

# Regulatory and Compliance Policy

**Date Adopted:** TBCThursday, 6 March 2025

**Version:** 3.0

## Policy Purpose

The purpose of this policy is to outline the principles and processes by which Maitland City Council manages regulatory matters. This policy ensures that regulatory actions are carried out in a consistent, fair and transparent manner, with the aim of protecting public health, safety and the environment while supporting and encouraging businesses and community members to comply with relevant legislation and standards. To achieve the purpose, the Policy is underpinned by the following objectives:

- **Promote Public Health and Safety:** Protect and enhance public health and safety by enforcing relevant regulations, particularly in areas such as food safety, environmental protection, and development control.
- **Ensure Consistent and Equitable Enforcement:** Apply regulatory enforcement consistently across all cases to maintain fairness and equity within the community.
- **Promote Community Confidence:** Build and maintain public trust in Council's ability to enforce regulations fairly, transparently, and effectively.
- **Provide Clear Guidance for Officers:** Equip Regulatory Compliance Officers with clear, actionable guidance on when and how to enforce regulations, including the use of discretion and ethical decision-making.
- **Manage Risks Effectively:** Apply a risk-based approach to prioritize enforcement actions that address the most serious threats to public health, safety, and the environment, including the appropriate prioritization the allocation of Council resources to enforcement activities that address the most significant risks to public health, safety, and the environment.

## Policy Scope

This policy applies to all Regulatory Compliance Officers within Maitland City Council and guides their interactions with the public, businesses and other stakeholders. 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.

# Our Mission Statement

*Working together for a safer, healthier community.*

We aim to protect and enhance the environment, community and public health standards through consistent and equitable enforcement of regulations by working together with integrity, trust, and purpose.

## Policy Statement

### 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
- Public Spaces (Unattended Property) Act 2021, 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 and fines

Whilst Council may be the Appropriate Regulatory Authority (ARA) for many regulatory 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. Regulatory Principles

### Overview of Principles

Our regulatory actions are guided by responsiveness and appropriateness for each case, allowing flexibility and discretion to ensure actions are proportionate to the offence and harm caused. Regulatory decision making is guided by the following principles:

**Fairness and consistency:** This policy supports fairness and consistency by establishing a framework to create procedures for regulatory compliance functions. This policy establishes a structured framework to clarify compliance roles and support equitable outcomes. While promoting consistency through defined outcomes and risk assessments, it allows for flexibility, but does not promote a rigid, one-size-fits-all solution and emphasizes the importance of considering the specific circumstances of each case.

**Risk-based:** Regulatory actions are prioritized based on risk, focusing resources on issues with the highest impact on public health, safety, environmental harm, Council integrity, and available resources. This approach ensures that actions are proportionate to risk severity, with responses ranging from education to legal measures.

**Proportionality:** Compliance and enforcement actions will consider all available compliance tools based on the offence, offender, and desired outcome to ensure effective enforcement. The enforcement action taken should be proportionate to the risk and severity of the breach, with more serious violations warranting stronger responses. Factors such as the impact or harm caused, intentionality of the conduct, and potential precedents set should guide this. Enforcement should aim to change behaviour, eliminate financial gain from non-compliance, address harm where possible, and deter future violations.

**Discretion:** The policy recognises the importance of discretion in decision making to ensure that compliance and enforcement actions are proportionate and appropriate to the offence. Officers can make decisions based on case specifics, guided by Council policies and goals. This policy recognises the need for officer judgment, especially in complex situations, allowing for fair, evidence-based decisions that align with public interest and administrative frameworks.

## 3. Regulatory Process

Council's regulatory role requires that it identifies and responds appropriately to unlawful activities that it has a responsibility for regulating. This section identifies the risk framework used to respond to unlawful activities.

### 3.1 Complaints triage

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.

Table 1: Risk Categories for prioritising investigation of unlawful activity

IMPACT ON COMMUNITY	CONSEQUENCE / IMPACT			
	None/Minor	Low	Moderate	High
Significant and likely community benefit	Low	Medium	High	High
Medium or likely community benefit	Low	Low	Medium	High
Low or unlikely community benefit	No Action	Low	Low	Medium
Limited/no impact	No Action	No Action	Low	Low

### 3.2 Risk response framework and response timeframes

A risk response and response timeframe framework are important for prioritising and effectively managing regulatory issues. Table 2 outlines a structured approach to ensure Council resources are allocated appropriately, urgent matters receive prompt attention, and less critical issues are managed efficiently without diverting unnecessary resources. This framework supports fair, timely, and targeted responses, aligning with the Council's commitment to public health, safety, and environmental protection.

### 3.3 Circumstances where no action will be taken

Council will take no further action if, throughout the process, it is identified that:

- The matter is minor in nature, so that the consequence/impact is very minimal, and actioning the matter would not result in a community benefit. Refer to Table 1.
- Council does not have jurisdiction to investigate or is not the appropriate authority to take action. 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.
- The complaint 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 prior approval or consent being required)
- The complaint is not supported with evidence or appears to have no substance
- The relevant Manager, Director or the GM 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.



Table 2: Example risk categories and indicative response timeframes

	<b>Risk Category</b>			
	<b>High</b>	<b>Medium</b>	<b>Low</b>	<b>No Action</b>
Features of category	These are the most critical risks that need immediate and significant attention. They have the highest likelihood and/or impact. Requires urgent mitigation strategies, close monitoring, and possibly more resource allocation to address.	These risks are moderate in impact or likelihood. They require action but are not as critical as high-risk items. Should be monitored and managed with appropriate mitigation strategies, but they may not require immediate attention.	These risks are either low in likelihood or impact. They generally do not require significant resources to manage. Requires some monitoring but typically does not necessitate immediate action. Strategies may be more about keeping an eye on potential changes.	These are the lowest priority risks, often with negligible impact or very low likelihood. No specific action is necessary.
Initial response timeframe	Immediately or within 24 hours	Within 5 working days	Within 10 working days	No action to be taken by Council
Example of Issue	Significant pollution incidents Large scale vegetation clearing Foodborne illness outbreak Dog attacks Collapsed/unsafe building works in public	Stray dogs Swimming pools barriers (publicly accessible) Rubbish dumped in unsafe location Abandoned vehicles (location poses a potential safety risk)	Hoarders & squalor Swimming pool barriers Septics Roadside dining Unlawful tree removal Minor public place activities Abandoned vehicles Dumped rubbish (not hazardous)	Overgrown properties (without substantial evidence of vermin/pests) Barking dogs (minor matters) Illegal parking (once-off incidents) Noise nuisance (behavioural, domestic, pubs & clubs*) Nuisance & feral cats * Animal cruelty * Domestic stormwater runoff

	areas Stray livestock Serious public safety issues	Pollution incidents Food business complaints Skin penetration complaints Commercial noise (Planning requirements)	Sediment control Noise affecting several people Works without consent Unauthorised land use Breach of consent conditions (e.g. waste management) Underground Petroleum SS	Dividing fences & retaining walls * Woodsmoke Privately certified sites (exc pools) Busking Signage Aesthetic issues Neighbourhood disputes & anon requests Minor non-compliance with consent
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\* Matters to be referred to relevant agency, such as EPA, RSPCA, DPI

## **3.4 Regulatory Response (Ethical Decision Making)**

Investigations must be impartial, thorough, and timely, guided by the following principles:

### **3.4.1 The Role of the Investigator**

Investigators are responsible for collecting, analyzing, and documenting evidence related to alleged unlawful activities, while maintaining objectivity and avoiding bias. Their duties include:

- Gathering all relevant facts and evidence.
- Ensuring compliance with legal and procedural requirements.
- Identifying and managing any conflicts of interest.
- Making recommendations based on findings.

If a matter falls outside Council's expertise or jurisdiction, it may be referred to an external agency, such as the Environment Protection Authority or law enforcement.

### **3.4.2 Recognising and Avoiding Conflicts of Interest**

Council Officers must avoid any actual or perceived conflicts of interest that could compromise the investigation's impartiality. Any potential conflicts should be disclosed and managed according to council policies to maintain the credibility of the investigation.

### **3.4.3 Gathering and Documenting Evidence**

Evidence collection is crucial to any investigation and includes:

- Oral Evidence: Testimonies from witnesses or involved individuals.
- Documentary Evidence: Relevant records, emails, or written materials.
- Physical Evidence: Tangible objects, photographs, or site inspection results.
- Expert Evidence: Technical analysis or opinions from qualified experts.

All evidence must be relevant, reliable, and collected to preserve its admissibility in legal proceedings. Documentation should be thorough, with clear records of how and when evidence was obtained.

### **3.4.4 Complying with Confidentiality and Privacy Requirements**

Confidentiality is essential to safeguarding the investigation's integrity and protecting the rights of those involved. Investigators must adhere to the Privacy and Personal Information Protection Act 1998 (PPIP Act) and other relevant legislation. This includes protecting the identities of complainants, witnesses, and subjects of the investigation. While absolute confidentiality cannot always be guaranteed, especially if required by law, investigators should clearly communicate the limits of confidentiality to all parties involved.



### **3.4.5 Providing Procedural Fairness**

Procedural fairness, or natural justice, is essential to a just and reasonable investigation process. This includes:

- Informing individuals whose rights or interests may be affected by the investigation of the allegations against them and providing an opportunity to respond.
- Allowing those affected to review and challenge any adverse findings.
- Conducting investigations promptly and without bias.
- Procedural fairness enhances the credibility of the investigation and helps protect the council from legal challenges.

### **3.4.6 Site Inspections and Record Keeping**

Site inspections are often necessary to obtain physical evidence and verify circumstances. Investigators should be thoroughly prepared, with all necessary equipment and familiarity with the relevant legal and regulatory frameworks. Detailed notes and documentation, including photographs or videos, should be kept securely and in compliance with the State Records Act 1998, ensuring their reliability in future proceedings.

### 3.4.7 Determining Compliance Response

Decisions on enforcement actions are made based on the evidence gathered, the nature of the violation, and the impact on public health, safety, and the environment. Officers are empowered to use their discretion in determining the appropriate action, considering the broader context and objectives of the Council.

Table 3: Determining Compliance Response

Significance of Issue	Enforcement Options	Examples
Very Low	<p>Take no action due to lack of evidence or insufficient public interest.</p> <p>Take no action when the issue is trivial or vexatious.</p> <p>Advise the complainant of private legal action options if appropriate.</p>	<ul style="list-style-type: none"> <li>- A minor encroachment onto public land with no significant impact.</li> <li>- A report of noise outside regulated hours, but no evidence to support the complaint.</li> <li>- A frivolous or vexatious complaint made out of personal grievance.</li> <li>- Unkempt residential property causing minor visual discomfort to neighbors.</li> <li>- A report of illegal parking, but the vehicle has moved before investigation.</li> <li>- Temporary signage on private property, not breaching any major guidelines.</li> </ul>
Low	<p>Negotiate corrective actions with clear timeframes.</p> <p>Issue a verbal or written warning.</p> <p>Send a formal caution letter specifying expectations for compliance.</p>	<ul style="list-style-type: none"> <li>- A small, unauthorized shed constructed without consent but compliant with safety standards.</li> <li>- A pet owner failing to secure their dog for the first time, with no incidents of harm.</li> <li>- A minor building addition, such as a pergola, constructed without approval but not violating safety codes.</li> </ul>
Medium	<p>Negotiate a corrective action plan.</p> <p>Issue a formal letter requiring work to be done or activities to cease.</p> <p>Issue a penalty infringement notice (PIN).</p> <p>Serve a notice of intention to issue an order and follow up with enforceable actions if required.</p>	<ul style="list-style-type: none"> <li>- A café operating an outdoor seating area without approval, affecting pedestrian traffic.</li> <li>- Construction work exceeding consented hours, disturbing nearby residents.</li> <li>- Unapproved signage obstructing driver visibility at an intersection.</li> <li>- An unauthorized food stall operating in a public park, breaching hygiene regulations.</li> </ul>

High	<p>Issue a penalty notice for non-compliance.</p> <p>Serve a notice of intention to issue an enforceable order.</p> <p>Execute remedial works under an order and recover costs from the offender.</p> <p>Escalate persistent non-compliance to court for civil enforcement.</p>	<ul style="list-style-type: none"> <li>- An industrial site emitting pollutants into a nearby waterway, causing environmental harm.</li> <li>- Persistent breach of noise regulations by a commercial establishment.</li> <li>- A restaurant discharging waste into a stormwater drain, causing pollution.</li> <li>- A developer commencing construction without required approvals.</li> <li>- A large tree removed without consent.</li> <li>- An industrial site breaching noise limits, affecting nearby residential areas.</li> </ul>
Very High	<p>Seek an injunction through the courts to prevent unlawful activities.</p> <p>Initiate legal proceedings for severe or repeated offences.</p> <p>Take action to restrain or remedy ongoing breaches under planning or environmental legislation.</p> <p>Refer the case to Council for further direction if it involves significant cost, policy implications, or risks.</p>	<ul style="list-style-type: none"> <li>- Unauthorized large-scale land clearing threatening an endangered species habitat.</li> <li>- Continued operation of a hazardous facility after being issued multiple orders to cease.</li> <li>- A property developer demolishing a heritage building without approval.</li> <li>- Immediate need to stop an unlawful public event causing safety risks.</li> <li>- Persistent breaches of consent conditions by a high-profile developer, undermining public trust in Council enforcement.</li> </ul>

Officers should consider the following questions when determining the appropriate action to take:

**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 granted 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 integrity?

Are there enforcement measure 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?

### **3.5 Reviews and Appeals**

Decisions made by Regulatory Compliance Officers can be reviewed upon request. Reviews will be conducted by a senior officer or manager, who will assess the appropriateness of the enforcement action against this Policy. To assist with this process, a Protocol for Reviewing customer request for reviews and appeals will be developed and maintained. This protocol will provide a framework for resolving disputes and complaints, with clear boundaries on the escalation process to avoid unnecessary prolongation of disputes.

## **4 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

### 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:

- 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, refers to the responsible and measured application of sound judgment by officers when determining whether to take, or refrain from taking, regulatory action. This process requires officers to:

- Operate within the framework of the Compliance Policy, Code of Conduct, and relevant legislation.
- Ensure decisions align with the intent, principles, and objectives of the Compliance Policy and broader community standards.
- Consider all available evidence, the significance of the issue, potential impacts, and the public interest.
- Avoid arbitrary or capricious actions and ensure decisions are reasonable, proportionate, and transparent.
- Document the reasoning behind actions or inactions to ensure accountability and maintain public trust.

Discretion must not be used to undermine the Compliance Policy, deviate from legislative requirements, or exceed the expectations of the community. Instead, it enables officers to apply the policy's intent flexibly and appropriately to achieve compliance outcomes.

## Policy Administration

<b>Business Group:</b>	City Planning
<b>Responsible officer:</b>	Coordinator Regulatory Compliance
<b>Council reference:</b>	TBC
<b>Policy review date:</b>	Three (3) years from date of adoption
<b>File number:</b>	103/166 & 35/1
<b>Relevant legislation</b>	<p>Includes but not restricted to:</p> <ul style="list-style-type: none"> <li>• Local Government Act 1993, and regulations</li> <li>• Environmental Planning and Assessment Act 1979, regulations, state environmental planning policies, and environmental planning instruments</li> <li>• Companion Animals Act 1998, and regulations</li> <li>• Food Act 2003, regulations and NSW Food Safety Standards</li> <li>• Public Spaces (Unattended Property Act) 2021, and regulations</li> <li>• Protection of the Environment Operations Act 1997, and regulations</li> <li>• Public Health Act 2010, and regulations</li> <li>• Roads Act 1993 and regulations</li> <li>• Swimming Pools Act 1992 and regulations</li> </ul>
<b>Related documents</b>	<ul style="list-style-type: none"> <li>• Code of Conduct</li> <li>• Right to Information Policy</li> </ul>

## Policy History

VERSION	DATE APPROVED	DESCRIPTION OF CHANGES
1.0	10 March 2015	This policy supersedes the Enforcement Procedure Policy
2.0	10 February 2020	Policy reviewed, no changes required. ELT approved renewing policy as is.
3.0	TBC	