

Compliance and Enforcement Guidelines

Purpose

The Compliance and Enforcement Guidelines (the Guidelines) are designed to give the public and council stakeholders information on the role of Council's authorised officers under different legislation and a broad outline of the way different enforcement powers may be used in different circumstances. It aims to make more transparent the work that Council's Environmental Compliance Business Unit (Building Control, Environmental Health and Rangers) undertakes and assist officers in achieving consistent outcomes.

It is important to acknowledge that individual circumstances of a matter may justify a departure from the Guidelines or the exercise of more than one compliance option, where the full circumstances and facts are considered and a decision made on merit.

Scope

These Guidelines follow the principles outlined in the Compliance and Enforcement Policy (the Policy) including a graduated and proportionate approach, transparency, consistency and actions which are in the public interest.

This is an operational document that can be expected to evolve overtime in response to influences such as changes in legislation, changes in Council Policy and precedents set through Court decisions, whilst always remaining consistent with the Compliance and Enforcement Policy.

The Environmental Compliance Business Unit will monitor compliance and enforcement outcomes to identify themes for the development and delivery of educational information for the community to raise awareness and ensure continuous improvement with outcomes.

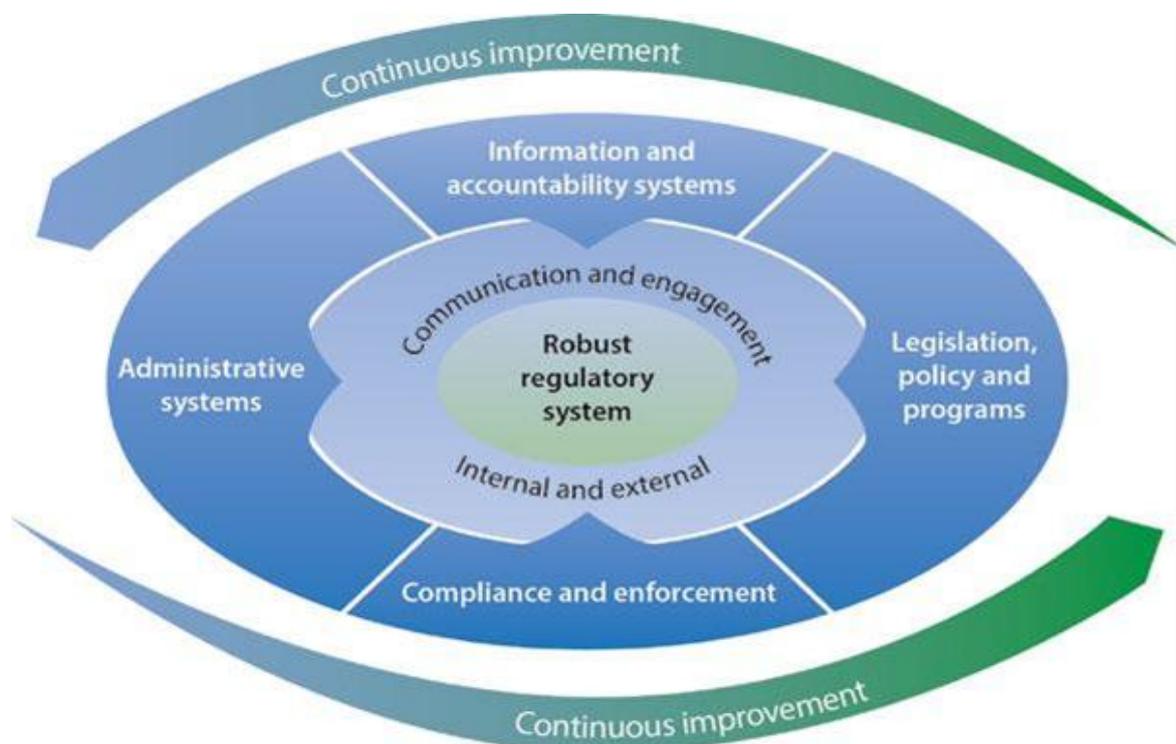


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Unauthorised building works and uses on private land

Scope of Council's role

To protect public health and safety, as well as ensure compliance with the planning and regulatory regime and take appropriate action where there is unlawful activity.

Council's Building Surveyors and Building Control Officers are authorised to inspect premises and structures for compliance with a range of legislation.

Some building works may be undertaken without the need to obtain any prior approval from Council. These works are called exempt development and can be carried out provided that certain development standards are achieved. The range of exempt development is outlined in an environmental planning instrument being a Local Environmental Plan or a State Environmental Planning Policy.

Structural and other building work such as new buildings and alterations and additions require prior approval. This approval process is to help ensure that works done are safe and don't negatively impact on the amenity of neighbours. Additionally, the change in use of a building may require a prior approval.

Building works may have been approved under a Development Consent or a Complying Development Certificate. Approvals contain conditions and are supported by approved plans and other approved documentation.

Relevant legislation and standards

Environmental Planning and Assessment Act 1979.

National Construction Code - Volumes 1, 2 and 3 (includes the Building Code of Australia).

State Environmental Planning Policy – Exempt and Complying Development Codes

What action may be taken if non-compliance is found?

(a) Unauthorised building works or works not in accordance with an approval

Compliance options	Example scenario
Warning	Building works are a minor departure from either an approval or an exempt development standard and can be readily changed to comply.
Penalty Infringement Notice and advisory letter	Issued for minor non-approved works which have minimal impact on the amenity of surrounding occupiers and no ongoing risk to public health or safety such as a pergola that does not present an over shadowing/ loss of solar access/loss of view.
Penalty Infringement Notice	May be issued for any building works undertaken without obtaining a prior approval or being constructed not in accordance with an approval This does not prevent Council from issuing Notice/Order to prevent ongoing unauthorised activity.
Notice/Order	Seeking a remedy to unauthorised works that have been completed that would not likely have been approved should an application have been made. Issues may relate to a likely threat to the general public, unapproved works to heritage item where it is desirable to have the matter returned to its original or approved condition (heritage input is required in these matters.) or works undertaken not in accordance with an approval.

Compliance options	Example scenario
Notice/Order and Penalty Infringement Notice	Any non-approved works or works that are currently in progress without approval May require all works to cease. Also involves removal of unapproved works and/or require changes to comply with an approval
Emergency Order (without prior Notice)	Structure is compromised and likely to cause imminent threat to the general public e.g. façade failure.
Court Attendance Notice or Land and Environment Court	Where there has been an extensive history of building works involving serious non-compliance with an approval or development consent and Notice/Order have not been satisfied. Proceedings are commenced in Court. May involve a matter where the breach is of such significance that a prosecution would serve as an educative approach to raise awareness in the community.
Compliance Cost Notice	May be issued for the matters where an Order has been given. Council is seeking to recover reasonable costs and expenses incurred in connection with monitoring action required under the Order and ensuring that the Order was complied with.

In general Council will not take action on the following matters and will advise customers there are other remedies available for the following:

- Private encroachment issues
- Easement disputes
- Dividing fence issues
- Matters which may be better resolved by Civil actions such as damage to common (private) property or damage to neighbouring properties caused by issues which are present or created by issues on another property.

(b) Non-approved use of buildings and premises

Compliance options	Example scenario
Warning	Minor ancillary issues not giving rise to public health or safety issues.
Penalty Infringement Notice (no further action)	Proven breach which would not require any further action or modification such as the operation of a business beyond the approved hours or an unauthorised one off event.
Penalty Infringement Notice and advisory letter	Occupation of a development without issue of occupation certificate where all works safety completed. Change of use that is not exempt development but is of minor impact and there are no amenity impacts.

Compliance options	Example scenario
Notice/Order	Unauthorised land use where the owner has agreed to cease the use and follow a development application process to seek approval, although due to the unauthorised configuration of the building the potential for unauthorised use remains available e.g. a separate occupancy within an existing dwelling.
Notice/Orders and Penalty Infringement Notice	Uses which would not be supported on planning grounds such as an unauthorised boarding house/back packer or other short term tourist style accommodation where there are safety issues for the occupants
Emergency Order (without prior Notice)	Where life safety is a concern relating to the use, such as a commercial premises being operated with an excessive number of patrons which may have adverse safety implications for occupants
Court Attendance Notice or Land and Environment Court	<p>Where there has been an extensive history of serious non-compliance with an approval or development consent and Notice/Order have not been satisfied. Proceedings are commenced in Court.</p> <p>May involve a matter where the breach is of such significance that a prosecution would serve as an educative approach to raise awareness in the community.</p>

Brothels/Sex Premises

Scope of Council's role

Council has a responsibility to investigate unauthorised use of premises. This role includes the investigation of allegations of unauthorised brothels operating out of commercial and residential premises.

Additionally, Council has a role in regulating some aspects of approved brothels and adult premises. This role includes reactive fire safety inspections, hours of operation and proactive inspection of some matters relating to public health including water quality testing of spa baths.

Relevant legislation and standards

Environmental Planning and Assessment Act 1979

Local Government Act 1993

Restricted Premises Act 1943

Public Health Act 2010

What action may be taken if non-compliance is found?

Compliance Options	Example scenario
Advisory letter	When a complaint is received but no evidence (including search of websites and initial inspection) supports the claim.
Penalty Infringement Notice	Initial breach of conditions of approval.
Notice/Order	Evidence is found demonstrating use of the premises without obtaining a prior approval, where the use is permissible within the planning controls for the premises.
Notice/Order and Penalty Infringement Notice	Repeated non-compliance with conditions of approval e.g. hours of operation or advertising signage
Court Attendance Notice or Land and Environment Court	Where there has been an extensive history of serious non-compliance with an approval or development consent and Notice/Order have not been satisfied. Proceedings are commenced in Court. May involve a matter where the breach is of such significance that a prosecution would serve as an educative approach to raise awareness in the community.

Brothel closure orders, including orders to turn off utilities to a building may be sought in certain circumstances.

Food Premises Inspection (including mobile and temporary premises)

Scope of Council's role

Council is an enforcement agency under the *Food Act 2003* and conducts regular inspections of retail food businesses to ensure food safety standards are being maintained.

Some matters are not regulated by Council and will be referred to the NSW Food Authority, including:

- Food borne illness outbreaks (involving more than 1 person/family)
- Non retail food businesses

What action may be taken if non-compliance is found?

Compliance options	Example scenario
Warning	Restock dispenser with single use hand towels (first offence). Minor cleaning issues for non-food contact surfaces (first offence). Minor structural issues (first offence).
Improvement notice	Significant cleaning issues across premises. Significant temperature control issue (>6 degrees outside of legal requirement). Cross contamination of ready to eat food.
Notice/Order	Issued where cleanliness or pest issues extend outside of the premises e.g. common areas, rear yards.
Prohibition order	Non-compliance with an improvement notice and/or; <ul style="list-style-type: none"> ➤ Gross hygiene issues throughout premises contributing to pest issue or cross contamination of food. ➤ Severe pest infestation in premises. ➤ Serious temperature control issue.
Penalty Infringement Notice	<ul style="list-style-type: none"> ➤ May be issued in conjunction with a notice or order for serious food safety breach or where there has been a history of non-compliance for the same or similar breach. ➤ May also be issued against food handlers for some personal hygiene breaches.
Seizure	<ul style="list-style-type: none"> ➤ Evidence of unsafe food – microbial, chemical or physical contamination e.g. pest contamination of food ➤ Unsafe food e.g. deliveries left unattended and likely to be contaminated or have been contaminated. ➤ Equipment e.g. a meat slicer that is unable to be cleaned and sanitized effectively

Compliance options	Example scenario
Court Attendance Notice	<p>Where there has been an extensive history of serious non-compliance within a food business and Notice/Order have not been satisfied. Proceedings are commenced in Court.</p> <p>May involve a matter where the breach is of such significance that a prosecution would serve as an educative approach to raise awareness in the community.</p> <p>Proceedings may be recommended in the absence of a history of non-compliance for very serious offences such as gross hygiene, temperature abuse, contamination of food and pest issues without a prior history being present.</p> <p>Matters relating to non-compliance with a prohibition order and obstruction of officers will also be referred for the consideration of proceedings.</p>

Public Swimming Pools – water quality

Scope of Council's role

Council is an enforcement agency under the *Public Health Act 2010* with responsibility to protect public health and safety in relation to the water quality of public swimming pools and take action against non-compliance. We must also maintain a register of public swimming pools and spa pools.

Council conducts a regular inspection and testing program to ensure commercial pool operators maintain their swimming pools and spa pools to a standard that does not pose a risk to public health.

Relevant Legislation

Council officers assess the water quality of public swimming pools against the following standards and legislation;

Public Health Act 2010

Public Health Regulation 2012

NSW Health Public Swimming Pools and Spa Pools Advisory Document 1 April 2013

What action may be taken if non-compliance is found?

Compliance options	Example scenario
Warning	The alkalinity of the pool was not tested on a daily basis
Penalty Infringement Notice	Not have fitted an automated or continuous metered disinfectant dosing system
Improvement Notice	The pH level of water must be: a) In the case of chlorine disinfected pool be between 7.0 – 7.8 and, b) In the case of bromine disinfected pool be between 7.0 – 8.0
Prohibition Order	Non-compliance with an Improvement Notice or for serious issues that pose an immediate risk to public health and safety. Where closure of the facility is necessary until safety measures have been implemented
Improvement Notice/Prohibition Order and Penalty Infringement Notice	Where repeated or multiple instances of non-compliance are identified during an inspection
Court Attendance Notice	Where there has been an extensive history of serious non-compliance within a swimming pool. Proceedings may be commenced in the absence of a history of non-compliance for very serious offences such as gross hygiene or a demonstrated public health outbreak. May involve a matter where the breach is of such significance that a prosecution would serve as an educative approach to raise awareness in the community.

Swimming Pools – fencing and barriers

Scope of Council's role

The *Swimming Pools Act 1992* requires Council to have an inspection program for private swimming pools to assess compliance with pool barrier safety requirements.

What action may be taken if non-compliance is found?

Compliance options	Example scenarios
Warning	Minor issues that do not yet create an issue but may in near future e.g. fading yet still legible signage, probable future vegetation growth near barrier, failure to register pool/spa.
Notice/Direction	Poorly maintained self-closing mechanism on gate. Vegetation removal required. Hand holds and foot holds evident on the barrier Barrier less than required minimum height
Direction	Most breaches will result in Direction due to child safety risk for example: <ul style="list-style-type: none"> • Gate failing to latch. • Non-compliant fencing or unrestricted window opening. • Unrestricted direct access to pool from a public place.
Penalty Infringement Notice	Issued for more serious breaches or where previous warnings given have not been satisfied. Can be issued in conjunction with a Direction: <ul style="list-style-type: none"> ➤ Fail to register pool (warning previously given). ➤ Failure to maintain pool barrier. ➤ Fail to keep the pool secure. ➤ Fail to have resuscitation signage (warning previously given). ➤ Fail to comply with a Direction
Land and Environment Court	Commencement of proceedings where failure to comply with a Direction. May involve a matter where the breach is of such significance that a prosecution would serve as an educative approach to raise awareness in the community.

Cooling towers and warm water systems

Scope of Council's role

Under section 4 of the *Public Health Act 2010*, Council has an obligation to take appropriate measures to ensure compliance with regulation of cooling water and warm-water systems.

Relevant legislation

Public Health Act 2010

Public Health Regulation 2012

Australian Standard 3666.1 2011

Australian Standard 3666.2 2011

Australian Standard 3666.3 2011

Australian Standard 3666.4 2011

NSW Health Guidelines Legionella Control in Cooling Water Systems 2018

What action may be taken if non-compliance is found?

Compliance options	Example scenario
Warning	Failure to display unique identification number on each system Time is about to expire for the lodgement of a Risk Management Plan (RMP)
Penalty Infringement Notice	System has not been registered with Council Fail to display unique identification number on each system following a warning RMP not reviewed following a warning
Improvement Notice	Continual issues with the operation or maintenance of the system. RMP not reviewed within required timeframe
Prohibition Order	System operation has caused a serious risk to public health and safety.
Court Attendance Notice	Where there has been ongoing failure to comply with prior notices and orders or failure to implement the RMP. Proceedings may be commenced in the absence of a history of non-compliance for very serious offences such as gross hygiene or a demonstrated public health outbreak. May involve a matter where the breach is of such significance that a prosecution would serve as an educative approach to raise awareness in the community.

Noise

Scope of Council's role

Council is responsible for the investigation of most noise related matters. Other agencies have some responsibility for noise complaints include the Environment Protection Authority (EPA), NSW Police and Liquor & Gaming NSW.

No compliance action can be taken by Council for instances where an authorised officer is unable to substantiate evidence of a noise nuisance. However Council will advise the customer that any person of their own accord may independently make an application to a Local Court to seek a Noise Abatement Direction.

Relevant Legislation

Protection of the Environment Operations Act 1997

Protection of the Environment Operations (Noise Control) Regulation 2017

Environmental Planning and Assessment Act 1979.

What action may be taken if non-compliance is found?

Compliance options	Example scenario
Warning	Generally issued for most offences in the first instance. e.g. noisy air conditioning unit, pool pump, amplified music, domestic alarms.
Noise Abatement Direction	Issued where offensive noise is repeatedly being or has been emitted from a premises e.g. noisy stereo or amplified music from a residential premises following a warning
Prevention Notice	Issued for ongoing issues e.g. mechanical plant and equipment or deliveries or pick-ups which cause offensive noise due to time or nature of the noise.
Penalty Infringement Notice	Failure to comply with prior warnings or a Noise Abatement Direction or a Prevention Notice.
Noise Control Notice	Issued to prohibit the carrying on of an activity or use of an article where noise is a systemic issue e.g. continued loud music constituting offensive noise. A penalty notice may be issued for a subsequent failure to comply with Noise Control Notice
Court Attendance Notice/Land and Environment Court	Where there has been a failure to comply with prior Noise Abatement Direction, Prevention Notice or Noise Control Notice. Commence proceedings

Pollution incidents (air, land and water)

Scope of Council's role

Council is responsible for the investigation of the majority of pollution incidents although Council shares this responsibility with the Environment Protection Authority (EPA).

In general, the EPA is responsible for incidents involving a government agency and major industrial or commercial operations which hold an EPA license.

Relevant Legislation

Protection of the Environment Operations Act 1997 and Regulations

Local Government Act 1993

Environmental Planning and Assessment Act 1979.

What action may be taken if non-compliance is found?

Compliance options	Example scenario
Warning	Good performance history or non-compliance was of short duration caused by unforeseen circumstances or genuine misunderstanding of requirements.
Clean Up Notice	Paint spills and short term pollution incidents such as dust, spillages and asbestos containing material. To expedite action, a Clean Up Notice may be given as a verbal direction which must be subsequently confirmed by Council in writing within 72 hours
Prevention Notice	Establish and implement a management plan for industrial air and noise impacts, environmental management of large construction site with siltation controls, dust suppression.
Penalty infringement notice	Generally issued for failure to comply with prior warnings or notice or where there is prior history for the same or similar offence or a foreseeable omission which has resulted in land, water or air pollution. May be issued without a warning e.g. significant silt and sedimentation from a development
Clean Up/Prevention Notice and Penalty Infringement Notice	Where initial, repeated or multiple instances of non-compliance are identified during an inspection, which is or is likely to cause environmental damage.
Court attendance notice	For ongoing failure to comply with prior notices/directions and/or matters resulting in significant environmental damage the matter.
Compliance Cost Notice	May be issued for the cost recovery of monitoring action, ensuring compliance or any other associated matter for enforcement of a Prevention Notice or Clean-up Notice.
Land and Environment Court	Where there has been an extensive pollution incident which has resulted in environmental degradation or damage and evidence has been obtained of the alleged offender. May involve a matter where the circumstances surrounding the pollution incident is of such significance that a prosecution would serve as an educative approach to raise awareness in the community.

Unhealthy Land or Premises

Scope of Council's role

Council has a role under the Local Government Act 1993 to investigate complaints received in relation to unhealthy living conditions, public health and/or safety in relation to land or premises.

What action may be taken if non-compliance is found?

Compliance options	Example scenario
Warning	Good performance history or non-compliance was of short duration caused by unforeseen circumstances or genuine misunderstanding of requirements.
Notice/Order	Issued where a risk to public health/safety has been identified such as an accumulation of garbage, vegetation or other items which are likely to be a harbourage for vermin.
Emergency Order (without prior Notice)	Issued where risk to public health and safety is very high and urgent action is required to be taken e.g. a sewer line is damaged or blocked and sewage is discharging onto public land or serious cleanliness/sanitation issues exist in a boarding houses.
Penalty Infringement Notice	Generally issued for failure to comply with a notice/order or where there is prior history for the same or similar offence.
Court Attendance Notice	<p>Where there has been no compliance with an Order and the adverse effects on public health and safety remains.</p> <p>May involve a matter where the circumstances surrounding the pollution incident is of such significance that a prosecution would serve as an educative approach to raise awareness in the community.</p> <p>Council may seek an Order from the Court that enables Council to enter premises to undertake works and recover costs from the owner or occupier if they fail to do so.</p>

Fire safety

Scope of Council's role

Council investigates and takes appropriate action against reported fire safety breaches and fire safety design deficiencies within existing buildings.

Council also manages annual fire safety certification for new or altered buildings. All premises on the Register must provide to Council an Annual Fire Safety Statement (AFSS) at least once within every twelve months, certifying that a properly qualified person has inspected the building, assessed the fire safety measures, and found those to be capable of performing to the relevant standards.

Relevant legislation

Environmental Planning and Assessment Act 1979
Environmental Planning and Assessment Regulation 2000

What action may be taken if non-compliance is found?

Compliance options	Example scenario
Warning	Minor issues, such as poor housekeeping practices; momentary failure of required fire systems.
Penalty Infringement Notice and an action plan	Failure to lodge, or late lodgement of a complete annual Fire Safety Statement. Foreseeable lack of fire safety management practices e.g. obstruction of exits, fire safety systems incapable of performing to required standards of performance.
Notice/Order	Premises have inadequate provisions for fire safety and a plan is required to be developed and implemented to ensure a building is safe for occupants and fire safety is managed
Court Attendance Notice	Failure to comply with the requirements of an Order. May involve a matter where the breach is of such significance that a prosecution would serve as an educative approach to raise awareness in the community.

Places of Shared Accommodation

Scope of Council's role

Council is responsible for the inspection of all boarding houses that have been registered with NSW Fair Trading, within 12 months of being first registered and within 12 months of a new proprietor being registered. The inspection is to ensure compliance with requirements relating to health, building and fire safety.

Council may undertake inspections of Backpacker hostels to ensure compliance with requirements relating to health, building and fire safety.

Relevant legislation

Boarding Houses Act 2012

Environmental Planning and Assessment Act 1979

Environmental Planning and Assessment Regulation 2000

Local Government Act 1993

Local Government (General) Regulation 2005

What action may be taken if non-compliance is found?

Compliance options	Example scenario
Warning	Minor issues, such as poor housekeeping practices
Notice/Order and Penalty Infringement Notice	<ul style="list-style-type: none"> ➤ Premises have inadequate provisions for fire safety. ➤ Unsafe/unhealthy conditions. ➤ Failure to provide required signage ➤ Non-compliance with requirements of Development Consent.
Court Attendance Notice	Failure to comply with the requirements of an Order

Companion Animals

Scope of Council's role

The Companion Animals Act provides for the effective and responsible care and management of companion animals. Council investigates complaints in relation to noise nuisance by a dog or cat within a residential property, dogs roaming outside of property, dogs un-leashed whilst in public open space or reserve. The walking of dogs and roaming cats are prohibited in designated areas especially beaches, playgrounds and Wildlife Protection Areas. Cats are prohibited in a Wildlife Protection Area. Council also investigates complaints regarding the aggressive behaviour of companion animals towards a person or another animal.

Relevant Legislation

Companion Animals Act 1988

Companion Animals Regulation 2008

Young Offenders Act 1997

What action may be taken if non-compliance is found?

Compliance options	Example scenario
Warning/Caution	Non-compliance was of short duration caused by unforeseen circumstances or genuine misunderstanding of requirements e.g. person with a vision impairment walking a dog beyond a sign prohibiting dogs
Penalty Infringement Notice	Foreseeable actions that knowingly or potentially cause harm to the environment or community, including; Dogs not under effective control (unleashed) whilst in public place Dogs being walked in prohibited places such as beaches and prohibited areas such as playgrounds or environmentally sensitive areas. Cats found within a Wildlife Protection Area Dog or Cat attacking a person or animal (other than vermin) Failing to comply with requirements of Nuisance Cat/Dog Order, Menacing Dog Order or Dangerous Dog Order.
Notice/Order (Menacing)	Where dog has displayed unreasonable aggression towards a person or animal (other than vermin)
Notice/Order (Dangerous)	Where a dog has without provocation attacked or repeatedly threatened to attack or repeatedly chased a person or animal (other than vermin)
Notice/Order (Nuisance)	Where there is substantiated evidence that a dog or cat is habitually at large or repeatedly defecates on property outside of property on which it is kept or runs at or chases a person or animal (other than vermin) or repeatedly causes substantial damage to anything outside of the property where it is ordinarily kept.
Court Attendance Notice	Failure to comply with the requirements of an Order. May involve a matter where the breach is of such significance that a prosecution would serve as an educative approach to raise awareness in the community.

Impounding of Abandoned Vehicles and Items

Scope of Council's role

Council will only investigate potentially abandoned or left unattended vehicles and items (such as shopping trolleys, bicycles, signs, banners and animals) located on public land. Council is not authorised to remove vehicles or items from private property.

After following due process, consistent with the Impounding Act 1993, should a vehicle or item be found to have been abandoned or left unattended on public land and the owner is not forthcoming, Council will impound the vehicle or item and dispose of same in accordance with legislative requirements.

Relevant Legislation

Impounding Act 1993

Impounding Regulation 2013

Local Government Act 1993

What action may be taken if non-compliance is found?

Compliance options	Example scenarios
Warning	Branded shopping trolley, notify nearest store and Trolley tracker Vehicles placed with a sticker notification of intention to impound and where identified, a letter is forwarded to the owner
Penalty Infringement Notice	Where Council obtains evidence of a person whom has abandoned a vehicle or other item in a public place.
Impounded	The vehicle or item remains in the public place and Council is unable to identify the owner

Tree Preservation on Public or Private Land

Scope of Council's role

Council will enforce relevant tree and vegetation preservation regulatory controls to ensure that trees do not become a safety hazard, are protected, maintained and only removed with an appropriate approval, unless listed as an exemption under relevant legislation.

Relevant legislation

Environmental Planning and Assessment Act 1979

Local Government Act 1993

Crown Lands Management Act 2016

Former Manly, Warringah and Pittwater Development Control Plans and Exempt Species

Rural Fire Service - 10/50 Vegetation Code of Practice.

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

State Environmental Planning Policy - Exempt and Complying Codes

What action may be taken if non-compliance is found?

Compliance options	Example scenarios
Warning	Extenuating circumstances that required tree removal or lopping for safety reasons without an approval e.g. strong winds or wet weather that has caused destabilisation of the tree.
Penalty Infringement Notice	Removal or lopping of a tree without a prior approval on public land, where required under relevant legislation.
Notice/Order and Penalty Infringement Notice	Failure to comply with conditions of an approval issued under relevant legislation Removal or lopping of a tree without a prior approval on private land, where required under relevant legislation.
Court Attendance Notice	For significant breaches and/or where there has been history of non-compliance with Orders, or Penalty Infringement Notices have not been sufficient deterrent. Where a significant tree was to be retained as a requirement of a Development Consent and the tree was subsequently damaged or removed
Land and Environment Court	Where there has been a significant number of trees removed or lopped which has resulted in environmental degradation or damage and evidence has been obtained of the alleged offender. May involve a matter where the circumstances surrounding the pollution incident is of such significance that a prosecution would serve as an educative approach to raise awareness in the community.

Reserves (Council or Community owned Land and Foreshore Assets)

Scope of Council's role

Council is responsible for the investigation of unauthorised activity or conduct within Council owned/managed land, bushland and foreshore assets. Also refer to other sections in the Guidelines, including Companion Animals, Pollution Incidents, Tree Preservation on Public and Private Land and Abandoned Vehicles & Items.

Council has established Plans of Management for Community Land in accordance with the Local Government Act 1993.

Council has designated some locations as Alcohol Free Zones (AFZ) and Alcohol Prohibited Areas (APA) which prohibit the possession and consumption of alcohol by people. NSW Police are the lead enforcement agency although Council Rangers do undertake compliance action.

Other agencies that have a shared responsibility for some enforcement action include:

NSW Police, Department of Primary Industry-Fisheries, Office of Environment and Heritage (National Parks and Wildlife Service), NSW Rural Fire Service and Roads & Maritime Service.

Relevant Legislation

Crown Lands Management Act 2015

Biosecurity Act 2015

Companion Animal Act 1998

Protection of the Environment Operations Act 1997

Local Government Act 1993

Young Offenders Act 1997

NSW Government Protocol for Homeless People in Public Places

Various Reserve and Foreshore Area Plans of Management

What action may be taken if non-compliance is found?

Compliance options	Example scenario
Warning	<p>Placement of a letter box, steps or the like within the public land adjoining own private property without an approval</p> <p>Verbal warning to people camping overnight within public lands</p> <p>Charity clothing bin has been located without approval</p> <p>Verbal warning to people in possession and consumption of alcohol in AFZ and APA</p>
Penalty Infringement Notice	<p>Unauthorised encroachments following a warning</p> <p>People camping multiple days after a warning</p> <p>A single event held without a prior approval</p> <p>Taking a dog or cat into the critical habitat for the Fairy Penguins at Manly Point, Collins Beach, Store Beach & Quarantine Beach</p>

Compliance options	Example scenario
<p>Notice/Order and Penalty Infringement Notice</p>	<p>Multiple instances of non-compliance with an approval e.g. operating beyond approved hours for a surf school or boot camp</p> <p>Building/landscaping/drainage works partially completed and either no approval has been obtained or work is different to the approval</p> <p>Charity bin remains in place following a warning to remove</p> <p>A fence has been built which obstructs safe movement of pedestrians and road traffic</p>
<p>Conduct or Activity referred to other Agencies</p>	<p>People in possession and consumption of alcohol in AFZ and APA following a warning are reported to NSW Police.</p> <p>Where a person's conduct is offensive and/or their actions appear to be distressed or in need of help or their conduct threatens their own safety or the safety and security of others, conduct is likely to result in damage to property or the environment will be referred an appropriate agency.</p>
<p>Court Attendance Notice</p>	<p>For serious breach and/or where there has been history of non-compliance with Orders, or Penalty Infringement Notices have not provided sufficient deterrent</p>

On-Site Sewage Management Systems

Scope of Council's role

Some properties within Northern Beaches Council area do not have access to the Sydney Water Corporation Sewerage System. Such properties are reliant on providing on-site sewage management systems to treat and dispose of sewage. Domestic grey water treatment systems are considered to be on-site sewage management systems, and generally require the same approvals.

Council is committed to managing the local environment and protecting public health from the risks associated with the operation of on-site management systems.

Approvals are required to be obtained under the Local Government Act 1993. An initial approval is required for the installation of a new system and a further reoccurring need for approval to operate the system.

Council has an inspection program for waste water systems to ensure ongoing correct operation and follow up to ensure compliance with the approval.

Relevant Legislation

Local Government Act 1993

Local Government (General) Regulation 2005

Protection of the Environment Operations Act 1997

Environmental Planning and Assessment Act 1997

What action may be taken if non-compliance is found?

Compliance options	Example scenario
Warning	Operating a Sewage management system without an approval Operating a Sewage management system not in accordance with an approval
Penalty Infringement Notice	Operating a Sewage management system without an approval after a warning Operating a Sewage management system not in accordance with an approval after a warning For non-compliance with a Notice or Order
Notice/Order and Penalty Infringement Notice	Where system is not operating in accordance with the approval Where the system may have failed temporarily due to a power outage and it is necessary to clean up any waste materials Where the system may have become unreliable and a plan is required to ensure preventative measures are taken to ensure a pollution incident does not occur
Court Attendance Notice	For serious breach and/or where there has been history of non-compliance with Orders, or Penalty Infringement Notices have not provided sufficient deterrent
Compliance Cost Notice	These may be issued for the cost recovery of monitoring action, ensuring compliance or any other associated matters relating to the enforcement required under a Prevention Notice or Clean-up Notice.

Service Stations

Scope of Council's role

Council will develop an inspection program to ensure that service stations are complying with the Protection of the Environment Operations (Clean Air) Regulation 2010.

Relevant Legislation

Protection of the Environment Operations Act 1997

Protection of the Environment Operations (Clean Air) Regulation 2010

Environmental Planning and Assessment Act 1997

Standards and Best Practice Guidelines for Vapour Recovery at Petrol Service Stations 2017

What action may be taken if non-compliance is found?

Compliance options	Example scenarios
Warning	Minor issues detected during inspection e.g. Signage not placed at front of shop or log book not up to date (initial inspection)
Penalty Infringement Notice	Currently only the EPA are able to issue, however, future changes in the Regulations are proposed to allow for Council officers to issue under the Clean Air Regulation
Prevention Notice	Where the service station is being carried out in an environmentally unsatisfactory manner such as an overflow prevention device has not been installed in the tank fill piping
Clean Up Notice	Where a pollution incident has occurred which requires removal such as a large diesel spill has occurred within the hard surface area of the service station
Court attendance Notice	For serious breach and/or where there has been history of non-compliance with Orders, or Penalty Infringement Notices have not provided sufficient deterrent
Cost Compliance Notice	These may be issued for the cost recovery of monitoring action, ensuring compliance or any other associated matters relating to the enforcement required under a Prevention Notice or Clean-up Notice.

Stormwater

Scope of Council's role

Council will investigate requests to ensure stormwater from buildings and hard surfaces is dealt with in a manner so as not to cause or likely to cause damage to an adjoining property.

However, there is no legislative requirement for a property owner to manage the natural runoff of rainfall across their property or to prevent that natural runoff to continue downslope onto adjoining lands.

Council does not have legislative ability to take action for sub surface water flow concerns or matters relating to a private easement. Council will advise customers dealing with similar civil matters to obtain legal advice or seek assistance from the Community Justice Centre operated by NSW Government.

Relevant Legislation

Local Government Act 1993

Environmental Planning and Assessment Act 1997

Protection of the Environment Operations Act 1997

What action may be taken if non-compliance is found?

Compliance options	Example scenarios
Warning/Advisory	General complaint received stating issues with stormwater
Notice/Order	If there is defective or inadequate guttering on a building and the resultant drainage is causing or likely to cause damage
Penalty Infringement Notice	Failure to comply with Order
Court Attendance Notice	For serious breach and/or where there has been history of non-compliance with Orders, or Penalty Infringement Notices have not provided sufficient deterrent

Skin Penetration Premises

Scope of Council's role

The Public Health Act 2010 and Public Health Regulation 2012 regulates body decorating and grooming practices carried out by people who are not registered as health professionals. The regulated body decorating and grooming industries include:

- acupuncture
- beauty treatments
- body, nose and ear piercing
- cosmetic enhancements
- colonic lavage
- tattooing; and
- blood cholesterol and glucose measurement

The Regulation specifies procedures to prevent disease transmission, requires operators to be registered with Council and empowers Council to carry out inspections.

Relevant legislation and information

Public Health Act 2010

Public Health Regulation 2012

What action may be taken if non-compliance is found?

Compliance options	Example scenarios
Warning	Premises not registered with Council Insufficient supply of paper hand towels
Penalty Infringement Notice	Premises not registered with Council after warning Not have an appropriate sharps disposal container at the premises Insufficient supply of paper hand towels after warning
Improvement Notice	No hand wash basin or separate sink for cleaning equipment No hot water available in the premises
Prohibition Order	Non-compliance with an Improvement Notice Serious breach with an imminent threat to public health and safety e.g. no autoclave in premises for sterilising of instruments
Court Attendance Notice	For serious breach and/or where there has been history of non-compliance with Orders, or Penalty Infringement Notices have not provided sufficient deterrent

Priority Weeds

As of the 1st July 2017 the *Noxious Weed Act 1993* was repealed and the NSW *Biosecurity Act 2015* came into effect. Under the Biosecurity Act the term “noxious” is no longer used in weed management.

The Biosecurity Act provides a framework for a flexible outcomes-focused approach to weed management and establishes a number of biosecurity duties for individuals and businesses to manage and control any biosecurity risks associated with weed species on their land or that they deal with.

The Biosecurity Act applies a general biosecurity duty to manage any biosecurity risks posed or likely to be posed by a weed species. To assist individuals and businesses to comply with their duties and to facilitate effective coordinated weed management between them and Council, the Greater Sydney Regional Strategic Weed Management Plan and the Northern Beaches Council Weed Management plan were developed. These plans identify the priority weeds for control across Greater Sydney and the Northern Beaches and outline actions for management of these weeds that demonstrate compliance with the general biosecurity duty.

Under the Biosecurity Act, Council is the control authority responsible for the management of weed species within its lands to prevent, eliminate or minimise any biosecurity risks posed by those weeds. Part of this function includes the inspection of private properties and businesses to ensure they are compliant with their general biosecurity duty.

Inspections target priority weeds species listed in the regional and local weed management plans. Control of weed species not listed in the plans may still be enforced where a weed risk assessment demonstrates that that weed poses a biosecurity risk. Where there is a failure to comply with the general biosecurity duty or management of a weed species that poses a biosecurity risk, Council can take actions to enforce this duty and control of the weed.

Scope of Council’s Role

Council is committed to implementing the goals of relevant regional and local weed management plans by fostering a shared responsibility and increasing awareness with the community as a whole with an emphasis on preventing new weeds entering the region and eradicating or containing the spread of priority weeds.

Relevant legislation

Biosecurity Act 2015

Biosecurity Regulation 2017

Local Land Services Act 2013

Biodiversity Conservation Act 2016

Local Government Act 1993

Crown Land Management Act 2016

Greater Sydney Regional Strategic Weed Management Plan 2017-2022

What action may be taken if non-compliance is found?

Compliance options	Example scenarios
Warning	Where a person is unlikely to have reasonably known of the biosecurity risk posed by a weed on their property, a letter will be sent to advise them of their duty to control weeds on their land, the weed species present, advice on how to identify, contain or remove the weeds and a date for re-inspection to check control measures have been implemented.

Compliance options	Example scenarios
Biosecurity Direction	<p>A direction issued by Council specifies the measures to be taken to prevent a suspected contravention or likely contravention of a requirement under the Biosecurity Act or to prevent, eliminate, control or manage a biosecurity risk.</p> <p>E.g. Council issues a direction to a person in relation to the control of a priority weed on their land.</p> <p>Council issues a direction to a person or business to prevent the sale of a priority weed species.</p>
Biosecurity Undertaking	<p>An undertaking specifies the measures proposed by a landholder and accepted by Council to remedy a contravention, likely contravention, or suspected contravention of the Biosecurity Act and the timeframes those measures must be implemented by.</p> <p>E.g. Council accepts a weed management plan from a landowner to eradicate or suppress a priority weed on their property.</p>
Penalty Infringement Notice	<p>An inspection of a property for compliance with a Biosecurity Direction or Undertaking reveals no action or failure to fully comply with the direction or undertaking a penalty infringement notice may be issued.</p>
Court Attendance Notice	<p>Where there has been a history of non-compliance with previous enforcement action for the same or similar offences</p>

Native Vegetation Clearing

This applies to all areas of Native Vegetation or bushland within both public and private land. Native vegetation is identified in Council's Development Control Plans (DCP) by description of the vegetation and/or location mapping.

Scope of Council's role

The clearing of native vegetation or bushland identified in Council's DCP without a permit, development consent or regulatory exemption is a breach of the *NSW Vegetation - State Environmental Planning Policy 2017* (Vegetation SEPP). Under the Vegetation SEPP Council regulates clearing that is not linked to development requiring consent. Clearing that is ancillary or part of a development requiring consent is assessed as part of the development assessment process, and may require further assessment and approval under the *Environmental Planning and Assessment Act 1979* and *Biodiversity Conservation Act 2016*.

Clearing native vegetation or bushland without a permit, authorisation or exemption is prohibited development. Council enforcement of native vegetation clearing can be through Section 4.3 of the *Environmental Planning and Assessment Amendment Act 2017*.

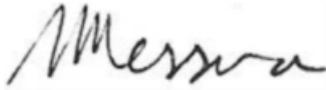
Relevant legislation

Biodiversity Conservation Act 2016 and Biodiversity Conservation Regulation 2017
Environmental Planning and Assessment Act 1979
Local Government Act 1993
Former Manly, Warringah and Pittwater Development Control Plans
Rural Fires Act 1997 and related 10/50 Vegetation Code of Practice
State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

What action may be taken if non-compliance is found?

Compliance options	Example scenarios
Warning	Good performance history or non-compliance, very minor works, person may have acted in accordance with agency advice or genuine misunderstanding of requirements.
Penalty Infringement Notice	Failure to comply with conditions of an approval issued under the relevant legislation, or for failure to obtain an Approval or Permit under relevant legislation. For unlawfully removing native vegetation or bushland identified in Councils DCP.
Notice/Order and Penalty Infringement Notice	Where there is sufficient evidence that a breach has occurred or is occurring and the breach has the potential to result in harm to the environment.
Court Attendance Notice	Where there has been a history of non-compliance with orders, or penalty infringement notices have not achieved compliance.
Land and Environment Court	Where there has been an extensive clearing, the degree of impact on vegetation and habitat features has resulted in environmental degradation or damage and evidence has been obtained of the alleged offender. May involve a matter where the circumstances surrounding the native vegetation clearing is of such significance that a prosecution would serve as an educative approach to raise awareness in the community.

Approved by



Acting General Manager Planning Place & Community

Melissa Messina

28 September 2018