

COMPLIANCE AND ENFORCEMENT POLICY

QUALITY CONTROL			
TRIM REFERENCES	D12/11854		
RESPONSIBLE POSITION	Executive Manager Planning and Community Safety		
APPROVED BY	Council		
REVIEW DATE	July 2026	REVISION NUMBER	3
EFFECTIVE DATE	ACTION	MINUTE NUMBER	
29 July 2015	Adoption	45005	
31 May 2017	Public Exhibition	45546	
26 July 2017	Adoption	45583	
27 July 2022	Public Exhibition	46908	
28 September 2022	Adoption	46977	

1. INTRODUCTION

This policy has been developed to ensure good governance and best practice standards are adhered to.

Broken Hill City Council is an enforcement authority and its Officers are required to make decisions and use discretion about appropriate enforcement action when non - compliant issues are identified.

Council also has a responsibility under Section 8 of the *Local Government Act 1993* to ensure that its regulatory activities are carried out in a consistent manner and without bias.

Council's regulatory and enforcement actions should be exercised to ensure the health, safety and environmental protection of all stakeholders including residents, visitors, workers and business operators. All stakeholders should have confidence in the decision making and internal review processes.

Council supports and welcomes the positive assistance of the community in reporting issues of concern and undertakes to work collaboratively with the community to promote the benefits of compliance, as a way of sustaining a safer quality of life for all.

The spirit of this Policy is to use a graduated approach to enforcement action. For example the issue of a warning letter, which if not successful in resolving the issue may be followed by statutory Notices and Orders; and finally, some form of enforcement proceedings, either via a penalty notice or Court action, if compliance cannot be achieved by any other method.

The Policy also recognises in some situations the gravity of the incident or other circumstances that determine an escalated approach, is not appropriate and immediate regulatory action is required.

For example where an activity is, or is likely to, result in a significant public health or safety risk, or is, or is likely to, cause significant environmental harm.

2. POLICY OBJECTIVE

Broken Hill City Council is strongly opposed to unlawful and non - compliant activities and aims to provide and deliver regulatory services in a fair, equitable and consistent manner designed to protect the natural, built and social environment.

This Policy aims to 'demonstrate accountability, transparency and ethical conduct'.

Consequently the Policy aims to:

- 2.1.** Ensure all regulatory activities meet Council's Charter of Responsibilities under Section 8 of the *Local Government Act 1993*;
- 2.2.** Assist Council Officers to respond promptly and effectively to complaints of unlawful activity and undertake proactive investigation;
- 2.3.** Ensure Officers comply with Council's Code of Conduct when investigating any unlawful activity;
- 2.4.** Provide a framework for operational guidelines and procedures for Council Officers and the community; which incorporate the principles of procedural fairness and natural justice; where decisions are made in a consistent, fair, equitable and transparent manner;
- 2.5.** Provide a framework for criteria to determine whether enforcement action is warranted and if so, ensure such action is in accordance with the delegation in a timely, cost effective manner and proportional to the relative seriousness of the situation;
- 2.6.** Provide a framework to ensure all possible options are considered prior to the implementation of enforcement action;
- 2.7.** Take a proactive approach to compliance by providing information to the public about Council's role and policy on enforcement and encourage a culture of compliance aimed at self regulation, rather than Council imposed enforcement action;
- 2.8.** Provide a service which embodies good practice and ensures that Council is a Model Litigant by behaving ethically, fairly and honestly in litigation.

3. POLICY SCOPE

This Policy applies to all areas where Council has a compliance and enforcement role under the various Acts and Regulations.

The application of the Policy includes, but is not limited to:

- a) Abandoned vehicles;
- b) Asbestos management;
- c) Boarding houses;
- d) Brothels;
- e) Commercial/ private swimming pools;
- f) Caravan parks, camp grounds and primitive camp grounds;
- g) Development (building work, carrying out of a work, subdivision, use of land and demolitions);
- h) Environmental and pollution control issues;
- i) Failure to comply with a condition of an approval, an Order or Notice;

- j) Fire safety;
- k) Food safety;
- l) Removal of trees or clearing vegetation from land;
- m) Parking control;
- n) Public health and safety;
- o) The control over the keeping of animals and companion animals;
- p) The regulation of unlawful development activities;
- q) Waste;
- r) Any other functions for which Council is the appropriate Regulatory Authority;
- s) Display of house numbers;
- t) Directional signage, and;
- u) Construction of paving on Public Footway.

Any enforcement action will be in accordance with this Policy, relevant NSW legislation and the State Debt Recovery Office (SDO) Guidelines.

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

In any situation where an Officer considers taking action which varies with the Policy and associated guidelines/procedures, the Officer will discuss the reasons for the variance with the Supervisor and will document and implement the agreed course of action.

3.1. Additional Requirements for Parking and Traffic Matters

This Policy applies to Council's enforcement functions and supports the concept of an escalated and proportionate approach to all non - compliant issues, except for parking and traffic matters.

While this Policy covers all matters to be taken into account when exercising discretion about compliance and enforcement matters, it recognises that Rangers who work with traffic and parking matters are faced with different time frames and decisions, which need to be made on the spot.

It is Council's Policy that Rangers will enforce the road rules and will carry out traffic and parking duties in a fair, equitable and consistent manner with a zero tolerance approach in school zones.

Zero tolerance is the strict enforcement of the rules.

3.2. Additional Requirements for Development Matters

Development is defined in the *Environmental Planning and Assessment Act 1979* as the use of land, the subdivision of land, the erection of a building, the carrying out of a work, the demolition of a building or work and any other act, matter or thing referred to in Section 26 that is controlled by an environmental planning instrument, but does not include any development of a class or description prescribed by the regulations for the purposes of this definition.

It is Council's Policy that Compliance Officers will enforce relevant legislation and carry out compliance inspections in relation to development in a fair, equitable and consistent manner with a zero tolerance approach to unlawful and unauthorised development and not compliance with development consent conditions.

Zero tolerance is the strict enforcement of legislation.

4. POLICY STATEMENT

4.1. Enforcement and Compliance Principles

Broken Hill City Council as a responsible regulator is committed to:

- a) Acting with consistency, impartiality, objectivity and fairness;
- b) Avoiding any discrimination on the basis of race, religion, political association, sex or national origin;
- c) The adoption of a graduated and proportionate response (where appropriate) to legislative non-compliance;
- d) Providing every opportunity for compliance by all stakeholders by indicating the relevant penalties for non-compliance;
- e) Providing written advice or directions in a clear and simple manner;
- f) Ensure any action taken is in the public interest and the action is in proportion to the offence;
- g) Ensure any action taken by Council is justified, against the correct person, cost effective and based on sound evidence which will withstand robust scrutiny;
- h) Ensure any decision to take no further action or issue a caution is in the public interest and in accordance with relevant guidelines (such as SDRO);
- i) Avoiding any actual or potential conflict of interest situations;
- j) Conducting all investigations in accordance with the Code of Conduct and making decisions in a professional manner with appropriate integrity;
- k) Creating awareness and seeking support with all stakeholders, including workers and business operators and the broader community, of the need for compliance when dealing with relevant issues;
- l) Ensuring action is instigated within legislative time limits; and
- m) Disclosing all evidence relevant to an alleged offence and assisting the Court, as required.

4.2. Procedural Fairness

Council is committed to natural justice and acting fairly in all aspects of the implementation of this Policy. In order to achieve this outcome Council will:

- a) Provide an opportunity for an alleged offender to provide an explanation however, there will be situations such as parking enforcement, development matters and other circumstances considered to represent a serious risk to public safety or the environment or the like, which would preclude this opportunity;
- b) Give due consideration to any written submission made by an alleged offender made either directly to Council, or via another agency (such as SDRO);
- c) Make all appropriate enquires investigations and searches prior to making an enforcement decision;
- d) Establish appropriate procedures to avoid an enforcement decision being influenced by an actual, potential or perceived conflict of interest;
- e) Implement procedures to ensure relevant information is provided to a complainant and alleged offender, subject to maintaining appropriate confidentiality provisions; and

- f) Act without bias and within statutory time frames.

4.3. Disclosure of Information

Council Officers will respect the privacy and confidentiality of information received however, due to its statutory obligations and other requirements, confidentiality cannot always be guaranteed.

The complainant's identity may be disclosed where:

- a) Access to the information is permitted under legislation, including but not limited to the *Government Information (Public Access) Act 2009*;
- b) Legal action is commenced and the information is disclosed in evidence;
- c) The person consents to the disclosure of the information;
- d) The principles of natural justice dictate that information be disclosed to the person who is the subject of the complaint, which may enable the complainant to be identified; and
- e) Council is of the opinion that disclosure of information is necessary to effectively investigate the matter.

Council Officers will also observe the information protection principles in the *Privacy and Personal Information Protection Act 1998*, which provides in certain circumstances for information to be shared with other public sector agencies for law enforcement purposes.

Reasons for decisions regarding compliance and enforcement action will be made available, unless to do so would cause a breach of the law. Reasons may not be given in any case where the information may cause harm to an informant, witness, or the alleged offender, nor in circumstances which would significantly prejudice the administration of justice.

4.4. Community Awareness

Council will take every opportunity to promote ongoing community awareness in regard to compliance/enforcement. This may include but is not limited to; website references, the publication of press releases and the periodic inclusion in any community newsletters with a view to improving community confidence and awareness.

Awareness initiatives that focus on residents, developers and business operators will adopt an educational approach designed to engage and promote:

- a) An awareness of the spirit and content of this Policy;
- b) Implementation of strategies that promote proactive compliance with legislation;
- c) The minimisation of non-compliance by improving the knowledge of legislation within the community; and
- d) The benefits of complying with the legislation and the consequences of not complying.

5. IMPLEMENTATION

5.1. Roles and Responsibilities

The following Council Officers are responsible for the implementation and the adherence to this policy:

All employees who deal with complaints and the enforcement of relevant legislation are responsible for implementing this Policy such as Building Surveyor, Town Planner, Compliance Officer, Weeds Officer, Ranger, Environmental Health Officer and any authorised Officers appointed by the General Manager.

5.2. Communication

This Policy will be communicated to the community and employees in accordance with Council's Policy, Procedure and Process Framework and Council's Business Paper process. Following adoption by Council, the Policy will be made available on Council's website.

5.3. Associated Documents

The following documentation is to be read in conjunction with this policy.

- Local Orders Policy;
- Local Approvals Policy; and
- Code of Conduct Policy.

6. REVIEW

Review of this Policy will incorporate relevant legislation, documentation released from relevant state agencies and best practice guidelines.

The standard review period will be within each term of Council following the Local Government Elections, or as required, to ensure that it meets legislation requirements and the needs of the community and Council. The responsible Council Officer will be notified of the review requirements three months prior to the expiry of this policy.

The Executive Manager Planning and Community Safety is responsible for the review of this policy.

7. LEGISLATIVE AND LEGAL FRAMEWORK

This policy is to be read in conjunction with the following:

- a) *Australian Road Rules 2008;*
- b) *Boarding Houses Act 2012;*
- c) *Companion Animals Act 1998;*
- d) *Contaminated Land Management Act 1997;*
- e) *Crown Lands Act 1989;*
- f) *Disability Discrimination Act 1992;*
- g) *Environmental Planning and Assessment Act 1979;*
- h) *Fines Act 1996;*
- i) *Food Act 2003;*
- j) *Impounding Act 1993;*
- k) *Local Government Act 1993;*
- l) *Motor Dealers Act 1974;*
- m) *Noxious Weeds Act 1993;*
- n) *Protection of the Environment Operations Act 1997;*
- o) *Public Health Act 2010;*
- p) *Swimming Pool Act 1992;*

- q) *Roads Act 1993*
- r) *Roads Regulations 2008*;
- s) *Road Transport (General) Regulation 2013*;
- t) *Road Transport (Mass Loading and Access) Regulation 2005*;
- u) *Rural Fires Act 2008*;
- v) *Work Health and Safety Act 2011*;
- w) *Work Health and Safety Regulation 2011* and;
- x) The Regulations relating to the above Acts.

Council Officers shall refrain from personal activities that would conflict with proper execution and management of Council's Compliance and Enforcement Policy. Council's Code of Conduct provides guidance for recognising and disclosing any conflicts of interest.

Council employees shall refrain from personal activities that would conflict with proper execution and management of Council's Compliance and Enforcement Policy. Council's Code of Conduct provides guidance for recognising and disclosing any conflicts of interest.

8. DEFINITIONS

The following explanation is provided in regard to terms used in this Policy:

'Authorised Officer' shall mean a Council Officer with delegated authority to carry out specific duties and take any necessary enforcement action. Such Officers carry specific Authorities under various Acts, which include prescribed powers of entry to certain properties.

'BCA' shall mean Building Code of Australia, part of the National Construction Code series.

'BPB' shall mean Building Professionals Board.

'Civil Proceedings' shall mean and include:

- Notices, Orders and Directions issued pursuant to various legislation;
- Class 4 proceedings in the Land and Environment Court seeking an order to remedy a breach of the *Environmental Planning and Assessment Act 1979*, the *Local Government Act 1993*, the *Protection of the Environment Act 1997* or any other Act, if the breach is causing, or is likely to cause harm to the environment; and
- Interlocutory relief for matters causing or with reasonable potential to cause serious environmental harm. In such proceedings it is likely the Council would be required to provide an undertaking as to damages.

'Complainant' shall mean a person lodging a customer action request (complaint) to Council.

'Council' shall mean Broken Hill City Council.

'Defendant' shall mean an alleged offender against whom action is being taken in Court.

'EP&A Act' shall mean the *Environmental Planning and Assessment Act 1979*.

'Offence' shall mean an offence under NSW legislation.

'PCA' shall mean Principal Certifying Authority.

'PIN or Penalty Notice' shall mean Penalty Infringement Notice (or Penalty Notice) occasionally referred to as an 'on the spot fine'.

‘Respondent’ shall mean the party against whom civil proceedings are brought.

‘Unauthorised/unlawful activity’ shall mean any activity that is:

- Contrary to the terms or conditions of a development consent, approval or permission;
- Contrary to an environmental planning instrument that regulates the activities or work that can be carried out on particular land;
- Contrary to a legislative provision regulating particular activity of work;
- Without a required development consent, approval, permission or licence;
- Contrary to legislation for which the Council is the appropriate regulatory authority; and
- Includes any activity, place or structure which is a risk to public health and safety, but excludes any parking or traffic offences which are dealt with in accordance with the Australian Road Rules.