PORT MACQUARIE HASTINGS COUNCIL

Compliance and Enforcement Policy

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1. Purpose

In New South Wales, local councils operate as the third tier of government and act as a primary regulator for their communities under a complex array of legislation to ensure the protection of public health and safety and the protection of natural and built assets, all while balancing economic, social and environmental outcomes.

To fulfill these duties, local councils are empowered to appoint 'Authorised Officers' who can exercise statutory regulatory powers, issue orders, undertake investigations and take enforcement action (including initiating civil or criminal court proceedings). Ultimately, local councils balance these actions through the development of policies and supporting procedures that align with legislative requirements, regulatory practice, community expectations and individual rights.

This Compliance and Enforcement Policy (Policy) seeks to:

- provide a framework for consistent and transparent decision making,
- provide our community and other stakeholders with clarity on Council's approach to compliance and enforcement functions across the Local Government Area (LGA),
- establish Council as a responsive, evidence-led, risk-based and outcomes focused regulator,
- empower the use of discretion by staff involved in regulatory decisions,
- protect human health and the environment (both built and natural),
- protect Council and community assets (both built and natural),
- enhance Council's reputation and standing within the community based on sound decision-making while ensuring a level playing field, as far as possible, across the entire LGA, and
- drive improved compliance with the various items of legislation, regulations, rules and other instruments or requirements administered and/or enforced by Council.

This Policy also assists with Council incorporating and embodying the guiding principles listed under Section 8A of the *Local Government Act 1993* and delivering its priority actions under the Community Strategic Plan 2025-2035.

2. Statement

Council is committed to undertaking all our regulatory functions, including compliance and enforcement actions, in a lawful and responsible manner underpinned by the concept of natural justice and procedural fairness.

Council positions itself as a firm but fair regulator. Council will take regulatory action where it is necessary and proportionate, and will exercise restraint where education, engagement, negotiation or other non-punitive responses are more likely to deliver compliance and reduce harm. Council will not take regulatory action for its own sake, nor will Council decline to act where the risk to public health, safety, the environment or the integrity of legislative frameworks warrants a response. Council's regulatory functions are exercised independently of political consideration and free from improper influence. Regulatory decisions are made by appropriately delegated and appointed staff.

3. Scope

This Policy applies to all Council staff who undertake regulatory functions, including compliance and enforcement actions, while allowing our community to understand Council's approach to regulation.

For the purposes of this Policy, regulatory functions encompass all investigative, restorative, compliance and enforcement functions associated with a piece of legislation/regulation for which that person has an in-force delegation and/or appointment and accompanying Identification Card, and generally encompasses the following areas of responsibility:

- parking and traffic issues,
- unauthorised camping,
- abandoned items and vehicles,
- litter and illegal dumping,
- tree and native vegetation vandalism and removal and other biodiversity impacts for which Council is responsible for regulating,
- environmental pollution,
- land use, encroachment, building and development matters (including campgrounds, caravan parks, manufactured home estates, non-compliance with development approvals and more),
- companion animals,
- swimming pool, spa and fire safety,
- public and environmental health (including food safety, legionella monitoring, onsite sewage management systems, underground petroleum storage systems, contaminated land and more),
- biosecurity,
- water, sewer, plumbing and trade waste, and
- traffic and related assets.

This Policy does not apply to complaints about the performance or otherwise of Council staff who undertake regulatory functions, including complaints about any perceived lack of enforcement action.

Complaints about staff performance are dealt with under Council's Customer Complaints Policy. Alternatively, complaints about staff performance can be made to the NSW Ombudsman.

4. Principles

Regulation is everywhere. It is a function of our democratic system to ensure that people do not impact other people, property, assets and the environment in a detrimental manner. This includes alleged unlawful activities that not only impact people, property, assets and/or the environment, but which undermine the correct functioning of legislative frameworks (e.g., the development assessment and approval framework). Regulation is therefore inherently complex and requires a range of approaches to address alleged offences to stop improper conduct while promoting changes in societal attitudes that drive behavioural change across the LGA.

Council's preference is that those living, working, visiting or otherwise interacting within the LGA comply with legislative provisions at all times.

Council therefore undertakes a range of proactive actions such as education or outreach activities as well as proactive audits and inspections to promote compliance and prevent harm, rather than relying solely on strict reactive and punitive action. There are also times when punitive action, including criminal prosecutions, are warranted, particularly for high-risk issues or when dealing with repeat offenders.

Generally speaking, Council takes a risk-based and outcomes-focused approach to regulation. Council seeks to identify and focus our resources and efforts on the activities or areas that present the highest risk to people, property, assets and the environment.

Some functions, such as parking enforcement, may occur for other purposes. For example, parking enforcement is also carried out to address the following:

- to protect pedestrian and road safety,
- to remove obstructions or other hinderances to pedestrian movement, including those with mobility limitations, or vehicle movements,
- to facilitate turn-over in central business districts to support economic throughput, and
- to provide equitable access to parking in high usage areas.

Council will apply the following principles to deliver on the purpose(s), statement of intent and scope of this Policy as outlined above.

Element/Service	Principles
A **Best practice regulation**	1. Council is committed to building public confidence in our regulatory action. Council will therefore strive to build strong practices to support our regulatory maturity including, but not limited to, the following: robust training, staff development, regulatory procedures, modern reporting, internal auditing and other initiatives (including the use of the Modern Regulator Improvement Tool hosted by the Australasian Environmental Law Enforcement and Regulators neTwork (AELERT). 2. Council acknowledges that this is an ongoing body of work and will look to utilise the lessons learnt from federal, state and other local regulators to accelerate this maturity uplift. 3. Council, though the actions above, strives to undertake our regulatory functions in a consistent manner, noting that many of the matters we investigate are situational dependent and can result in differing outcomes. 4. Council will make evidence-based decisions at all times. Our governance framework helps maintain objectivity, independence and integrity while ongoing maturity uplift improves performance.
B **Risk based approach**	1. Council takes a risk-based approach to its regulatory functions. Council allocates our efforts by focusing on those matters where they will have the biggest impact. Priority matters for Council include those matters that: a) pose an immediate or potential threat to public health and safety, b) cause actual or potential harm to the environment, c) pose a risk to essential Council or community assets, and d) undermine the integrity of key legislative frameworks, such as the NSW Planning System and the Waste and Resource Recovery System. Lower priority matters such as minor civil disputes, or aesthetic related complaints, may not result in regulatory action being taken if no significant public interest is served. 2. Council does not have infinite resources and must prioritise when and where to apply them. Council's regulatory functions are no exception. Council will therefore develop and publish on a financial year basis, its regulatory priorities via a Regulatory Priorities Statement. This will articulate where Council resources will be predominantly allocated that financial year. This will also have the added benefit of advising the community on what Council's regulatory priorities will be and where an increasing regulatory response may be applied. Council may seek community input into its regulatory priorities to ensure that any matters of significant community concern are adequately taken into consideration.
C **Timeliness of action**	1. Council will respond to alleged offences in accordance with the service level standards associated with the matter under investigation, or in accordance with the level of risk posed, where there are competing priorities. 2. This means that high to medium risk matters will be actioned prior to lower risk or aesthetic related matters, irrespective of whether the former was received at a more recent point in time.

Element/Service	Principles
D **Accountability, transparency, and communication**	1. Council will act in the best interests of our community by prioritising the protection of public health and safety and natural and built assets. 2. Council is accountable for our regulatory functions and regulatory actions. This means we are answerable for the decisions we make, including when we do or don't take regulatory action. We will record our actions and decisions in our records and case management system and ensure compliance with record management and retention related legislation. 3. Council will communicate, as far as possible, our regulatory decisions with the people affected, particularly when a regulatory decision has been made. In addition, we will develop a framework to publish the results of key regulatory decisions including via media releases/social media and website reporting. 4. Council will ensure compliance with privacy related legislation and our own Privacy Management Plan, noting that there are some exemptions to this in relation to the sharing of information and intelligence in certain law enforcement or public safety situations.
E **Use of discretion**	1. Council has a range of regulatory options available to it when responding to alleged offences, situation dependent. It is important to note that an alleged offence does not always automatically result in punitive action being taken. This is at the heart of the use of discretion – choosing the most appropriate response to the alleged offence being investigated. In some cases, no regulatory action being taken may be an appropriate outcome. 2. Council staff, when deciding the appropriate regulatory action, will consider the Proportionality and Regulatory Considerations principle below (Principles G and H respectively).
F **Inter-agency interactions**	1. Council will refer complaints to alternate government agencies or services where Council is not the appropriate authority to respond (i.e., the complaint relates to a matter where legislation determines which tier of government is to respond) or where another service provider may be more appropriate in the first instance (e.g., mental health care provider for systemic hoarding or an alternative housing provider for persons that are genuinely homeless). This is a relatively common occurrence across governments. Where there is jurisdictional overlap (e.g., a Development Approval issued by the NSW Government for State Significant Infrastructure or State Significant Development or similar but where Council regulates day to day pollution matters under the Protection of the Environment Operations Act 1997 (POEO Act), Council may consider deferring to the enacting mechanism, e.g., the issued Development Approval where that mechanism is best placed to address the matter. This does not prevent Council from taking action if required. 2. Council will cooperate with, and share permitted information and intelligence with other enforcement agencies at a federal, state and local level to achieve common objectives. Council will look for opportunities to work with other enforcement agencies to build relationships and deliver effective outcomes (e.g., joint inspections and investigations).

Element/Service	Principles
G Proportionality and regulatory considerations	1. Council seeks to ensure that our regulatory action, including any enforcement action, is proportionate to the level of risk and the seriousness of the alleged offence. This approach is moderated by a range of other factors, including those outlined within the Regulatory Considerations section below. 2. Council will make cost effective decisions about enforcement action while balancing the need to take action to address risk/harm while deterring future unlawful activity, both generally and specifically.
H Core regulatory considerations	1. Council staff will give consideration to the following when determining the most appropriate response to an alleged offence (see Regulatory Options): a) public interest: - the decision may undermine public confidence in Council. - the decision may be for the benefit of the community and environment at large. - the decision may be considered necessary to clarify or test a potential “grey” area in the law or the law’s applicability. - the decision may be considered necessary to set a deterrent for a systemic issue. b) seriousness: - the level of actual or potential harm to individuals, the community, public health and safety and the natural and built environment. - the level of actual or potential harm of the alleged offence to Council property and assets which are property and assets for the benefit of our community. This includes hazards on private property that have the potential to impact assets such as road reserves and public places. - the person has not cooperated with Council or complied with lawful directions/notices/orders etc to resolve the issue - whether the alleged offence is a repeat offence and/or is ongoing/continuing. c) history - does the person have a history of previous non-compliances. d) culpability - was the breach accidental or deliberate/calculated (e.g., for financial gain). e) mitigation - has the person cooperated and taken steps to fix the issue. f) regularisation – whether the alleged offence is capable of being remedied through a lawful approval pathway, and the likelihood that such an approval would be granted (see Unauthorised Development and Retrospective Approval). g) personal circumstances - age, health, or mental capacity that may make a warning more appropriate than a fine or prosecution. 2. Other discrete case-by-case reasons, outside of these core regulatory considerations list above, may exist that contribute to one form of regulation action being taken over another.
I.	1. Council staff discharging regulatory functions will be appropriately delegated and appointed under the legislation that they are administering at all times.

Delegations and appointments	2. Council staff discharging regulatory functions will carry an Authorised Officers Identification Card that identifies the staff member as having the correct delegations and appointments.
J. Councillor involvement	1. Individual Councillors have no authority to direct Council officers in their day-to-day activities and the discharge of their regulatory functions. 2. Decision making relating to the outcome of an investigation of alleged unlawful activity is the responsibility of appropriately authorised Council Officers and relevant line management.
K. Natural Justice and Procedural Fairness	1. Council's regulatory staff will observe the principles of natural justice and procedural fairness at all times. This means that regulatory decisions will be made by an unbiased decision-maker, that a person of interest will be given sufficient information to understand the alleged offence and any proposed regulatory action, and that they will be provided with a genuine opportunity to respond before a decision that affects their rights or interests is made, except in emergencies or where legislation provides otherwise. 2. In most cases, internal and external review processes exist, with some enshrined in legislation. If a person has been subject to regulatory action, the options for review are set out in the documentation provided to that person, or that person can contact Council directly for more information.

5. Complaints generally

5.1. Making complaints

Complaints of suspected unlawful activity are one of the primary ways in which Council becomes aware of such matters. Due to the LGA's relatively large geographical area of over 3,686km², it is impossible for Council staff to be everywhere at all times. Therefore, it is important that people can lodge a complaint and that complaints to Council contain sufficient information to allow Council staff to triage and action them.

Complaints can be made in a variety of ways including by phoning Council on 02 6581 8111, by emailing counci@pmhc.nsw.gov.au or by lodging a self-service complaint via the online report an issue webpage. Complaints should be made in real time or as close as possible to real time to assist in the preservation and collection of evidence which will assist Council's investigations. Urgent complaints should always be made using the telephone number above. Provided below is a list of items to include with a complaint to assist Council to investigate/action:

- complainant's name and contact details,
- date and time of the alleged unlawful activity,
- who undertook the alleged unlawful activity (if known) – this could include a description of the alleged offender such as gender, height, weight, clothing etc or vehicle registrations associated with the person(s),
- location where the alleged unlawful activity took place,
- details of the alleged unlawful activity (i.e., what does the complaint relate to), and
- other details or evidence that may assist Council's action such as photographs and video footage (where that evidence has been collected lawfully e.g., no trespassing).

Council may request further details from a complainant to assist with our investigations which is routine practice (e.g., provision of a barking dog diary, request for any photographs or video footage).

Council expects, where safe and reasonable, that attempts have been made to resolve an issue directly with the person responsible or via other like for like arrangements (e.g., raising an amenity issue within a unit complex with the strata manager so that it can first be dealt with under any by-laws). However, we note that this is not always possible and sometimes Council's regulatory staff are best positioned to respond. Any attempts to resolve the matter external to Council should be included within the complaint for Council's information. Council also expects that complainants treat Council staff with courtesy and respect, do their best to assist with Council's enquiries where requested, do not provide false or misleading information and do not otherwise impede or disrupt ongoing investigations. Doing so may result in the discontinuation of Council's investigation and referral to the NSW Police Force.

5.2. Managing complaints

Complaints of suspected unlawful activity are managed in accordance with the *State Records Act 1998*, Council's Code of Conduct Policy, Council's Customer Experience Policy and a range of internal frameworks, policies, procedures and directives that relate to records and complaint management.

Complaints of suspected unlawful activity are recorded in our Customer Relationship Management system and allocated a unique reference number, known as a CRM. Council action on receipt of a complaint may include, but need not be limited to, the following:

1. Complaint recording,
2. Complaint allocation,
3. Complaint acknowledgement,
4. Complainant feedback/input,
5. Initial review and assessment in accordance with principles contained within this Policy, such as risk, and any other operational priorities,
6. Referral, advice, education, other non-regulatory remedies or continuation to investigation,
7. Regulatory action, where warranted, and
8. CRM closure.

Council staff will look to formally acknowledge a complaint as well as seeking additional feedback and/or input from a complainant into the specifics of the complaint, unless the complainant requests no contact with Council staff or where the matter is already under investigation and Council staff have already spoken to the complaint on the topic the subject of investigation. Council staff will attempt to keep a complainant informed of the actions being taken or final actions taken, as far as possible. However, this is not always achievable given the variability of caseloads and case complexity. Not all complaints will result in Council regulatory action. This could be for a broad array of reasons including the fact that a complaint may be the responsibility of another agency resulting in formal referral, or the matter may have already been raised with Council, investigated, regulatory action implemented and action continuing.

As indicated within the principles contained in this Policy, Council staff can exercise the use of discretion within reasons and where appropriate.

5.3. Responding to confidential complaints

If a complainant asks that their details remain confidential, Council will honour this request as far as possible where it is lawful and practicable to do so unless compelled through a court order or legal compulsion.

That said, Council will always seek to protect a complainant's identity utilising the public interest immunity provisions under section 130 of the *Evidence Act 1995*. This reflects the NSW Crown Solicitor's Office guidance on public interest immunity and established NSW case law, both of which recognise that the public interest in protecting the identity of complainants who provide information to regulatory agencies will generally outweigh the interest in disclosure to the person(s) the subject of the investigation.

5.4. Responding to anonymous complaints

Having a name with relevant contact details is important as it allows Council staff to make contact with the complainant to gather further details and evidence that can assist Council in assessing what action is required and what regulatory action, including punitive action, should be taken, if any. In addition, the preference for the provision of a name and contact details can prevent frivolous complaints being made to Council.

In general, Council will not investigate anonymous complaints unless there is an overriding public interest to do so. Council will give consideration to any potential "harm" and any "public interest" considerations when making this determination.

5.5. Responding to vexatious complaints

Council acknowledges that there are times, however unlikely, when investigations identify that a complaint may have been made for nefarious or vexatious purposes which could be due to a neighbourhood dispute or similar.

In general, Council will not investigate vexatious complaints unless there is an overriding public interest to do so. Council will give consideration to any potential "harm" and any "public interest" considerations when making this determination.

5.6. Responding to after-hours complaints

Where an after-hours complaint relates to a matter that poses an immediate risk to public health, safety, the environment or essential community assets, Council will deploy an on-call Authorised Officer or refer the matter to the appropriate emergency response agency, including (where relevant) the NSW Police Force, NSW Ambulance, Fire and Rescue NSW, the NSW Rural Fire Service, the NSW State Emergency Service, NSW Health or the NSW Environment Protection Authority.

Where the matter does not warrant an immediate after-hours response, it will be triaged and actioned during the next business day.

5.7. Council identified alleged offences

In addition to complaints, Council staff may self-identify an alleged offence during routine business activities such as proactive inspections or through targeted compliance campaigns.

Such self-identified alleged offences will be dealt with similarly to any complaint received from a member of the public and in accordance with this Policy.

5.8. Engagement with vulnerable persons

Council recognises that regulatory action can have significant consequences for individuals and that some persons of interest may have additional vulnerabilities that warrant a tailored regulatory response.

Vulnerabilities may include, but are not limited to:

- Aboriginal and Torres Strait Islander identity,
- age (including children and older persons),
- mental health conditions or cognitive impairment,
- serious physical health conditions or disability,
- experience of homelessness or housing instability,
- acute financial hardship,
- experience of family or domestic violence, and
- linguistic and cultural diversity, including persons from culturally and linguistically diverse backgrounds.

When responding to a matter that involves a person who may be vulnerable, Council staff will:

- engage with Aboriginal and Torres Strait Islander persons in a culturally appropriate manner, recognising the importance of community connection and Council's commitments under its Reconciliation Action Plan,
- engage with relevant support agencies and refer matters that are more properly the responsibility of a health, social, housing, or specialist service,
- adjust communication methods and timeframes where reasonable to support meaningful engagement and informed response,
- exercise discretion consistent with Principle E and the Core Regulatory Considerations in Principle H, with particular weight given to personal circumstances, and
- not treat vulnerability as a basis for inaction where the matter poses a serious risk to public health, safety, the environment or the integrity of legislative frameworks.

Council acknowledges that vulnerability may also apply to complainants, witnesses and other affected persons. Council staff will apply the principles above when engaging with all parties noting there are times when Council staff may need to verify personal circumstances.

5.9. Unauthorised development and retrospective approval

Complaints regarding unauthorised development, being development carried out without the required approval or otherwise than in accordance with an approval, represent a significant proportion of the matters Council investigates.

In responding to unauthorised development, and in addition to the Core Regulatory Considerations under Principle H, Council staff will consider:

- whether the development is capable of being regularised through a lawful approval pathway, such as a development application, a modification application or a building information certificate,
- the likelihood that such an approval would be granted if sought, including whether the development could have been carried out as exempt or complying development,
- whether the development, although unauthorised, is minor or technical in nature and causes no material harm to public health, safety, amenity or the environment, and
- conversely, whether the circumstances of the unauthorised development (e.g., deliberate conduct, financial gain, prior warnings or the undermining of the integrity of the NSW Planning System) warrant enforcement action irrespective of whether an approval could be obtained.

Where a person of interest lodges an application to regularise unauthorised development, Council may, at its discretion, defer enforcement action pending determination of that application, having regard to the level of risk or harm posed in the interim. Deferral is not automatic and will not occur where the development poses a risk to public health, safety or the environment, or where the application appears to have been lodged primarily to delay enforcement action.

The lodgement or approval of a retrospective application does not extinguish an offence already committed, and Council retains discretion to take enforcement action, including the issue of a Penalty Infringement Notice or the commencement of proceedings, in respect of the original unauthorised conduct where the circumstances warrant it.

5.10. Alleged offences involving Council, Councillors or Council staff

There are times when the alleged offender may be Council itself (for example, alleged unlawful activity on Council-owned or Council-managed land, or arising from Council works or operations), a Councillor, a member of Council staff or a contractor engaged by Council.

Council recognises that these matters carry an inherent conflict of interest, whether actual or perceived, and will manage them with additional rigour and transparency.

In responding to such matters, Council will:

- investigate and respond to the alleged offence no less rigorously than it would for any other person, applying the principles and considerations set out in this Policy,
- ensure the matter is not investigated or decided by any officer with a direct involvement in, or responsibility for, the activity the subject of the alleged offence,
- escalate the matter to the Group Manager Environment and Regulatory Services and, where appropriate, the Director and/or General Manager for oversight of the investigation and any regulatory decision,
- record the matter, the investigation and the reasons for any decision in Council's records and case management system in accordance with Principle D, and
- refer the matter to the appropriate external agency where the alleged offence falls within the jurisdiction of another regulator (e.g., the NSW Environment Protection Authority for certain pollution matters involving Council activities), or where independent investigation is otherwise warranted, including (where relevant) the Office of Local Government, the NSW Ombudsman or the Independent Commission Against Corruption.

Where the conduct of a Councillor or member of Council staff may also constitute a breach of Council's Code of Conduct, the matter will additionally be dealt with under Council's Code of Conduct and associated procedures. Action under the Code of Conduct does not prevent, replace or delay regulatory action under this Policy where such action is warranted.

6. Authorised officers

Council's regulatory functions are exercised by Authorised Officers operating under delegations and appointments made under the relevant legislation.

Council will:

- appoint as Authorised Officers only those persons required to hold such appointments and who hold the appropriate qualifications, training, experience and ongoing competency (where applicable),
- issue Identification Cards to Authorised Officers in accordance with statutory requirements, and require those Identification Cards to be carried and produced as required by law,
- maintain a current register of delegations and appointments,
- provide ongoing training and professional development to maintain regulatory readiness,
- support authorised officers to identify and manage actual, perceived and potential conflicts of interest in accordance with Council's Code of Conduct, including by recusal from matters where required, and
- support a culture of integrity, accountability and continuous improvement, consistent with the Modern Regulator Improvement Tool and Council's commitments under this Policy.

7. Council investigations

Council staff, following review and triaging of any complaint or self-identified alleged offence, may determine that further investigation is warranted. Council investigations will be conducted lawfully, ethically, professionally and in a manner that respects the rights of all parties as far as practicable.

Investigations will be:

- conducted by appropriately delegated and appointed Authorised Officers,
- proportionate to the seriousness of the alleged offence and the level of risk,
- undertaken using powers conferred under the relevant legislation and consistent with the rules of evidence, including the *Evidence Act 1995*,

- supported by appropriate evidence collection, handling and storage to maintain the integrity and admissibility of any evidence collected,
- conducted in a manner that affords procedural fairness to the person of interest, including the opportunity to respond to allegations before a regulatory decision is made, except where doing so is permitted by legislation, would compromise the investigation, create a risk of harm and/or is otherwise impractical or inappropriate,
- conducted in a manner that protects the confidentiality of complainants and witnesses consistent with this Policy, and
- conducted in accordance with Council's investigation procedures, operational directives and applicable statutory frameworks.

Council may use audio recordings, photography, body-worn cameras, drones and other crewed or uncrewed aerial vehicles and other lawful means of evidence capture in accordance with the relevant legislation administered, with consideration given to the Surveillance Devices Act 2007, the Privacy and Personal Information Protection Act 1998 and any other related legislation.

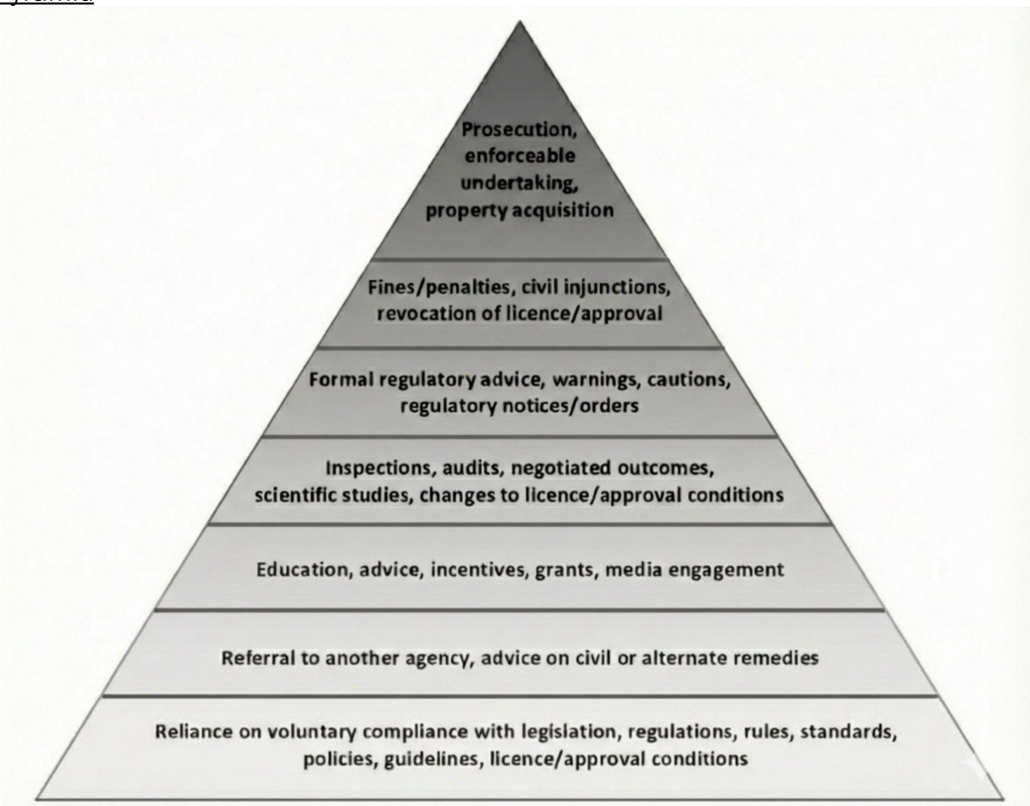
Not all matters investigated will result in punitive action being taken. A decision not to take regulatory action following an investigation is itself a regulatory decision and will be recorded with reasons. The options available to Council are explored further below.

8. Regulatory options

Council has a range of regulatory tools available to respond to alleged unlawful activity. These tools are scaled, beginning with education and engagement and escalating to formal enforcement and court proceedings.

The diagram below summarises Council's regulatory response options, from the lowest to the highest level of intervention.

Regulatory Pyramid



The selection of a regulatory tool will reflect the principles set out in this Policy, in particular Principle E (Use of Discretion), Principle G (Proportionality and Regulatory Considerations) and Principle H (Core Regulatory Considerations).

Provided below is an overview of those tools that are considered punitive in nature, shown in escalating order of severity:

- **Verbal warnings:** formal expression that observed conduct constitutes, or may constitute, an alleged offence, with an expectation that the conduct cease or be remedied. Warnings are recorded against the person of interest and may inform Council's response to any subsequent matter.

- **Formal warnings:** Issued in accordance with the Caution Guidelines under the *Fines Act 1996*, formal warnings provide a documented alternative to a Penalty Infringement Notice for less serious matters where the conduct is acknowledged, and the person of interest is unlikely to reoffend.

- **Statutory notices/orders:** Legally enforceable instruments issued under the relevant legislation, such as (but not limited to) orders under section 124 of the *Local Government Act 1993*, development control orders under the *Environmental Planning and Assessment Act 1979*, clean-up notices, prevention notices and prohibition notices under the *Protection of the Environment Operations Act 1997*, and so on. Council will provide a person of interest with the opportunity to make submissions before issuing an order, except where the matter is urgent, and statutory provisions do not require submissions to be sought or where doing so would create a risk of harm or compromise an investigation.

- **Penalty Infringement Notices (PINs):** On-the-spot fines for prescribed offences, administered under the *Fines Act 1996*. PINs may be issued where the evidence is sufficient, and the matter is not considered serious enough to warrant the commencement of a prosecution in an appropriate court jurisdiction.

- **Enforceable Undertakings (EUs):** Where the enabling legislation permits, Council may accept a written undertaking from a person of interest to take specified action to address the alleged offence and prevent recurrence. An accepted enforceable undertaking is an alternative to other formal enforcement action and is itself enforceable and will be formalised through an appropriate court jurisdiction.

- **Civil proceedings:** Council may bring proceedings in the Land and Environment Court (Class 4) or another court of competent jurisdiction to restrain conduct, compel action or seek remediation of harm. Civil proceedings are typically used where injunctive or declaratory relief is sought, where the conduct is ongoing, or where other tools may not have achieved compliance.

- **Criminal prosecution:** Council may commence criminal proceedings (typically in the Land and Environment Court Class 5 or the Local Court) for offences against legislation Council administers. Prosecution is reserved for serious matters or for repeat offenders and proceeds in accordance with Council's prosecution decision-making criteria, having regard to the Director of Public Prosecutions' Prosecution Guidelines as a reference point.

- **Court-ordered remediation and cost orders:** Where civil or criminal proceedings are successful, Council may seek orders for remediation of harm, payment of Council's investigation and legal costs, and publication orders to deter future offending.

On occasion, Council may look to utilise a variety of tools in response to a given matter depending on the circumstances such as the issuing of statutory notices/orders, the commencing of civil proceedings and the **commencement** of a criminal prosecution.

On an even rarer occasion an in response to select issues (e.g., systemic unpaid debt), Council may look to recover outstanding monies owed through the acquisition and sale of land, as permitted under the *Local Government Act 1993*.

9. Decision making

Council staff, when determining whether to take regulatory action, will apply this Policy in a structured manner. The decision-making process generally involves:

- confirming jurisdiction i.e., whether the matter is one Council is empowered to act on under legislation it administers,
- assessing the evidence i.e., whether there is sufficient evidence to establish a reasonable basis for believing that an offence has occurred or is occurring,
- applying the Core Regulatory Considerations set out in Principle H i.e., public interest, seriousness, history, culpability, mitigation, regularisation, personal circumstances and any other relevant situational specific matters, and
- recording the decision and the reasons for it in Council's records and case management system.

If a matter is significant, complex, novel or likely to attract significant scrutiny, the decision will be reviewed by the Group Manager Environment and Regulatory Services or another appropriate senior officer prior to action being taken. If a matter involves proposed prosecution and/or other court proceedings, Council's Legal Counsel will be engaged at the earliest practical opportunity.

10. Reviews and Appeals

Statutory orders and decisions made under various legislation administered by Council generally carry inherent rights of appeal that are typically set out in the order itself, or in the supporting documentation provided to the affected person. These may include:

- appeals to the Land and Environment Court in respect of issued/served development control orders, environment protection notices and other planning and environmental instruments,
- appeals to the Local Court in respect of other orders and matters,
- statutory rights of review and election for court hearing in respect of Penalty Infringement Notices, and
- merit review by the NSW Civil and Administrative Tribunal in respect of certain decisions.

Council decisions may also be the subject of complaint to the NSW Ombudsman, review by the Information and Privacy Commissioner in matters concerning information access or privacy, or judicial review proceedings in the Supreme Court of NSW. Affected persons are encouraged to seek their own legal advice in relation to their review and appeal rights.

11. Cost Recovery Options

Council may recover the costs of its regulatory functions in accordance with the relevant legislation. Cost recovery mechanisms may include:

- charges and fees set under Council's Fees and Charges,
- administrative fees set under legislation administered by Council,
- recovery of investigation, monitoring, inspection and remediation costs under specific provisions of legislation administered by Council, including (but not limited to) the *Local Government Act 1993*, the *Environmental Planning and Assessment Act 1979* and the *Protection of the Environment Operations Act 1997*,
- revenue collected from Penalty Infringement Notices in accordance with the *Fines Act 1996*,
- application for costs in successful court proceedings, and
- enforcement of unpaid penalties and costs through Revenue NSW or other debt recovery providers.

12. Reporting and Transparency

Council is committed to transparency in its regulatory functions, consistent with Principle D above. Council will:

- publish a Regulatory Priorities Statement on an annual financial year basis,
- report on regulatory performance through its Operational Plan and Annual Report,
- report on key regulatory outcomes (including significant prosecutions, civil enforcement actions and substantial orders issued) on Council's website and through other appropriate channels, and
- maintain registers and disclose information in accordance with the Government Information (Public Access) Act 2009.

Publication of regulatory outcomes will be balanced against the rights of individuals to privacy and the requirement to maintain the integrity of ongoing matters. Council will not publish information that would prejudice an investigation, breach privacy obligations or otherwise be contrary to law.

13. References and Related Documents

Legislation

- *Biosecurity Act 2015* and its associated regulation(s),
- *Boarding Houses Act 2012* and its associated regulation(s),
- *Building and Development Certifiers Act 2018* and its associated regulation(s),
- *Companion Animals Act 1998* and its associated regulation(s),
- *Crown Land Management Act 2016* and its associated regulation(s),
- *Environmental Planning and Assessment Act 1979* and its associated regulation(s),
- *Evidence Act 1995*
- *Fines Act 1996* and its associated regulation(s),
- *Food Act 2003* and its associated regulation(s),
- *Graffiti Control Act 2008* and its associated regulation(s),
- *Local Government Act 1993* and its associated regulation(s),
- *Local Land Services Act 2013* and its associated regulation(s),
- *Plumbing and Drainage Act 2011,*
- *Protection of the Environment Operations Act 1997* and its associated regulation(s),
- *Public Health Act 2010* and its associated regulation(s),
- *Public Spaces (Unattended Property) Act 2021* and its associated regulation(s),
- *Roads Act 1993* and its associated regulation(s),
- *Road Rules 2014*,
- *Strata Schemes Management Act 2015* and its associated regulation(s),
- *Swimming Pools Act 1992* and its associated regulation(s), and
- *Water Management Act 2000* and its associated regulation(s).

References and Related Documents

- Council's Local Strategic Planning Statement (LSPS) 2040,
- Council's Community Strategic Plan (CSP), as in-force from time to time,
- Council's 4-year Delivery Program, as in-force from time to time,
- Council's 1-year Operational Plan, as in-force from time to time,
- NSW Ombudsman Enforcement Guidelines for Councils, and
- Attorney-General's *Internal Review Guidelines* and *Caution Guidelines* under the *Fines Act 1996*.

14. Definitions

- **Alleged offence** means conduct that, if proven, may constitute a breach of legislation administered by Council.

- **Authorised officer** means a Council officer who has been appointed and delegated under the relevant legislation to exercise regulatory functions, and who carries a valid Identification Card.
- **Complaint** means a report to Council of an alleged offence or other matter falling within Council's regulatory functions. A complaint may be made by a member of the public, another agency, an internal Council officer or may arise from Council's proactive monitoring.
- **Complainant** means a person who has made a complaint to Council.
- **Council** means Port Macquarie-Hastings Council.
- **Discretion** means the exercise of judgement by an authorised officer or other Council officer, within the limits of their delegation and the requirements of this Policy, to determine the most appropriate response to an alleged offence.
- **Enforcement action** means formal regulatory action taken by Council in response to an alleged offence, including the issue of a statutory notice or order, the issue of a Penalty Infringement Notice, civil enforcement proceedings and criminal prosecution.
- **Investigation** means the structured collection and assessment of evidence in respect of an alleged offence to inform a regulatory decision.
- **LGA** means the local government area of Port Macquarie-Hastings.
- **Person of interest** means a person who is the subject of an investigation or against whom regulatory action is being considered or has been taken.
- **Penalty Infringement Notice (PIN)** means an infringement notice issued under the *Fines Act 1996* or other empowering legislation.
- **Procedural fairness** means the requirement that a decision affecting a person's rights, interests or legitimate expectations be made by an unbiased decision-maker, that the person be informed of the matters being considered, and that the person be given a genuine opportunity to respond before the decision is made, except where the law provides otherwise.
- **Regulatory action** means any action taken by Council in the exercise of its regulatory functions, including education, engagement, the giving of advice or warnings, investigation and enforcement action. A decision not to take action is itself regulatory action.
- **Regulatory functions** means all investigative, restorative, compliance and enforcement functions associated with legislation administered by Council, as further described in the Scope section of this Policy.
- **Vulnerable person** means a person who, by reason of one or more factors identified in the Engagement with Vulnerable Persons section of this Policy, may require a tailored regulatory response.

15. Responsible Officer

For more information on this Policy and its associated documents, please contact the Group Manager, Environment and Regulatory Services.

16. Amendments

2022: Compliance and Enforcement Policy created.

2026: Compliance and Enforcement Policy updated to align with Council’s updated policy framework and templates while modernising the policy to ensure it is fit for purpose now and into the immediate future.