

# ENFORCEMENT POLICY

## POLICY ADMINISTRATION

<b>Dates</b>	Policy approved 27/09/2021 This policy is effective upon its approval. Policy is due for review September 2024
<b>Approved by</b>	Council Meeting 27/09/2021 Council Resolution CCL060-21 (ENV042-21)
<b>Exhibition Period</b>	7 June 2021 to 19 July 2021
<b>Policy Owner</b>	Manager Environment, Health and Regulatory Services, Environment and Planning
<b>Related Documents</b>	Supporting documents, procedures & forms for this policy
<b>References &amp; Legislation</b>	<ul style="list-style-type: none"> <li>• Environmental Planning and Assessment Act, 1979 (NSW)</li> <li>• Protection of the Environment Operations Act, 1997 (NSW)</li> <li>• Road Transport Act, 2013 (NSW)</li> <li>• Companion Animals Act, 1998 (NSW)</li> <li>• Noxious Weeds Act, 1993 (NSW)</li> <li>• Public Health Act, 2010 (NSW)</li> <li>• Swimming Pools Act, 1992 (NSW)</li> <li>• Food Act, 2003 (NSW)</li> <li>• Impounding Act, 1993 (NSW)</li> <li>• Roads Act 1993 (NSW)</li> <li>• Graffiti Control Act 2008 (NSW)</li> <li>• Local Government Act, 1993 (NSW)</li> <li>• Water Management Act 2000 (NSW)</li> </ul>
<b>Document Identifier</b>	Policy #: Pol-009.02 Doc #: D17/118209
<b>Breaches of Policy</b>	Breaches of any policy will be dealt with and responded to in accordance with adopted codes and/or relevant legislation.
<b>Record Keeping</b>	All documents and information obtained in relation to the implementation of this policy will be kept in accordance with the NSW State Records Act 1998, Georges River Council's Corporate Records Policy and adopted internal procedures.

## PURPOSE

The purpose of this policy is to provide a framework to ensure the investigation and detection of any breach of the law will be conducted in a fair, lawful, consistent, transparent and professional manner and with a thorough consideration of all available facts, to assist Council and its Authorised Officers in making decisions in its regulatory functions.

## SCOPE

This Policy applies to all areas within the Georges River local government area, and to officers who are authorised to investigate unlawful activity including, but not limited to:

- Development and building control
- Tree preservation
- Fire safety
- Swimming pools
- Public health and safety
- Food safety
- Pollution control
- Environmental health
- Companion animals
- Roads and footpaths
- Parks and reserves
- Illegal dumping

## DEFINITION OF TERMS

Term	Meaning
Authorised Officer	an employee of Council with delegated authority under relevant legislation.
Coercive	to compel by forcible action.
Procedural Fairness	the rules or principles developed to ensure that decision making is fair and reasonable.
Unlawful activity	includes both an act and/or an omission.

## POLICY STATEMENT

### 1. Guiding Principles for Enforcement

Prior to making a decision to enforce or prosecute, the Council or its Authorised Officers will consider the following guiding principles.

- 1.1. Use of Discretion - deciding whether to take enforcement or prosecution action in response to evidence of unlawful activity.
- 1.2. Procedural Fairness - ensure that its enforcement and prosecution processes afford natural justice.
- 1.3. Previous conduct - ensure that communication is clear in relation to Councils previous actions and how these actions impact on a specific circumstance prior to deciding to take enforcement or prosecution action.
- 1.4. Nature of the activity - consider the nature and extent of the activity prior to making a decision to take enforcement or prosecution action including:
  - If the breach was of a trivial or technical nature,
  - If there were any aggravating circumstances, and
  - If there was any third party or environmental harm.
- 1.5. Delay in taking action - ensure that decisions to take enforcement or prosecution action are made without undue delay.
- 1.6. Public interest - the cost/benefit of taking enforcement or prosecution action in circumstances where the non-compliance can be easily remedied or where Council approval could have been obtained needs to be balanced against the cost of any action.
- 1.7. Impartiality – ensure enforcement decisions will not be influenced by:
  - An individual’s race, religion, sex, nation of origin or political associations, activities or beliefs
  - Possible political advantage or disadvantage to Council or any other party
  - The possible impact of the decision on the personal or professional circumstances of any party
  - Possible media or community reaction to the decision
  - A conflict of interest (real or perceived) as contained within the Council’s Code of Conduct
- 1.8. Reputation of the Council – any decision regarding enforcement or prosecution action will be made in a sound and ethical manner so not damage, harm or tarnish the professional reputation of the Council.

## **2. Enforcement options and considerations**

Council has a range of enforcement options available to remedy breaches of legislation. The specific option will be chosen to ensure that the level of regulatory action is proportionate to the level of risk and seriousness of the breach. Where appropriate these options may be used in an escalatory manner, such as in the case of repeat offenders.

## 2.1 Non-Coercive methods

- 2.1.1 Education - on the requirements of the relevant legislation, Council Policies or Codes. This option may be taken for a single minor breach that would not result in risk to life/property/health or the environment, the breach could be rectified immediately, the offender has shown contrition and rectified the matter immediately.
- 2.1.2 Warning letter – to more formally advise of the requirements of the relevant legislation, Council Policies or Codes. This option may be taken where there are a number of minor breaches that may result in risk to life/property/health or the environment, the breaches may require some time to rectify and a reinspection is required to confirm compliance.
- 2.1.3 Issue formal Notices, Orders & Directions – to give specific details of what work must be undertaken or that an activity must cease in order to comply with relevant legislation, Council Policies or Codes. This option may be taken where a breach is likely to cause risk to life/property/health or the environment, the breach will require time/resources to rectify and a reinspection is required to confirm compliance.
- 2.1.4 Carrying out the uncompleted work specified in an Order, and transferring the cost of such action to the offender. This option may be taken when the recipient of an Order/Direction from Council has made no attempt to complete the works and/or is incapable of completing the required works and there is a risk to life/property/health or the environment by not completing the works.

## 2.2 Coercive Methods

- 2.2.1 Penalty Notice – using a fixed financial punishment for an offence
  - a) The offence is a minor breach of an Act or Regulation where the facts alleged are not complex
  - b) The behaviour is isolated and unlikely to be repeated
  - c) The Penalty Notice fine amount is likely to be a sufficient deterrent.
- 2.2.2 Issue a Court Attendance Notice – to seek more extensive fines for breaches or Court Orders to remedy a situation.
  - a) Prosecution in the Local Court
    - i. The amount of any fine imposed is unlikely to exceed the jurisdictional limit of the Local Courts (currently \$110,000.00)
    - ii. The factual circumstances of the offence are not complex
    - iii. A penalty notice has been issued to the same Defendant for a similar offence which has failed to deter the Defendant

- iv. The offence is one where the environmental harm is not considered serious enough to take to the Land & Environment Court
  - v. The matter can be more efficiently dealt with in the Local Court
- b) Prosecution in the Land and Environment Court
- i. The monetary penalty imposed is likely to exceed the jurisdictional limits set by the Local Court (maximum penalty currently \$5million)
  - ii. The offence is one that has caused substantial environmental damage or harm
  - iii. The offence is one that has been committed previously by the Defendant and Court action has failed to act as a deterrent
  - iv. The offence is one where Council is, in addition to seeking a monetary penalty, seeking orders requiring the Defendant to undertake remedial work, where allowed by the relevant legislation.

## 2.3 Referral

2.3.1 Where Council is not the appropriate regulatory authority under specific legislation Council will refer the matter to the appropriate agency or forum.

- a) Referring the complaint to an external agency for further action, e.g. police or relevant NSW Government Department
- b) Referring the disputing parties to an external mediator, e.g. the Community Justice Centre or NSW Civil & Administrative Tribunal (NCAT).

## 2.4 Customer Requests

2.4.1 Council will investigate all request raised by the public. The investigation of each request will be conducted on the merits and accuracy of the information provided. Investigation of requests will be on a risk basis where matters that pose a risk to life/property/health and the environment are investigated as a priority.

2.4.2 Where the nature of a request also relates to a matter of concern to a State Agency or where there is an increase in the number of a particular request type, Council may investigate using a Compliance Program approach. Where this is approach is used all available resources are focused on that matter, i.e. unlawful boarding houses.

2.4.3 Members of the public wishing to request Council to investigate a potentially unlawful activity can do so by contacting Council's Customer Service Centre on (02) 9330 6400 or by lodging an online request using the [Log It / Fix It tab](#) on [Council's website](#).

## RESPONSIBILITIES

Position	Responsibility
Staff (Authorised Officer)	<ul style="list-style-type: none"> <li>• To effectively participate in policy training</li> <li>• To follow the policy as outlined</li> <li>• To report any barriers or concerns relating to policy implementation to the Coordinator without undue delay</li> <li>• To effectively participate in document review.</li> <li>• To make decisions relating to the investigation of alleged unlawful activity with the support of the Coordinator</li> </ul>
Coordinator	<ul style="list-style-type: none"> <li>• To effectively train, guide and monitor staff in policy implementation</li> <li>• To effectively respond to reported concern or barriers to policy implementation</li> <li>• Be an active advocate for policy implementation</li> <li>• Effectively coordinate and participate in policy review</li> <li>• Ensure policy requirements remain consistent with Council Policy and Organisational objectives.</li> <li>• To review decisions relating to investigation of alleged unlawful activity made by an Authorised Officer</li> </ul>
Manager	<ul style="list-style-type: none"> <li>• To effectively respond to reported concern or barriers to policy implementation</li> <li>• Be an active advocate for policy implementation</li> <li>• Effectively coordinate and participate in policy review</li> <li>• Ensure policy requirements remain consistent with Council Policy and Organisational objectives.</li> </ul>
Councillors	<ul style="list-style-type: none"> <li>• To refer customers that have allegations of unlawful activity to appropriate Council officers/ Managers to ensure appropriate action is taken</li> <li>• Councillors are not to make decisions around the way unlawful activities are investigated and/or prosecuted.</li> <li>• Councillors are prohibited from involvement in the day to day operational and management decisions around enforcement and prosecution.</li> <li>• Councillors can assist individuals who raise concerns with them by satisfying themselves that the Council's policies are being carried out correctly</li> </ul>

## VERSION CONTROL AND CHANGE HISTORY

Version	Amendment Details	Policy Owner	Period Active
HCC	Former Hurstville Council Enforcement Policy discontinued	Hurstville Planning and Environment	28/5/2008 – 02/07/2017
KCC	Former Kogarah Council Compliance, Enforcement and Prosecution Policy discontinued	Kogarah Planning and Environment	25/11/2013 – 02/07/2017
1.0	Complete new Georges River Enforcement Policy  Adopted by Council 03/07/2017 Council Resolution CCL115-17	Manager Environment Health and Regulatory Services	3/07/2017 – 27/09/2021
2.0	Amendments to 'Scope' and clause 2.1 to ensure greater clarification and a new clause 2.4 added to explain customer request investigation and lodgement.	Manager Environment Health and Regulatory Services	27/09/2021 - ongoing