



# **COMPLIANCE AND ENFORCEMENT POLICY**

Public Document

Version: 1 / ECM: ECM Document Set ID: 2790442

Adopted by: Council on 6 December 2022

Ownership: Manager Compliance

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## Compliance and Enforcement Policy

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### Purpose

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This Policy provides information for all internal and external stakeholders and interested parties about Council's compliance and enforcement matters within the Mosman Local Area.

It explains how Council determines priorities, allocates resources and makes decisions to ensure that investigations are undertaken in a manner that is lawful, accountable, transparent, consistent, proportional, and timely.

This Policy outlines for the community how reports alleging unlawful activity will be managed by Council, how Council treats the confidentiality of people who report alleged unlawful activity, what Council expects from people who report allegations of unlawful activity, and the process for making complaints about Council's enforcement action. It also provides advice and guidance on the role of Councillors in compliance and enforcement.

A matter may be treated as complaint under Council's Complaints Management Policy and also managed under this Policy when relating to an unlawful activity.

### Objectives

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The objectives of this Policy are to:

- Provide clear guidelines for the management of Council's regulatory activities
- Provide a consistent approach in the enforcement and resolution of matters
- Manage regulatory matters in a consistent and transparent manner and through best practice enforcement principles
- Ensure the principles of procedural fairness and natural justice are followed
- Provide an effective process of education and consultation.

### Scope

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Applies to staff with delegated compliance roles within Mosman Council and persons, business or agencies residing in and/or undertaking activities in the Mosman Local Area.

### Application

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This Policy applies to regulatory issues within Council's area of responsibility including, but not limited to:

- Control over animals
- Development and Building control
- Environmental Health
- Fire safety
- Food safety
- Heritage preservation
- Illegal dumping
- Noise complaints
- Noxious weeds
- Parks and Reserves
- Pollution control
- Public Health and Safety
- Roadways, footpath and parking
- Septic systems

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- Tree preservation
- Water and sewer

### Definitions

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**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:

- 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
- and includes any activity, place or structure which is a risk to public health and safety

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

**Report alleging unlawful activity (incident report):** 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.

**Complaint:** A complaint is an expression of dissatisfaction with the Council's decisions, policies, procedures, charges, employees, agents or the quality of the services it provides and will be managed in accordance with Council's *Complaints Management Policy*.

### Making a report alleging unlawful activity

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Reports may be lodged with Council in any manner, be it verbal, in writing or electronically. Details including the name, address and contact phone number and email address of the person making the report, together with a brief description of the problem should be included. Person's wishing to lodge a report online may go to: <https://www.mosman.nsw.gov.au/contact>.

Anonymous reports will be recorded and assessed in accordance with the above requirements. However, because it is not possible to seek clarification or additional information about a matter, it may be more difficult to evaluate the allegations and therefore these reports are less likely to result in an investigation or any action. The level of resources dedicated to an anonymous complaint will be relative to the level of information supplied. .

### How reports alleging unlawful activity will be dealt with by Council

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Council's objectives when dealing with reports alleging unlawful activity are to:

- Maintain the collective good and welfare of the community
- Prevent or minimise harm to health, welfare, safety, property or the environment
- Consider the broader public interest having regard to Council's priorities and any resource limitations
- Consider the report fairly and impartially.

Not all reports will be investigated. A preliminary assessment of all matters will be made to determine the priority for a response, and whether investigation or other action is required.

Decisions about what action should be taken by Council are made at Council's discretion. This means reports alleging unlawful activity will be assessed and resolved to the satisfaction of

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Council, not to the satisfaction of the person making the report. Council aims to resolve matters as quickly and informally as possible to avoid the need to take formal action.

If there is insufficient information in a report to undertake a preliminary assessment, further information may need to be sought from the person who made the report, or an inspection undertaken. Staff may also need to consult Council records and other internal business units to understand the relevant history and context of a matter.

When investigating incidents of alleged unlawful activity Council staff aim to:

- Determine the cause of the incident
- Determine if there has been a contravention of law, policy or standards
- Gather evidence to the required standard to support any required enforcement action
- Determine any necessary action to mitigate the possibility of reoccurrence of similar incidents.

Should it be decided not to investigate an allegation of unlawful activity following a preliminary assessment, this decision will be recorded and where applicable, reason for the decision made.

### Assessing unlawful activity incidents

Where appropriate a risk rating lens will be applied to common unlawful activity in line with the general example table below. This assessment of risk will inform the prioritisation of investigation and action to be undertaken and the customer response that will be given.

<b>Risk Category</b>			
<b>Very High</b>	<b>High</b>	<b>Medium</b>	<b>Low – Very Low</b>
Permanent, long-term or reoccurring and serious damage to health, property or environment likely or very likely to occur. Large scale impacts Very serious offences Very high priority issue for council and community	Moderate, major or severe consequences likely or very likely to occur. Medium-large scale impacts Serious offences High priority issue for council and community	Moderate consequences are likely, serious impacts are unlikely to occur. Small-medium scale impacts Moderate offence severity Medium priority issue for council and community	Consequences are minor or moderate and are unlikely or very unlikely to occur. Small scale, isolated impacts Low level offence severity Low to very low priority issue for council and community
<b>Example Report Types</b>			
Significant pollution incidents; Large scale clearing of vegetation containing threatened species; Food poisoning incidents; Abandoned vehicles in an unsafe location; Collapsed or unsafe building works in public areas; Dog attack.	Roaming dogs; Unsafe buildings and building works; Hazardous rubbish dumped in an unsafe location; Pollution incidents; Breaches of tree preservation order/s; Dangerous/restricted dog concerns;	Abandoned vehicles; Stormwater or drainage issues; Dumped rubbish (not hazardous); Breach of consent conditions (e.g. waste management); Poor sediment control on building sites.	Parking infringements Noxious weeds Minor consent breaches (eg no signage) Unauthorised signage Unauthorised land use; Overgrown and Aesthetic issues; Neighbour disputes and nuisance concerns (e.g. noise, barking dogs).

<b>Customer Response Expectations</b>		
<p>A customer response will be given within 48 hours, which may be an acknowledgement of receipt of the report or provision of general advice on the issue.</p> <p>The outcome of initial assessment will be communicated to the customer.</p> <p>Feedback on the progress or finalisation investigation will be provided. Noting that the level of detail provided is at the discretion of the investigating officer, considering the integrity of the investigation and privacy requirements.</p>	<p>A customer response will be given within 5 working days, which may be an acknowledgement of receipt of the report or provision of general advice on the issue.</p> <p>Minor initial investigation will be undertaken to determine appropriate risk categorisation and action, considering competing priorities.</p> <p>Further customer responses may not be provided.</p>	<p>A customer response will be given within 10 working days, which may be an acknowledgement of receipt of the report or provision of general advice on the issue.</p> <p>Council will assess the issue and determine appropriate action considering competing priorities.</p> <p>Further customer responses will not be provided.</p> <p>There will be no responses or updates provided to third parties on parking ticket infringements.</p>

**Confidentiality**

Staff will not disclose the identity of people who report allegations of unlawful activity should it be requested that their personal details remain confidential as compelled by privacy legislation. However, people who report allegations of unlawful activity should not expect that their identities will remain confidential from the subject of their report in all circumstances. Council may have to disclose information that identifies them in the following cases:

- The disclosure is necessary to investigate the matter
- Their identity has already been disclosed to the subject of their report directly or in a publicly available document
- The individual was consulted following receipt of a *Government Information (Public Access) Act 2009* application and did not object to the disclosure
- The individual consents in writing to their identity being disclosed
- The disclosure is required to comply with principles of procedural fairness
- The matter proceeds to court

Council will take seriously any concerns an individual may have about their physical safety being endangered as a result of making a report. However, this may limit Council’s ability to investigate the matter.

**What Council expects from people who report allegations of unlawful activity**

Council expects that people who report 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)

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- 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 Council's inquiries and giving timely responses to questions and requests for information
- Treating Council's staff with courtesy and respect
- Allowing the investigation to be completed without prematurely taking the matter to other agencies unless referred by Council

If these expectations of the individual are not met, Council may need to set limits or conditions on the continuation of the investigation or may need to restrict any further communication with the individual.

Any unreasonable conduct will be dealt with in accordance with the principles of the *NSW Ombudsman's Managing Unreasonable Complainant Conduct Manual 2021* and *Council's Customer Service Charter*.

### What parties can expect from Council staff

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Council staff will treat all relevant parties with courtesy and respect. In line with Council's risk rating of report types, Council staff will:

- Communicate with relevant parties and provide feedback on the progress of an investigation in line and any reasons for delay without compromising the integrity of the investigation where applicable.
- Make full and proper records in relation to the assessment and investigation of reports alleging unlawful activity, including reasons for any decisions
- Inform relevant parties of reasons for decisions where applicable.
- Provide as much information as possible to relevant parties about the outcomes of investigations to show that adequate and appropriate action was taken and/or is proposed to be taken in response to a report of alleged unlawful activity. This will be limited to the extent of the illegal activity. For example Council will not update a third party on if a parking ticket has been issued based on their incident report.
- Provide information to relevant parties about any avenues to seek an internal or external review of a decision

### Neighbour disputes

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Council will at times receive reports from parties involved in neighbour disputes seeking Council's involvement. When a dispute between two neighbours is a civil matter, Council will often have no authority to resolve the issue in dispute. Some reports will raise several matters, some of which may require Council's involvement and some of which will be personal to the parties.

Council staff will assess such reports to determine whether there is evidence of unlawful activity requiring action by Council. Where available, individuals will be provided with information about how to resolve neighbour disputes including referral information resources such as Law Access NSW and Community Justice Centres.

Council has information available on its website providing advice on resolving the most common types of neighbourhood issues and enquiries including:

- Barking dogs
- Dividing fences
- Noise

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- Trees
- Stormwater issues

### Closing reports

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Decisions on the appropriate steps to take in assessing and investigating a report is entirely at Council's discretion.

It is possible that further information about a matter may be provided which changes Council's decision however, simply disagreeing with the decision made isn't a sufficient reason for Council to revisit the issue.

Should additional information become available which increases the risk category of the activity, please provide this information for further review.

### Complaints about Council's enforcement actions

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Where a person or organisation subject to enforcement action disputes Council's decision to take enforcement against them, they are directed to make representations in accordance with relevant internal and external appeal processes, the detail of these processes are contained within Council's *Complaints Management Policy*.

Complaints about the conduct of Compliance Officers will be managed in accordance with Council's *Complaints Management Policy* and the *Code of Conduct*.

### Dealing with confirmed cases of unlawful activity

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Council will 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 of the case.

This will include an assessment as to whether:

- Taking enforcement action is in the public interest
- Considerations about the alleged offender
- The impact of any enforcement action
- The potential for remedy.

### Enforcement Options

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Enforcement options 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.

Investigating Officers should decide whether to try to resolve the request by using alternative means, or to take legal action in the form of administrative, civil or criminal action. The type of action will depend on the offence being investigated, the likely costs of each type of action and the desired outcome.

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Council has a range of enforcement options available including:

- Assessing that no action is required
- Localised management of the issue
- Alternative Dispute Resolution
- Issuing a Penalty Notice
- Administrative Actions – Notice of Intention and Orders
- Legal Proceedings

The process of legal proceedings will be subject to the relevant delegations in place. All legal matters and costs are reported to Council annually and in the quarterly financial updates.

### Following up enforcement action

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.

Should enforcement action be found to be ineffective, Council staff will consider other enforcement options. Additional enforcement action may be necessary to ensure compliance outcomes are met.

### Taking legal action

Councils operate in a complex and changing environment. Council will be guided by legal advice in deciding whether to commence criminal or civil proceedings and will consider the following:

- Whether the public interest warrants legal action being pursued
- 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
- Legislative time limits within which to commence proceedings.

### Shared enforcement responsibilities

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Some reports will raise matters involving shared regulatory responsibilities between Council and other authorities including the *Environment Protection Authority*, the *NSW Police Force*, *Liquor and Gaming NSW*, *NSW Fair Trading*, *SafeWork NSW*, *NSW Food Authority*, *Building Professionals Board* and *NSW Crown Lands*.

Council recognises that collaboration and cooperation between authorities to address issues of shared regulatory responsibility is the best approach. To this end, where there are shared legislative responsibilities, Council staff will liaise with relevant authorities to establish:

- Which authority will take the lead role on any joint investigation
- Which activities each authority will carry out
- Responsibilities for updating an individual where relevant
- Protocols for exchanging confidential information between the relevant authorities

Council will reasonably endeavor to respond to requests for information or assistance on joint regulatory matters in a timely manner.

### Role of Council where there is a private certifier

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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.

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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.

### Role of Councillors in enforcement

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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 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 Council's policies are being carried out correctly, however they cannot ignore or alter a policy in order to satisfy the demands of individuals or special groups.

Councillors can be confidentially briefed where appropriate on any enforcement matters through the General Manager or relevant Director.

### Related Legislation and Policies

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This Policy should be read in conjunction with the following legislation:

- *Local Government Act 1993 and Regulations*
- *Environmental Planning and Assessment Act 1979 and Regulations*
- *Boarding Houses Act 2012*
- *Food Act 2003, Regulations and NSW Food Safety Standards*
- *Protection of the Environment Operations Act 1997 and Regulations*
- *Waste Avoidance and Resource Recovery Act 2001 and Regulations*
- *Noxious Weeds Act 1993*
- *Public Health Act 2010 and Regulations*
- *Companion Animals Act 1998 and Regulations*
- *Roads Act 1993 and Regulations*
- *Road Transport (Safety and Traffic Management) Act 1999, Regulations and Australian Roads Rules*
- *Impounding Act 1993 and Regulations*
- *Recreational Vehicles Act 1983*
- *Swimming Pools Act 1992*
- *Liquor Act 1982 and Regulations*
- *Fisheries Management Act 1994 and Regulations*
- *Tree (Disputes between Neighbours) Act 2006 and Regulations*
- *Fines Act 1996*
- *Government Information (Public Access) Act*

This Policy should be read in conjunction with the following Mosman Council policies:

- *Code of Conduct*
- *Complaints Management Policy*
- *Council Delegations*
- *Customer Service Charter*

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The NSW Ombudsman website has the following helpful resources at [www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au):

- Good Conduct and Administrative Practice
- Options for Redress

See also

- Commonwealth Director of Public Prosecutions (2021), Prosecution Policy of the Commonwealth: Guidelines for the making of decisions in the prosecution process
- NSW Planning (2021), Prosecution Guidelines.
- NSW Ombudsman's 'Enforcement Guidelines for Councils' 2015
- Relevant Standard Operating Procedures

### Review

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This Policy will be reviewed every four years unless otherwise directed by Executive Team.

### Contact

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Enquiries should be directed to the Manager Compliance on 9978 4059.

### Amendments

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Date	Amendment	Reference
6 December 2022	ADOPTION of new policy which combines and updates former Compliance and Enforcement Policy and Food Safety and Compliance Policy to reflect the NSW Ombudsman good practice guidelines and the 2015 Model Compliance and Enforcement Policy.	EP/48 and ECM Document Set ID 6436919