

1. POLICY OBJECTIVES

- 1.1 The intent of this policy is to establish clear guidelines and protocols for Council staff in the management of Council's regulatory activities.
- 1.2 It provides workable guidelines on:
 - responding to reports alleging unlawful activity
 - assessing whether reports alleging unlawful activity require investigation
 - deciding on whether enforcement action is warranted
 - options for dealing with confirmed cases of unlawful activity
 - taking further action such as issuing an appropriate penalty or taking legal action.
 - implementing shared enforcement responsibilities.
- 1.3 The policy also provides advice and guidance on:
 - the role of the Principal Certifying Authority and
 - the role of Councilors in enforcement.

2. BACKGROUND

- 2.1 Councils Regulatory responsibilities relate to actual unlawful activity as well as failure to take action (in order to be compliant with certain legal requirements). Council officers are often required to make decisions and use discretion about appropriate enforcement action when non-compliant issues are identified.
- 2.2 Council also has a responsibility under Section 8 of the Local Government Act 1993 to ensure that its regulatory activities are carried out in a consistent manner and without bias.
- 2.3 Council's regulatory and enforcement actions should be exercised to ensure the health, safety, welfare and environmental protection of all stakeholders including residents, visitors, workers and business operators. All stakeholders should have confidence in the decision making and internal review processes.
- 2.4 In order to satisfy these needs this Policy has been developed and is broadly based on the "Model Policy" prepared for Local Councils by the NSW Ombudsman. Council supports and welcomes the positive assistance of the community in reporting issues of concern and undertakes to work collaboratively with the community to promote the benefits of compliance as a way of sustaining a safer quality of life for all.
- 2.5 This policy distinguishes between a 'report alleging unlawful activity' and a 'complaint'.

For the purposes of this policy, a report alleging unlawful activity is where an individual expresses concern in relation to alleged unlawful activity, or they request service from Council about such matters. Council considers that a response or resolution to a report alleging unlawful activity is explicitly or implicitly expected by the individual, or may be legally required.

A complaint is where an individual expresses dissatisfaction about Council services, staff or the handling of a complaint. Therefore, a complaint may arise where an individual claims that Council staff have failed to take action in relation to a report alleging unlawful activity. A complaint will be recorded separately and responded to in accordance with Council's Complaints Management Policy and procedures.

- 2.6 The spirit of this Policy is to use a graduated approach to enforcement action, for example the issue of a warning letter, which if not successful in resolving the issue may be followed by statutory Notices and Orders and finally some form of enforcement proceedings either via a penalty notice or Court action if compliance cannot be achieved by any other method.
- 2.7 The Policy also recognises in some situations the gravity of the incident or other circumstances determines that an escalated approach is not appropriate and immediate regulatory action is required e.g. where an activity is or is likely to result in a significant public health or safety risk, or is or likely to cause environmental harm. Other offences such as parking matters and certain development consent breaches such as hours of operation may be dealt with using penalty notices due to the transient nature of the offence and the impracticality of using notices and orders to deal with the issue.
- 2.8 Enforcement Guidelines and Procedures assist officers when determining the most appropriate enforcement actions. This documentation facilitates a consistent approach for departments with regulatory responsibilities and will ensure the objectives of the Enforcement Policy are delivered.

3. APPLICABILITY

Purpose and Scope

- 3.1 This policy provides information for all internal and external stakeholders and interested parties about Council's position on compliance and enforcement matters in the local government area.
- 3.2 The purpose of this policy is to provide structure for consistency and transparency in decision making and to facilitate a proportional approach to compliance and enforcement. It is also intended to assist Council staff to act promptly, effectively and consistently in response to allegations of unlawful activity.
- 3.3 This policy outlines matters to be considered at the various stages of the enforcement process from the receipt and investigation of reports alleging unlawful activity, through to what enforcement option Council will choose and whether to commence criminal or civil proceedings.
- 3.4 In certain circumstances Council will have shared enforcement responsibilities with other regulatory authorities. This policy sets out a collaborative and cooperative approach to such matters. Advice and guidance is also provided on the role of Council in building and construction compliance matters where there is a private certifier and the role of Councillors in enforcement.
- 3.5 Responsible Council staff are not limited by this policy in their use of discretion and exercise of official functions. The full circumstances and facts of each case need to be considered and a decision made on the merits.
- 3.5.1 All employees who deal with alleged unlawful activities and the enforcement of relevant legislation are responsible for implementing this Policy.

- 3.6 This Policy applies to all areas where Council has a compliance and enforcement role under the various Acts and Regulations, it includes but is not limited to:
- abandoned vehicles
 - development and building control
 - pollution control
 - environmental health
 - public health and safety
 - sewage management
 - septic systems
 - control over animals
 - swimming pool audits
 - food safety
 - fire safety
 - tree preservation
 - parking control
 - any other functions which Council is the Appropriate Regulatory Authority (ARA).
- 3.7 Any enforcement action will be in accordance with this Policy, relevant NSW legislation and the State Debt Recovery Office (SDRO) Guidelines.
- 3.8 Whilst it is intended the principles in this Policy will have general application, there may be cases where the particular circumstances justify departure from these principles.
- 3.9 In any situation where an officer considers taking action which varies from the Policy and associated guidelines/procedures, the officer will discuss the reasons for the variance with the Team Leader/Manager and will document and implement the agreed course of action.
- 3.10 This Policy applies to Council's enforcement functions and supports the concept of an escalated and proportionate approach to most non-compliant issues except for examples such as parking and traffic matters.
- 3.11 While this Policy covers all matters to be taken into account when exercising discretion about compliance and enforcement matters, it recognises that Rangers who work with traffic and parking matters are faced with different time frames and decisions which need to be made on the spot.
- 3.12 It is Council's Policy that Rangers will enforce the Australian Road Rules and will carry out traffic and parking duties in a fair, equitable and consistent manner with a zero tolerance approach in school zones.
- 3.13 Zero tolerance is the strict enforcement of the rules.
- 3.14 Other offences such as certain development consent breaches e.g. hours of operation and some environmental offences (e.g. illegal burning of waste/plastics) may be dealt with using penalty notice due to the transient nature of the offence and the impracticality of using notices and orders to deal with the issue.

4. GUIDELINES

Compliance and Enforcement Principles

4.1 The following are the principles that underpin Council actions relating to compliance and enforcement:

Principle	Action
Accountable and transparent	<ul style="list-style-type: none"> • acting in the best interests of public health and safety and in the best interests of the environment • ensuring accountability for decisions to take or not take action • acting fairly and impartially and without bias or unlawful discrimination • providing information about compliance and enforcement priorities and reasons for decisions to improve understanding and certainty and promote trust by the regulated community • ensuring meaningful reasons for decisions are given to all relevant parties, particularly when there is a departure from this policy • acting on any complaints or concerns about the conduct of compliance officers in accordance with Council's complaints management policy and procedures advising people and organisations subject to enforcement action of any avenues available to seek an internal or external review of a decision.
Consistent	<ul style="list-style-type: none"> • ensuring all compliance and enforcement action is implemented consistently • encouraging reports about possible unlawful activity by acting reasonably in response to the circumstances and facts of each matter.
Proportional	<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.
Timely	<ul style="list-style-type: none"> • ensuring responses to reports alleging unlawful activity and decision making in relation to those is timely

Procedural Fairness

4.2 Council is committed to natural justice and acting fairly in all aspects of the implementation of this Policy. In order to achieve this outcome Council will:

- 4.2.1 provide an opportunity for an alleged offender to provide an explanation. However there will be situations such as parking enforcement and other circumstances considered to represent a serious risk to public safety or the environment or the like which would preclude this opportunity;

- 4.2.2 give due consideration to any written submission made by an alleged offender made either directly to Council in a representation period or via another agency e.g. State Debt Recovery Office if a penalty notice has been issued. Any requests or representations seeking reconsideration or waving of a penalty infringement notice are required to be made directly through The NSW Office of State Revenue. Requests to waive penalty infringement notices by individuals cannot be made directly to Council.
- 4.2.3 make appropriate enquiries, investigations and searches prior to making an enforcement decision;
- 4.2.4 establish appropriate procedures to avoid an enforcement decision being influenced by an actual, potential or perceived conflict of interest;
- 4.2.5 implement procedures to ensure pertinent information is provided to a complainant and alleged offender, subject to maintaining appropriate confidentiality provisions;
- 4.2.6 act without bias and within statutory time frames.

Code of Conduct

- 4.3 Council Officers carrying out their duties including the consideration of some form of enforcement action will have due regard to the contents of Council's Code of Conduct which is available on Council's website;
<http://www.wollondilly.nsw.gov.au/assets/Documents/Council/Meetings-and-Forums/Code-of-Conduct-Current.PDF>
- 4.4 It is Council's expectation all inspections will be carried out in a respectful, helpful manner while being attuned to any language or cultural considerations. All Officers should:
 - 4.4.1 not permit personal views, or prejudices to influence their attitude towards any person or duty required to be undertaken;
 - 4.4.2 respond to any reasonable request or lawful direction of any supervisor or manager of the Council;
 - 4.4.3 not commit any act which constitutes dereliction of duties;
 - 4.4.4 not commit any act that brings Council into disrepute;
 - 4.4.5 not publicly criticise Council in any way that is demeaning, defamatory or brings disrespect, or embarrassment to Council;
 - 4.4.6 not publicly criticise any Council employee in any way, which is demeaning, defamatory or brings disrespect to Council;
 - 4.4.7 not obey any order or direction which is contrary to the law;
 - 4.4.8 report any such unlawful order to the attention of an immediate supervisor, manager or, if required the General Manager;
 - 4.4.9 not solicit or receive any gift that is contrary to Council's Code of Conduct.

- 4.5 Council Officers who are accredited under the Building Professionals Board scheme must also satisfy the code of professional conduct requirements of such scheme.
- 4.6 Each officer should be mindful of any constraints that may have been placed on their “Delegations” by Council and be equipped with their specific authorisation (with photograph) under the particular Acts.

Conflict of Interest

- 4.7 If a situation arises where an officer believes a perceived or actual conflict of interest exists, the matter will be referred to the supervisor.

Disclosure of Interest

- 4.8 Council Officers will respect the privacy and confidentiality of information received, however due to its statutory obligations and other requirements, confidentiality cannot always be guaranteed.
- 4.9 A person’s identity who has made an allegation of illegal activity may be disclosed where:
- 4.9.1 access to the information is permitted under legislation including but limited to the Government Information (Public Access) Act 2009;
 - 4.9.2 legal action is commenced and the information is disclosed in evidence;
 - 4.9.3 the person consents to the disclosure of the information;
 - 4.9.4 the principles of natural justice dictate that information be disclosed to the person who is the subject of the request for action, which may enable the complainant to be identified;
 - 4.9.5 the Council is of the opinion that disclosure of information is necessary to effectively investigate the matter.
- 4.10 Council Officers will also observe the information protection principles in the Privacy and Personal Information Protection Act 1998 which provides in certain circumstances for information to be shared with other public sector agencies for law enforcement purposes.
- 4.11 Reasons for decisions regarding compliance and enforcement action will be made available, unless to do so would cause a breach of the law. Reasons may not be given in any case where the information may cause harm to an informant, witness, or the alleged offender, nor in circumstances which would significantly prejudice the administration of justice.
- 4.12 Council’s Rangers have access to external electronic databases including the NSW Companion Animals Register and the Roads and Maritime Services Vehicle Ownership Register. Neither of these are registers to which the general public or other Council Officers have access. The Information on both registers is protected under the relevant Acts. Rangers are subject to routine external auditing in regard to the use of databases.
- 4.13 Some officers have access to the following information:
- State wide Electronic Database of Residential Swimming Pools
 - Department of Fair Trading Boarding Houses Register.

Investigating Alleged Unlawful Activity (Receiving and Responding to Customer Request)

- 4.14 Council's expectation is that all customer requests will be electronically recorded and dealt with within set customer service standards and having regard to the seriousness of the issue and other priorities.
- 4.15 All reports alleging unlawful activity will be initially acknowledged through Council's Customer Requests system within 7 days and within 7-14 days appropriate action taken in accordance with this Policy and the person making the allegation also advised.
- 4.16 All requests for action will be investigated unless:
- 4.16.1 Council is not the Appropriate Regulatory Authority;
 - 4.16.2 the matter has already been actioned and resolved;
 - 4.16.3 insufficient information has been provided in order to adequately identify a property or issue;
 - 4.16.4 the request for action is premature and relates to an unfinished aspect of work still in progress that has development approval;
 - 4.16.5 a private Principal Certifying Authority is responsible for monitoring compliance with the conditions of development consent. Council will work cooperatively with relevant agencies and Private Certifiers to achieve compliant outcomes;
 - 4.16.6 the activity is determined to be lawful and does not require an approval;
 - 4.16.7 a Development Approval, Complying Development Certificate or any other lawful authority has been granted for the work and the request for action does not relate to a non-compliance issue;
 - 4.16.8 the request for action is trivial, frivolous or vexatious in nature;
the complainant is solely seeking a monetary refund from a third party;
 - 4.16.9 the request for action relates to a civil matter or dispute (private matter between neighbours).
 - 4.16.10 anonymous requests for action unless an imminent serious threat to the environment and public health and safety.
- 4.17 In situations where Council is the Appropriate Regulatory Authority, the relative seriousness of each matter will determine the priority attached to a particular request for action.
- 4.18 Council will try to use the quickest and most informal option to deal with unlawful activity wherever possible unless there is little likelihood of compliance with such options. Council staff will use discretion to determine the most appropriate response to confirmed cases of unlawful activity and may take more than one approach. Any enforcement action taken by Council will depend on the full circumstances and facts of each case, with any decision being made on the merits.
- 4.19 At all times, Council's key concerns are:

- to prevent or minimise harm to health, welfare, safety, property or the environment
- to influence behaviour change for the common good and on behalf of the community.

4.20 As a guide the following categories can be applied:

Alleged non-compliant activities ranked by order of worst case consequence

Legionella control – regulated systems
Fire Safety
Dangerous Structure
Dogs attacking\ Dangerous Dogs
Unsecured loads
Swimming pool – safety (fence\barrier)
Food Safety
Livestock Straying
Discharge waste to water body
Tree clearing
Demolition of heritage item
Asbestos removal
Major earthworks or landfill
As directed by Council Managers

Major non-compliance with approval including tattooing, botox and piercing injections
Skin penetration practice
Property squatter, abandoned unsecured property
Dogs Straying
Parking breach – safety issue
Public Place – Obstructions, Abandoned Articles or Building Materials
Public Swimming – water quality
Sewer discharges
Public Place – Litter
Public Place – Rubbish Dumping
Air Pollution
Parking breach – general
Unauthorised building works in progress
On Site Sewage Management Systems
Public Place – Advertising Signs Structures Oversized.
Overgrown Land/Vegetation
Unauthorised Land Use - General
Rubbish accumulation
Land Pollution
Noise Pollution Commercial and Industrial
Unauthorised Brothel
Public Place – Abandoned Vehicles
Vehicles in Parks/Reserves
Land Use – Signs in commercial zones (no safety or heritage impacts) (** see below)
Land Use – Living in Sheds/Garages/Caravans (**see below)
Unauthorised building works completed (**see below)
Land Use – Home Occupation/Business/Industry
Animal & Bird Control (Other than dogs and cats)
Stormwater Nuisance
Domestic noise pollution
Domestic Odour nuisance
Dogs Barking
Dogs defecating in Public Places (ownership known)
Land Use – Dividing Fences (possible referral to the Local Land Board)
Hair/Skin/Beauty – no skin penetration
Public Place – Buskers, Spruikers, Stalls

- * This is not an exhaustive list Compliance audits may affect order of priority.
 ** Matters raised by external complainants will be given priority unless it is deemed a serious public health or environmental risk.

Initial triaging response time
Extreme – within working day
High – Within 24 hours
Medium – within 7-14 days*
Minimal or no action

Anonymous Requests for Action

- 4.21 Anonymous requests for action may not be able to be investigated. The decision to investigate includes but is not limited to the subject and seriousness of the matter – i.e. whether the matter is a serious public health or environmental issue; the likely reliability of the request for action, ability to access further information, available staff resources and Work Health and Safety responsibilities.
- 4.22 When an anonymous request for action is investigated, an appropriate record of the investigation will be made.

Fraudulent Requests for Action

- 4.23 Fraudulent request for action are where a person lodges a request with Council in someone else's name without that persons knowledge or where the nature of the request is untrue. Such request will be treated as vexatious unless a valid basis for such a request can be established. The decision to investigate such a matter will be based on the same criteria as for anonymous request.

Unreasonable Complaint Conduct

- 4.24 Council has an obligation to use resources efficiently and effectively. While Council acknowledges a customer's entitlement to make requests, it reserves the right to cease responding to customers that continually exhibit unreasonable customer behaviour including:
- 4.24.1 requests that place unreasonable demands on Council's staff;
 - 4.24.2 requests that place unreasonable demands on Council's resources;
 - 4.24.3 unreasonable persistence;
 - 4.24.4 unreasonable lack of cooperation;
 - 4.24.5 requests for action based on unreasonable arguments;
 - 4.24.6 abusive and derogatory behaviour towards Council staff;
 - 4.24.7 requests for action which are proven to be vexatious or retaliatory.
- 4.25 In the context of the above situations officers will follow Council's Policy on Dealing with Unreasonable Customer Conduct and its Customer Service Charter.

Consultation with other Agencies

- 4.26 There will be situations such as in the investigation of a request for action or the like where Council has no legal or geographical jurisdiction or operational responsibility and consequently the matter should be referred to the relevant agency without delay.
- 4.27 Agencies may include but not be limited to, the NSW Police Services, NSW Department of Planning and Infrastructure, Local Land Services, NSW Office of Fair Trading, NSW Department of Primary Industry, NSW WorkCover, NSW Environment Protection Authority, NSW Food Authority, NSW Health, the Building Professional Board, NSW Roads and Maritime Services, Fire and Rescue NSW.
- 4.28 Council will consult with the responsible agencies to facilitate a coordinated and constructive compliance approach and keep the complainant informed.

Private Certifiers

- 4.29 In terms of Council's Development Compliance role, requests for action are received from time to time in regard to various matters on building construction sites where Council is not the Principal Certifying Authority.
- 4.30 In such situations in the first instance the complainant should be encouraged to contact the Principal Certifying Authority directly to ensure all relevant details are accurately communicated to the Principal Certifying Authority.
- 4.31 Alternatively, should an external observation by a Council Officer of a building site which is under the jurisdiction of a Principal Certifying Authority (not being Council) disclose significant non-compliant issues, Council will initially draw the matter to the attention of the Principal Certifying Authority.
- 4.32 If a request or observation relates to an urgent matter involving a life threatening situation or significant environmental damage or an on-going matter where valuable evidence may not be available if an immediate response is not commenced, a Council Officer may undertake an immediate investigation to assess the seriousness of the situation.
- 4.33 If the request is substantiated, Council will consider action in accordance with this Policy and the Principal Certifying Authority informed of any action taken by Council.
- 4.34 In any situation where it is considered a Principal Certifying Authority has acted incorrectly, improperly and/or unprofessionally a report may be forwarded to the Manager recommending referral of the matter to the Building Professionals Board.
- 4.35 Relevant factors for determining if a matter should be referred to the Building Professionals Board are:
- a) the seriousness of the failure to act professionally;
 - b) any previous history of complaints;
 - c) the level of cooperation from the Principal Certifying Authority to rectify the problem/s;
 - d) the adequacy of changes made by the Principal Certifying Authority to procedures or practices to ensure that future problems will be minimized.
- 4.36 Examples of matters that might be referred to the Building Professionals Board include but are not limited to:
- a) significant departure from the development consent and the PCA does not appear to be taking appropriate action to address the issue;
 - b) the persistent failure to submit relevant certificates or other documentation to Council within the specified time period;
 - c) Complying Development Certificates that do not meet the development standards for the relevant State Environmental Planning Policy.

Building Certificates

- 4.37 Council recognises that persons who may have carried out unlawful building works may, as an option apply for approval of a development application. If this option is taken an owner will need to apply for a Building Certificate under section 149D of the Environmental Planning and Assessment Act to retain and regularise the structure. If a building certificate is issued, Council cannot ask for demolition or alterations unless after 7 years of fair wear and tear.
- 4.38 It is Council's policy however that such applications should not be encouraged to justify unlawful works. Irrespective of whether or not a Building Certificate is applied for, Council may take action against a person who carried out unlawful works
- 4.39 The action may include the issuing of a penalty notice or in conjunction with criminal proceedings, where it is considered appropriate and necessary for punitive action to also be taken, having regard to the restriction provisions provided under Section 127 (7) of the EP&A Act.
- 4.40 Building Certificate applications to support unlawful building works will be expected to provide the same level of details in plans, certificates, specifications etc. as would be required for assessing an Application for Development, a Construction Certificate, a Complying Development Certificate and/or an Occupation Certificate.

Role of Councillors in Enforcement

- 4.41 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.
- 4.42 Individual Councillors do not have the right to direct Council staff in their day-to-day activities. Councillors can help individuals who raise concerns with them by satisfying themselves that their 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.
- 4.43 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.

Proactive Compliance Monitoring

- 4.44 In addition to responding to requests for action and enquiries about alleged unlawful activity Council also provides a number of proactive compliance programs around high risk regulatory areas. These areas include but are not limited to:
- Food premises inspections
 - Swimming pool audit program
 - Public swimming pool water quality monitoring
 - Onsite sewage management systems (septic tanks)
 - Fire safety
 - Sedimentation and erosion control
- 4.45 Compliance action may be initiated where non-compliance is identified in the course of a proactive compliance inspection, in which case the principles outlined in this policy will also be applied.

The Decision Process – Taking Enforcement Action

4.46 When deciding whether to take enforcement action in relation to a confirmed case of unlawful activity, Council will consider the full circumstances and facts of the matter and the public interest. The following common considerations will assist Council staff in determining the most appropriate response in the public interest:

Considerations about the alleged offence and impact:

- The nature, extent and severity of the unlawful activity, including whether the activity is continuing;
- The harm or potential harm to the environment or public health, safety or amenity caused by the unlawful activity;
- The seriousness of the breach, including whether the breach is merely technical, inconsequential or minor in nature;
- The time period that has lapsed since the date of the unlawful activity.

Considerations about the alleged offender:

- Any prior warnings, instruction, advice that was issued to the person or organization reported or previous enforcement action taken against them;
- Whether the offence was committed with intent;
- Whether the person or organization reported has been proactive in the resolution of the matter and assisted with any Council requirements and instructions;
- Any mitigating or aggravating circumstances demonstrated by the alleged offender;
- Any particular circumstances of hardship affecting the person or organization reported.

Considerations about the impact of any enforcement action:

- The need to deter any future unlawful activity;
- Whether an educative approach would be more appropriate than a coercive approach in resolving the matter;
- The prospect of success if the proposed enforcement action was challenged in court;
- The costs and benefits of taking formal enforcement action as opposed to taking informal or no action;
- What action would be proportionate and reasonable in response to the unlawful activity;
- Whether Council is prevented from taking action based on earlier advice given, i.e. whether an estoppel situation has been created.

Considerations about the potential for remedy:

- Whether the breach can be easily remedied
- Whether it is likely consent would have been given for the activity if it had been sought
- Whether there is a draft planning instrument on exhibition that would make the unauthorized use legal.

Legal or technical issues:

- Where legal and/or technical issues are in question, Council staff will consider whether legal advice or professional advice from duly qualified staff or other experts should be obtained and considered. Council may also require a person subject to possible enforcement action to obtain professional advice in relation to issues of concern to Council for assessment as to whether further action is required.

Requirements of Council staff considering enforcement action

- Prior to taking enforcement action, Council staff will take into account the above considerations as well as the evidence gathered during their investigation. Council staff must 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. Enforcement action will not be taken purely as a response to the conduct of an individual such as persistent demands or threats.
- Council staff are required to maintain records about critical thinking and decision making processes in relation to reports alleging unlawful activity and any enforcement action, as well as records of interactions with relevant parties. Council staff will at all times adhere to Council’s internal approval processes prior to the commencement of any enforcement action.
- Council staff will take steps to ensure that any enforcement action is taken against the correct person or organization. Where there are multiple possible parties to an alleged unlawful activity, Council staff will be guided by legal advice in determining the appropriate persons to pursue.

Options for Dealing with Confirmed Cases of Unlawful Activity

4.47 Council will try to use the quickest and most informal option to deal with unlawful activity wherever possible unless there is little likelihood of compliance with such options. Council staff will use discretion to determine the most appropriate response to confirmed cases of unlawful activity and may take more than one approach. Any enforcement action taken by Council will depend on the full circumstances and facts of each case, with any decision being made on the merits.

At all times, Council’s key concerns are:

- To prevent or minimise harm to health, welfare, safety, property or the environment
- To influence behaviour change for the common good and on behalf of the community

The following enforcement options to be considered by Council are ordered to reflect an escalation in response that is proportionate to the level of risk, the seriousness of the confirmed breach or the need for a deterrent:

Level of risk	Enforcement options
Minimal or No Action	<ul style="list-style-type: none"> ▪ Take no action on the basis of a lack of evidence or some other appropriate reason ▪ Provision of information/advice on how to be compliant
Medium	<ul style="list-style-type: none"> ▪ Negotiating with the person to obtain voluntary undertakings or an agreement to address the issues of concern ▪ Issuing a warning or a formal caution ▪ Issuing a letter requiring work to be done or activity to cease in lieu of more formal action ▪ Issuing a notice of intention to serve an order or notice under relevant legislation, and then serving an order or notice if appropriate and may include the issuing of a penalty notice.
High	<ul style="list-style-type: none"> ▪ Issuing a penalty notice ▪ Carrying out the works specified in an order at the cost of the person served with the order

Level of risk	Enforcement options
Extreme	<ul style="list-style-type: none"> ▪ Commence legal proceedings for an offence against the relevant Act or Regulation ▪ Seeking an injunction through the courts to prevent future or continuing unlawful activity ▪ Commence legal proceedings for an offence against the relevant Act or Regulation

(NB: this is a guide only and each issue is assessed on its merits and circumstances. Some offences such as parking may be dealt with using penalty notice due to the transient nature of the offence and the impracticality of using notices and orders to deal with the issue)

Following up enforcement action:

All enforcement action will be reviewed and monitored to ensure compliance with any undertakings given by the subject of enforcement action or advice, directions or orders issued by Council. Reports alleging continuing unlawful activity will be assessed and further action taken if necessary. If the unlawful activity has ceased or the work has been rectified, the matter will be resubmitted for follow up action to ensure ongoing compliance outcomes are met. Should initial enforcement action be found to have been ineffective, Council staff will consider other enforcement options.

Taking Legal Action

- 4.48 The Council and its delegated staff will be guided by legal advice in deciding whether to commence criminal or civil proceedings and will consider the following;
- 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
 - Whether the public interest warrants legal action being pursued

Whether there is sufficient evidence to establish a case to the required standard of proof

Council considers the decision to take legal action a serious matter, and as such will only initiate and continue proceedings once it has been established that there is admissible, substantial and reliable evidence to the required standard of proof.

The basic requirement of any criminal prosecution is that the available evidence establishes a prima facie case. The prosecutor is required to prove the elements of the offence beyond reasonable doubt.

In civil enforcement proceedings, Council will require sufficient evidence to satisfy the court that an actual or threatened breach has occurred on the balance of probabilities.

Whether there is a reasonable prospect of success before a court

Given the expense of legal action Council will not take legal action unless there is a reasonable prospect of success before a court. In making this assessment, Council staff will consider the availability, competence and credibility of witnesses, the admissibility of the evidence, all possible defenses, and any other factors which could affect the likelihood of a successful outcome.

Whether the public interest requires legal action to be pursued

The principal consideration in deciding whether to commence legal proceedings is whether to do so is in the public interest. In making this determination, the same factors to be considered when taking enforcement action apply (see Section 20).

The following considerations relate more specifically to the decision to commence legal proceedings and will assist Council and its delegated staff in making this determination:

- The availability of any alternatives to legal action
- Whether an urgent resolution is required (court proceedings may take some time)
- The possible length and expense of court proceedings
- Any possible counter-productive outcomes of prosecution
- What the effective sentencing options are available to the court in the event of conviction
- Whether the proceedings or the consequences of any resulting conviction would be unduly harsh or oppressive

Time within which to commence proceedings

Council staff must be aware of legislative time limits in which enforcement proceedings must be commenced. Sometimes legal action will be statute barred despite good evidence that unlawful activity has occurred.

Recovery of Fines and Legal Costs

Council's policy for recovery of costs in Courts is:

- a) To seek to recover fair and reasonable costs in all matters where costs are recoverable, either by consent or by order of the court;
- b) To seek to recover the penalty imposed by the court where such penalty is imposed;
- c) Consider any recommendations of its legal representative/s to accept a lesser amount than the full legal cost if the acceptance will result in Council not incurring further and unnecessary legal costs.

Community Awareness

4.49 Council will take every opportunity to promote ongoing community awareness in regard to compliance/enforcement. This may include but is not limited to, website references, the publication of press releases and the periodic inclusion in any community newsletters with a view to improving community confidence and awareness.

4.50 Awareness initiatives that focus on residents, developers and business operators will adopt an educational approach designed to engage and promote:

- 4.50.1 an awareness of the spirit and content of this Policy;
- 4.50.2 the minimisation of non-compliance by improving the knowledge of legislation within the community;
- 4.50.3 the benefits of complying with the legislation and the consequences of not complying.

5. RESPONSIBILITY/ACCOUNTABILITY

- 5.1 This policy applies to the following Council officers:
 - 5.1.1 Manager – Compliance
 - 5.1.2 Team Leader – Compliance
 - 5.1.3 Compliance Officers
 - 5.1.4 Environmental Health Officers
 - 5.1.5 Rangers
 - 5.1.6 Animal Control Officers
 - 5.1.7 Parking Officers
 - 5.1.8 All of Council’s staff undertaking compliance activities.
- 5.2 The policy encompasses the entire Wollondilly Shire.

6. RELATED POLICIES/PROTOCOLS/CHARTERS

- 6.1 Complaint Handling Policy – GOV0054
- 6.2 Code of Conduct
- 6.3 Dealing with Unreasonable Customer Contact
- 6.4 Customer Services Charter
- 6.5 Enforcement Guidelines for Council’s - NSW Ombudsman
- 6.6 NSW Department of Planning Practice Note – Exercising Discretion
- 6.7 This Policy is principally based on the ‘Enforcement Guidelines for Councils, published by the Office of the NSW Ombudsman, June 2002.

7. RELATED PROCEDURES

- 7.1 Swimming Pool Audit Program

8. RELATED LEGISLATION

- 8.1 This policy applies in relation to compliance and enforcement of all NSW Legislation administered by Council, including Council staff delegated to initiate various levels of enforcement action is set out in Council’s Delegation Register. The legislation applicable to the delegations is as follows:

- 8.1.1 Australian Road Rules 2014
- 8.1.2 Local Government Act, 1993 (NSW)
- 8.1.3 Environmental Planning and Assessment Act, 1979 (NSW)
- 8.1.4 Protection of the Environment Operations Act, 1997(NSW)
- 8.1.5 Roads Act, 1993 (NSW)
- 8.1.6 Companion Animals Act, 1998 (NSW)
- 8.1.7 Noxious Weeds Act, 1993 (NSW)
- 8.1.8 Public Health Act, 2010 (NSW) 2010
- 8.1.9 Swimming Pools Act, 1992 (NSW)
- 8.1.10 Rural Fires Act, 1997
- 8.1.11 Food Act, 2003 (NSW)
- 8.1.12 Impounding Act 1993 (NSW)
- 8.1.13 Boarding Houses Act 2012
- 8.1.14 Contaminated Land Management Act 1997
- 8.1.15 Crown lands Act 1989
- 8.1.16 Fines Act 1996
- 8.1.17 Motor Dealers & Repairers Act 2013
- 8.1.18 Roads Regulations 2008
- 8.1.19 Building Professionals Act 2005
- 8.1.20 The regulations relating to the above Acts

9. ATTACHMENTS

- 9.1 Annexure 1
- 9.2 Annexure 2
- 9.3 Definitions

10. RESOURCES

- 10.1 Model Compliance and Enforcement Policy 2015 - NSW Ombudsman
- 10.2 NSW Department of Planning Practice Note – Exercising Discretion
- 10.3 The assistance of other NSW Councils with compliance and enforcement policies.

11. IMPLEMENTATION STATEMENT

11.1 To ensure this policy is implemented effectively, Council will employ a variety of strategies involving awareness, education and training. These strategies will be aimed at Councillors, staff and Council representatives and will involve:

11.1.1 The draft policy will be placed on public exhibition.

11.1.2 Information sessions will be conducted with the staff on the implementation of the draft policy.

12. POLICY HISTORY

12.1 Date First Adopted	16 August 2010
12.2 Most Recent Adoption	16 March 2015
12.3 Next Review Date	March 2016
12.4 Responsible Officer	Manager Compliance

Attachment 9.1

ANNEXURE 1

EXAMPLES OF MATTERS TAKEN INTO CONSIDERATION WHEN DETERMINING
APPROPRIATE REGULATORY ACTION AND ENFORCEMENT

Considerations	Comments/Examples
1. Does Council have sufficient evidence to prove the alleged offence?	To be able to implement any enforcement action, Council is required to possess sufficient evidence of the alleged offence (which can be substantiated in Court if required), including evidence of the person responsible for the offence to be successful in the event of a hearing or appeal.
2. Is the offence or breach of a technical or inconsequential nature?	<p>Consideration is to be given to the nature, extent and severity of the offence or breach and any material impacts upon the health, safety and amenity of the environment and community.</p> <p>Consideration should be given to the likely costs and benefits of any enforcement action where breaches are solely of a minor technical nature or resulting in no material impacts upon any other party or the environment.</p>
3. How long has the unlawful activity or breach been occurring and is enforcement action statute barred?	<p>The legislation may provide time limits in which to commence proceedings or take enforcement action.</p> <p>In addition, consideration should be given to the time which the offence or breach occurred and the 'reasonableness' of taking enforcement action if a significant time has lapsed since the time of the offence or breach.</p>
4. Is the matter subject to estoppel?	Estoppel is a legal rule which prevents a person from later denying something which may have previously been relied upon by another person. For example Council may not be able to take action if Council has contributed in some way to the person acting upon a reasonable expectation that no action would be taken or if a matter had previously been brought to Council's attention and no action was taken at the time.
5. Has the offence or breach affected the natural or built environment and/or amenity of the area?	Consideration should be given to the nature and extent of any actual or potential impact that the breach has or may have upon the natural or built environment, or upon the amenity of the locality and community.
6. Has the offence or breach affected or potentially affected the health, safety and well-being of the residents or community?	Offences or breaches which affect, or potentially affect, the health, safety and well-being of the residents or community would generally warrant affirmative and effective enforcement and remedial action.

<p>7. Can the matter be resolved by seeking and obtaining the relevant approval from Council (i.e. development consent or a Section 96 amendment to an existing consent)?</p>	<p>If the legislation enables the particular matter to be resolved by obtaining the relevant approval (i.e. a development consent or a Section 96 amendment to an existing development consent), it may be appropriate to allow a reasonable period for the person to seek the necessary consent/s from Council, prior to taking any enforcement action, such as the service of possible orders to demolish unauthorised works or commencement of legal proceedings.</p> <p>Consideration should also be given to all other relevant factors, in particular, any current impacts upon the community and environment, which require the matter to be remedied expeditiously.</p> <p>If appropriate, having regard to the circumstances of the case, Council may still be able to issue a penalty infringement notice or commence legal proceedings for the initial offence or breach.</p>
<p>8. Has the relevant approval (i.e. development consent or section 96 amendment to the existing consent) already been obtained from Council in relation to the particular breach or offence?</p>	<p>If development consent (or Section 96 amendment to an existing consent) has been obtained from Council in relation to the particular matter, Council would not be able to issue further Notices or Orders in relation to the subject matter.</p> <p>Council may (if it has not already done so), issue a penalty infringement notice/s or implement legal proceedings for the initial offence or breach, following consideration of the circumstances of the case and the nature and severity of the offence.</p> <p>However, if consent has been obtained from Council in relation to a previous breach (i.e. a section 96 application) and the matter was of a minor nature, with minimal impact, consideration would need to be given to the likelihood of success and the likely outcome of any possible enforcement action or legal proceedings for the initial offence.</p>
<p>9. Could the non-compliance or breach be easily remedied by the person responsible?</p>	<p>Generally, where appropriate, Council will attempt to ensure compliance by informal means, however, there is a need to consider and balance the public interest in enforcing the law. Consideration is also to be given to whether or not it is possible to remedy a breach and at what cost.</p> <p>In some cases, upon being advised of the regulatory requirements or breach, the responsible person may be pro-active and remedy the matter, rather than being subject to possible enforcement action.</p>
<p>10. Has the breach or unauthorised activity detrimentally affected a heritage item or the heritage.</p>	<p>Where applicable, relevant Council officers will be consulted in assessing the detriment to the natural or built environment and possible remedies.</p>

<p>11. Does the unauthorised work or activity comply with relevant criteria and Standards?</p>	<p>Consideration should be given to compliance with relevant criteria and Standards (i.e. Building Code of Australia and fire safety requirements) and the extent and suitability of evidence provided to confirm compliance.</p> <p>If relevant criteria and Standards are not satisfied, appropriate and affirmative enforcement action may be warranted.</p>
<p>12. What is the intent and importance of the regulatory requirements?</p>	<p>Regulatory requirements which aim to ensure the health, safety and well-being of the community are considered to be of paramount importance and any offences or breaches of this nature would generally warrant affirmative and effective enforcement action.</p>
<p>13. Would the enforcement action be in the public interest?</p>	<p>Public interest considerations include:</p> <ul style="list-style-type: none"> • Does the breach or unlawful activity affect the public interest (i.e. affect a number of people or the community generally), or does the breach primarily affect a private interest? • Would enforcement action be in the public interest or would it primarily benefit only a private interest? • Are there any circumstances of hardship applicable? • Would enforcement action by Council impact unreasonably on certain parties or population groups (i.e. disadvantaged or elderly residents)? • What other remedies are available to address the matter? For example, if a breach primarily affects a private interest, the affected party should seek alternative remedies, such as civil action or mediation (i.e. disputes regarding trespass, alleged damage to premises or encroachments).
<p>14. Does the person or corporation exhibit contrition for the breach or offence?</p>	<p>In some cases, it will be appropriate to have regard to the behaviour of the offender and their willingness to remedy the breach or prevent a recurrence of the problem.</p>
<p>15. Have any previous warnings, instructions or advice been provided to the person, which have not been followed?</p>	<p>If the investigation reveals that previous instructions, advice or a warning has been provided in relation to the particular matter, which has not been followed or complied with, a more formal enforcement approach is generally appropriate for any offences which have occurred.</p>

<p>16. Is it likely that the person would generally have been aware, or should have been aware, of the relevant regulatory provisions, requirements or offence?</p>	<p>When deciding whether to take an educative approach or enforcement approach, consideration should be given to the following matters:</p> <ul style="list-style-type: none"> • the reasonable likelihood that the person may have known or should have known the relevant requirements or rules, • level of contrition shown by the responsible person, • whether the parties have previously been advised of the regulatory requirements or provisions, • whether or nor any previous warnings or instructions have been provided, • the apparent level of intent shown by the responsible person.
<p>17. Is the cost of enforcing likely to be excessive having regard to the nature and impact of the offence?</p>	<p>Consideration should be given to the relative costs and benefits of taking formal enforcement action as opposed to taking informal action or an educative approach. Council's action should be commensurate with the seriousness of the breach and any impacts or potential impacts on other parties and the environment.</p>
<p>18. Is the particular requirement (i.e. condition of development consent) which has not been complied with unreasonable, ambiguous or ultra vires?</p>	<p>A condition that is unreasonable, ambiguous or ultra vires may be unenforceable and may preclude Council from taking enforcement action or issuing Orders or the like.</p>
<p>19. Does the legislation provide for representations or submissions to be made in the matter?</p>	<p>Certain legislation contains provisions for the person responsible to make representations to prior to Council taking certain enforcement action (i.e. service of an Order to do certain things), which must be considered on their merits.</p> <p>However, in most cases, the provisions do not provide for representations to be sought or made prior to taking enforcement action for the initial offence or breach of the legislation or regulations (i.e. failure to obtain an approval or comply with a particular requirement).</p>
<p>20. What are the chances of success if challenged?</p>	<p>Council should take into consideration what the likelihood is of a successful appeal or court challenge against the proposed enforcement action.</p> <p>It may not be appropriate to take enforcement action (i.e. service of an Order or commencement of legal proceedings) if the chances of success, in the event of any appeal or hearing, are unlikely.</p>

<p>21. Is the proposed course of action reasonable and proportionate?</p>	<p>The proposed course of action for a particular breach or Offence should be reasonable and proportional to the nature and extent of the breach or offence and the circumstances of the case.</p> <p>The costs and benefits of particular enforcement action must also be considered and compared against other possible solutions or action.</p>
<p>22. Has consideration been given to other relevant factors and the circumstances of the case?</p>	<p>To ensure that Council's enforcement action is appropriate, effective, reasonable and successful, particularly in the event of an appeal or Court hearing, consideration should be given to any other relevant factors and the circumstances of the particular case.</p>

Attachment 9.2

ANNEXURE 2

EXAMPLES OF KEY OPTIONS AND POSSIBLE COURSES OF ACTION*

Offence Scenario	Act/Reg.	Details of the case	Warning/ Education	Penalty Infringement Notice	Notice &/or Order	Legal Action	LEC Class 4
Nuisance Dog Order	Companion Animals Act	Failure to comply with a Nuisance Dog Order (i.e. Possible danger to other people, unrestrained or barking dog)	X	X	X		
Traffic/ Parking	Aust. Road Rules or LGA	Parking of vehicle in No Stopping signposted area		X			
Traffic/ Parking	Aust. Road Rules	Parking of vehicle on footpath or nature strip	X	X			
Traffic/Parking	Aust. Road Rules	Parking of vehicles on road reserves	X	X			
Pollution of stormwater drain	POEO Act	Soil, sand and other building waste entered stormwater system	X	X	X	X	
Potential for pollution	POEO Act	Location of stockpile of sand may cause pollution incident (i.e. in rain)	X	X	X		
Minor building works - Owner	EP&A Act	Construction of pergola awning by owner –Where there is no material impact on other parties and locality – No BCA issues	X	X	X		
Site management	Local Govt. Act or EP&A Act	Articles located on footpath without approval – Possible safety hazard	X	X	X		

Offence Scenario	Act/Reg.	Details of the case	Warning/ Education	Penalty Infringement Notice	Notice &/or Order	Legal Action	LEC Class 4
Building work outside of hours	EP&A Act	Carrying out building works outside of hours permitted in DA – Licensed. Builder	X	X	X		
Minor building works – Licensed Builder	EP&A Act	Construction of alterations or additions to rear of existing dwelling – BCA issues to be resolved	X	X	X		
Major building works	EP&A Act	Substantial alterations and additions to the existing building – Planning & BCA compliance issues		X	X	X	
Variation to DA - Major	EP&A Act	Major variation to DA (i.e. substantial changes to approved development or use)		X	X	X	X
Variation to DA - Minor	EP&A Act	Minor variation to DA (i.e. relocation of door/window) – Section 96 obtained	X				
Unauthorised Use - Major	EP& A Act	Unauthorised use of premises as backpacker accommodation, additional dwelling(s) or brothel			X	X	X
Fire safety Minor	EP&A Act	Failure to submit an annual fire safety statement after due date		X	X		
Fire safety	EP&A Act	Fire safety upgrading			X		

Offence Scenario	Act/Reg.	Details of the case	Warning/ Education	Penalty Infringement Notice	Notice &/or Order	Legal Action	LEC Class 4
Tree Preservation Order Minor	EP&A Act	Tree covered by TPO lopped without approval – minor impact on tree / amenity of locality	X				
Tree Preservation Order Major	EP&A Act	Tree covered by TPO removed without approval – significant impact on amenity of site/locality	X	X		X	
Food Premises	NSW Food Act & Regulation	Unclean food premises.	X	X	X	X	
Vegetative Overgrowth and/or Noxious Weeds.	Local Gvt Act or Noxious Weeds Act	Vegetation causes, or is likely to cause, unsafe or unhealthy conditions.	X	X	X	X	
Accumulation of Rubbish	Local Gvt Act	Accumulation results in, or is likely to result in, unsafe or unhealthy conditions.	X	X	X	X	

* Notes:

- In some cases, the particular breach may be remedied or resolved prior to proceeding to the service of Notices, Orders or legal proceedings i.e. via negotiation or by promptly obtaining relevant approvals.
- Prior to determining an appropriate course of action, consideration is required to be given to the circumstances of the case and the courses of action contained in the above table may not be suitable or sufficient in all cases.

Attachment 9.3

DEFINITIONS

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

ABN/ACN: Australian Business/Company Number.

Administration fee: A prescribed fee imposed in some legislation to cover the cost of the service of a notice/order and re-inspection fee and adopted by Council in the annual Schedule of Fees and Charges.

ARA: Appropriate Regulatory Authority, a term under the Protection of the Environment Operations Act 1997.

Authorised Officer: A Council Officer with delegated authority to carry out specific duties and take any necessary enforcement action. Such officers carry specific Authorities under various Acts which include prescribed powers of entry to certain properties.

BCA: Building Code of Australia, part of the National Construction Code series.

BPB: Building Professionals Board.

CAN: Court Attendance Notice used to commence proceedings in the Local Court.

CRM: Customer Request Management, an electronic Council computer reporting system that registers and records requests for action, compliments and requests for service.

Caution: A formal warning given instead of a penalty advising enforcement action will follow if there is a recurrence, any consideration to issue a “Caution” should be in accordance with the Caution Guidelines issued by the NSW Attorney General under section 19 (1) (a) (1) of the Fines Act.

Cautioning: The verbal process an officer is required to issue to an alleged offender once the officer has considered an offence has occurred and the officer may use any subsequent statement/s made by the alleged offender as evidence.

Civil Proceedings: Include:

- Notices, Orders and Directions issued pursuant to various legislation;
- Class 4 proceedings in the Land and Environment Court seeking an order to remedy a breach of the Environmental Planning and Assessment Act, the Local Government Act, the Protection of the Environment Act or any other Act, if the breach is causing or is likely to cause harm to the environment;
- Interlocutory relief for matters causing or with reasonable potential to cause serious environmental harm. In such proceedings it is likely the Council would be required to provide an undertaking as to damages.

Complaint: 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.

For the purposes of this policy, a complaint does not include:

- a report alleging unlawful activity (see definition below)
- a request for information about a Council policy or procedure
- a request for an explanation of actions taken by Council
- a request for internal review of a Council decision.

Complainant: A customer lodging a request for action to Council.

Council: Wollondilly Shire Council.

Criminal Proceedings: Includes:

- the issuing of a penalty notice;
- prosecuting an offence in the Local Court with the use of a Court Attendance Notice;
- prosecuting for an offence in the summary jurisdiction of the Land and Environment Court (Class 5 proceedings).

Defendant: An alleged offender against whom action is being taken in Court.

Enforcement: Actions taken in response to serious or deliberate contraventions of laws.

EP&A Act: The Environmental Planning and Assessment Act 1979.

Estoppel: Legal rule of evidence.

Fines Act: Fines Act 1996.

GIPAA: The Government Information (Public Access) Act 2009.

ICAC: Independent Commission Against Corruption.

Informant: the person who brings criminal proceedings.

Issuing Agency: Council.

Issuing Officer: the Council Officer authorised to issue a penalty notice for an offence.

LGA: Local Government Act 1993.

Offence: An offence under NSW legislation.

PCA: Principal Certifying Authority.

PIN or Penalty Notice - Penalty Infringement Notice (or Penalty Notice) occasionally referred to as an “on the spot fine”.

Plaintiff: The person commencing civil proceedings.

Prima facie: Presentation of sufficient evidence to support a legal claim.

Procedural Fairness: Procedural fairness relates to the use of fair and proper procedures as part of the decision making process.

POEO: The Protection of the Environment Operations Act 1997.

Respondent: The party against whom civil proceedings are brought.

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: 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.

SDRO: State Debt Recovery Office which produces the Fixed Penalty Handbook for the issue of penalty notices.

Technical breach: A breach to the provisions of an Act, Regulation, Notice, Order, Direction or Development Consent.

Unauthorised/ unlawful activity: Any activity that is:

- contrary to the terms or conditions of a development consent, approval or permission;
- contrary to an environmental planning instrument that regulates the activities or work that can be carried out on particular land;
- contrary to a legislative provision regulating particular activity of work;
- without a required development consent, approval, permission or licence;
- contrary to legislation for which the Council is the appropriate regulatory authority;
- 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 Australian Road Rules