



ENVIRONMENT & REGULATORY SERVICES ENFORCEMENT POLICY

P2.0066.3

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DIVISION: Planning and Environment

BRANCH: Environment & Regulatory Services

CATEGORY: 2

PART 1 - INTRODUCTION

1. BACKGROUND

- 1.1 This Policy applies to the investigation and enforcement of identified unlawful activity, where Council is the Appropriate Regulatory Authority.
- 1.2 This Policy has been developed with reference to and is broadly based on the NSW Ombudsman's 'Model Compliance and Enforcement Model Policy'.

2. OBJECTIVE

- 2.1 This Policy uses a graduated and risk-based approach to taking regulatory action, for example, the issue of a warning or caution, 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 fine or court action if compliance cannot be achieved by any other method.
- 2.2 This Policy provides a framework for Authorised Officers to make sound decisions and use discretion, where appropriate, about taking appropriate regulatory action.
- 2.3 This 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, is or is likely to cause environmental harm or relates to a matter that is transient in nature.
- 2.4 This Policy provides a framework for Authorised Officers to:
 - Ensure regulatory services are managed in a fair, equitable and consistent manner that protects the natural, built and social environment.
 - Respond promptly and effectively to complaints of unlawful activity and undertake proactive monitoring.
 - Assess whether reports alleging unlawful activity require investigation.
 - Determine whether regulatory action is warranted and proportional to the relative seriousness of the situation.
 - Determine options for dealing with confirmed cases of unlawful activity.

- Determine when to pursue legal action.

3. SCOPE

- 3.1 This Policy applies to regulatory enforcement that is within Council's area of responsibility where Council is the Appropriate Regulatory Authority.
- 3.2 Any regulatory action will be in accordance with this Policy, relevant NSW legislation and Revenue NSW Guidelines.
- 3.3 In any situation where an Authorised Officer considers taking action which varies from the Policy and any associated guidelines/procedures, the Authorised Officer will discuss the reasons for the variance with their Team Leader/Manager and will document and implement the agreed course of action.
- 3.4 When enforcing the road rules, Authorised Officers will carry out traffic and parking duties in a fair, equitable and consistent manner which includes a zero-tolerance approach in school zones (i.e. strict enforcement of the rules).
- 3.5 Other offences, such as certain development consent breaches (e.g. hours of operation and some environmental offences, such as illegal burning of waste/plastics or water pollution), may be issued an immediate fine due to the transient nature of the offence, significant environmental harm or the impracticality of using notices and orders for enforcement.

4. DEFINITIONS

- 4.1 **Appropriate Regulatory Authority** means the most appropriate authority with legal powers to investigate and enforce certain legislation as defined by individual legislation.
- 4.2 **Authorised Officer** means a Council officer with delegated authority to carry out specific duties and take any necessary regulatory action. Such officers carry specific authorities under various Acts, which include prescribed powers of entry to certain properties.
- 4.3 **Complainant** means a person lodging a complaint with Council.
- 4.4 **Council** means Camden Council.
- 4.5 **Offence** means an offence under NSW legislation.
- 4.6 **Unauthorised use/unlawful activity** means 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:
 - 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.

PART 2 - POLICY STATEMENT

5. REGULATORY PRINCIPLES

5.1 Council is committed to:

- Acting in the best interests of public health and safety and the environment.
- Acting with consistency, impartiality, objectivity, fairness and avoiding any discrimination.
- The adoption of a risk-based, graduated and proportionate response (where appropriate) to legislative non-compliance.
- Providing opportunity for compliance by stakeholders by indicating the fines for non-compliance.
- Providing written advice or directions in a clear and simple manner.
- Ensuring any action taken by Council is justified, against the correct person(s), 'or legal entity', cost effective and based on sound evidence.
- Ensuring any decision to take no further action or issue a caution is in the public interest and in accordance with relevant guidelines (e.g. those published by Revenue NSW).
- Avoiding any actual, perceived or potential conflict of interest situations.
- Conducting all investigations in accordance with the Code of Conduct and making decisions in a professional manner with appropriate integrity.
- Creating awareness and seeking support from all stakeholders, including workers and business operators and the broader community, regarding the need for compliance when dealing with relevant issues.
- Ensuring action is instigated within legislative time limits.
- Disclosing all evidence relevant to an alleged offence to the court and assisting as required.

6. CODE OF CONDUCT, CONFIDENTIALITY AND DISCLOSURE OF INFORMATION

- 6.1 Authorised Officers must act impartially, adhere to 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 private or personal interest.
- 6.2 Regulatory action will not be taken purely as a response to the conduct of an individual, such as persistent demands or threats.
- 6.3 Councillors are bound by the Code of Conduct and must ensure, when discussing regulatory matters with Council Officers or the community, that they are aware of and comply with their obligations under the Code. As they are operational matters

managed by Council Officers, Councillors must not become involved in regulatory matters.

- 6.4 When dealing with regulatory matters, Authorised Officers will adhere to Council's Privacy Management Plan, Access to Information Policy and relevant legislative requirements.

7. RESPONDING TO REGULATORY MATTERS

- 7.1 All customer requests relating to regulatory matters will be managed in accordance with Council's Customer Service Charter and this Policy.

- 7.2 All customer requests will be initially assessed within practical time constraints and appropriate action will be taken in accordance with this Policy.

- 7.3 All complaints will be investigated unless:

- Council is not the Appropriate Regulatory Authority.
- The matter has already been investigated and actioned.
- Insufficient information has been provided.
- The complaint is premature and relates to an unfinished aspect of work still in progress.
- A private Principal Certifying Authority is responsible for monitoring compliance with the conditions of development consent. In this circumstance, Council will work with relevant agencies and Registered Certifiers to achieve appropriate outcomes.
- The activity is determined to be lawful and does not require an approval.
- A Development Approval, Complying Development Certificate or any other lawful authority has been granted for the work.
- The complaint is trivial, frivolous or unreasonable in nature.
- The complainant is solely seeking a monetary resolution from a third party.
- The complaint relates to a civil matter or dispute (e.g. private matter between neighbours).

- 7.4 In addition to responding to customer requests about alleged unlawful activity, Council also provides proactive compliance programs. These include:

- Food premises inspections
- Public Health inspections
- Public swimming pool water quality monitoring
- Onsite sewage management systems (septic tanks)
- Fire safety
- Parking
- School Zone compliance

- Building site controls inspections.
- 7.5 Decision making relating to the investigation of regulatory matters is the responsibility of the Authorised Officer, in accordance with the applicable delegations and this Policy.
- 7.6 Decisions about what action should be taken by Council are made at Council's discretion and unlawful activity will be resolved to the satisfaction of Council. Council will generally try to resolve matters as quickly and informally as possible, in accordance with this Policy, to avoid the need to take formal action.
- 7.7 Any complaints about Council's handling of reports alleging unlawful activity will be handled in accordance with Council's Feedback Policy.
- 7.8 Where a person or organisation subject to regulatory action disputes Council's decision to take enforcement against them, they will be directed to make representations in accordance with any relevant appeal processes. This may include making an appeal directly to Revenue NSW.
- 7.9 Council expects that customers who report regulatory matters or allegations of unlawful activity will cooperate and act in good faith in respect of any investigations conducted by Council. This includes:
- Providing a clear description of the problem (and the resolution sought, if relevant).
 - Giving all available and relevant information to Council, including any new information about the alleged activity that may become known to the person following the making of their report.
 - Not giving any information that is intentionally misleading or wrong.
 - Cooperating with reasonable requests from Authorised Officers and giving timely responses to questions and requests for information.
 - Treating Council Officers with courtesy and respect.
- 7.10 Any unreasonable customer conduct will be dealt with in accordance with Council's Dealing with Unreasonable Customer Conduct Policy.
- 7.11 Council has a zero-tolerance policy towards any harm, abuse or threats directed towards Council staff or officials.

8. REGULATORY FRAMEWORK

- 8.1 When deciding whether to take regulatory 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.
- 8.2 Authorised Officers will maintain appropriate records about decision making processes in relation to reports alleging unlawful activity and any proposed or taken regulatory action, as well as records of interactions with relevant parties.

- 8.3 Where there are multiple possible parties to an alleged unlawful activity, Council will determine which party to pursue regulatory action against.
- 8.4 Authorised Officers will adhere to Council's internal approval processes and delegations prior to the commencement of any regulatory action.
- 8.5 The following common considerations will assist Authorised Officers in determining the most appropriate response in the public interest:

8.5.1 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 technical, inconsequential or minor in nature.
- The time period that has lapsed since the date of the unlawful activity.

8.5.2 Considerations about the alleged offender:

- Any prior warnings, instruction or advice that was issued to the person or organisation reported, or previous regulatory action taken against them.
- Whether the offence was committed with intent.
- Whether the person or organisation 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 the person or organisation reported (e.g. health, young offender).

8.5.3 Considerations about the impact of any regulatory 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 regulatory action was challenged in court.
- The costs and benefits of taking formal regulatory action as opposed to taking informal or no action.
- What action would be proportionate and reasonable in response to the unlawful activity.
- Whether Council may be prevented from taking action based on earlier advice.

8.5.4 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 unauthorised use legal.

- 8.6 Authorised Officers will use discretion to determine if action is required and if so, the most appropriate response. Authorised Officers may take more than one approach. Any regulatory 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 and on behalf of the community.

The following enforcement options are to be considered by Authorised Officers when managing regulatory matters. The options reflect an escalated approach that is proportionate to the level of risk, the seriousness of the confirmed breach and/or the need for a deterrent:

Level of risk	Enforcement options
Low , for example: • Minor non-compliance with approval • Neighbour dispute. • Minor technical breach	• Taking no action based on a lack of evidence or some other appropriate reason • Providing information/advice on how to be compliant • Negotiating with the person to obtain voluntary undertakings or an agreement to address the issues of concern • Use of independent mediation e.g. Community Justice Centre • Issuing a warning or a formal caution
Medium , for example: • Major non-compliance with approval • Non-life threatening fire safety or similar safety matter • Unauthorised use or building work where the opportunity to collect critical evidence is not lost (tree removal or demolition).	• 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
High , for example: • Significant environmental or safety risk to life or property (e.g. discharge of toxic waste to a water body, likely collapse of a shop awning over a public road, removal of a swimming pool fence	• Issuing a fine • Issuing appropriate Notices and/or Orders under relevant legislation. • Carrying out the works specified in an order at the cost of the person served with the order • Seeking an injunction through the courts to prevent future or continuing unlawful activity • Commencing legal proceedings for an offence against the relevant Act or Regulation The decision to commence legal proceedings will

• or barrier, a fire safety issue, significant failure of retaining wall adjacent to public land, demolition of a heritage item, asbestos removal (other than regulated by Safework NSW) • Serious community safety or public health issues (e.g. dog attack, food poisoning, Legionnaires case) • Urgent matters as directed by Council's senior management.	be guided by legal and expert advice 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 requires legal action to be pursued
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- 8.7 Prior to taking regulatory action, Authorised Officers will take into account the above considerations as well as the evidence gathered during their investigation.
- 8.8 Regulatory action will be reviewed and monitored to ensure compliance with this Policy and any enforcement action taken by Council. Reports alleging continuing unlawful activity will be assessed and further action taken if necessary
- 8.9 Should initial regulatory action be found to have been ineffective, Authorised Officers will consider additional or alternative enforcement options.
- 8.10 The investigation of regulatory matters may warrant consideration of the use of a statutory declaration and statements. Any person who completes a statutory declaration will be informed they may be required to appear in court as a witness should the matter be defended. The completion of a statutory declaration or statement does not guarantee further regulatory action will be undertaken by Council.
- 8.11 Where Council is not the Appropriate Regulatory Authority, Council will refer the matter to the appropriate agency for investigation.

9. REGISTERED CERTIFIERS

- 9.1 Where customer requests are received regarding building construction sites where Council is not the Principal Certifying Authority, the customer will be advised to contact the Principal Certifying Authority directly.
- 9.2 Alternatively, should an Authorised Officer observe significant non-compliance on a building site which is under the jurisdiction of a Principal Certifying Authority (not being Council), Council will initially refer the matter to the Principal Certifying Authority.

- 9.3 If a complaint or observation relates to a high-risk matter, an Authorised Officer may undertake an immediate investigation to assess the seriousness of the situation.
- 9.4 If the complaint is substantiated, Council will consider action in accordance with this Policy and the Principal Certifying Authority will be informed of any action taken by Council.
- 9.5 In any situation where it is considered a Principal Certifying Authority has acted incorrectly, improperly and/or unprofessionally, the matter may be referred to NSW Fair Trading subject to approval by the Manager Environment & Regulatory Services. A customer may report their concerns regarding a Registered Certifier directly to NSW Fair Trading.

10. BUILDING INFORMATION CERTIFICATES

- 10.1 Council recognises that persons who may have carried out unlawful building works may, as an option, apply for a Building Information Certificate under Part 6 Division 6.7 of the *Environmental Planning and Assessment Act 1979* (EPA Act) to retain the structure. If a Building Information Certificate is issued, Council cannot ask for demolition or alterations unless after seven years of fair wear and tear.
- 10.2 Irrespective of whether a Building Information Certificate is applied for, Council may take action against a person who carried out unlawful works.
- 10.3 The action may include the issuing a fine or commencement of criminal proceedings, where it is considered appropriate and necessary for punitive action to be taken, having regard to the restriction provisions provided under section 9.57 of the EPA Act.
- 10.4 Building Information Certificate applications to support unlawful building works will be expected to provide the same level of details in plans, certificates, specifications and other documents as would be required for assessing a Development Application, Construction Certificate, Complying Development Certificate and/or an Occupation Certificate.

11. COMMUNITY AWARENESS

- 11.1 Council will promote ongoing community awareness about this Policy and Council's regulatory framework. This may include website references, social media and the periodic inclusion in any community newsletters with a view to improving community awareness.

RELEVANT LEGISLATIVE INSTRUMENTS: *Biosecurity Act 2015 (Cth)*
Boarding Houses Act 2012
Building and Development Certifiers Act 2018
Camden Local Environmental Plan
Companion Animals Act 1998
Contaminated Land Management Act 1997
Crown Land Management Act 2016
Environmental Planning and Assessment Act 1979
Fines Act 1996
Food Act 2003
Impounding Act 1993
Local Government Act 1993
Protection of the Environment Operations Act 1997
Public Health Act 2010
Region Growth Centres) 2006
Road Rules 2014
State Environmental Planning Policy (Exempt and Complying Development Codes) 2008
State Environmental Planning Policy (Sydney Swimming Pools Act 1992
The Regulations relating to the above Acts.

RELATED POLICIES, PLANS AND PROCEDURES: Asbestos Policy
Code of Conduct
Companion Animal Policy
Dealing with Unreasonable Customer Conduct
Feedback Policy
Fire Safety Policy
Food Inspection Program
Guidelines for Councillor Access to Information and Advice
Local Approvals Policy
On-Site Sewage Management Policy
Signs and Banners Policy
Swimming Pools Inspection Program
Temporary Food Stall and Mobile Food Vehicle Policy
Tree Management Policy

RESPONSIBLE DIRECTOR: Director Planning and Environment
APPROVAL: Council

HISTORY:

Version	Approved by	Changes made	Date	EDMS Number
1	Council	New	08/03/2016	16/137442
2	Council	Minor amendments	Adopted Council meeting 13/08/2019 for public exhibition – effective from 25/09/2019	16/137442

3	Council	Policy title renamed and substantial amendments to structure and content		
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