

Council Policy (NBC2024/XXXX)

Compliance and Enforcement Policy

Purpose

This Policy sets out the approach to compliance and enforcement taken by Northern Beaches Council (Council). It explains how we determine our priorities, allocate resources, and make decisions to achieve reasonable and defensible regulatory outcomes for the community and businesses.

Council as a regulatory authority takes a risk-based approach in exercising its discretionary powers to undertake enforcement action to address matters of public safety or environmental harm. Council seeks to work collaboratively with the community to achieve fair, balanced, and proportionate compliance outcomes.

Internal decision-making processes on compliance and enforcement decisions are also guided by the NSW Ombudsman's Enforcement Guidelines for Councils as well as industry guidance.

Scope

The Policy applies to all employees of Northern Beaches Council with responsibility for managing and investigating regulatory issues that are the responsibility of Council and in which Council has appropriate regulatory power.

These activities may include:

- Development and building control
- Pollution control and environmental degradation or damage
- Environmental health
- Public safety
- Wastewater systems
- Companion animals
- Food safety
- Fire safety
- Tree preservation and land clearing
- Residential swimming pool safety
- Illegal dumping
- Concerns relating to Council reserves, assets, and infrastructure

This Policy does not apply to on-street parking related matters as these are regulated by the issuing of Penalty Infringement Notices that are generally issued on the spot and under the *Fines Act 1996*. Revenue NSW is the administrative authority to conduct internal reviews of representations in relation to these matters.

Policy Statement

Council is committed to balancing individual and community interests to appropriately allocate resources that present the highest risk. Choosing the appropriate regulatory option involves weighing up sometimes competing interests and priorities.

The following principles underpin our compliance and enforcement decisions:

Principle	Action
Accountability and transparency	<ul style="list-style-type: none"> • acting in the best interests of public health and safety and the environment. • acting fairly and impartially and without bias or unlawful discrimination. • providing information on compliance and enforcement priorities and reasons for decisions to promote trust within the regulated community. • acting on any complaints or concerns about the conduct of compliance officers in accordance with Council's complaints management policy and procedures • advising parties subject to enforcement action of any avenues available to seek independent review of Council's decisions where relevant.
Fairness and Consistency	<ul style="list-style-type: none"> • ensuring all compliance and enforcement action is implemented fairly and consistently. • encouraging reports about possible unlawful activity by acting reasonably in response to the circumstances and facts of each matter.
Proportionality	<ul style="list-style-type: none"> • ensuring the level of enforcement action is proportionate to the level of risk and seriousness of the breach. • making cost-effective decisions about enforcement action • taking action to address harm and deter future unlawful activity.
Flexibility	<ul style="list-style-type: none"> • the application of this policy and exercise of discretion may be applied flexibly based on the circumstances as required, for example during major environmental or public health incidents.
Timeliness	<ul style="list-style-type: none"> • ensuring responses to reports alleging unlawful activity and decision making in relation to those is timely.

Responsibilities

All Council staff who respond to enquiries regarding enforcement and compliance matters are to abide by the principles of this Policy and the Code of Conduct. Council staff authorised by the Chief Executive Officer to undertake these functions, include Environmental Health Officers, Building Surveyors, Building Compliance Officers, Rangers, and other Authorised Officers.

Council staff will:

- treat all relevant parties with courtesy and respect.
- where appropriate, communicate with all relevant parties and provide feedback on the progress of an investigation and any reasons for delay without compromising the integrity of the investigation.
- make full and proper records in relation to the assessment and investigation of reports alleging unlawful activity, including reasons for any decisions.
- where appropriate, update relevant parties of the reasons for a decision, and on the outcome of investigations.
- 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 case management system.

Risk-based approach to Compliance

A risk-based approach to compliance ensures our effort is focused on activities that pose the greatest risk to the public, environment, or the integrity of our regulatory frameworks.

All customer enquiries are reviewed using a risk-based approach and are triaged to determine their priority/urgency.

Matters identified as greatest risk (urgent/high), will be actioned as a priority.

Matters that present as medium risk will be investigated as resources permit.

Low risk cases will be recorded and reviewed to determine whether an investigation will be undertaken. Based on the principles outlined in this policy, if a decision is made not to investigate, the decision is recorded by the investigating officer and the reasons for that decision clearly explained to the person who reported the matter.

The factors that will be taken into consideration in assessing risk include but are not limited to:

- the currency of the breach, for example is the breach continuing or has it stopped and/or been remedied, or the age of the works or issue of concern
- is the activity permissible without any consent or approval.
- are conditions of a consent or approval being complied with.
- is the activity having a significant detrimental effect on the environment or does it constitute a risk to public health, safety and amenity.
- has there been previous complaints about the subject premises or the person or organisation.
- is the complaint trivial, frivolous, vexatious or unreasonable in accordance with

the NSW Ombudsman's Unreasonable Conduct by Customers Model Policy
2022

- Overall, is it in the public interest to investigate the complaint.

Decision to take Enforcement Action

Following an investigation, Authorised Officers will determine whether:

- a) enforcement action is necessary to remedy a breach or non-compliance, and
- b) if there is sufficient evidence available to fulfil the legal requirements in order to pursue the action.

All enforcement action must comply with legal requirements.

When considering whether to take an enforcement action, Authorised Officers will consider the following:

- the seriousness of the breach, including whether the breach is merely technical or “trivial” in nature.
- the currency of the breach, for example is the breach continuing or has it stopped and/or been remedied.
- the compliance history of the offending party and level of cooperation in addressing the concern.
- the level of harm or potential harm to the environment or public health, safety or amenity caused by the unlawful activity and whether that harm is ongoing.
- whether an educative approach might be more appropriate in the circumstances than a punitive action.
- the need for general and specific deterrence.
- whether the breach can be easily remedied.
- any particular circumstances of hardship affecting the complainant or the person who is the subject of the complaint.
- any precedent that may be set by not taking enforcement action.
- the statutory time limits within which certain enforcement proceedings must be commenced. Sometimes legal action may be statute barred despite good evidence that unlawful activity has occurred.

Discretion

The taking of enforcement action by Council and its officers is a discretionary power. This means that, whilst Council is provided with the authority to enforce a law, there is no legal obligation to do so, not even at the insistence of a third party.

When exercising discretion, Council officers are obliged to:

- use discretionary powers in good faith, including for the intended and authorised purpose;
- base their decisions on facts and findings supported by evidence, only relevant considerations and not irrelevant ones;
- give proper, genuine and realistic consideration to the merits of the case, including weighing- up the importance of relevant factors;
- exercise discretion independently and not under the direction of a third party or body;
- make decisions in accordance with relevant rules or policies but not inflexibly; and
- observe the basic rules of natural justice and procedural fairness.

The decision to pursue regulatory action will also be made impartially and will not be influenced by any inappropriate reference to race, religion, sex, national origin or political association, nor will it be influenced by matters that are of a civil nature or a private dispute.

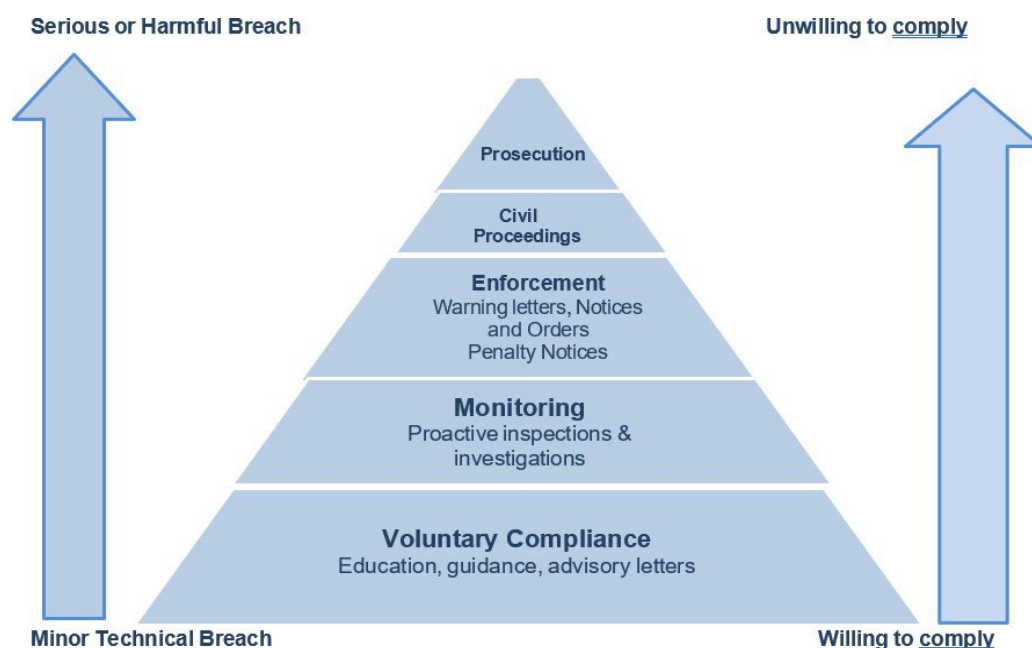
Enforcement Options

Any enforcement action taken by Council will depend on the circumstances and facts of each 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 reflect an escalation response that is proportionate to the level of risk of harm to public safety or the natural environment, the seriousness of the confirmed breach and need for a deterrent and/or remedy:



Delegations

The relevant staff delegations for taking action under this policy are included in Council's Delegation Register.

Relevant Legislation

This policy applies to the enforcement of all Acts and their associated Regulations, Standards and Rules administered by Council, including, but not limited to:

Local Government Act 1993
 Environmental Planning and Assessment Act 1979
 Food Act 2003
 Protection of the Environment Operations Act 1997
 Public Health Act 2010
 Boarding Houses Act 2012
 Swimming Pools Act 1992
 Companion Animals Act 1998
 Roads Act 1993
 Road Transport Act 2013
 Public Spaces (Unattended Property) Act 2021
 Biosecurity Act 2015
 Contaminated Land Management Act 1997
 Crown Land Management Act 2016
 Fines Act 1996
 Heavy Vehicle National Law (NSW)

Definitions

Term	Definition
Authorised Officer	<ul style="list-style-type: none"> Council employee authorised under legislation and by internal delegations to carry out compliance action on behalf of Northern Beaches Council. Each Authorised Officer is required to carry their identification and authorisation under the particular legislation they are acting under. This is a written authority setting out the Acts under which they are authorised. The relevant sets out the powers of authorised officers. Council's officer will employ different powers under each Act and in some cases may enter premises and undertake investigations utilizing powers under several Acts.

Discretion	<p>The taking of enforcement action by Council and its officers is a discretionary power. This means that, whilst Council is provided with the authority to enforce a law, there is no legal obligation to do so, not even at the insistence of a third party.</p> <p>When exercising discretion, Council officers are obliged to:</p> <ul style="list-style-type: none"> • use discretionary powers in good faith, including for the intended and authorised purpose; • base their decisions on facts and findings supported by evidence, only relevant considerations and not irrelevant ones; • give proper, genuine and realistic consideration to the merits of the case, including weighing- up the importance of relevant factors; • exercise discretion independently and not under the direction of a third party or body; • make decisions in accordance with relevant rules or policies but not inflexibly; and • observe the basic rules of natural justice and procedural fairness. <p>The decision to pursue regulatory action will also be made impartially and will not be influenced by any inappropriate reference to race, religion, sex, national origin or political association, nor will it be influenced by matters that are of a civil nature or a private dispute.</p>
Powers of Entry	<p>Are specified within the legislation being relied upon by the authorised officer. Although in most instances prior notice is given to afford procedural fairness to the property owner/occupier, this either may not be required if there is a statutory power to inspect without the requirement for prior notice as may be the case for non-residential premises or emergency situations.</p> <p>There may also be instances where officers can make observations without the need to physically attend a property, such as cases where a non-compliance can clearly be observed from neighbouring land.</p>
Report of unlawful activity	<p>An expression of concern or a request for service about an alleged unlawful activity where a response or resolution is explicitly or implicitly expected or legally required.</p>

Unlawful Activity	<p>Unlawful activity – this expression includes any activity or work that has been or is being carried out contrary to the law, as well as any state of affairs where there has been or is a failure or unpreparedness to take action so as to be compliant with the law, as more fully described below:</p> <ul style="list-style-type: none"> • a contravention, breach or non-compliance with conditions of a development consent, approval, permit or licence • a contravention, breach or non-compliance with an Act, regulation, environmental planning instrument or other instrument that controls and regulates the activity, work or state of affairs • a failure to obtain any required development consent, approval, permit or licence in respect of the activity, work or state of affairs • any other actionable contravention, breach or non-compliance with the law pertaining to one or more of the matters falling within the scope and operation of this Policy. <p>and includes any activity, place or structure which is a risk to public health and safety but excludes any parking or traffic offences, which are dealt with in accordance with the Road Rules 2014 (NSW).</p>
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Other resources

1. The NSW Ombudsman website has the following helpful resources at www.ombo.nsw.gov.au:
2. [Managing unreasonable conduct by complainants Model policy, July 2022](#)
[Effective complaint handling guidelines – 3rd edition](#)
3. [Good Conduct and Administrative Practice - Third edition, March 2017](#) Options for Redress
4. [Enforcement guidelines for Councils, December 2015](#)

See also:

1. Commonwealth Director of Public Prosecutions (2021), [Prosecution Policy of the Commonwealth: Guidelines for the making of decisions in the prosecution process](#)
2. NSW Planning, Industry and Environment (2021), *Prosecution Guidelines*.
3. [NSW EPA Powers and notices guideline for authorised officers and enforcement officers](#)
4. [NSW EPA guideline on the use of unmanned aircraft](#)

Responsible Officer

Executive Manager Environmental Compliance

Review Date

Four years from date of adoption (once per Council term).

Revision History

Revision	Date	Status	TRIM Ref
1	2 May 2023	Draft Northern Beaches Council Compliance and Enforcement Policy for public exhibition.	2023/282227
2	29 March 2024	Post exhibition amendments to Northern Beaches Council Compliance and Enforcement Policy.	2023/722023