## INVESTIGATIONS

Under the Compliance and Enforcement Policy, Council conducts investigations about complaints of potential breaches of legislation, which fall within the responsibility of Council.

Knowledge obtained from these investigations often will be deemed as evidence, which will be needed for events, that in all probability may result in prospective litigation.

To avoid any risk of compromising Council's investigations or prejudice any subsequent litigation, Council will generally not disclose information concerning potential breaches under investigation, including who, how or what is being investigated.

## WORKPLACE RELATIONSHIPS

Under conditions of Development or other ancillary approvals, proponents may from time to time, be required to 'self-report' incidents that could incorporate potential non-compliances with their respective Approval(s).

With these contraventions, which may not have been ordinarily detected through inspections and routine monitoring, we often rely on ‘self-reporting’ and it is important to monitor the level of disclosures and generally not provide information about self-reported minor matters.

This is owing to the circumstance, where this may have the potential to discourage companies from ‘self-reporting’ breaches of their own consent conditions.

In addition, unwarranted or unwanted public attention could also lessen the co-operation of applicants or contractors during investigations if they are of the view, they will be unfairly ‘named and shamed’.

Accordingly, this may make it more difficult and time-consuming for the compliance team to undertake investigations of suspected offences, which may not conclude in the desired standard of compliance outcomes.

In general terms, when Council is in receipt of information from complainants, we will as a practice, not release those details, which could disclose the identification of the complainant, in an endeavour to ensure their privacy is respected.

However, conversely, where other agencies decide to report potential breaches to Council, we may resolve in those circumstances to identify those parties, but as always, that is on the provision any sensitivities surrounding these stakeholders are not compromised and any investigation underway will not be weakened.

Council recognises that where companies, contractors, individuals, or others have clearly acted beyond their legal obligations, and more serious enforcement actions have been taken, it is befitting that these companies, contractors, individuals and others are identified and made publicly accountable to the community.

The following table sets out when incidents should be detailed or proponents named, either:

- |   |
|---|
| a) <b>PROACTIVELY</b> (e.g. through reports or a media release); and or |
| b) <b>REACTIVELY</b> , in response to specific media enquiries.         |

However, the Director – Planning and Environmental Health, in conjunction with the Council’s Communications Team may consider, on a case-by-case basis, a different approach might be more appropriate regarding the level of information about an incident (i.e., more detail or less detail) which shall be supplied to the media.



TYPE OF ACTION	PROACTIVE COMMUNICATION (REPORT OR MEDIA RELEASE)		REACTIVE COMMUNICATION	
	NAME COMPANY?	INFORMATION PROVIDED	NAME COMPANY?	INFORMATION PROVIDED
<b>Inspections</b>	NO	<ul style="list-style-type: none"> <li>General information about the nature of inspections and actions resulting.</li> <li>No site specific details.</li> </ul>	NO	<ul style="list-style-type: none"> <li>General information about the number and type of inspections and general outcomes.</li> <li>No site specific details/name (unless the inspection led to enforcement actions, in Part 4.)</li> </ul>
<b>Negotiated outcome</b>	YES (if agreed to by company) NO (if not agreed to by company)	<ul style="list-style-type: none"> <li>Include general information if the seriousness of the incident or public interests warrants it.</li> <li>Name the proponent if they have agreed to be identified as part of the negotiated outcome.</li> </ul>	YES (if agreed to by company) NO (if not agreed to by company)	<ul style="list-style-type: none"> <li>Additional information of a general nature if proponent has agreed to be named.</li> <li>If proponent does not want to be named, no additional information to be provided, as negotiated outcomes involve cooperation from the proponent.</li> </ul>
<b>Advisory letter</b>	NO	<ul style="list-style-type: none"> <li>Statistics in compliance report.</li> </ul>	NO	<ul style="list-style-type: none"> <li>No additional information, as these are an administrative/information tool.</li> </ul>
<b>Warning letter</b>	NO	<ul style="list-style-type: none"> <li>If the seriousness of the incident or public interest warrants it, provided general information in the compliance report about the nature of the warning letter.</li> </ul>	NO (if self reported)	<ul style="list-style-type: none"> <li>Additional information provided, including site specific details, if company has not self-reported and the Council has had to proactively identify the compliance issue and act.</li> <li>No site-specific information if the company self reported.</li> </ul>
<b>Enforceable undertaking</b>	YES	<ul style="list-style-type: none"> <li>Statistics in compliance report.</li> </ul>	YES	<ul style="list-style-type: none"> <li>No additional information, as this is a step with the investigation process and indicates inquiries and investigations are ongoing.</li> </ul>
<b>Notices to production information and records</b>	NO	<ul style="list-style-type: none"> <li>Statistics in compliance report.</li> </ul>	NO	<ul style="list-style-type: none"> <li>No additional information, as this is a step with the investigation process and indicates inquiries and investigations are ongoing.</li> </ul>
<b>Draft orders</b>	NO	<ul style="list-style-type: none"> <li>Statistics in compliance report.</li> </ul>	NO	<ul style="list-style-type: none"> <li>No additional information, as this stage indicates the enforcement action has not been finalised.</li> </ul>
<b>Order from the council</b>	YES	<ul style="list-style-type: none"> <li>Include in compliance report and/or prepare a media release with name of company and details of incident order.</li> </ul>	YES	<ul style="list-style-type: none"> <li>Provide additional information about the incident and investigation and reasons for the order, if requested.</li> </ul>
<b>Court order</b>	YES	<ul style="list-style-type: none"> <li>Include in compliance report and/or prepare a media release with name of company and details of incident order.</li> </ul>	YES	<ul style="list-style-type: none"> <li>Provide additional information about the incident and investigation and reasons for the court order, if requested.</li> </ul>
<b>Fine</b>	YES	<ul style="list-style-type: none"> <li>Include in compliance report and/or prepare a media release with name of company and details of incident order.</li> </ul>	YES	<ul style="list-style-type: none"> <li>Provide additional information about the incident and investigation and reasons for the fine, if requested.</li> </ul>
<b>Prosecution</b>	<b>Before and during court proceedings</b>			
	NO	<ul style="list-style-type: none"> <li>Include in compliance report with information of a general nature, but not site specific details such as the name of the proponent.</li> </ul>	NO	<ul style="list-style-type: none"> <li>No further details provided by the Council, but the media may be referred to the Court for further information.</li> </ul>
	<b>Court action completed</b>			
	YES (if court success)  NO (if no success in court)	<ul style="list-style-type: none"> <li><b>If the prosecution was successful, include in compliance report, with site specific information and the name of the proponent, and the penalty imposed.</b></li> <li><b>If prosecution unsuccessful, no proactive communication as the allegation is not proved and media scrutiny of the company would be unwarranted.</b></li> </ul>	YES (if court success)  NO (if no success in court)	<ul style="list-style-type: none"> <li><b>If the prosecution was successful, provide additional further information as requested about the incident, proponent, background about the site or previous incidents, penalty imposed and maximum penalties.</b></li> <li><b>If unsuccessful, refer the journalist to the court or provide information that is already on the public record, while making it clear that the action was unsuccessful and the allegation was not proved.</b></li> </ul>



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