

Compliance & Enforcement Procedure

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1. Introduction

The Compliance and Enforcement Policy outlines Council's position and approach to compliance and enforcement in its local government area. This procedure operationalises this policy for Council officers undertaking compliance and enforcement activities. It provides further information relevant for Council officers.

2. Purpose and Scope

This procedure provides information for Council officers when assessing, investigating and deciding upon enforcement action. It is intended to be read in conjunction with the Compliance and Enforcement Policy.

This procedure relates to acts of unlawful activity, it does not include complaints about Council's service or decision making. This is managed under Council's Complaint Handling Policy.

3. Definitions

Term	Meaning
ARA	Appropriate Regulatory Authority (i.e. the agency responsible for investigating or responding to the unlawful activity).
Complaint	A complaint is an expression of dissatisfaction with a Council's policy or procedure, Councillor/s, staff member/s, fees and charges, agents or quality of service. It is distinct from a customer enquiry or request. Complaints are managed under council's Complaint Handling Policy.
Enforcement	Actions taken in response to serious or deliberate contraventions of laws.
Regulation	Using a variety of tools and strategies to influence and change behaviour to achieve the objectives of an Act, Regulation or other statutory instrument administered by Council.
Report alleging unlawful activity (or Request for Service)	An expression of concern or a request for service in relation to alleged unlawful activity, where a response or resolution is explicitly or implicitly expected or legally required.
Unlawful activity	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">• terms or conditions of a development consent, approval, permit or licence• an environmental planning instrument that regulates the activities or work that can be carried out on particular land• a legislative provision regulating a particular activity or work• a required development consent, approval, permission or licence.

4. Procedure Objectives

The aim of this procedure is to:

- Provide clear guidelines for Council officers when undertaking regulatory action, and for assessing and investigating reports about unlawful activity.
- Establish priorities and the factors to be considered when determining how a report of alleged unlawful activity should be dealt with by Council.
- Outline suitable enforcement options for common offences relating to unlawful activity.

5. Compliance Flow Chart



6. Compliance Process

The Compliance Process includes the following:

- Assessment Framework
- Investigation Process
- Compliance and Enforcement Options

6.1 Assessment Framework

The Assessment Framework establishes the factors that will be considered when determining how reports of unlawful activity will be initially considered by Council and whether or not a report will lead to further detailed investigation by Council.

Criteria for assessing reports of unlawful activity

All matters will be assessed in accordance with the priorities outlined below:

Incident type	Broad description of the allegation
Legislative responsibility	Is the matter within the jurisdiction and responsibility of the council?
Impact on community	A rating of the perception of community interest in the matter
Impact on Council	How does the matter affect the operations of Council?
Impact on complainant	How does the matter affect council's customer?
Possible outcome	What will a more detailed investigation be likely to achieve? What are the possible outcomes of a detailed investigation? What are the potentials for remedy?
Response required	Broad description of the urgency of the matter
Resources available	Does council have the available skills and equipment to properly investigate the report?
Value	What is the potential, likely or actual environmental, social and economic impact of the incident/activity complained of?
Appropriate defendant	Who is the most appropriate defendant? (It could be the landowner, contractor, occupier or multiple defendants).
WHS risk	Risk to council staff and/or public safety

Risk rating and indicative timeframes for alleged unlawful activities

Risk Category	Features	Indicative Timeframe of Initial Response	Examples
Critical	<ul style="list-style-type: none"> Permanent, long-term or reoccurring and serious damage to health, property or environment likely or very likely. Large scale impacts. Very serious offences. Very high priority issue for Council and the community. 	Immediate - 24 hours response	<ul style="list-style-type: none"> Significant pollution incidents. Large scale clearing of vegetation containing threatened species. Food poisoning incidents. Abandoned vehicle in an unsafe location. Collapsed or unsafe building works in public areas. Dog attacks. Livestock on roads.
High	<ul style="list-style-type: none"> Moderate, major or severe consequences likely or very likely. Medium-large scale impacts. Serious offences. Very high priority issue for Council and the community. 	Response within 24 - 48 hours	<ul style="list-style-type: none"> Roaming dogs acting aggressively. Unsafe buildings and building works. Rubbish dumped in an unsafe location/hazardous. Pollution incidents. Breaches of tree preservation order. Dangerous/restricted dog complaints. Straying stock on roads.

Medium	<ul style="list-style-type: none"> Moderate consequences are likely, serious impacts are very unlikely. Small-medium scale impacts. Moderate offence severity. Very high priority issue for Council and community. 	Response within 7 working days	<ul style="list-style-type: none"> Abandoned vehicles. Stormwater or drainage issues. Dumped rubbish (not hazardous). Breach of consent conditions. Poor sediment control on building sites. Noise complaints affecting several people. Roaming dogs.
Low	<ul style="list-style-type: none"> Consequences are minor or moderate and are unlikely or very unlikely to occur. Small scale, isolated impacts. Low level offence severity. Very high priority issue for Council and community. 	Response within 21 working days	<ul style="list-style-type: none"> Noxious weeds. Minor consent breaches. Unauthorised signage. Unauthorised land use. Overgrown. Aesthetic issues. Neighbour disputes. Nuisance complaints (e.g., domestic noise, barking dogs). Abandoned shopping trolleys.

Response times are linked with Council's Customer Service Request targets.

Where a report is received about unlawful activity occurring out of business hours, the on-call officer at the time will determine whether an immediate response is required depending on the particular circumstances of the matter. Critical and high matters can be responded to out of business hours by on call staff. Supervisor approval will be required to undertake overtime for investigation of alleged unlawful activities with are medium and low risk.

Outcome of assessment

No further action	Not in council's jurisdiction, not a matter requiring attention, low impact, no resources available to attend.
Referred to other agency	Not in council's jurisdiction and in the province of another agency.
Referred to other council section	Does not require compliance or enforcement action or falls under the jurisdiction of another section within council.
Received for information	Report minor in nature and will not be actively investigated. May afford intelligence for proactive enforcement at a later date.
Investigation action	Satisfies all factors and will be investigated.

6.2 Compliance and Enforcement Options

Once investigation has been completed, Council officers must decide whether to take enforcement and prosecution action on the basis of evidence or unauthorised activity. The significance of the breach will need to be taken into consideration. The same factors for consideration set out in the Assessment Framework should be reviewed when determining the compliance and enforcement action which will be taken. Each matter should be considered on a case-by-case basis, taking into account the factors set out in the table below. Outcomes include:

No Action	The decision is taken not to proceed, even though the possible offence has been established.
Managed Outcome	An agreed settlement, in writing, usually involving some reinstatement or restitution that does not preclude further action should there be any failure to comply or subsequent offences.

Caution Verbal	Verbal advice to an individual advising them of the offence and cautioning them that action will be taken on further breaches. (Note – verbal cautions should be documented).
Caution Written	Letters and/or preformatted notes addressed to an individual or business advising them of the offence and cautioning them that action will be taken on further breaches.
Show Cause / Final Warning / Notice of Intention	A letter seeking the alleged offender to show cause (i.e., given their reasons) why Council should not take further action in regards to a matter. The response by the alleged offender is then taken into consideration to determine whether enforcement action is required.
Impoundment, seizure, or disposal	Impoundment, seizure or disposal of an animal or good/item in accordance with powers under the relevant legislation.
Orders	Written or verbal directions, notice or orders enforceable by law requiring some action by the identified party.
Penalty Notice ('PN')	The issue of a fine prescribed by relevant regulation for the identified offence.
Prosecution or civil enforcement proceedings before a court	The submission of a brief of evidence via supervisor to council's solicitor so they may undertake a prosecution or civil enforcement proceedings on council's behalf.

Factors to be considered when choosing an option

When determining what enforcement action to take, Council officers should consider the below factors as well as the consideration outlined in Council's Compliance and Enforcement Policy.

Available remedies of law	What remedies are available under the relevant legislation? e.g. orders, fines, prosecution etc.
Seriousness of the breach	What type of offence has been committed? How seriously would this breach/unlawful activity impact the community, in terms of time/cost/inconvenience? Is the matter trivial or technical in nature?
Precedent	What actions has council previously taken in similar circumstances?
History of Council dealings with person	Has this person come to the notice of council for other, the same or similar offences? What were the outcomes/results of such dealings?
Contrition	Does the person or corporation exhibit remorse for the offence? In some cases, it will be appropriate to have regard to the offender's apparent willingness to prevent a recurrence of the offence.
Council's actions	Have the actions of council created an expectation that no action would be taken in a specific set of circumstances? Has the person responsible been advised that no action would be taken? Has council contributed to the offender's actions, e.g., by providing advice/approval to the activity?
Discretion to not take action based on the facts in issue and relevant material	Is a managed outcome a better alternative? No bias, actual or perceived should influence the decision to exercise discretion. Should discretion be exercised the reasoning should be recorded to support the decision. Council Authorised Officers are able to exercise discretion based on their delegations and authority.
Procedural fairness/natural justice	Has the offender been informed of the nature of the issue and allowed a right of reply? Due consideration of the reply is to be given and the investigation is to be conducted objectively.

Timing and delay	Is the offending action recent? Has there been significant delay in the investigation? Is the proposed action within the statutory limitation period for the offence?
Public interest (costs vs. benefits, likely success, effects – social and environmental)	Are there any mitigating circumstances which will impact on the outcome of any prosecution/legal proceedings? What council resources will be affected and how?

6.3 Common Offences

Below is a list of common offences related to unlawful activity that Council officer regularly investigate and preferred enforcement options. This table has been developed as a guide to assist Council officers when choosing an appropriate enforcement action.

Offence	Act or Regulation	Details	Education &/or Warning	PIN	Notice &/or Order	Legal action
Pollution of stormwater	POEO	Soil, sand and other building waste entered stormwater system.	x	x	x	
Potential for pollution	POEO	Location of stockpile of sand may cause pollution incident (i.e., in rain).	x	x		
Minor building works – owner	EPAA	Construction of pergola awning by owner – where there is no material impact on other parties and locality – no BCA issues.		x	x	
Site management	LGA & EPAA	Articles located on footpath without approval – possible safety hazard.	x	x	x	
Building work outside of hours	EPAA	Carrying out of building works outside of hours permitted in DA.	x	x	x	
Minor building works	EPAA	Construction of alterations or additions to rear of existing dwelling BCA issues to be resolved.	x	x	x	
Major building works	EPAA	Substantial alterations and additions to the existing building – planning and BCA issues		x	x	x
Variation to DA – minor	EPAA	Minor variation to DA (i.e., relocation of window/door) S96 obtained.		x		
Unauthorised use – major	EPAA	Unauthorised use of premises as a brothel or taxi depot.		x	x	
Fire Safety – Minor	EPAA	Failure to submit an annual fire safety statement after due date.		x	x	
Fire Safety – Major	EPAA	Fire safety upgrading of existing multi storey development.		x	x	x
Food safety standards - Minor	FA	Food business has failed to comply with the food safety standards – minor/small breaches.	x	x	x	

Food safety standards – Major or Multiple	FA	Food business has failed to comply with the food safety standards – major or multiple breaches.		x	x	x
Long grass	LGA	Excessive vegetation or long grass potential to cause safety or public health risk.	x	x	x	
Dog attack - Minor	CAA	Dog attack causing fear or minimal injury to another person or animal.		x	x	
Dog attack – Major	CAA	Dog attack causing injury or serious injury to another person or animal.		x	x	X
Stray or Wandering Dog – Minor	CAA	Dog not under effective control in a public place – minimal impact/risk.	x	x		
Stray or Wandering Dog – Major	CAA	Dog not under effective control in a public place –multiple different occasions or caused safety risk.		x	x	
Unregistered Dog	CAA	Owner/keeper has failed to register their dog.	x	x	x	

7. Investigation Process

7.1 Overview of the Investigation Process

Investigation action may include but is not limited to any of the following:

- A desktop review
- Assessment of likely environmental and public harm and safety
- A site inspection including interviews with any relevant persons

All investigative procedures are for the purposes of gathering information and evidence to determine if a breach has occurred and who may be responsible for the breach. Evidence may include: digital surveillance, videos, photographs, samples and physical evidence, witness statements, file notes and records of any interviews. The procedure and type of investigation undertaken will depend on the facts and circumstances of each case.

Investigating officers are to undertake their investigation in a professional manner that is:

- Objective, fair and impartial
- Consistent with the presumption of innocence
- Within their delegated authority
- In accordance with the law

7.2 Cautioning

If an investigating officer forms the belief that there is sufficient evidence to establish an individual has committed an offence, when questioning that individual, the investigating officer must caution the individual that he or she does not have to say or do anything but that anything the individual does say or do may be used in evidence. Cautioning ensure that evidence obtained is admissible in court. It is the obligation of the Council officer to inform a person of their rights.

When to caution?

- Investigating an allegation about unlawful activity; or

- Interviewing an alleged offender, employee or person at the offending property; or
- When a routine inspection moves to an 'evidence gathering exercise' due to multiple or major non-compliances.

Refer to Appendix 3 for further examples of cautions under specific legislation.

7.3 Elements of an Offence

Elements of an offence means:

"Elements of an offence are the issues which must be identified and proven to establish the criminal liability of an individual or entity for an offence".

To use an analogy in a culinary sense – each of the elements could be likened to the ingredients of a cake. If the cookbook stipulates certain ingredients in the cake mix and one or more of those ingredients are left out, the result is obvious. Similarly, if an ingredient (i.e., element) in an offence is overlooked or not proven then the case will fail.

The elements are the 'building blocks' of an offence or the meaningful 'parts' of an offence.

Common elements to every offence (proofs common) include time, date, place, identification of a person or entity. Elements which are specific to the offence (specific or criminal elements) include physical (acts or omissions), fault (intention, knowledge, negligence or recklessness).

It is the role of the Council officer to establish all elements of an offence in order to prove a person/entity has committed the offence. This must be established before any enforcement action can be taken (including Notices/Orders, fines and prosecution).

7.4 Burden of Proof

An investigation must satisfy the elements of the offence to a standard of proof – beyond a reasonable doubt. This means that sufficient evidence that would satisfy a reasonable non-expert person past the point that they could not entertain any doubts as to the existence of the thing or occurrence of the event.

7.5 Evidence

Types of evidence:

Direct – facts constituted by the testimony of a witness (which may also be the investigating Council officer):

- I saw
- I smelt
- I touched
- I tasted
- I heard

Direct evidence can also include, as well as the testimony of observations, contemporaneous notes of the observation by the witness. Council officers should keep an evidentiary notebook to notate their observations during an investigation of an alleged unlawful activity.

Direct evidence also includes photographs which show the offence occurring.

Circumstantial – not direct evidence of a fact, but infer the existence of that fact. It may also include photographs, documents, receipts, items and things that infer or corroborate direct evidence of an offence.

Council officers should obtain and keep evidence of the offence, particularly if enforcement action is taken. Evidence should be stored in Council's record keeping system for future reference.

7.6 Note Taking

The investigating officer should keep an evidentiary notebook that take contemporaneous notes of any interviews or discussions with witnesses, alleged offenders and complainants. The evidentiary notebook should also be used to record observations and findings of the officer when attending properties to investigate allegations of unlawful activity.

Contemporaneous notes are notes made at the time or shortly after an event occurs. It includes notes taken at the time of meetings or interviews with individuals, during telephone calls, while visiting a premises. They represent the best recollection of what the officer has witnessed.

This evidentiary notebook is important and could be called upon to be used as evidence in court if the matter reaches this far. Maintaining an evidentiary notebook on a regular basis where all notes of any investigations into unlawful activity are contained in one notebook demonstrates to the court that the officer is consistent with their investigation and their notes relating to the investigation can be relied upon in court.

All investigating officers will be issued with an evidentiary notebook. Supervisors and Managers are responsible for ensuring that their staff maintain an evidentiary notebook.

7.7 Multiple Allegations About a Single Property

Where a complainant lodges a concern to Council which include multiple allegations of unlawful activity at a single property that would involve more than one investigating officer or department, Council staff will liaise with each other to establish:

- Which officer or department will take the lead role on any joint investigation;
- Which activities each officer or department will carry out; and
- Which officer or department will update the individuals involved.

Council staff should avoid instances where more than one officer or department is investigating a matter at a single property and multiple visits and conversations happen as a result. Council staff should aim to work collaboratively to conduct any inspections and conversations with individuals at the same time.

There may be instances where it is appropriate for the lead Council investigating officer to consider the allegation(s) that another officer or department is responsible for while attending the property and provide their notes and observations to the responsible officer or department to enable them to determine appropriate action to be taken.

Examples include:

- A Building Surveyor responds to an allegation of an illegal structure and while at the property they observe whether the fence is adequate to keep a dog on the property which is alleged to be continually escaping from the property. The Building Surveyor's observations can be given to the responsible Ranger so they can determine what action to take regarding the dog matter.
- An Environmental Health Officer responds to an allegation about a hoarding situation at the property and while at the property they observe whether there are excessive animals being kept on the property which was also raised as a concern. The Environmental Health Officer's observations about the animals can be given to the responsible Ranger so they can determine what action to take regarding the animal issue.

7.8 Discretion

Council officers regularly encounter matters in which they are required to exercise independent judgement and make decisions, such as whether to take enforcement action or what enforcement action to take.

Where there is no clear guidance on whether to take enforcement action or what enforcement action to take, staff should utilise their discretion in accordance with the following:

- Using discretionary powers in good faith.
- Basing their decisions on facts and finding supported by the evidence.
- Giving proper, genuine and realistic consideration of the merits of the particular case.
- Exercising discretion independently and not under the dictation of an external person or body.
- Making decisions in accordance with Council's policies but without applying these policies inflexibly.
- Observing the basic rules of procedural fairness.

Basic rules of procedure fairness include:

- Informing people of allegations made against them.
- Informing people of adverse findings proposed to be made against them.
- Consider any submissions put forward by a person subject to the investigation.
- Make reasonable inquiries or investigations before making decisions.
- Act fairly and without bias.
- Conduct investigations without undue delay.

Ten questions Council staff need to consider when exercising discretion:

1. Do I have the power to make the decision?
2. Are there any pre-conditions before I can make the decision?
3. Have I gathered all the information and established the facts?
4. Have I evaluated the evidence?
5. What is the appropriate standard of proof?
6. Am I acting reasonably, fairly and without bias?
7. Do I need to provide procedural fairness before making the final decision?
8. Consider the merits of the case and make judgement
9. Have I kept all relevant parties informed, advised of the outcomes and provided reasons for my decision?
10. Have I created and maintained relevant records?

Guidelines for Assisting Officers with Exercising Discretion for Penalty Notices:

Under the Attorney General's Caution Guidelines under the Fines Act 1996, officers who issue penalty notices may give cautions instead, if the officer believes:

- On reasonable grounds that a person has committed an offence under a statutory provision for which a penalty notice may be issued; and
- It is appropriate to give a caution in the circumstances.

The matters that should be considered when deciding whether it is appropriate to give a person a caution instead of a penalty notice include:

- The offending behaviour did not involve risks to public safety, damage to property or financial loss, or have a significant impact on other members of the public;
- The person is homeless;
- The person has a mental illness or intellectual disability;
- The person is a child (under 18);
- The person has special infirmity or is in very poor physical health;
- The offending behaviour is at the lower end of the seriousness scale for that offence;
- The person did not knowingly or deliberately commit the offence;
- The person is cooperative and/or complies with a request to stop the offending conduct;
- It is otherwise reasonable, in all the circumstances of the case, to give the person a caution.

8. Reviews and Appeals

Review and appeals of decisions about enforcement matters will be governed by the applicable legislation. Council officers should familiarise themselves with the review and appeal rights under the legislation they are responsible for.

It should be noted that allegations of poor performance or misconduct by officers, will require a separate investigation under Council's Complaints Handling Policy.

8.1 Penalty Notices

Council has an MoU with NSW Commissioner of Fines Administration (via Revenue NSW) for the administration of penalty notices, including reviews and representations. Under the MoU, the Commissioner is deemed the primary 'reviewing agency' for penalty notices. Upon receipt of a representation for review, the Commissioner will consider those representations and any information or guidance provided by Council. If the recipient of the penalty notice makes representations directly to Council, they should be referred to Revenue NSW.

Contact Details Revenue NSW:

Ph: 1300 138 118

Address: Revenue NSW, PO Box 786, STRAWBERRY HILLS NSW 2012

Online: www.revenue.nsw.gov.au/fines-and-fees/request-a-review

More information can be found at: <https://www.revenue.nsw.gov.au/fines-and-fees>

A copy of the MoU can be found in Content Manager (22/24891).

Generally, all requests for review will be directed through to Revenue NSW for consideration. In exceptional circumstances, the relevant Director or General manager may decide to undertake a review of a penalty notice and either decide uphold or withdraw the penalty notice. Considerations for whether to withdraw a penalty notice include:

- Whether the penalty notice was issued in error;
- Whether the penalty notice was issued contrary to law;
- The recipient is responsible for the offence;
- Whether a penalty notice was appropriate given the offence;
- Any other exceptional or extenuating circumstances.

If the relevant Director or General manager makes the decision to withdraw a penalty notice, Revenue NSW are to be informed of the decision.

8.2 Notices, Orders & Declarations

Notices

The purpose of a Notice is to make the recipient aware of Council's intention to issue an Order and allow the recipient an opportunity to make representation to Council as to why Council should not proceed with issuing the Order. A copy of the proposed Order intended to be issued should be provided to the recipient.

If a representation is made to Council, then the Manager of the investigating officer is to consider the representation received and the investigating officers' information before deciding whether to proceed with issuing the Order or not.

Requests by the recipient for additional time to comply and/or modifications or changes to the actions required to remedy the offence in the proposed Order should be taken into consideration at this stage.

The recipient should be informed in writing of Council's decision, including the reasons for the decision. If the decision is made to proceed with issuing the Order, the investigating officer will issue the Order.

Orders

An Order is issued to remedy an offence.

An alternative to or prior to a Court appeal, the recipient of an Order can request Council to undertake an internal review. The purpose of an internal review is to ensure whether the order was issued correctly, and whether there are any circumstances to warrant the order being revoked or modified.

The internal review must be conducted by a person who was not involved in the making the decision to issue the Order and who does not have a conflict of interest or personal interest in the outcome or decision. Generally, internal reviews will be conducted by the relevant Director.

The matters that should be considered when undertaking an internal review include:

- Whether the Order was issued contrary to law;
- The recipient is responsible to remedy the offence;
- Whether the actions outlined in the Order are appropriate to remedy the breach;
- Whether other enforcement options are more appropriate given the circumstances of the breach;
- The recipient's ability to remedy the offence due to any personal circumstances outlined by the recipient;
- Any other exceptional or extenuating circumstances presented to Council by the recipient.

The recipient should be informed in writing of Council's decision, including the reasons for the decision.

Declarations

Declarations for menacing, dangerous and restricted dogs can be made by authorised officers under the *Companion Animals Act 1998*. Owners must be notified of a proposed declaration and the owner can object to the proposed declaration in writing.

Should the owner object to the declaration, the Manager of the authorised officer is to consider the objection including the reasons for the objection before making a decision whether or not to proceed with the declaration.

If the decision is made by the Manager to proceed with issuing the declaration, the authorised officer will issue the declaration.

The owner of a dog can make application to Council for their dogs' dangerous or menacing declaration to be revoked after 12 months of the declaration being made. The Director of the authorised officer who made the declaration is to review the application, including the original reasons for the declaration and whether there are any reasons outlined in the application that would make it appropriate to revoke the declaration. Reasons that may be appropriate to revoke the declaration include the nature and extent of any behaviour training that the dog has undergone.

Note that the owner of a dog that has been declared dangerous or restricted can appeal the declaration in the Local Court. Menacing dog declarations can not be appealed in the Local Court.

Segregation of Duties for Reviews

It is important to ensure adequate segregation of duties to ensure the officer undertaking the review is impartial in the matter. This also aligns with the principles of accountability and transparency under Council's Compliance & Enforcement Policy.

Appropriate segregation of duties would include:

Situation	Responsible officer
Issuing Penalty Notice	Investigating officer based on the findings of their investigation and considerations included in this policy and procedure.
Reviewing of Penalty Notice	Refer to Revenue NSW. The Investigating officer to respond to any requests for information from Revenue NSW. If Revenue NSW request Council to review and provide a recommendation, this will be undertaken by the investigating officer's Manager.
Review Representations Made to Notice	The Manager of the investigating officer to consider representation received and investigating officers' information before deciding whether to proceed with issuing the Order or not. The recipient will be informed of Council decision, including reasons for the decision. If the decision is made to proceed with issuing the Order, the investigating officer will issue the Order.
Issuing Notice of Intention to Issue an Order	Investigating officer based on the findings of their investigation and considerations included in this policy and procedure.
Issuing an Order	Investigating officer to issue the Order if approved by their Manager.
Internal Review of an Order	The Director to consider the request for review including representations from the person subject to the Order, the investigating officer's original investigation and findings and any recommendations by the Manager before deciding whether to uphold the Order. If the Director was involved in the decision to issue the Order, then the General Manager will be responsible for the internal review.
Issuing a Notice of Proposed Declaration	Authorised officer based on the findings of their investigation and considerations included in this policy and procedure.
Review of Objection to Declaration	The Manager of the authorised officer to consider objection received and authorised officers' information before deciding whether to proceed with issuing the Declaration or not. The recipient will be informed of Council decision, including reasons for the decision. If the decision is made to proceed with issuing the Declaration, the authorised officer will issue the Declaration.
Declaration	Authorised officer to issue the Declaration if approved by their Manager.
Applications to Revoke Declaration	The Director of the authorised officer to consider the application received and the original reasons for the declaration being made as well as the nature and extent of behavioural training that the dog has undergone.

9. Templates

Templates have been drafted for some Notices and Orders:

Template	Content Manager Reference #
LGA Notice of Intention	19/2682

EP&A Notice of Intention	19/1336
LGA Order	19/2683
EP&A Order	19/1337
Food Improvement Notice	19/2684

These templates can be found in folder SC2225 in Content Manager.

Note – templates for animal related notices and orders can be found on the Office of Local Government portal.

10. References & Associated Documents

Related Council policies:

- Code of Conduct
- Complaints Handling Policy
- Privacy Policy

Related legislation:

- Local Government Act 1993
- Protection of the Environmental Operations Act 1997
- Environmental Planning and Assessment Act 1979
- Companion Animals Act 1998
- Food Act 2003
- Public Health Act 2010
- Fines Act 1996

Related external references

- NSW Ombudsman Model Compliance and Enforcement Policy
- NSW Ombudsman Enforcement Guidelines for Council
- NSW Attorney General's Internal Review Guidelines under the Fines Act 1996
- NSW Attorney General's Caution Guidelines under the Fines Act 1996
- Commissioner of Fines Administration and Federation Council Memorandum of Understanding: Services Provided under the Fines Act 1996

11. Policy History

Version	Date	Changes / Amendments
1	15 Jan 2019	Initial draft
2	28 June 2022	Review and update Adopted at February 2023 Council Meeting

NOTE: This is a controlled document. If you are reading a printed copy, please check that you have the latest version by checking it on Councils Electronic Document system. Printed or downloaded versions of this document are uncontrolled.

Appendix 1 – Guide to Issuing Notices & Orders

General instructions

When drafting an order, Council staff need to ensure that they select the correct order and ensure the reasons for that order are fully identified. Refer to the relevant legislation.

Council needs to first fully describe what is required by the order. If it assists to refer to photographs or plans to identify the work that needs to be undertaken, then reference should be made to this further material and the material should be attached to the order.

The reasons for the order need to be clearly set out in the order for the recipient to understand what is required of them. The reasons for the order should include as much detail as possible and should not merely be a replication of the circumstances set out in, for example, column 2 in the table in Part 1 of Schedule 5 of the *Environmental Planning and Assessment Act 1979*.

Set out below are 6 of the main orders that are commonly issued by Councils.

Whilst the below instructions provide guidance on completing the specific orders Council staff need to ensure that all details relating to the specific circumstance of the matter are set out which justify the reason for serving an order.

Type of Order	Description	Reasons for the order
Stop Use Order – Order No. 1	<p>Option 1 To stop using the <<premises/building>> identified in <<plans/photographs>>.</p> <p>Option 2 Not to conduct or to stop conducting an activity on the premises as identified in <<plans/photographs>>.</p>	<p>The premises is being used for:</p> <ol style="list-style-type: none"> 1. For a prohibited purpose, or 2. For a purpose for which a planning approval is required but has not been obtained, or 3. In contravention of a planning approval. <p>The premises is being used:</p> <ol style="list-style-type: none"> 1. Inconsistently with its classification under the Environmental Planning and Assessment Act 1979 or the Local Government Act 1993, and 2. In a manner that constitutes or is likely to constitute a life-threatening hazard or a threat to public health or public safety, and 3. In a manner that is not regulated or controlled under any other Act by a public authority. <p>The premises are being used for an activity (that would or would be likely to require planning approval) that:</p> <ol style="list-style-type: none"> 1. Constitutes or is likely to constitute a life-threatening hazard or a threat to public health or public safety, and 2. Is not regulated or controlled under any other Act or public authority.
Demolish Works Order – Order No. 3	To demolish or remove a building identified in <<plans/photographs>>.	<p>A building:</p> <ol style="list-style-type: none"> 1. Requiring a planning approval is erected without approval, or 2. Requiring approval under the <i>Local Government Act 1993</i> is erected without approval, or 3. Is likely to become a danger to the public, or

		<ol style="list-style-type: none"> 4. Is so dilapidated that it is prejudicial to person or property in the neighbourhood, or 5. Is erected in contravention of the <i>Environmental Planning and Assessment Act 1979</i>
Repair Order – Order No. 5	<p>The <<insert details of structure>> set out in the <<plans/photographs>> requires repair as it is <<structurally inadequate/dangerous etc.>>.</p> <p>Council hereby orders you to attend to the following repair items:</p> <ol style="list-style-type: none"> 1. <<insert reasons for order, e.g. Brace building etc.> 	<ol style="list-style-type: none"> 1. The <<insert details of structure that requires repair>> required to be repaired as <<structurally inadequate/does not comply with BCA/unsafe>> 2. The building is or is likely to become a danger to the public or is so dilapidated that it is prejudicial to the occupants, persons or property in the neighbourhood.
Public Safety Order – Order No. 7	<p>The <<insert details of structure>> set out in the <<plans/photographs>> are a danger to public safety and you are required to <<install temporary fence/secure loose items etc.>></p>	<ol style="list-style-type: none"> 1. The property constitutes a safety risk to the general public and needs to be <<fenced/secured>> to ensure the safety to the public, or 2. Construction work is to be undertaken on the property and the work is likely to cause a safety concern to members of the public in the vicinity of the building, or 3. The property is to be demolished and the works undertaken could be a danger to members of the public.
Restore Works Order – Order No. 10	<p>To restore the premises to the condition in which they were before unlawful building or other works occurred.</p> <p>For example: To remove the illegal extension to the rear of the property as identified in the photographs attached to this order including but not limited to the following items:</p> <ol style="list-style-type: none"> 1. Bathroom 2. All plumbing works 3. Concrete slab 	<p>An unauthorised building has been the subject of a Demolish Works Order or unauthorised works have been carried out.</p> <p>For example:</p> <p>Council requires you to restore the house to the condition it was in prior to the unlawful works being completed as the works required the prior consent of Council.</p>
Compliance Order – Order No. 11	<ol style="list-style-type: none"> 1. To comply with a planning approval for the carrying out of works, or 2. To do whatever is necessary so that any building or part of a building that has been unlawfully erected complies with relevant development standards, or 3. To carry out works associated with subdivision <p>For example: Council hereby orders you to <<detail works to be completed>> to comply</p>	<ol style="list-style-type: none"> 1. Development Consent <<details TBC>> was issued on <<date TBC>> 2. The terms of Development Consent <<details TBC>> have not been complied with. In particular, conditions <<TBC>> have not been satisfied. <p>Alternative reasons:</p> <ol style="list-style-type: none"> 1. Building has been unlawfully erected and does not comply with relevant development standards, or 2. Authorised subdivision works, or works agreed to by the applicant, have not been carried out.

	with development consent no. <<TBC>>.	
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Timeframes to comply with Orders

When issuing an order, you are required to specify the timeframe in which the person has to comply with the order.

Each matter will need to be separately assessed as to a suitable timeframe. For matters that involve issues of safety, the orders should be prepared stating that compliance is required from the date of service of the order. This would be relevant in situations where someone is using a building illegally and the building is a safety hazard to that individual or to others.

In situations where Council is requiring someone to undertake work or remove illegal structures, the reasonableness of time period for compliance will depend upon the factual circumstances. In situations such as this, it is recommended the person should be separately ordered to immediately cease using the building the subject of the order, e.g., the extension.

Council staff should be mindful that although they may specify a timeframe for compliance with an order, a recipient may make representations to Council for further time to comply. Such requests will need to be dealt with on a case-by-case basis.

Structure of the Notice/Order

Name

The Notice and Order must be served on an appropriate legal entity. This would include:

- an individual
- an incorporated body such as Pty Ltd or Ltd
- a statutory authority
- incorporated association
- co-operative or other body corporate

The Notice and Order must not be served on a trading name, business name or care of a person. Full names of individuals must be used.

Address

The Notice and Order must be served on an appropriate legal entity at its correct residential, business or registered office address. The service of a Notice or Order can be issued by:

- prepaid post
- by serving it personally
- by fixing it to a conspicuous part of the premises to which the Order is addressed
- facsimile transmission

Salutation

Where you are sure about the recipients' gender you may use the salutation for example *Dear Mr Smith* otherwise use only *Dear Sir or Madam*.

Property/Premises Description

The property / premises description must include full details as it appears on Council's records, for example where applicable Lot, DP (Deposited Plan), Section, SP (Strata Plan), street number and / or rural addressing number.

Order Number

Ensure that the Order number you choose is the most appropriate in the situation. Often a similar action can be taken under a number of different pieces of legislation however the Act or Regulation that is most appropriate for the situation must be used.

Terms of the Order

The requirement must be in consistent terms, be specific, written in plain English and be easily understood by the recipient. In some instances, it may be appropriate to attach a plan, diagram or photographs to the Order to assist the recipient in understanding the requirements. With development consents, plans should be referenced and / or conditions repeated.

The terms in the Order should be then carefully checked, so that the terms are specified in accordance with the sections and tables under the relevant Acts. If there are certain requirements that are not provided under one piece of legislation, then you may need to specify these requirements in the terms of a separate Order.

Period of Compliance with Order

It is preferable to specify an actual time and date (i.e., *5.00pm Friday 28 September 2018*) for compliance rather than for example *28 days from the date of this Order*, as this gives a clear indication of when the Order is to be complied with. The timeframe for compliance must be reasonable in the circumstances. The time for the compliance can be less than the appeal period, however legal action cannot commence until the appeal period has expired or an appeal is dismissed.

An Emergency Order can require immediate compliance.

Period for Representation (Notice of Proposed Order)

It is preferable to specify a date for the receipt of representations rather than a number of days from the date of the Notice as this will provide the recipient a clear indication of when representation is to be submitted to Council.

Reasons

The reasons must specifically reflect the terms of the Order, and should include:

- Observations (*i.e. on this date it was observed.....*)
- Inspection results (*i.e. an inspection by a Council officer on this date found.....*)
- Applicable conditions of consent or legislation not complied with (*i.e. it is a requirement of condition A1 of the development consent that.....*)
- The impact of the non-compliance (*i.e. non-compliance has resulted in.....*)

It is not sufficient reason to just include the circumstance for which an Order may be served as specified in the tables of the Act.

Officer's Name

The contact name for the officer responsible for the issue and enforcement of the Notice or Order must be stated in the Notice or Order.

Appendix 2 - Guide to Issuing Penalty Notices

All penalty notices must be filled out using a ball-point pen with black ink and using block letters.

The penalty notice comprises of three sheets, Part A, Part B and Part C.

Part A (white) is to be sent to the State Debt Recovery Office by the officer issuing the penalty notice.

Part B (yellow) remains in the penalty book.

Part C (coloured copy) is issued to the offender.

Infringement Type

For non-motor vehicle related offences place an "x" in box 2. General.

Offenders Details

Enter the full name and residential address of the offender as listed in Council's records (including postcode). Where multiple names are listed in Council's records the first name listed is to be used.

- Surname or Company Name (not trading names).
- Given Name/s.
- Address, must be residential or registered address (PO Box numbers are not acceptable).

Offence Details

This must be described in full and should not be abbreviated. Date and time of offence is required as prima facie evidence for Court enforcement.

The time, day and date of offence is used to verify the correct date has been recorded. Time needs to be recorded as either AM or PM.

The location is also to be recorded including full legal description including Lot and DP numbers.

Additional Information

The field "in relation to" allows for further information to be entered. For example "*Environmental Planning & Assessment Act, 1979*"

Offence Code

The offence code is a numeric code comprising 4-8 characters that identify the offence as supplied in the Fixed Penalty Handbook. Work left to right and leaving unused boxes blank.

Regulation Code

The regulation code comprises three alpha-characters which are used to verify that the correct offence code was used. Work left to right and leave unused boxes blank. If either the offence Code or Regulation Code is incorrectly recorded the penalty notice will not be processed.

Short Title

Enter the short title of the offence as set out in the Fixed Penalty Handbook.

Penalty Amount

Enter the penalty amount as set out in the Fixed Penalty Handbook.

Signature of Officer

Only an authorised officer with the appropriate delegations is able to sign the penalty notice.

At this point **remove Part C** and serve the notice before continuing.

Name and Issuing Authority

The authorised officer is to enter their name, and Federation Council as the issuing authority. This should only appear on Parts A and B.

Client Code and Client Edit Code

The client code (101095) and the client edit code (LT) identifies that Federation Council has issued the penalty notice for the purpose of the NSW Office of State Revenue and the State Debt Recovery Unit and reimbursing Council with the fines. This should only appear on Parts A and B.

Description of Offence

A full description of the offence, ensuring sufficient prima facie evidence to prove the offence (i.e.: who did what, where and when). It is acceptable to refer to notes contained in a note book or to reference a report contained within a file. Any comments recorded of the offender should only be included in any report or notes if they are recorded verbatim, in the first person (e.g.: "*He said*", "*I said*"). This should only appear on Parts A and B.

Appendix 3 – Example Cautions

<p>General Caution</p>	<p>I am going to ask some further questions. I am going to caution you because I believe there is sufficient evidence to establish that you have committed an offence. You do not have to say or do anything, but anything you say or do may be used in evidence. Do you understand what I have said?</p>
<p>General Caution</p>	<p>I / we intent to ask you further questions in relation to this matter, but before I/we do, I must caution you that you do not have to say or do anything but that anything you do say or do may be given in evidence. Do you understand?</p>
<p>POEO Act 1997 Caution</p>	<p>I am an authorised officer under the Protection of the Environmental Operation Act 1997; you are required to answer the following questions. I warn you that if you neglect or fail to answer without lawful excuse, give false or misleading information you are guilty of an offence under the Act.</p> <p>You may however object to answering a question on the grounds of self-incrimination, but you must still answer the question but the answer is not admissible in evidence against you personally. Do you understand this?</p>
<p>POEO Act 1997 Caution</p>	<ol style="list-style-type: none"> 1. I have reasonable grounds to suspect that you have knowledge of matters in respect of a [pollution incident/building works/use/other] that [is occurring/occurred/is taking place] at [place], on [date]. 2. You are required by the [Protection of the Environment Operations Act 1997/Environmental Planning and Assessment Act 1979] to answer the following questions as part of our investigation of the [incident/works/use]. Failure to answer any of my questions is an offence. 3. It is an offence to provide information knowing that it is false or misleading. 4. It is also an offence to wilfully delay or obstruct me in the course of my investigation of this [incident/matter]. 5. You are not excused from providing me with records or information or to answer a question on the ground that the record, information or answer might incriminate you or make you liable to a penalty. 6. However, you may object to answering my questions or providing me with information on the ground that it may incriminate you. If you do this at the time that you answer the question, then that information or answer is not admissible in evidence against you personally in criminal proceedings unless those proceedings relate to the provisions of answers which are false or misleading. 7. Do you understand? <p>If a recorded interview, issue the warnings 1 to 7 above, and add: 8.</p> <ol style="list-style-type: none"> 8. This interview will be recorded. You will be provided with a copy of the recording [as soon as is practicable, i.e. either at the conclusion of the interview, or, we would suggest, within 5-7 working days].