



DATE ADOPTED: 10 MARCH 2015

VERSION: 1.0

POLICY OBJECTIVES

The objective of this policy is to:

- Ensure that regulatory matters are managed in a consistent and transparent manner and the principles of procedural fairness and natural justice are followed
- Establish clear guidelines for the management of Council's regulatory activities and implementation of enforcement action which include:
 - Development, review and implementation of specific programs for regulated activities
 - Utilising education, awareness, negotiation and remediation prior to the adoption of a regulatory response
 - The investigation of customer requests for action relating to regulatory matters based on risk and prioritisation
 - Determining whether or not enforcement action is warranted
 - Matters for consideration and the exercise of discretion in dealing with regulatory action by Council
 - Options for dealing with unlawful activities and regulatory breaches

Maitland City Council acknowledges that it has an obligation under section 8 of the *Local Government Act 1993* to ensure that the exercise of its regulatory power is carried out with consistency and without bias.

POLICY SCOPE

This policy relates to the regulation of a range of regulatory activities undertaken by Council's Development and Environment Department. Regulatory activities include, but are not limited to, environmental health, food safety, fire safety, on-site sewage management, pool barriers, illegal dumping, control of animals, parking, illegal development, advertising signs and similar regulatory activities within Council's area of responsibility.

Whilst it is intended that the principles in this policy will have general application, there may be cases where the particular circumstances justify departure from these principles.

For the avoidance of doubt, this is not a local orders policy for the purpose of section 159 of the *Local Government Act 1993*.

POLICY STATEMENT

This policy provides an overall framework for the investigation and enforcement of regulated activities (e.g. programs for food surveillance, public health, swimming pools, fire safety etc.) and Council's response to unlawful activity (e.g. illegal advertising signs/posters, illegal development/activity, parking, animal management, customer service requests, etc).

The NSW Ombudsman's *Enforcement Guidelines for Council's* form the basis for the overarching principles associated with development of this regulation and compliance policy.

1. AUTHORITY TO TAKE REGULATORY ACTION

Council has authority to take regulatory action under a number of NSW Acts and Regulations including, but not restricted to:

- *Local Government Act 1993*, and regulations
- *Environmental Planning and Assessment Act 1979*, regulations, state environmental planning policies, and environmental planning instruments
- *Companion Animals Act 1998*, and regulations
- *Food Act 2003*, regulations and NSW Food Safety Standards
- *Impounding Act 1993*, and regulations
- *Protection of the Environment Operations Act 1997*, and regulations
- *Public Health Act 2010*, and regulations
- *Roads Act 1993* and regulations
- *Swimming Pools Act 1992* and regulations

Each Act sets out the powers of authorised officers under that particular piece of legislation. These powers include, but are not limited to:

- Powers of entry (and notice of inspection requirements where applicable)
- Inspection and investigation powers
- Require records to be produced for inspection
- Issue notices, orders, Penalty Infringement Notices (PINs)

Whilst Council may be the Appropriate Regulatory Authority (ARA) for many regulation and compliance matters it is not the ARA for all compliance and enforcement matters. Where Council is not the ARA, customers will be informed of the appropriate agency to contact (e.g. Police, NSW Health, NSW Food Authority, WorkCover etc.).



2. ETHICAL DECISION MAKING

- All records are to be captured and registered into an official record keeping system in accordance with the adopted policies and procedures
- Officers will collect, use and disclose information and records only in accordance with adopted policies and procedures for privacy and accessing information
- Officers are required to comply with the Council's Code of Conduct
- Officers are to act in accordance with the principles of natural justice (procedural fairness) which include:
 - Providing a fair hearing – allowing a person whose interests may be adversely affected by a decision to present their case
 - Impartiality in the decision making process – officers are to be unbiased and not hold a vested interest in the outcome of a process
 - Decisions based on evidence – decisions must be based on the evidence provided, not on irrelevant issues, and there must be a rational basis upon which the decision maker has decided to accept the evidence as credible
- Officers will apply discretion in an impartial, consistent and fair manner, with the public interest in mind, in accordance with NSW Ombudsman Enforcement Guidelines for Councils
- Management will not fetter the discretion of Officers as required by administrative law and the Attorney General's Caution Guidelines under the Fines Act 1996
- An internal review process is to be established to systematically review protocols and procedures associated with compliance functions.

3. REGULATED ACTIVITIES – OVERVIEW AND PRINCIPLES OF PROGRAMMED ACTIVITIES

Council has an important role to play in monitoring and encouraging compliance with specific legislation through programmed review and inspection programs such as for food surveillance, on-site sewage management systems, swimming pool barrier inspections, public health issues to name just a few.

To ensure consistency between programs a model has been developed that allows officers to focus on matters of significance based on risk analysis of non-compliant activities, and to address those risks through the development and use of a suite of compliance tools.

This model has been adapted from similar models in use by other organisations including a local council. A diagram representing the Regulatory Compliance model is provided in the following pages.

Existing compliance activities will be reviewed for consistency with the policy and changes implemented to align those activities to reflect the approach outlined in this policy. The model will be applied separately to each programmed regulatory activity.

3.1 Overview of Principles

The overarching principle is to use the most appropriate enforcement or compliance tools to address the most significant problems to achieve the best outcomes as quickly and effectively as possible.

- Use of appropriate data to find and address significant problems
- Use risk based analysis to prioritise our compliance activities



- Use the most appropriate mix of tools where appropriate to achieve the best environmental, public health, and safety outcomes through a balance of:
 - Compliance assistance
 - Incentives
 - Compliance monitoring
 - Enforcement
- Review and assessment of the effectiveness of our activities
- Effectively communicating the outcomes of our activities.

3.2 Use of Appropriate Data

Information is gathered and analysed from sources such as:

- Registration supplied with application form to Council or NSW registers (e.g. cooling towers, food businesses, swimming pools etc)
- Council inspection / compliance data
- Other government or industry compliance data (e.g. NSW Environmental Protection Authority (EPA), NSW Food Authority, Office of Local Government)
- Customer service request (CSR) data
- Monitoring / maintenance records (e.g. maintenance records for on-site sewage management systems, fire safety, Legionella control)

3.3 Risk based analysis

The main risk categories of relevance to Council compliance functions are:

- Human health
- Public safety
- Environmental harm
- Council's reputation (e.g. for non-compliance with legislative requirements to undertake specific regulatory activities)

Council has a legal obligation to run a number of pro-active monitoring programs focussed on specific regulated activities with the aim of minimising the potentially significant consequences (such as: food surveillance, fire safety, skin penetration, onsite sewage management, water-cooling and warm-water systems)

3.4 Compliance Tools

The appropriate use and application of a range of regulatory and non-regulatory compliance tools is essential to achieve the most efficient and effective use of Council resources to achieve the best public health, safety and environmental outcomes for the community.

The five main compliance tools and their application are outlined below:

- Compliance Assistance

Compliance assistance involves informing a regulated community on how to comply and the reasons why compliance is required. Council will educate the community and commercial operators in relation to regulatory issues and their responsibilities in this regard.

Council can further encourage voluntary compliance through the use of resources such as the website, pamphlets, discussion, training sessions, and the like.



Compliance assistance will help to:

- Improve knowledge of the legal requirements and responsibilities
- Increase awareness and understanding within each regulated community (e.g. skin penetration, or fire safety or similar regulated activities)
- Outline the consequences of non-compliance such as loss of business; health, safety and environmental liabilities, and any associated legal or financial implications
- Compliance Incentives

Compliance incentives can be an effective tool to encourage voluntary compliance, self-assessment and self-reporting.

Where appropriate, council may choose to reduce the frequency of site inspections based on documented evidence of compliance being submitted. E.g. records of regular maintenance of aerated wastewater treatment system being submitted on a regular basis.

In turn, a reduction in frequency of inspections may also result in a reduction in fees for service payable to Council i.e. if inspection not required then inspection fee would not apply.

- Pro-active Monitoring
 - Council undertakes a range of pro-active, planned monitoring and inspection programs to determine the level of compliance within a regulated community and to improve compliance where required
 - Inspections carried out at regular intervals (e.g., annually, bi-annually, or every 1-3 years determined on the basis of risk rating)
 - Re-inspection or more frequent inspections of identified poor performers or higher risk activities or premises
 - Campaigns targeting a particular regulated community, e.g. high risk swimming pool barrier inspections
- Enforcement Action

Council will choose an enforcement response which is proportionate to the seriousness of the offence, which is consistent with the intent of the legislation, and is an appropriate use of Council's resources.

Section 3.3 of this policy provides an overview of the compliance options available.

3.5 Performance Measurement

Council is committed to the ongoing assessment of the effectiveness of compliance activities undertaken.

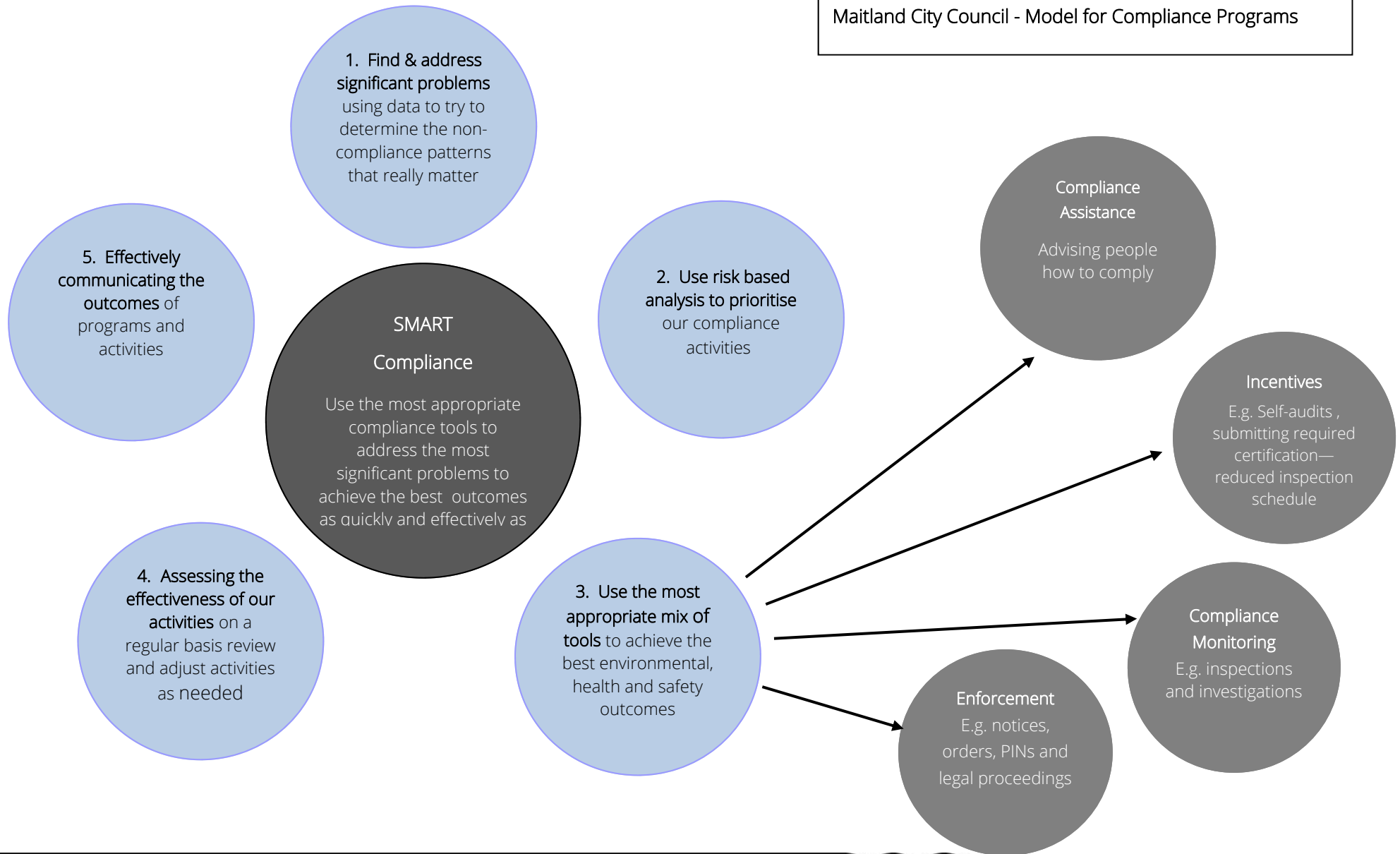
The relevant key performance indicators vary between the requirements of each legislation, however, some common measures might include:

- Overall compliance/non-compliance within specific regulated communities
- Compliance/non-compliance with specific laws, regulations, conditions or standards

3.6 Performance Reporting

Council provides reports to specific agencies such as Office of Local Government, NSW Health and the NSW Food Authority. Summary reports for compliance programs will be provided to management for further distribution as appropriate.





4. RESPONSE TO REPORTS OF UNLAWFUL ACTIVITIES

Council's regulatory role requires that it identifies and responds appropriately to unlawful activities that it has a responsibility for regulating.

The principles identified in Section 3 equally apply to Council's response to unlawful activities.

4.1 Prioritisation

All notifications of alleged unlawful activity (verbal and written) must be lodged in Council's Customer Service Request system and directed to the responsible officer.

As a means of helping to screen and prioritise customer service requests, Council has developed a Preliminary Prioritisation Risk Matrix. This matrix will help prioritise response time based on criteria such as risk to public safety, human health, environmental harm, and, council reputation.

Council must respond appropriately to a request relating to an alleged unlawful activity. Applying a risk-based approach enables Council to make informed regulatory decisions that ensure its compliance focus is on the biggest risk to the public.

The risk matrix is not intended to be exhaustive but is meant to provide a guide on the efficient use of Council resources taking into account the urgency and seriousness of the request. Not all requests will warrant immediate or extensive investigation.

Risk Matrix - Preliminary Prioritisation (Regulatory Compliance)

	CRITICAL	MODERATE	LOW
Overall	<ul style="list-style-type: none"> Requires immediate action This issue is so urgent it need to be attended to now <p><i>Short term localised impacts with minimal harm would not be included</i></p>	<ul style="list-style-type: none"> Important but not urgent the non-compliance does not involve any life threatening issue It is not critical that the issue be resolved immediately 	<ul style="list-style-type: none"> Needs attention but is not urgent
Initial Response Time	Within one (1) business day	Within one (1) to five (5) business days	As resources permit
Risk - Public Safety	May involve significant public safety issues	May include moderate, actual or potential public safety issues	Public safety aspects are minimal or unlikely
Risk - Human Health	May involve significant human health issues	May include moderate, actual or potential human health issues	Human health impacts are minimal or unlikely
Risk - Environmental Harm	May involve significant pollution or environmental harm	May include moderate or potentially serious impacts on the environment	Environmental harm is minimal or unlikely
Risk - Council Reputation	May involve significant loss of reputation, state / national focus	General community dissatisfaction, local coverage	May cause some minor public concern



All action requests about alleged unlawful activities should be acknowledged (by mail, telephone or email) at the earliest opportunity and no later than 10 business days from receipt. The response should acknowledge receipt of the customer service request, advise that the matter is being investigated and that they will be further advised of the outcome.

4.2 Investigation

In addition to the initial prioritisation process Council will consider a range of factors when deciding the extent to which a matter will be investigated and what action will be taken, including but not limited to:

- Jurisdiction
 - Is the matter in question within the jurisdiction of Council?
 - Is there another body that is a more appropriate regulatory agency to investigate and deal with the matter?
- Permissibility
 - Is the activity or work permissible with or without consent?
 - If the activity is permissible with consent, is there a consent in place? Would consent have been obtained regardless if it was sought? Is the proposal of the scale similar to exempt or complying development?
 - Is it possible to determine from the information available to Council whether the activity or work is permissible without consent or whether all conditions of consent are complied with?
- Magnitude of Offence / Constraints
 - Is the report/request trivial, frivolous or vexatious?
 - Is the activity having an actual or potentially significant detrimental effect on the environment or does it present a risk to public safety, environmental harm, human health or council reputation?
 - Are there enforcement measures needed to ensure compliance and to bring about the best environmental outcome?
 - Is the incident a technical breach only? Is some form of rectification work needed?
 - When was the unlawful activity carried out? How long has it been taking place? If it has been ongoing for some time what has changed to trigger the report/request?
- Tangible Impact
 - How has the unlawful activity affected the natural or built environment and the health, safety and amenity of the area?
 - Would consent have been given to the party if it had been sought for this particular issue? Can the breach be easily remedied?
- Pattern of Behaviour
 - Is the report/request one of a series? If so could it be an indicator of a more wide spread problem?
 - Has the subject of the report/request received any previous warnings for a similar issue?
 - Are there any particular circumstances of hardship affecting the complainant, or the person the subject of the report/request?
 - If an offence has been committed has the subject of the report/request shown contrition? Have they undertaken any voluntary actions to mitigate any impacts? Have they shown any willingness to cooperate with Council by committing to appropriate remedial action?



- Policy and Resource Considerations
 - Does the report/request have special significance in terms of Council's existing priorities?
 - Are there significant resource implications in relation to an investigation and any subsequent enforcement action?
 - Is there any precedent which may be set by not taking action?
- Public Interest Considerations
 - Is there a potential for a conflict of interest in the investigation or reaction to a report/request?
 - What action would be reasonable and proportionate in each case given the circumstances?
 - Are witnesses prepared to give evidence in court to support Council's action?
 - What would be in the public interest?
 - What are the chances of success if the proposed enforcement action was challenged in court?
 - What are the costs and benefits of taking formal enforcement action, as opposed to taking informal or no action?

If a decision is made not to investigate a report/request beyond a certain stage then the decision and the reasons for it must be recorded and appropriately documented.

4.3 Compliance Options

Before considering which compliance options to apply it is essential that the authorised officer ensures:

- all decisions to take enforcement action (including all decisions to commence civil proceedings or prosecution) shall be made in accordance with the relevant delegations and powers
- lawfully obtained (admissible) evidence is sufficient to support the claim within the courts if challenged
- for serious breaches, after forming the belief that a suspect is responsible for that breach, a formal legal warning is to be made before asking any further direct questions of that suspect (if and as required by the relevant legislation)
- the exact provision of the legislation that has been breached has been determined in order to identify and evaluate the most appropriate compliance option available
- due consideration is given to the likelihood of success should the matter proceed to court and whether that action is in the best interest of the wider community

Options include:

- Referral
 - Referring the report/request to an external agency (authorised regulatory authority) for investigation
 - In some instances council officers may advise/refer parties to an external mediator such as the Community Justice Centre
 - Where a number of unrelated premises (three or more) are adversely affected by offensive noise, as defined by the Protection of the Environment Operation Act 1997 (POEO), and are prepared to give evidence in court, then Council will consider discretionary powers available under the POEO Act and other legislation to resolve the impact
 - In some instances, such as where council receives a request regarding amplified music or noise associated with parties/crowds, the complainant will be referred to the Police who are better equipped to deal with such situations



- Where an individual or single premises is adversely affected by offensive noise as defined by the POEO Act, the affected person be advised to seek resolution by means of mediation, with the assistance of the Community Justice Centre or by an application for a Noise Abatement Order at the Local Court as prescribed by Section 268 of the POEO Act
- No Action when
 - On the balance of evidence there is little to no likelihood of success in the courts
 - It's not in the public interest of the wider community
 - In some circumstances where no action is to be taken the complainants may be advised of the option to take private legal action against the alleged offender. Irrespective of whether or not Council takes any compliance or enforcement action anyone can commence civil proceedings to protect themselves and their property from harm
- Warnings / Cautions
 - Issue a formal warning by letter requiring work to be done or the activity to cease
 - Issue a formal written caution (Council issued CAUTION notice) or verbal caution supported by notebook entry
- Penalty Infringement Notices (PINs)
 - PINs involve the issuing of a fine ranging in value from \$ 60 to \$ 5,000
 - PINs are intended to be used for minor offences or non-compliance with orders. They do not require any rectification works they are simply a penalty tool
 - All representations by persons to whom a PIN has been issued, must be made to the State Debt Recovery Office (SDRO). Any persons making representations directly to Council will be referred to the SDRO for all enquiries.
- Notices of Intention and Orders
 - Issue a notice of intention to serve an order and, where required by legislation provide the recipient with the opportunity to make written representation as to why the order should not be served
 - The notice of intention includes the terms and conditions of the proposed order and specifies the required actions to be taken
 - A re-inspection is made at the expiration of the notice of intention, if the issue has not been rectified then the order will be served
 - When preparing notices of intention, orders and directions, officers are to ensure that the requirements are appropriate and legally enforceable, and that there is sufficient evidence at that point in time to defend the matter if challenged in court
- Action following expiration of Orders
 - A further re-inspection is made at the expiration of the Order, if the issue has not been rectified then the order will then be served
 - For some issues if the matter has not been rectified council officers may issue a PIN under the relevant legislation, and/or commence legal action to obtain a court order to permit Council to undertake the required works and to recover the costs of that work from the offender
 - In other circumstances council officers may, with the concurrence of the Manager Development and Environment, start proceedings in the Land & Environment Court for an Order to remedy or restrain a breach of the relevant legislation, or commence proceedings for an offence under the relevant legislation.



- Prosecution
 - For major breaches or repeated offences, prosecution may be a more appropriate avenue than the issue of a PIN
 - Civil enforcement proceedings seeking Court orders to restrain or remedy breaches (or potential breaches) are generally commenced in Class 4 proceedings before the Land and Environment Court
 - Summary enforcement proceedings are heard in the local court and relate to matters such as fines for parking, companion animals and other non-criminal offences
 - Following due process and after hearing the evidence presented by both sides of the case, the Judge or Magistrate may convict the offender or make an Order dismissing the charge
 - In the case of a conviction the Judge/Magistrate may order that the defendant pays the prosecutor's court costs, or, in the case of a dismissal, that the prosecuting authority pay the defendant's court costs.
- Injunction Proceedings
 - In cases where unauthorised development or works are occurring and Council wishes these activities to cease, an injunction may be taken out through the Land and Environment Court
 - Injunction proceedings are matters where a breach of planning legislation has taken place (eg an activity is about to or is occurring and that activity contravenes the provisions of the legislation)
 - An injunction will generally only be sought where there is an immediate need to prevent an activity from occurring (eg unlawful demolition, an unlawful event, or similar activities requiring immediate intervention by Council), or where other attempts to have the matter resolved have not been successful
 - Once determined, the Court may issue Orders either for or against the proceedings. These Orders are to be complied with in the manner set out by the Court. A failure to comply may lead to contempt proceedings being taken by the Court
- Report to Council dependent on circumstances
 - Where a decision to take compliance or enforcement action may impact upon Council policy, undermine or abandon a strongly held position or result in extreme costs with an inherent risk of proceedings failing, then based on legal advice on the prospects of success, council officers may elect to report the matter to Council
 - The decision to proceed with such legal action will then be subject to resolution of Council having a full understanding of all elements of the compliance and enforcement matter

5 INTERAGENCY COOPERATION

Council is committed to working in cooperation with and sharing non-specific information with other enforcement agencies at Local, State and Federal levels to achieve common compliance objectives.

In some cases this may involve assisting other agencies in their enforcement activities, or alternatively, seeking their assistance and participation in specific compliance activities run by Council.



POLICY DEFINITIONS

Authorised officer	An employee of Maitland City Council authorised by the Council for the purposes of carrying out certain duties including the enforcement of legislation
Compliance	Is the act of adhering to, and demonstrating adherence to, laws, regulations, conditions, standards and policies
EPA	NSW Environmental Protection Authority
Regulated community	Means a community defined by their common responsibility to comply with particular laws, regulations or policies
Smart Compliance	Focussed on using the most appropriate compliance tools to address the most significant problems to achieve the best outcomes as quickly and effectively as possible
Technical breach:	Is a minor breach of a regulatory instrument that does not result in any material damage or impact on human health or the environment. Generally relates to matters which are illegal but do not warrant further regulatory action.
Unlawful activity	Is any land-use or other activity that has been or is being carried out: <ul style="list-style-type: none">• Contrary to the terms or conditions of, or in the absence of development consent, approval, notice, permission or license• 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
Using discretion	In regulatory matters, relates to Council's discretion in deciding whether to take enforcement action or not. Council must exercise this discretion in the context of its broad regulatory responsibilities and experience



POLICY ADMINISTRATION

BUSINESS GROUP:	Planning, Environment and Lifestyle
RESPONSIBLE OFFICER:	Group Manager Planning, Environment and Lifestyle
COUNCIL REFERENCE:	Ordinary Council Meeting 10 March 2015
POLICY REVIEW DATE:	Three (3) years from date of adoption
FILE NUMBER:	103/166 & 35/1
RELEVANT LEGISLATION	<p>Includes but not restricted to:</p> <ul style="list-style-type: none"> • <i>Local Government Act 1993</i>, and regulations • <i>Environmental Planning and Assessment Act 1979</i>, regulations, state environmental planning policies, and environmental planning instruments • <i>Companion Animals Act 1998</i>, and regulations • <i>Food Act 2003</i>, regulations and NSW Food Safety Standards • <i>Impounding Act 1993</i>, and regulations • <i>Protection of the Environment Operations Act 1997</i>, and regulations • <i>Public Health Act 2010</i>, and regulations • <i>Roads Act 1993</i> and regulations • <i>Swimming Pools Act 1992</i> and regulations
RELATED POLICIES / PROCEDURES / PROTOCOLS	<ul style="list-style-type: none"> • Code of Conduct • Privacy Management Plan • Right to Information Policy

POLICY HISTORY

VERSION	DATE APPROVED	DESCRIPTION OF CHANGES
1.0	10 March 2015	This policy supersedes the Enforcement Procedure Policy

