

ENFORCEMENT & COMPLIANCE

Policy | Development & Environmental Services

To establish clear guidelines for the management of Council's regulatory activities and the implementation of enforcement actions.

| | | | |
|------------------------------|--|---------------------|-------------|
| Policy No: | POL/10065 | Version: | 4 |
| Service Unit: | Development & Environmental Services | | |
| Responsible Officer: | Manager Development & Environmental Services | | |
| Responsible Director: | Director Infrastructure & Planning Services | | |
| Authorisation Date: | 17 May 2022 | Review Date: | 17 May 2024 |
| Minute No: | 89/2022 | | |

Printing Disclaimer

If you are viewing a printed copy of this document it may not be current. Printed copies of this document are not controlled.

Before utilising a printed copy of this document, verify that it is the most current version by referencing Council's intranet.

Table of Contents

| | | |
|-----------|--|-----------|
| 1 | Background..... | 3 |
| 1.1 | Title of the Policy and Commencement Date | 3 |
| 1.2 | Purpose of the Policy | 3 |
| 2 | Objective | 3 |
| 2.1 | Objectives and Coverage of the Policy | 3 |
| 3 | Application | 3 |
| 3.1 | Application of this Policy | 3 |
| 4 | Definitions | 4 |
| 5 | Compliance Activities | 5 |
| 5.1 | Risk Based Proactive Compliance Activities | 5 |
| 5.2 | Reactive Compliance Activities | 6 |
| 5.3 | Powers of Council Officers | 6 |
| 5.4 | Managing Breaches or Non-compliances | 6 |
| 5.5 | Risk Rating and Response Time | 8 |
| 5.6 | Discretion | 9 |
| 5.7 | Escalations of Enforcement Options..... | 9 |
| 5.8 | Rights of Appeal | 10 |
| 6 | Relevant Legislation | 11 |
| 7 | Document Information..... | 11 |
| 7.1 | Related Documents..... | 11 |
| 8 | Responsible Officer / Policy Owner..... | 12 |
| 9 | Responsibilities | 12 |
| 10 | Approval..... | 12 |
| 11 | Monitoring | 12 |
| 12 | Review Date | 13 |
| 13 | Last Review Date | 13 |
| 14 | Record Keeping, Confidentiality and Privacy | 13 |
| 15 | Breaches and Sanctions | 13 |
| 16 | Document History | 13 |



1 Background

1.1 Title of the Policy and Commencement Date

The Enforcement and Compliance Policy takes effect upon adoption by Council.

1.2 Purpose of the Policy

The purpose of this policy is to establish clear guidelines for the management of Council's regulatory activities and the implementation of enforcement action.

This policy sets out how Singleton Council will deal with compliance and enforcement that will facilitate the effective achievement of the regulatory goals of each of the Acts it has responsibilities under in a manner that is:

- authorised by law
- procedurally fair
- accountable and transparent
- consistent and
- proportionate.

2 Objective

2.1 Objectives and Coverage of the Policy

The objectives of this policy are:

- to provide transparency on how Council will make decisions of enforcement action
- to guide decision making and action by Council staff in the use of enforcement options
- to ensure that regulatory powers are carried out in a consistent manner without bias
- to enhance consistency of enforcement actions between officers and
- to use regulatory tools in such a way as to best achieve Council's strategic and operational objectives.

3 Application

3.1 Application of this Policy

The policy applies to all compliance and enforcement action where Council has regulatory responsibility under NSW legislation, including:

- Unauthorised development (including non-compliance with consent conditions)



- Control of animals (including keeping of animals and companion animals)
- Pollution control
- Public health and safety issues
- Food safety
- Fire safety
- Swimming pool safety (public and private pools)
- Building control
- Roads, footpaths and parking
- Signage and
- Tree preservation.

4 Definitions

For the purposes of this policy:

| Term | Meaning |
|-------------|--|
| Compliance | Is the act of adhering to, and demonstrating adherence to, laws, regulations, conditions, standards and policies. |
| Complaint | <p>A complaint is an expression of dissatisfaction made about council services, staff or the handling of a complaint, where a response or resolution is explicitly or implicitly expected or legally required.</p> <p>For the purposes of this policy, a complaint does not include:</p> <ul style="list-style-type: none"> - report alleging unlawful activity (see definition below) - request for information about a council policy or procedure - request for an explanation of actions taken by council - a request for internal review of a council decision. |
| Council | The elected council or staff under delegation of the Singleton Council (Local Government Area). |
| Enforcement | The act of to put or keep force, to enforce laws or rules, to impose a course of action upon a person. |
| EPA | Environment Protection Authority |
| EP&A Act | The <i>Environmental Planning and Assessment Act, 1979</i> . |



| Term | Meaning |
|-------------------|---|
| PIN | A penalty or fine issued in accordance with the NSW Self Enforcing Infringement Notice, in lieu of court proceedings. |
| POEO Act | The <i>Protection of the Environment Operations Act, 1997</i> . |
| SDRO | State Debt Recovery Office. |
| 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. |

5 Compliance Activities

5.1 Risk Based Proactive Compliance Activities

To guide the Councils proactive auditing, monitoring and compliance activities, the Council uses a risk ranking methodology to assist compliance staff in undertaking a systematic approach to assess commercial and industrial sites, as per the land use table in the Singleton Local Environmental Plan 2013. The Council assesses the risk of approved projects in relation to its compliance function in terms of the potential or actual severity of the harm that may be caused to human health, the economy, the community and the environment.

Each land use type has been assessed on a set of defined indicators and given a risk ranking that will determine the compliance activities to be targeted for developments of that type. The methodology provides for a ranking of each development based on its potential risk to the community and the environment. The higher the risk, the higher the ranking and the potential compliance actions that will be targeted by the Council, in accordance with this Policy. Council has developed an operational procedure to support this approach.

The risk assessment process is an on-going process whereby proponents may move up and down the ranking scale over time based on environmental performance, compliance with conditions and the stage of the project. This approach promotes voluntary compliance by reducing regulatory burden on the projects with a lower risk and directs council's resources to more high-risk projects.

Council also aims to provide education to the community and commercial operators about compliance, enforcement and regulatory requirements. This



education should be delivered proactively e.g. prior to a 'blitz' or when new legislation is released.

Education may include providing information on Council's website, letters, pamphlets, newsletters, media releases, workshops, webinars and digital tools. Education may be given after alleged breaches occur but does not prevent other enforcement action occurring.

5.2 Reactive Compliance Activities

Council will deal with all complaints and customer requests in accordance with the Council's Complaints and Customer Requests Management Policy. Any complaint or customer request that is determined to result in a non-compliance or potential breach, the issue will be managed in accordance with this document.

5.3 Powers of Council Officers

Council investigation officers have various powers to conduct site inspections and audits on a proactive basis, or to investigate issue-specific potential non-compliances or breaches of the Act following a complaint, incident or other notification process.

Officers have the power to enter and search premises, conduct interviews, obtain information and records, and require persons to answer questions.

The tools that investigation officers use to monitor compliance and detect non-compliances include:

- Notified on-site inspections
- Audits
- Sampling
- Spot checks without warning
- Issue specific inspections
- Community feedback and
- Investigations and reports from other agencies or regulatory authorities.

Where a potential breach or non-compliance is identified, the Council will conduct an investigation to obtain the necessary evidence to establish whether a breach has occurred and the facts surrounding the incident or non-compliance.

Only council staff with appropriate delegation from the General Manager can undertake investigations or compliance and enforcement action in relation to this Policy.

5.4 Managing Breaches or Non-compliances

Council's commitment to the management of non-compliance is to be:

- Accountable and transparent
- Consistent
- Proportional and



- Timely.

A number of elements are required to be taken into consideration when determining the appropriate course of action for the non-compliance and any enforcement of a regulatory matter, including:

- The severity of the offence or breach; this would include the extent, nature duration magnitude of the breach and whether the breach is continuing
- The impact of the breach to harm or potentially harm the natural or built environment, health and safety or amenity of the locality and community
- Is the matter within the jurisdiction of Council
- The openness, honesty and cooperation demonstrated by the alleged offender
- The difficulty and resources expended by the Council in investigating and proving the elements of the particular offence or the type of offence
- The efficiency and cost to the Council of the compliance and enforcement option that is used
- Is the enforcement action required to achieve the objectives of the relevant laws including Acts, regulations, environmental planning instruments, development control plans, the Building Codes of Australia or relevant standards
- Whether the person/s who committed the breach should have been aware of their obligations because they have:
 - Particular knowledge e.g.: a builder or company that regularly carries out work and is generally aware of the relevant Council or other requirements
 - Received a previous warning or
 - Been subject to previous formal legal action.
- What would be in the public interest
- Whether sufficient evidence has been taken
- The proportionality of the selected enforcement action so that the action will not be unduly harsh or oppressive
- Any previous precedents or the setting of a precedent by not taking enforcement action
- The time period elapsed since the offence or breach took place, statutes of limitations and
- The effective and available use of resources within Councils goals, having regard to the circumstances of the breach or offence.

On completion of an investigation, the facts and evidence collected are analysed, evaluated and used to determine the appropriate regulatory response or action. Types of responses for the significance of the breach available to the Council are provided in **Figure 5-1**.



Figure 5-1 Escalating regulatory response to a breach

5.5 Risk Rating and Response Time

The investigating officer will determine the response time and enforcement options to be used based on the level of risk. Priority will be given to matters which have a risk rating of extreme or high. This is calculated by taking into consideration the nature and seriousness of the breach. Refer to **Table 5-1** for appropriate council response times.

The main categories of relevance to Council compliance functions are:

- Risk to people (human safety and wellbeing)
- Risk to the environment
- Risk to Council's reputation
- Legal and financial risk and
- Risk to Councils capacity to deliver services.

Table 5-1 Risk Rating and Response Time

| Risk Rating | Risk Classification | Response Time |
|-------------|--|----------------------|
| Extreme | Immediate pollution incident or immediate public health or safety risk | Immediate |
| High | Serious pollution incident or other serious incident where the environment or public health and safety is at immediate risk | Within 24 – 48 Hours |
| Medium | Has the potential to result in a pollution incident or where the environment or public health and safety is likely to be at risk | Within 7 – 14 days |
| Low | Minor matters where there is no immediate adverse health or safety risk | Within 30 days |



5.6 Discretion

Council has discretion in determining whether or not enforcement action or the type of enforcement action should be taken in relation to a particular matter having consideration to the matters outlined in **Section 5.4**.

Planning NSW Practice note – Exercising Discretion explains this power:

The Macquarie Dictionary defines discretion as the “power or right of deciding, or acting according to one’s own judgement; freedom of judgement or choice.” The Concise Oxford adds “... absolutely or within limits”. This means Council can choose whether or not to take enforcement action as long as it’s within its limits of governing legislation and the principles of administrative law are followed.

The NSW Ombudsman’s publication, “Good conduct and administrative practice” provides the principles of administrative law which proper discretion should use. These principles include:

- *exercising powers lawfully and reasonably*
- *considering relevant material and basing decisions on material that can be logically demonstrated*
- *not considering irrelevant facts*
- *not acting under a dictation or inflexibly applying a policy*
- *only using powers for their proper purpose*
- *giving reasons for decisions*
- *avoiding actual or apprehended bias*
- *giving affected parties the right to be heard and*
- *acting with integrity, competence, tolerance and in the public interest.*

5.7 Escalations of Enforcement Options

Escalation is the increase in intensity of the enforcement action chosen. Escalation of enforcement options can occur when:

- Matters aren’t resolved in the timeframe given
- The previous enforcement action has failed to cease the offence or rectify the matter or
- When a person reoffends.

For example if a warning letter does not achieve the desired response, it may be appropriate to make an Order or to seek an Order from the Court; or if an Order is not complied with it may be appropriate to bring forward enforcement or prosecution proceedings (refer to **Figure 5-1**).



5.8 Rights of Appeal

5.8.1 Penalty Infringement Notice (PIN)

If the person chooses they can make representations against a Penalty Infringement Notice directly to the State Debt Recovery Office. A person may wish to elect to have the matter heard in court.

Representations seeking a review of a PIN may be made to the Council officer who issued the PIN. The review decision will be made by a more senior officer than the officer who issued the PIN. Council will only withdraw a PIN directly if subsequent evidence identifies that the PIN was issued unlawfully.

5.8.2 Orders

The legislation in which an order is made contains provisions for a person to lodge a formal appeal against the order in the Local Court, the Land & Environment Court or Administrative Tribunal within a specified timeframe. The appeal provisions are specified in the order.

5.9 Role of council where there is a private certifier

Council retains its regulatory role and enforcement powers where a private certifier has been appointed the Principal Certifying Authority (PCA). However, if a private certifier is appointed the PCA, it is not council's responsibility to ensure building and construction compliance.

Private certifiers have limited enforcement powers as the PCA. They have the power to issue a notice of intention to issue an order to the owner or builder to comply with the conditions of consent or rectify any breaches. A copy of any notice of intention issued by a private certifier must be provided to council for assessment as to whether council will enforce the notice by issuing an order.

Council and private certifiers will work together to resolve any issues when they arise to achieve compliance with the development consent or complying development certificate. Council staff will take steps to ensure individuals are clear about which agency performs which role.

5.10 Role of Councillors in enforcement

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

Individual Councillors are not delegated to direct council staff in their day-to-day activities. Councillors can help individuals who raise concerns with them by satisfying themselves that council's policies are being carried out correctly, however they cannot ignore or alter a policy in order to satisfy the demands of special groups.

The general manager may present certain decisions to be ratified by the elected council if this is necessary or desirable, and the Councillors may also have the



right to call for a report about particular issues to a council meeting.

5.11 Delegations

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

6 Relevant Legislation

- *Local Government Act, 1993*
- *Environment Planning and Assessment Act, 1979*
- *Protection of the Environment Operations Act, 1997*
- *Biodiversity Conservation Act, 2016*
- State Environmental Planning Policy (Exempt and Complying Development Codes), 2008
- *Plumbing and Drainage Act, 2011*
- *Companion Animals Act, 1998*
- *Roads Act, 1993*
- *Public Health Act, 2010*
- *Swimming Pools Act, 1992*
- *Food Act, 2003*
- *Impounding Act, 1993*
- *Road Rules, 2014*

Including the various Regulations made under the above Acts.

7 Document Information

Related documents and reference information in this section provides a single reference point to develop and maintain site compliance information.

7.1 Related Documents

Related documents, listed in **Table 7-1** below, are internal documents directly related to or referenced from this document.

| Number | Title |
|-----------|---|
| POL/40007 | Complaint Handling Policy |
| POL/40008 | Unreasonable Complainant Conduct Policy |
| POL/10062 | Environmental Noise Policy |
| POL/6013 | Legislative Compliance Policy |
| POL/10015 | On-Site Sewage Management Strategy |



| Number | Title |
|------------|---|
| | Development Compliance Risk Assessment Procedure |
| | Development Compliance Officer Guidelines |
| SOP 91 | Food Safety Compliance and Enforcement Procedure – Reviewed February 2013 |
| SOP 87 | Food Complaint Procedure |
| SOP 94 | Nuisance Dog Complaint Procedure |
| SOP 95 | Barking Dog Complaint Procedure |
| POL/9008.2 | Integrated Risk Management Policy |

Table 7-1 – Related documents

8 Responsible Officer / Policy Owner

Ownership of this policy rests with the Manager Development & Environmental Services.

9 Responsibilities

| Parties or Persons | Responsibilities |
|--|--|
| Manager Development & Environmental Services | <ul style="list-style-type: none"> Ensuring the document is maintained and reviewed according to the documents requirements. Ensuring the resources are allocated to effectively undertake all aspects of this document |
| Development and Environmental Services Staff | <ul style="list-style-type: none"> Conduct compliance activities and enforcement actions in accordance with the requirements of this document. |

10 Approval

As per cover sheet.

11 Monitoring

This policy will be monitored by the Manager Development & Environmental Services to ensure compliance.



12 Review Date

This policy, once adopted, is to remain in force until it is reviewed by Council. This policy is to be reviewed approximately every two (2) years to ensure that it meets legislative requirements.

13 Last Review Date

This policy was last reviewed on 20 May 2020.

14 Record Keeping, Confidentiality and Privacy

This policy is to be made available for public viewing as required under the *Government Information (Public Access) 2009, NSW*.

15 Breaches and Sanctions

Any breaches of this Policy will be referred to the General Manager for appropriate action.

16 Document History

The below table provides a summary of changes and amendments to this document.

| Version. | Date Amended | Author | Comments (e.g. reasons for review) |
|----------|--------------|------------|--|
| 4 | May 2022 | M Crawford | <ul style="list-style-type: none">• Biennial review.• Updated position titles and dates as relevant |

