



Enforcement Policy

Date policy was adopted by Council:	17 December 2008
Resolution number:	617/08
Previous Policy review date:	August 2013
Next Policy review date:	December 2016
Reference number:	C093077

1 OUTCOMES:

To assist Council Authorised Officers to act promptly, consistently and effectively in response to allegations of unlawful activity.

2 POLICY:

This policy applies to the investigation and enforcement of complaints about unlawful activity or failure to comply with the terms or conditions of approvals, licences, notices and orders. This policy is applicable to development compliance issues, pollution control, parking regulation, environmental health compliance issues and keeping and control of animals.

The aim of this policy is to establish clear guidelines for the exercise of discretion in dealing with customer action requests or complaints about unlawful activity. It provides workable guidelines on:

- How to assess whether complaints of unlawful activity require investigation
- Options for dealing with unlawful activity
- How to decide whether enforcement action is warranted.

3 DEFINITIONS

Unlawful activity: defined as an activity or work that has been or is being carried out:

- Contrary to the terms or conditions of a development consent, approval, permission or licence.
- 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 a particular activity or work.
- Without the required development consent, approval, permission or licence (NSW Ombudsman, 2002).

Vexatious complaints: complaint has been made without sufficient grounds and for the purpose of causing annoyance and irritation to others (Macquarie, 1990).

Trivial and frivolous complaints: complaints that are lacking in seriousness, importance or significance and not worth serious consideration (Macquarie, 1990) (Council's Complaints Procedure has a section on dealing with frivolous and vexatious complaints).

4 LEGISLATIVE OBLIGATIONS AND/OR RELEVANT STANDARDS

Council has an enforcement role in relation to a range of Local Government, State and Commonwealth Government legislation. This legislation applies to all persons and properties in the Queanbeyan local government area.

5 CONTENT

Responsibility

All Council staff who deal with the following activities are responsible for implementing this policy:

- Written and verbal requests or complaints alleging unlawful activity;
- Staff who respond to complaints of unlawful activity
- Staff who undertake routine compliance inspections.

All notifications of alleged unlawful activity should be logged in Council's customer action request (CARS) system and directed to the responsible person using the automated 'Pathway' system. Council has developed a *Complaints Policy, Procedure and Staff Guidelines* which sets out the steps for dealing with complaints. Council also has in place a *Customer Service Charter* which sets out how we should deal with its customers.

Investigating Unlawful Activity

Not all complaints will warrant investigation. Council will consider a range of factors when deciding whether to investigate as outlined below:

- Is the matter within the jurisdiction of Council?
- Has consent already been granted or is the activity or work permissible without consent?
- Is the complaint trivial, frivolous or vexatious?
- Has too much time elapsed since the event?
- Is there a more appropriate agency to investigate and deal with this matter?
- Does the complaint have a significant detrimental effect on the environment or constitute a risk to public safety?
- Are there significant resource implications in relation to an investigation and any subsequent enforcement action?
- Is it in the public interest to investigate the complaint?
- Does the complaint have special significance in terms of the Council's existing policy priorities?

Responding To Complaints

All customer action requests or complaints about alleged unlawful activity should be recorded electronically on Council's complaints database and an appropriate response undertaken, in line with Council's *Complaints Policy, Procedures and Staff Guidelines* and Council's *Customer Service Charter*.

Options For Dealing With Confirmed Cases Of Unlawful Activity

If, after investigation, it is determined that an offence appears to have been committed against an Act, Regulation or Order enforced by Council, it will try to use the quickest and most appropriate option to deal with unlawful activity wherever possible unless there is little likelihood of compliance with such options. This may or may not involve prosecution. The response to a confirmed case of unlawful activity may depend on all relevant circumstances consistent with this policy. It is important to ensure that the response taken by Council is appropriate and proportionate to a particular unlawful activity.

Approaches to be considered will include:

- referring the complaint to an external agency for further investigation or prosecution
- taking no action on the basis of a lack of evidence or for some other appropriate reason
- counselling the subject of the investigation to educate them on the relevant council requirements
- negotiating with the subject of the investigation and obtaining some undertakings to address the issues of concern arising from the investigation eg an application for modification of development consent
- 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, followed by service of an appropriate order or notice (Local Government Act (LG Act) ss. 124-128,

Environmental Planning & Assessment Act (EPA Act) s.121B, and the Protection of the Environment Operations Act (PEO Act) Pts 4.2-4.4 and 8.6)

- issuing a notice requiring work to be done under various legislation
- starting proceedings in the Land & Environment Court for an order to remedy or restrain a breach of the relevant Act or Regulation (s.673 LG Act; s.123 EPA Act)
- seeking injunctions from the Land & Environment Court or the Supreme Court
- issuing a summons in the local court
- issuing a penalty infringement notice
- taking proceedings for an offence against the relevant Act or Regulation (s.691 LG Act, s.125 EPA Act; Cl 5 PEO Act)
- carrying out the works specified in an order under the LG Act at the cost of the person served with the order (s.678 LG Act).

Taking Enforcement Action

When deciding on whether to take enforcement action, the decision as to which enforcement measures are appropriate is a matter of judgement and Council will consider the circumstances of the case. This judgement will be based on a range of factors which include:

- Has the Council created an estoppel situation?
- Is the breach a technical breach only?
- When was the unlawful activity carried out and for how long?
- How has the unlawful activity affected the natural or built environment and the health, safety and amenity of the area or individuals affected?
- Would consent have been given if it had been sought?
- Can the breach be easily remedied?
- Does the person in breach show contrition?
- Are there any particular circumstances of hardship affecting the complainant or the person the subject of the complaint?
- Has the person the subject of the complaint, received a previous warning or other non-coercive approach or has formal legal action been taken?
- Would an educative approach be more appropriate than a coercive approach?
- What are the costs and benefits of taking formal enforcement action as opposed to taking informal or no action (eg educative approach)?
- What are the chances of success if the proposed enforcement action was challenged in court?
- Is there a draft planning instrument on exhibition that would make the unauthorised use legal?
- What action would be reasonable and proportionate in this case?
- What would be in the public interest?

Delegations For Enforcement Action

The delegations for Council staff to initiate various levels of enforcement action are authorised by the General Manager. Council's Authorised Officers are appointed to assist Council in administering various legislation under its control. Authorised Officers:

- Carry out inspections and assessments to verify and ensure compliance with various Acts and Regulations, and with notices, orders, licences and approvals etc;
- Where non compliance is found, review options for prevention and corrective action including warnings or notices of contravention;
- Conduct investigations to obtain evidence as to whether a contravention has occurred including entry onto premises where necessary for such investigations;

- Take samples and measurements; and
- Undertake enforcement action or give directions with confirmed cases of unlawful activity.

Conclusion

This policy is intended to be used as a guide for Council officers to carry out enforcement action and is not legally binding on the Queanbeyan City Council. The policy cannot be used to limit the discretion of Queanbeyan City Council to take any enforcement action.

From time to time procedures to deal with problematic and recurring enforcement issues may be developed by Council to assist staff in processing CARS consistently and expeditiously. These procedures can be found in TRIM Folder SF070289.

In addition the NSW Ombudsman provides very useful guidelines on the following issues which may be of assistance:

- Tips on Conducting Enforcement Investigations
- Council Powers to Enter and Inspect Premises
- Having Trouble with Unlawful Development Activity?
- Application of Information Protection Principles to Council Enforcement Action

These guidelines can be found at:

<http://www.ombo.nsw.gov.au/publication/PDF/guidelines/Enforcement%20guidelines%20for%20Councils2.pdf>

References

NSW Ombudsman, 2002, *Enforcement Guidelines for Councils*, 1st edition, NSW Government Publication.

NSW Food Authority, 2006, <http://www.foodauthority.nsw.gov.au/>

enHealth Council (2006) *Responding to Environmental Health Incidents: Community Involvement Handbook*, Melbourne: NPHP.

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Macquarie University, 1990, *The Macquarie Encyclopaedic Dictionary*, The Macquarie Library, Australia

6 PERFORMANCE INDICATOR

Nil

POLICY:-	
Policy No:	TBA
Policy Title:	Enforcement Policy
Date Policy was adopted by Council:	17 December 2008
Resolution Number:	617/08
Previous Policy Review Date:	August 2013
Next Policy Review Date:	December 2016
PROCEDURES/GUIDELINES:-	
Date Procedure/Guideline (if any) was developed:	Nil
RECORDS:-	
Container Reference in TRIM: Policy	SF080616
Container Reference in TRIM: Procedure	Nil
Other locations of Policy:	Intranet (linked to TRIM Container)
Other locations of Procedures/Guidelines:	Nil
DELEGATION (if any):-	
	In accordance with Delegation Register
RESPONSIBILITY:-	
Draft Policy developed by:	M Thompson/ E White
Committees (if any) consulted in the development of the Draft Policy:	Nil
Responsibility for Implementation:	Group Manager Sustainability and Better Living
Responsibility for Review of Policy:	Group Manager Sustainability and Better Living
INTEGRATED PLANNING FRAMEWORK:	
Community Strategic Plan:	Strategic Priority No.
Delivery Program Title:	
Operational Plan:	Program No.

Senior Authorising Officer	Position General Manager	Signature/Date  18 December 2009
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ACTION	COUNCIL MEETING DATE	RESOLUTION NUMBER	REPORT ITEM NUMBER
NEW/RECONFIRMED/ AMENDED			
New	17 December 2008	617/08	Item 1

DATE REVIEWED	REVIEWER POSITION	REVIEWER NAME
August 2013	Group Manager – Sustainability and Better Living	Mike Thompson