

ATTACHMENTS DISTRIBUTED UNDER SEPARATE COVER

**CCL 22/11/22 – ADOPTION OF COMPLIANCE AND ENFORCEMENT
POLICY**

ITEM-XX **Attachment A:** Compliance and Enforcement Policy -
Marked up copy

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Compliance and Enforcement

November 2022

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1 Purpose

- 1.1 ~~The Compliance and Enforcement~~ This Policy (the “Policy”) provides information to all internal and external stakeholders and interested parties about the City of Newcastle’s (“CN”) position on compliance and enforcement matters ~~within~~ the local government area.
- 1.2 ~~The Policy~~ outlines how CN conducts compliance and enforcement activities in a fair and equitable manner; and establishes a framework to guide the most efficient and effective use of CN resources to achieve the best environmental, health and safety outcomes for the community.
- 1.3 The Policy is modelled on the NSW ~~Ombudsman~~ ~~Ombudsman’s Model Compliance and Enforcement~~ Model Policy. In implementing the Policy, CN will have regard to compliance and enforcement guidelines developed by the NSW Ombudsman.
- 1.4 The compliance and enforcement activities of CN play an important role in achieving CN's Community Strategic Plan (“CSP”). The CSP is a shared community vision and it includes a number of key objectives for the city.
- 1.5 ~~The~~ This Policy assists CN to achieve the shared objective of protecting and enhancing our environment and ensuring we have a liveable environment.
- 1.6 CN's current compliance and enforcement activities are outlined in CN's Delivery Program and Operational Plan.

2 Scope

- 2.1 ~~The~~ This Policy applies to ~~all~~ the compliance and enforcement activities carried out by CN in respect of, associated with the broad range of legislation, regulations, guidelines, codes and standards that CN is delegated and responsible to administer and enforce. Specific legislation and delegations are outlined in CN's register of delegations and authorisations.
- 2.2 This includes regulatory functions, including, but not limited to:
 - 2.2.1 development and building control.
 - 2.2.2 pollution control.
 - 2.2.3 environmental health.
 - 2.2.4 public health and safety.
 - 2.2.5 animal control.
 - 2.2.6 food safety.
 - 2.2.7 parking and traffic, and.
 - 2.2.8 fire safety
- 2.3 When new legislative requirements and associated regulatory responsibilities are introduced, CN will assess these responsibilities to determine the prioritisation of resources across the new and existing regulatory functions of CN. If new regulatory functions are to be performed, new systems, procedures and processes may need to be created and associated staff training completed. In some cases, new regulatory functions may not be commenced due to resourcing constraints and potential impacts upon other regulatory functions and associated service commitments to the community. Where there is overlap in responsibilities and functions between regulatory agencies (ie. NSW EPA, NSW Police or Liquor & Gaming NSW) CN will look to prioritise apply our resourcing to those functions which are the highest priority for CN, and for which CN has sole regulatory responsibility.

3 Principles

- 3.1 The following principles underpin CN's approach to compliance and enforcement:
 - 3.1.1 Accountable and transparent.
 - 3.1.1.1 acting in the best interests of public health and safety and in the best interests of the environment.
 - 3.1.1.2 ensuring accountability for decisions to take or not take action.
 - 3.1.1.3 acting fairly and impartially and without bias or unlawful discrimination.

- 3.1.1.4 providing information about compliance and enforcement priorities and reasons for decisions to improve understanding and certainty and promote trust by the regulated community
- 3.1.1.5 ensuring meaningful reasons for decisions are given to all relevant parties, particularly when there is a departure from this Policy.
- ~~3.1.1.6~~ 3.1.1.6 acting on ~~any~~ complaints or concerns about the conduct of ~~CN staff compliance officers~~ in accordance with CN's complaints management policy and procedures, and
- ~~3.1.1.63.1.1.7~~ 3.1.1.7 -advising people and organisations subject to enforcement action of any avenues available to seek an internal or external review of a decision.

3.1.2 Consistent

- 3.1.2.1 ensuring all compliance and enforcement action is implemented consistently, and
- 3.1.2.2 encouraging reports about possible unlawful activity by acting reasonably in response to the circumstances and facts of each matter.

3.1.3 Proportional

- 3.1.3.1 ensuring the level of enforcement action is proportionate to the level of risk and seriousness of the breach.
- 3.1.3.2 making cost-effective decisions about enforcement action, and
- 3.1.3.3 taking action to address harm and deter future unlawful activity.

3.1.4 Timely

~~3.1.4.1~~ 3.1.4.1 ~~Ensuring timely~~ ensuring responses to reports alleging unlawful activity whilst recognising that complex matters may require more time for detailed investigation or legal advice before decisions are made and action ~~decision making in relation to these is taken timely.~~

3.1.4.1

4 Responsibility

- 4.1 CN receives numerous requests from members of the public, and various other parties and authorities to investigate concerns regarding non-compliant or unlawful activities.
- 4.2 All CN staff who deal with reports alleging unlawful activity are responsible for implementing this Policy. CN staff are also responsible for ensuring that any other possible unlawful activity identified as a result of an inspection, proactive enforcement or other activity is brought to the attention of the appropriate Service unit of CN.
- 4.3 Only CN staff with appropriate authorisations and/or delegations can undertake investigations or compliance and enforcement action in relation to this Policy.
- 4.4 CN staff are required to:
 - 4.4.1 treat all relevant parties with courtesy and respect.
 - 4.4.2 communicate with all relevant parties and provide feedback on the progress of an investigation and any reasons for delay without compromising the integrity of the investigation.
 - 4.4.3 make full and proper records in relation to the assessment and investigation of reports alleging unlawful activity, including reasons for any decisions.
 - 4.4.4 inform all relevant parties of reasons for decisions.
 - 4.4.5 provide ~~as much~~ information, considering the requirements of NSW privacy legislation, ~~as possible~~ to all 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, and

4.4.6 provide information to all relevant parties about any avenues to seek an internal or external review of a decision.

5 Responding to concerns about unlawful activity

- 5.1 All concerns received are initially received and assessed by CN's Customer Contact Centre or Records Section in accordance with our customer service charter, CN's Customer Service Request Policy. Concerns of a serious nature can be referred immediately to the relevant sections of CN for further assessment and appropriate response.
- 5.2 Decisions about what action should be taken by CN are made at ~~the~~ CN's discretion, having regard to this Policy and related policies and procedures.
- 5.3 CN will endeavour to provide clear and transparent information on how we generally respond to reports manage the expectations of people who report alleged unlawful activity through. ~~In the provision absence of information via our website and advice via our Customer Contact Centre. This will include information on reports related to low risk matters or matters which sufficient evidence of unlawful activity, CN may be unable or at its discretion choose not~~ warrant further investigation.
- ~~5.35.4 to take further action.~~ CN does not have unlimited resources ~~and powers to~~ investigate all deal with reports received which allege ~~alleging~~ unlawful activity. The Policy and associated procedures assist staff in the appropriate allocation of available investigation and legal resources.
- 5.45.5 CN expects that people who report allegations of unlawful activity will cooperate and act in good faith in respect of any investigations conducted by CN. This includes:
- 5.4.15.5.1 providing a clear description of the problem (and the resolution sought, if relevant).
- 5.4.25.5.2 giving all available and relevant information to CN, including any new information about the alleged activity that may become known to the person following the making of their report.
- 5.4.35.5.3 not giving any information that is intentionally misleading or wrong.
- 5.4.45.5.4 cooperating with CN's inquiries and giving timely responses to questions and requests for information.
- 5.4.55.5.5 treating CN's staff with courtesy and respect.
- 5.4.65.5.6 allowing the investigation to be completed without prematurely taking the matter to other agencies unless referred to by CN.
- 5.5.7 attending court to give evidence regarding the unlawful activity, including any impact it has had on them personally, if required.
- 5.55.6 If these expectations ~~of the individual~~ are not met, CN may terminate an investigation, ~~need to~~ set limits or conditions on the continuation of the investigation or may ~~need to restrict any~~ further communications with the individual.
- 5.65.7 Any unreasonable conduct will be dealt with in accordance with the principles of the NSW Ombudsman's "Managing Unreasonable Conduct by a Complainant" ~~Conduct Manual 2021 and CN's Customer Complaints Handling Policy. 2012 and CN's Customer Complaints Handling Policy.~~

6 Investigating alleged unlawful activity

- 6.1 ~~Not all reports alleging unlawful activity will need to be investigated.~~ A preliminary assessment of all matters will be made to determine the priority for a response, and whether further investigation or other action is required. Not all reports alleging unlawful activity will need to be actioned after this preliminary assessment.
- 6.2 An investigation of alleged unlawful activity may take a significant amount of time to complete, particularly where the issues are complex.

6.5 CN's risk management framework and relevant procedures and processes are used to guide the assessment and prioritisation of alleged unlawful activities. CN will prioritise matters on the basis of risk to public safety, human health and/or the environment.

6.6 CN's risk-rating categories are minor, low, moderate~~medium~~, high and extreme.

6.7 CN allocates required resources to the investigation of allegations of "extreme" and "high"-risk activities as first priority over all other requests.

~~6.7—~~Allegations of Response to medium risk activities that fall within CN's "low" and "medium" risk categories are actioned as soon as practical depending on available resources allocated to higher risk investigations

6.8 ~~Low risk activities are only~~ allocated resources when available and if necessary, after application of any specific internal procedures to address these~~for common low risk~~ concerns. These~~Low risk~~ activities may include, but are not limited~~allegations relating~~ to:

6.8.1 unauthorised development that has a~~with~~ low environmental impact, which may include:

6.8.1.1 signs (with no safety or heritage impacts),

6.8.1.2 building non-compliance,

~~6.8.1.3—~~

~~6.8.1.4~~6.8.1.3 home occupation/business/industry, and

~~6.8.1.5~~6.8.1.4 residential~~family member~~ living in shed / garage / caravan.

6.8.2 stormwater nuisance,

6.8.3 residential (domestic) noise and odour,

6.8.4 dog barking and defecating,

6.8.5 cat nuisance.

6.8.6 tree pruning

6.8.7 Noise impacts associated with 24-hour business operations permissible under the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

~~6.9—~~In~~Specific internal procedures and publicly available information to assist the community have been developed for the following common low risk concerns:~~

~~6.9.1—~~stormwater nuisance (problem solving between neighbours)

~~6.9.2—~~nuisance (barking) dogs

~~6.9.3—~~neighbourhood (residential) noise.

~~6.10~~6.9~~Procedures and information provided~~In~~in~~ relation to "these low" to "medium" risk activities, CN~~concerns~~ may direct community members to other relevant authorities or agencies that can assist them, or to other action that they may choose to take to resolve the matter.

~~6.11~~6.10 When a dispute between two neighbours is a civil matter, CN will often have no authority to resolve the issue in dispute.

~~6.12~~6.11 Anonymous reports will be recorded and risk assessed for investigation in accordance with this Policy~~a similar manner~~. 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 may be~~are~~ less likely to warrant further investigation.

6.12 CN often receives reports related to matters that fall under the regulatory responsibility of a state or federal government agency. People making such reports will be advised to contact the relevant agency and that no further investigative action is required to be taken by CN.

7 Taking enforcement action

- 7.1 When deciding whether to take enforcement action in relation to a confirmed case of unlawful activity, CN will consider the full circumstances and facts of the matter, public safety, human health and/or the environment, and the public interest.
- 7.2 The following considerations will assist CN in determining the most appropriate response ~~in the public interest~~:
 - 7.2.1 considerations about the alleged offence and impact, including the nature, extent and severity of the unlawful activity; the harm or potential harm to the environment or public health, safety or amenity caused by the unlawful activity, and the seriousness of the breach.
 - 7.2.2 considerations about the alleged offender, including any prior warnings or previous enforcement action taken against them, any mitigating or aggravating circumstances.

9.1.3 outlines the consequences of non-compliance in relation to relevant issues such as loss of reputation, health and safety and environmental impacts, financial penalties and legal action.

10 Role of CN where there is a private certifier

~~10.1~~ If a private certifier is appointed the Principal Certifying Authority (PCA), CN is not responsible to ensure building and construction compliance, and, Private certifiers have the relevant PCA should be contacted directly

Annexure A - Definitions

CEO means the Chief Executive of the CN and includes their delegate or authorised representative.

References to the Chief Executive Officer are references to the General Manager appointed under the Local Government Act 1993 (NSW).

City of Newcastle (CN) means Newcastle City Council.

Compliance is the act of adhering to, and demonstrating adherence to, laws, regulations, conditions, standards and policies.

Council means the elected Council.

Enforcement activities refer to actions taken in response to contravention of laws, regulations, conditions, standards and policies.

NSW Ombudsman Model Policy means the Model Compliance and Enforcement Model Policy in the NSW Ombudsman's Enforcement guidelines - December 2015.

Regulated community means a community defined by their common responsibility to comply with particular laws, regulations or policies.

Report alleging unlawful activity refers to an expression of concern or a request for service in relation to alleged unlawful activity, where a response or resolution is explicitly or implicitly expected or legally required.

Unlawful activity refers to an activity or work that has been or is being carried out contrary to the below and/or fails 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, or
- A required development consent, approval, permission or licence.

Document control

Policy title	Compliance and Enforcement
Policy owner	Manager Planning, Transport & Regulation
Policy expert / writer	Environmental Health Coordinator
Associated Procedure Title (if applicable)	Stormwater nuisance (problem solving between neighbours) Nuisance (barking) dogs Neighbourhood (residential) noise

Procedure owner (if applicable)	N/A
Prepared by	Manager Planning, Transport & Regulation
Approved by	<u>Elected Council</u>
Date approved	<u>To be completed by Legal</u> 25/06/2019
Policy approval form reference	ECM# 6008760
Commencement Date	<u>To be completed by Legal</u> 26/06/2019
Next revision date (date policy will be revised)	<u>25/06/2022</u> 30/09/2021
Termination date	<u>To be completed by Legal</u> 30/09/2022 (one year post revision date)
Version	Version number <u>(versions mean adopted versions only)</u> 2
Category	<u>Governance</u>
Keywords	Compliance, regulation, law enforcement, illegal activities
Details of previous versions	<u>City of Newcastle (September 2019) Version 1</u> —— Compliance Policy ECM: 3849973
Legislative amendments	N/A
Relevant strategic direction	<u>Protected and Enhanced Environment</u>
Relevant strategy	N/A
Relevant legislation / codes (reference specific sections)	This policy supports CN's compliance and enforcement functions associated with a wide range of legislation and codes, <u>including reference within:</u> <u>City of Newcastle - Register of Delegations and Authorisations</u> see: <u>City of Newcastle - Register of Delegations and Authorisations</u>

Other related policies / documents / strategies_	<p>Newcastle City Council (September 2021) Customer Complaints Handling Policy</p> <p>CN Customer Service Charter Newcastle City Council (October 2016) Customer Complaints Handling Policy</p> <p>City of Newcastle (2010) Customer Service Policy</p> <p>City of Newcastle (March 2019) Internal Review Guidelines for Penalty Notices under the Fines Act 1996</p> <p>NSW Ombudsman's Model Compliance and Enforcement Model Policy</p>
Related forms_	N/A
Required on website	Yes
Authorisations_	N/A

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**CCL 22/11/22 – ADOPTION OF COMPLIANCE AND ENFORCEMENT
POLICY**

ITEM-- - Attachment B: Compliance and Enforcement Policy –
Clean version

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1 Purpose

- 1.1 The Compliance and Enforcement Policy (the “**Policy**”) provides information to all internal and external stakeholders and interested parties about the City of Newcastle’s (“**CN**”) position on compliance and enforcement matters within the local government area.
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