



Enforcement Policy

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1 PURPOSE

This policy provides information for internal and external stakeholders and interested parties about Council's position on compliance and enforcement matters in the Goulburn Mulwaree local government area.

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.

This policy outlines factors to be considered at the various stages of the enforcement process from the receipt and investigation of reports alleging unlawful activity, including how matters are assessed and prioritised for investigation, through to enforcement options available to Council and considerations given when determining how to best respond to these compliance matters including whether to commence criminal or civil proceedings.

2 SCOPE

This policy applies to all compliance and enforcement actions where Goulburn Mulwaree Council has a regulatory responsibility and is the appropriate regulatory authority under New South Wales legislation. This policy applies to all regulatory and compliance functions including scheduled regulatory programs, investigation of complaints and enforcement actions.

Council's regulatory responsibilities are applicable to actual unlawful activity, as well as a failure to take action (in order to be compliant with certain legislative or legal requirements) including failure to comply with approvals or legal directions. For simplicity, this policy refers to both an act and/or an omission by an alleged offender as 'unlawful activity'.

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 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.

Council will undertake compliance and enforcement action where appropriate in accordance with this Policy document. However, 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 merit based decision made.

It should be noted that this policy is distinct from Council's Complaint Handling Policy as it does not respond to expressions of dissatisfaction received by Council relating to the business of Council or the action/s of Council staff or agents.

3 POLICY OBJECTIVE

Policy objectives:

- To provide clear guidelines and protocols for the management of Councils regulatory activities and to assist Council officers in making decisions in the undertaking of their enforcement functions;
- To specify the criteria which Council will take into consideration when deciding:
 - a) If enforcement action is necessary; and

- b) The most appropriate type of action;
- To provide guidelines for the exercising of discretion when dealing with non-compliances including taking into account not only legislative provisions but all relevant information including the available evidence, cost to the community, the circumstances of the individual case, public policy and precedent considerations;
 - To provide a consistent approach in the enforcement and resolution of matters and to ensure these matters are managed in a fair and transparent manner;
 - To ensure the principles of procedural fairness and natural justice are followed;
 - To provide information to the public about Council's role and policy position on enforcement; and
 - Ensures that the enforcement process is conducted proportionate to the risk associated.

4 LEGISLATIVE PROVISIONS

Local Government organisations are responsible for the enforcement of a diverse range of legislative provisions designed to protect public infrastructure, public health, safety and amenity and the environment. The guiding principles, under section 8 of the *Local Government Act 1993*, require Council to ensure that its regulatory powers are exercised fairly and in a consistent manner without bias and in the best interests of the community.

In determining regulatory actions to be taken in regards to a compliance matter Council will take into account the circumstances surrounding the matter, the risk presented by the non-compliance, community needs and interests and the principles of social justice. Council decision-making will be transparent and in accordance with this policy.

This policy outlines Council's broad approach to enforcement and provides a framework that promotes understanding of the manner in which enforcement activities and actions will be undertaken. This Policy is supported by detailed internal procedures that provide further guidance to Council Officers.

5 APPLICATION

This policy applies to all compliance and enforcement actions where Goulburn Mulwaree Council has a regulatory responsibility and is the appropriate regulatory authority under New South Wales legislation. As a statutory body, the Council cannot act in a particular situation unless it has been given the power to do so by an Act or Regulation. In the exercise of Councils regulatory functions it is required to act in the public interest rather than the private interest of individuals or landowners.

Activities and functions for which Council has an enforcement or regulatory responsibility include but are not limited to:

- Development and building
- Pollution
- Environmental Health
- Food Safety
- On-site Sewage Management
- Companion Animals
- Swimming Pools
- Public Health and Safety
- Biosecurity Weeds
- Impounding
- Parking and Traffic Control
- Abandoned Articles
- Tree Preservation
- Fire Safety
- Boarding Houses
- Water and Sewer

6 COMPLIANCE AND ENFORCEMENT PRINCIPLES

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 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 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 compliance and enforcement action is implemented consistently. • Encouraging customer 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.

7 RESONSIBILITY

Council receives information about alleged unlawful activity from members of the public, contact from other Government Agencies and information gathered by Council Officers during proactive inspections.

All Council staff who deal with reports alleging unlawful activity are responsible for implementing this policy. Council 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 business unit of Council.

Only Council Officers with appropriate delegations from the Chief Executive Officer can undertake investigations or compliance and enforcement actions in relation to this Policy.

Council staff are required to:

- Treat all relevant parties with courtesy and respect;
- 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;
- Make full and proper records in relation to the assessment and investigation of reports alleging unlawful activity, including reasons for any decisions;
- Inform all relevant parties of reasons for decisions;
- Provide as much information 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;
- Provide information to all relevant parties about any avenues to seek an internal or external review of a decision.

All reports alleging unlawful activity are to be entered into Council's customer request management system and actioned within the appropriate risk based time frame by the appropriate business unit.

8 SUBMITTING REPORTS OF UNLAWFUL ACTIVITY

Reports alleging unlawful activity will be recorded in Council's customer request systems and will be allocated a unique reference number. The report will be referred to the relevant Council Officer to commence any necessary action.

The name, address and contact details of the person submitting the report will also be recorded. This information is critical as Council may need to rely on evidence from the complainant to prove any alleged offence and commence enforcement action. Council will advise any complainants of the action, if any, taken or the reasons why no action was taken in the circumstances.

Council generally seeks to keep confidential, personal information identifying a complainant. However, Council may be required to disclose the identity of complainants in a variety of circumstances including the following:

- The matter proceeds to Court or legal proceedings are commenced and the information is disclosed in evidence served;
- When access to the information is permitted under Legislation, including the *Government Information (Public Access) Act 2009* or the *Local Government Act 1993*;
- The person consents to the disclosure;
- The disclosure is required to comply with the principles of procedural fairness;
- The disclosure is necessary to investigate the matter.

It should be noted that in some circumstances it may be possible for the identity of the person submitting the report to be ascertained purely by the nature of the allegation. 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.

8.1 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);
- Providing a clear description/account of the impact that the alleged activity is having;
- 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;
- Co-operating with Council's inquiries and giving timely responses to questions and requests for information;
- Treating Council's staff with courtesy and respect.

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 communications with the individual. Any unreasonable conduct will be dealt with in accordance with Council's *Unreasonable Complainant Conduct Policy*.

8.2 Anonymous Reports:

Anonymous reports will be recorded and assessed in accordance with the requirements of this Policy. However, because it is not possible to seek clarification or additional information about a matter, it may be more difficult to evaluate or investigate the allegations, therefore, these reports are less likely to warrant action and will be prioritised accordingly.

8.3 Neighbour Disputes:

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 will require Council's involvement and some of which will be personal to the parties.

Council staff will thoroughly assess such reports to determine whether there is evidence of any possible unlawful activity requiring action by Council. Care will be taken to explain which aspects of a report council can deal with and which cannot be dealt with and why. Where possible, individuals will be provided with information about how to resolve neighbour disputes including referral information resources such as LawAccess NSW and Community Justice Centre's.

It is possible that one party may provide further information about a matter which changes Council's decision about whether it will become involved. In such circumstances, Council staff will carefully consider the matter before taking action and document reasons for the new decision. Relevant parties will be advised about the reasons Council has changed its position on a matter.

Council staff will not change a decision about whether or not Council should be involved purely as a response to the conduct of an individual such as persistent demands or threats.

8.4 Complaints regarding Council Enforcement Actions:

Any complaints about Council's handling of reports alleging unlawful activity will be recorded separately and handled in accordance with Council's *Complaints Handling Policy* and associated procedures.

Where a person or organisation subject to enforcement action merely disputes Council's decision to take enforcement against them, they will be directed to make representations in accordance with any relevant internal and external appeal processes.

Council will act on any complaints about the conduct of compliance officers in accordance with Council's *Complaints Handling Policy*, procedures and the *Model Code of Conduct*.

9 RESPONDING TO CONCERNS ABOUT UNLAWFUL ACTIVITY

Council will record every report alleging unlawful activity in the customer request management system. Council will provide a response to every such report unless the person raising the matter has indicated they do not wish to receive a response about Council's handling of the matter, or the report is anonymous.

Generally speaking, 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 received can, will or need to be investigated. A preliminary assessment of all matters will be made to determine the priority for a response and a risk assigned in accordance with Council's customer request response procedure, to determine whether investigation or other action is required.

An investigation of alleged unlawful activity may take a significant amount of time to complete, particularly where the issues are complex. If Council decides to investigate, staff will give the person who reported the alleged unlawful activity regular feedback on the progress of the investigation, and any reasons for delay. This does not mean that the individual can expect to be given details about every aspect of the investigation or information that would compromise the integrity of the investigation.

Decisions about what action should be taken by Council are made at the Council's discretion. This means the objective is that reports alleging unlawful activity will be resolved to the satisfaction of Council, not necessarily the person raising the matter. Council will generally try to resolve matters as quickly and informally as possible to avoid the need to take formal action.

Council staff will endeavour to manage the expectations of people who report alleged unlawful activity, and in particular explain that in the absence of sufficient evidence of unlawful activity, Council may be unable to take further action. Council does not have unlimited resources and powers to deal with all reports alleging unlawful activity. If Council is unable to fully investigate or take action on a matter because it is restricted by any legal or resource limitations this will be explained to the individual. While there are certain statutory requirements that must be met in relation to notices and orders Council staff will ensure that all explanatory communications are made in plain English and explain any technical language the law requires to be used.

10 UNREASONABLE COMPLAINANT CONDUCT

Council has an obligation to use resources efficiently and effectively. While Council acknowledges a customer's entitlement to make requests and complaints, it reserves the right to cease responding to customers that continually exhibit unreasonable customer complaint behaviour including:

- a) Requests that place unreasonable demands on Council's staff;
- b) Requests that place unreasonable demands on Council's resources;
- c) Unreasonable persistence;
- d) Unreasonable lack of cooperation;
- e) Requests or complaints based on unreasonable arguments;
- f) Behaviour that is threatening, abusive or aggressive.

In the context of the above situations officers will follow Council's *Unreasonable Complainant Conduct Policy*.

11 INVESTIGATING ALLEGED UNLAWFUL ACTIVITY

Not all reports alleging unlawful activity will warrant investigation. A preliminary assessment of all matters will be made to determine whether investigation or other action is required. Council will prioritise matters on the basis of risk to public safety, human health and environment in accordance with its Customer Request Response Procedure.

If there is insufficient information in the 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.

11.1 Circumstances where no action will be taken:

Council will take no further action if, following a preliminary assessment, it is identified that:

- The report is not supported with evidence or appears to have no substance;
- Council does not have jurisdiction to investigate or is not the appropriate authority to take action on the issues raised.

Where there is another appropriate authority or course of action, council may bring the matter to the attention of the authority or provide information and contact details to the individual. For example, Safe Work NSW for workplace safety matters, the NSW Environment Protection Authority for possible environmental offences and licensed sites and Community Justice Centre's NSW for personal disputes;

- The report relates substantially to a matter previously determined by Council and no new or compelling information is presented which would cause Council to change its earlier decision. In this case, staff will acknowledge the report and advise that no further action will be taken as no new information had been provided (other than where the person has previously been advised they would receive no further response);
- The allegations relate to a lawful activity (e.g. where there is an existing approval or the activity is permissible without Council approval or consent being required);
- The relevant Business Manager, Director or the Chief Executive Officer determines that investigation or other action would have an unreasonable impact on resources and/or is unlikely to achieve an outcome sufficient to justify the expenditure of resources.

11.2 Relevant factors guiding decisions as to whether action is taken:

When deciding whether to investigate, Council will consider a range of factors including whether:

- The activity is having a significant detrimental effect on the environment or it constitutes a risk to public safety;
- The report is premature as it relates to some unfinished aspect of work that is still in progress;
- The activity or work is permissible with or without permission;
- All conditions of consent are being complied with;
- How much time has elapsed since the events, the subject of the report, took place;
- Another body is a more appropriate agency to investigate and deal with the matter;
- It appears there is a pattern of conduct or evidence of a possible wide spread problem;
- The person or organisation reported has been the subject of previous reports;
- The report raises matters of special significance in terms of the Council's existing priorities;
- There are significant resource implications in relation to an investigation and any subsequent enforcement action;
- It is in the public interest to investigate the report.

The above are factors for Council to consider and weigh in making a determination. Council staff are not limited in their use of discretion by these considerations and may decide to investigate or not investigate based on these and other factors.

The objective of the processes Council staff use when investigating incidents of alleged unlawful activity, is 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 incident.

Any decision not to investigate an allegation of unlawful activity will be recorded and the reasons for that decision clearly stated to the complainant.

12 DECIDING WHETHER OR NOT TO TAKE ENFORCEMENT ACTION

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 including the public interest. The following common considerations will assist Council staff in determining the most appropriate response in the public interest:

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

12.2 Considerations about the alleged offender:

- Any prior warnings, cautions, instructions, advice that was issued to the person or organisation reported or previous enforcement 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 hardship affecting the person or organisation reported.

12.3 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.

12.4 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.

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 *Model 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 actions undertaken, as well as records of interactions with relevant parties. Council staff will at all times adhere to Council's internal processes prior to the commencement of any enforcement action.

Council staff will take all steps necessary to ensure that any enforcement action is taken against the correct person and/or organisation.

13 OPTIONS FOR DEALING WITH CONFIRMED CASES OF UNLAWFUL ACTIVITY

Council will use the most effective, informal option to deal with unlawful activity where ever 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 individual merits of each case.

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.

There are a range of enforcement actions available to Council officers as shown in Figure 1. It should be noted, however, that enforcement options are not necessarily mutually exclusive. For example, in some circumstances it may be appropriate to simultaneously issue an Order and a Penalty Infringement Notice or in dealing with straightforward matters of unlawful activity where the matter is resolved at the time of action Council may determine to address the matter by way of issuing a Penalty Infringement Notice and take no further action for example when addressing parking or roaming dog offences.

13.1 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 compliance outcomes are met. Should initial enforcement action be found to have been ineffective, Council staff will consider other enforcement options.

13.2 Figure 1: Enforcement actions available to Council:

The Figure on the following page depicts the typical escalation pathway that may be followed by Council in undertaking enforcement action for unlawful activity. Council may however commence enforcement at any step in the below process based on the considerations in Item 12 and 13 of this Policy.

Remedial or Rectification Action

Court Order
 An order from the Court requiring certain things to be done to achieve compliance
 (Civil proceedings)

Order/ Notice
 A Order/ Notice from Council requiring certain things to be done to achieve compliance

Letter requiring undertaking
 A letter requesting an undertaking that corrective action will be taken within a certain timeframe

Negotiation
 With alleged offender and written confirmation or commitments made

Caution/ Warning or Advisory Letter
 To encourage future compliance and caution that further action may be taken

Record of Breach
 No further action- used for minor breaches only

Penalty Action

Criminal Prosecution
 In the Land and Environment Court or the Local Court

Penalty Infringement Notice
 On the spot fine where an offence is immediately established or issued in conjunction with other action

Typical Escalation Pathway



Note: It may be appropriate to use more than one enforcement option in some cases. If initial enforcement action does not achieve a satisfactory outcome it may be necessary to proceed to a higher level of enforcement response. For example, if a warning letter or notice of intention does not achieve the desired response, it may be appropriate to give an order; or if an order is not complied with, it may be appropriate to bring about enforcement or prosecution proceedings.

14 TAKING LEGAL ACTION

Council and 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;
- time within which to commence proceedings.

14.1 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.

14.2 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.

14.3 Whether the public interest warrants legal action being 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.

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 are lengthy processes);
- 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.

14.4 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.

15 SHARED ENFORCEMENT RESPONSIBILITIES

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

Council recognises that collaboration and co-operation between authorities to address issues of shared regulatory responsibility, in this regard, where there are shared legislative responsibilities, Council staff will work with relevant authorities to establish:

- Which authority will take the leading 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.

16 ROLE OF COUNCIL WHERE THERE IS A PRIVATE CERTIFIER

Where a Private Certifier has been appointed as the Principal Certifier (PC) for a site the Council recognises that the Private Certifier is the authority responsible for ensuring compliance with the conditions of development consent.

Persons making complaints regarding a site under the supervision of a Private Certifier will be advised to contact the Private Certifier in the first instance. This will provide the Private Certifier an opportunity to address the issues and take appropriate action as necessary. Although Private Certifiers have limited enforcement powers as the PC, they are required to issue a Written Directions Notice for non-compliances where they become aware of a breach or possible breach as detailed under the *Environmental Planning and Assessment Act 1979*.

Should the Private Certifier fail to use their enforcement powers to address the issue raised within a reasonable timeframe, Council may act to investigate the matter and refer the conduct of the Private Certifier to NSW Fair Trading.

It must be noted that Council is not the regulator of Private Certifiers and any complaints from the public about the conduct of Private Certifiers must be directed to NSW Fair Trading.

Council will endeavor to work with Private Certifiers 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.

17 ROLE OF COUNCILLORS IN ENFORCEMENT

Compliance and enforcement matters are sensitive and easily susceptible to allegations of impropriety, bias or inconsistency. To manage the risk associated with these functions and in accordance with the *Model Code of Conduct*, Councillors must carefully consider their role and the provisions of the Code of Conduct and Local Government Act prior to any perceived or actual involvement with a compliance matter or regulatory action.

Decision making relating to the investigation of reports alleging unlawful activity and taking enforcement action is the responsibility of appropriately authorised Council officers or the Council itself.

Individual Councillors are not permitted 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 or individuals or seek to influence or change an enforcement action.

The Chief Executive Officer may present certain decisions to be ratified by the elected Council if this is necessary or desirable, and Councillors may have the right to call for a report about particular issues to a Council meeting.

18 DELEGATIONS

Council staff delegations for taking action under this policy are detailed in Council's Delegation Register.

19 REVIEW

This policy is to be reviewed at least every two years or as circumstances warrant (e.g. when changes to legislation are enacted or where a particular judicial decision may have an impact on the procedures or process outlined in this policy).

20 RELATED COUNCIL POLICIES

This policy is distinct from Council's *Complaint Handling Policy* as it does not respond to expressions of dissatisfaction received by Council relating to the business of Council or the action/s of Council staff or agents.

This policy references Council's *Unreasonable Complainant Conduct Policy* and the processes referred to therein.

21 RELATED DOCUMENTS

This policy is adapted for Council from the NSW Ombudsman '*Model Compliance and Enforcement Policy*' (2015).

Council officers undertaking compliance or enforcement actions under this policy may also reference the following related documents in addition to others not detailed, in determining appropriate actions.

- *Caution guidelines under the Fines Act, 1996*. Attorney General (2010).
- *Enforcement Guidelines for Councils*. NSW Ombudsman (2015).
- *Guideline on the exercise of functions under the Companion Animals Act*. Office of Local Government (2015).
- *Powers and Notices- Guideline for Authorised Officers and Enforcement Officers under the Protection of the Environment Operations Act, 1997*. NSW Environment Protection Authority (2021).
- *Prosecution Guidelines*. NSW Department of Planning, Industry and Environment (2021).

APPENDIX 1 - APPLICABLE LEGISLATION

The Policy applies, but is not limited to, Council's responsibilities under the following Acts, their associated Regulations and any subsequent legislative amendments:

- Australian Road Rules 2014
- Biodiversity Conservation Act 2016
- Biosecurity Act 2015
- Boarding Houses Act 2012
- Building and Development Certifiers Act 2018
- Companion Animals Act 1998
- Contaminated Land Management Act 1997
- Crown Land Management Act 2016
- Environmental Planning & Assessment Act 1979
- Fines Act 1996
- Food Act 2003
- Impounding Act 1993
- Liquor Act 2007
- Local Government Act 1993
- Plumbing and Drainage Act 2011
- Protection of the Environment Operations Act 1997
- Public Health Act 2010
- Roads Act 1993
- Road Transport Act 2013
- Rural Fires Act 1997
- Swimming Pool Act 1992

APPENDIX 2 - DEFINITIONS

The following are the definitions of key terms in this Policy:

Appropriate Regulatory Authority (ARA):

Refers to the agency or body responsible for enforcing a particular regulation. Council is not the appropriate regulatory authority for all enforcement matters.

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.

Enforcement:

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

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.

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 license;
- 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 license.



GOULBURN MULWAREE COUNCIL

ENFORCEMENT POLICY

Version	Council Meeting Date	Resolution	Adoption Date	Effective From
1	2 June 2020	2020/207	12 August 2020	12 August 2020
2	6 September 2022	2022/312	6 September 2022	4 October 2022

All policies can be reviewed or revoked by resolution of Council at any time.

DIRECTORATE: Planning & Environment

BUSINESS UNIT: Environment & Health