



ENFORCEMENT POLICY

Policy 17/2021-2024

DATE

- Ordinary Meeting of Council 12.06.18 and 28.06.2022

POLICY NO:	17/2021-2024
LEGISLATIVE REQUIREMENTS	<ul style="list-style-type: none"> • Environmental Planning and Assessment Act 1979 • Local Government Act 1993
RESPONSIBILITY:	DEVELOPMENT AND COMPLIANCE
OBJECTIVE:	<ul style="list-style-type: none"> a) To provide clear guidelines for the management of Council’s regulatory activities; b) To provide a consistent approach in the enforcement and resolution of matters; c) To manage regulatory matters in a consistent and transparent manner and through best practice enforcement principles; d) To ensure the principles of procedural fairness and natural justice are followed; e) To provide an effective process of education and consultation.
REVIEW	Within the first 12 months of each term of Council or as required.

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1. Introduction

The Enforcement Policy aims to achieve and maintain minimum standards for the operational duties, functions and responsibilities for officers involved in the enforcement and resolution of all regulatory activities.

Council's regulatory responsibilities are applicable to actual unlawful activity, as well as a failure to take action (in order to be compliant with certain legal requirements). For simplicity, this policy refers to both an act and/or an omission by an alleged offender as 'unlawful activity'.

This policy distinguishes between a 'report alleging unlawful activity' and a 'complaint'.

For the purposes of this policy, a report alleging unlawful activity is where an individual expresses concern in relation to alleged unlawful activity, or they request service from council about such matters. Council considers that a response or resolution to a report alleging unlawful activity is explicitly or implicitly expected by the individual, or may be legally required.

A complaint is where an individual expresses dissatisfaction about council services, staff or the handling of a complaint. Therefore, a complaint may arise where an individual claims that council staff have failed to take action in relation to a report alleging unlawful activity. A complaint will be recorded separately and responded to in accordance with Council's Complaint Handling Policy.

a) The aim of The Hills Shire Council's Enforcement Policy is to:

- Provide clear guidelines for the management of Council's regulatory activities;
- Provide a consistent approach in the enforcement and resolution of matters;
- Manage regulatory matters in a consistent and transparent manner and through best practice enforcement principles;
- To ensure the principles of procedural fairness and natural justice are followed;
- To provide an effective process of education and consultation.

2. Purpose and scope

This policy provides information for all internal and external stakeholders and interested parties about council's position on compliance and enforcement matters in The Hills Shire Council Local government area.

The purpose of this policy is to provide structure for consistency and transparency in decision making, and to facilitate a proportional approach to compliance and enforcement. It is also intended to assist council staff to act promptly, effectively and consistently in response to allegations of unlawful activity.

This policy outlines matters to be considered at the various stages of the enforcement process from the receipt and investigation of reports alleging unlawful activity, through to what enforcement option council will choose and whether to commence criminal or civil proceedings.

In certain circumstances council will have shared enforcement responsibilities with other regulatory authorities. This policy sets out a collaborative and cooperative approach to such matters. Advice and guidance is also provided on the role of council in building and construction compliance matters where there is a private certifier, and the role of Councillors in enforcement.

Council staff are not limited by this policy in their use of discretion and exercise of official functions. The full circumstances and facts of each case need to be considered and a decision made on the merits. These Policy's allow the discretionary application of alternatives by the officer in order to achieve the resolution of situations in a satisfactory manner.

3. Organisational approach

The Hills Shire Council acknowledges that it has an obligation under Section 8 of the Local Government Act 1993 to ensure that the exercise of its regulatory power is carried out with consistency and without bias. In the course of its normal operation, Council receives numerous reports and complaints about unlawful activity within the Shire.

a) Why the procedure is important

- to prevent or minimise harm to health, welfare, safety, property or the environment;
- to improve the safety and amenity of residents and visitors to the area;
- for the collective good, the welfare of the community or the public interest;
- to promote social policies (eg to preserve or protect the environment);
- to manage risks;
- to uphold social order;
- to meet the expectations of the community;
- to encourage reports about possible unlawful activity from the community;
- to make the community aware of their legal obligations and how to comply.

b) What does the Enforcement Policy regulate:

The Enforcement Policy are directed to the regulation of the following:

- Roads, footpaths & parking;
- Pollution and environmental control;
- Control of Animals;
- Unauthorised Development;
- Non-compliance with conditions of Development Consent;
- Public Health and Safety;
- Food Safety;
- Fire Safety and essential services;
- Tree Preservation;
- Swimming Pools;
- Unauthorised land Use;
- Heavy vehicle enforcement;
- Abandoned motor vehicle and articles;

- Sediment and erosion controls;
- Signage.

c) Proactive and reactive compliance and enforcement activities.

A proactive compliance inspection program assists councils to meet their statutory requirements, respond to common complaints, and maintain a positive monitoring presence with operations that pose significant environmental risk. A proactive program also provides the opportunity for councils to actively work with particular industries to improve compliance levels and environmental outcomes.

Developing an effective proactive compliance program may reduce the amount of reactive incidents councils need to respond to. In this regard The Hills Shire Council has a number of proactive compliance and enforcement activities, including:

- Swimming pool inspection program;
- Fire Safety audits;
- Food shop inspections;
- Parking enforcement (on road, schools and private carparks under contract);
- Dangerous / menacing dogs;
- Heavy Vehicle Enforcement;
- On-site sewage inspection programs.

4. Definitions

The following are definitions of key terms in this policy:

Term	Meaning
Complaint	<p>A complaint is an expression of dissatisfaction made about council services, staff or the handling of a complaint, where a response or resolution is explicitly or implicitly expected or legally required.</p> <p>For the purposes of this policy, a complaint does not include:</p> <ul style="list-style-type: none"> a report alleging unlawful activity (see definition below) a request for information about a council policy or procedure a request for an explanation of actions taken by council a request for internal review of a council decision.
Enforcement	<p>Actions taken in response to serious or deliberate contraventions of laws.</p>
Regulation	<p>Using a variety of tools and strategies to influence and change behaviour to achieve the objectives of an Act, Regulation or other statutory instrument administered by council.</p>

Report alleging unlawful activity	An expression of concern or a request for service in relation to alleged unlawful activity, where a response or resolution is explicitly or implicitly expected or legally required.
Unlawful activity	Any activity or work that has been or is being carried out contrary to the below and/or failure to take required action in order to be compliant with: terms or conditions of a development consent, approval, permit or licence. an environmental planning instrument that regulates the activities or work that can be carried out on particular land a legislative provision regulating a particular activity or work a required development consent, approval, permission or licence.

5. Policy objectives

The intent of this policy is to establish clear guidelines and protocols for council staff in the management of council's regulatory activities.

- a) It provides workable guidelines on:
- responding to reports alleging unlawful activity
 - assessing whether reports alleging unlawful activity require investigation
 - deciding on whether enforcement action is warranted
 - options for dealing with confirmed cases of unlawful activity
 - taking legal action
 - implementing shared enforcement responsibilities.
- b) The policy also provides advice and guidance on:
- the role of the Principal Certifiers; and
 - the role of councillors in enforcement.

6. Application

This policy applies to regulatory issues within council's area of responsibility including, but not limited to:

- Development and building control.
- Environmental control.
- Road, footpath and parking.
- Environmental health.
- Public health and safety.
- Noxious weeds.
- Water and sewer.

- Septic systems.
- Control over animals.
- Food safety.
- Fire safety.
- Tree preservation.
- Abandoned motor vehicles and articles.
- Sediment and erosion controls.
- Signage.

7. Compliance and enforcement principles

a) Why Should Council have an Enforcement Policy?

- To provide an overarching document setting out strategic and procedural directions for Council's many different types of regulatory responsibilities;
- To assist staff to act promptly, consistently and effectively in response to allegation of non-compliance;
- To support staff in the exercise of discretionary powers;
- To foster an awareness within the community of the reasons for and value of compliance;
- To better manage the community expectations about the exercise of council's discretionary powers;
- To set out priorities, responsibilities and processes for dealing with different types of compliance issues;
- To provide the framework for choosing options after an investigation; and
- To encourage cooperation with other agencies responsible for enforcement in the Local Government area.

The following are the principles that underpin council actions relating to compliance and enforcement:

Principle	Action
Accountable and transparent	acting in the best interests of public health and safety and in the best interests of the environment ensuring accountability for decisions to take or not take action acting fairly and impartially and without bias or unlawful discrimination providing information about compliance and enforcement priorities and reasons for decisions to improve understanding and certainty and promote trust by the regulated community ensuring meaningful reasons for decisions are given to all relevant parties, particularly when there is a departure from this policy acting on any complaints or concerns about the conduct of compliance officers in accordance with council’s complaints management policy and procedures advising people and organisations subject to enforcement action of any avenues available to seek an internal or external review of a decision.
Consistent	ensuring all compliance and enforcement action is implemented consistently encouraging reports about possible unlawful activity by acting reasonably in response to the circumstances and facts of each matter.
Proportional	ensuring the level of enforcement action is proportionate to the level of risk and seriousness of the breach making cost-effective decisions about enforcement action taking action to address harm and deter future unlawful activity.
Timely	ensuring responses to reports alleging unlawful activity and decision making in relation to those is timely.

8. Responsibility

Council receives information about alleged unlawful activity from members of the public, contact from other government agencies and information gathered by its officers during proactive inspections.

All council staff who deal with reports alleging unlawful activity are responsible for implementing this policy. Council staff are also responsible for ensuring that any other possible unlawful activity identified as a result of an inspection, proactive enforcement or other activity is brought to the attention of the appropriate business unit of council.

- a) Council staff are required to:
 - treat all relevant parties with courtesy and respect
 - communicate with all relevant parties and provide feedback on the progress of an investigation and any reasons for delay without compromising the integrity of the investigation

- make full and proper records in relation to the assessment and investigation of reports alleging unlawful activity, including reasons for any decisions
- inform all relevant parties of reasons for decisions
- provide as much information as possible to all relevant parties about the outcomes of investigations to show that adequate and appropriate action was taken and/or is proposed to be taken in response to a report of alleged unlawful activity
- provide information to all relevant parties about any avenues to seek an internal or external review of a decision.

All reports alleging unlawful activity are to be entered into Council's Pathways Customer Request System and actioned in a timely manner by the appropriate business unit. Please see Annexure 'A' Council's Customer Contact Centre 'CSR Requirements and objectives' which outline Council's procedures on how reports should be received, registered and processed.

Attached and marked Annexure 'B' sets out the relevant business units and their responsibilities of Council's Regulatory Services Team and Environment and Health Team.

Only council staff with appropriate delegations from the general manager can undertake investigations or compliance and enforcement action in relation to this procedure.

9. Responsibility to concerns about unlawful activity

a) How reports alleging unlawful activity will be dealt with by council

Council will record and assess every report alleging unlawful activity.

Council will respond to every such report unless the person raising the matter has indicated they do not wish to receive a response about council's handling of the matter, or the report is anonymous.

Generally speaking, council's objectives when dealing with reports alleging unlawful activity are to:

- maintain the collective good and welfare of the community
- prevent or minimise harm to health, welfare, safety, property or the environment
- consider the broader public interest having regard to council's priorities and any resource limitations
- consider the report fairly and impartially.

Not all reports will need to be investigated. A preliminary assessment of all matters will be made to determine the priority for a response, and whether investigation or other action is required.

An investigation of alleged unlawful activity may take a significant amount of time to complete, particularly where the issues are complex. If council decides to investigate, staff will give the person who reported the alleged unlawful activity regular feedback on the progress of the investigation, and any reasons for delay. This does not mean that the individual can expect to be given details about every aspect of the investigation or information that would compromise the integrity of the investigation.

Decisions about what action should be taken by council are made at the council's discretion. This means the objective is that reports alleging unlawful activity will be resolved to the satisfaction of council, not necessarily the person raising the matter. Council will generally try to resolve matters as quickly and informally as possible so as to avoid the need to take formal action.

Council staff will endeavour to manage the expectations of people who report alleged unlawful activity, and in particular explain that in the absence of sufficient evidence of unlawful activity, council may be unable to take further action. They will also explain that council does not have unlimited resources and powers to deal with reports alleging unlawful activity. If council is unable to fully investigate or take action on a matter because it is restricted by any legal or resource limitations this will be explained to the individual.

While there are certain statutory requirements that must be met in relation to notices and orders council staff will ensure that all explanatory communications are made in plain English and explain any technical language the law requires to be used.

b) Confidentiality of people who report allegations of unlawful activity

Council staff must ensure that a complainant will not be subjected to victimisation, harassment, discrimination or prejudice. In accordance with Council's Customer Complaint Procedure, Council staff will not disclose the identity of a complainant should the complainant request that their personal details remain confidential as compelled by privacy legislation.

However, people who report allegations of unlawful activity should not expect that their identities will remain confidential from the subject of their report in all circumstances. Council may have to disclose information that identifies them in the following cases:

- the disclosure is necessary to investigate the matter
- their identity has already been disclosed to the subject of their report directly or in a publicly available document
- the individual was consulted following receipt of a Government Information (Public Access) Act 2009 application and did not object to the disclosure
- the individual consents in writing to their identity being disclosed
- the disclosure is required to comply with principles of procedural fairness
- the matter proceeds to court.

Council will take seriously any concerns an individual may have about their physical safety being endangered as a result of making a report. However, this may limit council's ability to investigate the matter.

c) What council expects from people who report allegations of unlawful activity

Council expects that people who report allegations of unlawful activity will cooperate and act in good faith in respect of any investigations conducted by council. This includes:

- providing a clear description of the problem (and the resolution sought, if relevant)
- giving all available and relevant information to council, including any new information about the alleged activity that may become known to the person following the making of their report

- not giving any information that is intentionally misleading or wrong
- cooperating with council's inquiries and giving timely responses to questions and requests for information
- treating council's staff with courtesy and respect
- allowing the investigation to be completed without prematurely taking the matter to other agencies unless referred to by council.

If these expectations of the individual are not met, council may need to set limits or conditions on the continuation of the investigation or may need to restrict any further communications with the individual.

Any unreasonable conduct will be dealt with in accordance with the principles of the NSW Ombudsman's Managing Unreasonable Complainant Conduct Manual 2012 and The Hills Shire Council Difficult Customer Procedure.

d) What parties can expect from council staff

People who report alleged unlawful activity, as well as individuals or businesses that are subject to investigation and any enforcement action, can expect that council staff will:

- treat them with courtesy and respect
- advise them of the outcome of the allegation reported, including a full explanation of the reasons why that outcome was considered to be reasonable in the circumstances
- clearly explain decisions in plain English
- provide information about any relevant internal and external appeal processes that may be available
- carefully assess any new information provided by any party after a decision has been made and advise whether further action will be taken.

e) Complaints about council's enforcement actions

Any complaints about council's handling of reports alleging unlawful activity will be recorded separately and handled in accordance with Council's Complaints Management Policy and Procedures.

Where a person or organisation subject to enforcement action merely disputes council's decision to take enforcement against them, they will be directed to make representations in accordance with any relevant internal and external appeal processes.

Council staff will act on any complaints about the conduct of compliance officers in accordance with Council's Complaints Management Policy and Procedures and the Code of Conduct.

f) Anonymous reports

Anonymous reports, both written and verbal will be recorded and brought to the attention of the relevant Manager/Coordinator to determine whether an investigation is required. Anonymous complaints will not normally be investigated as it is not possible to seek clarification or additional information about a complaint and the anonymity of a complainant does not enable the principles of natural justice or procedural fairness to be upheld. If a complaint is made by phone or by person, the member of staff taking the complaint will encourage the caller to provide their name and contact details. The caller will be advised that unless they provide these details, it may not be possible to investigate their complaint.

g) Unlawful activity outside business hours

Unlawful activity can occur outside business hours. In particular, council may receive reports about matters such as offensive noise and failure to comply with limitations on hours of operation during nights and weekends.

Due to resource and operational capability restraints on council, investigations into alleged unlawful activity outside business hours will be assessed on the basis of risk of harm to health, welfare, safety, property or the environment or it is otherwise in the public interest to take such action

Council's on call officer will determine whether attendance after normal business hours is required in accordance with Council's weekend/on call procedure)

h) Neighbour disputes

Council will at times receive reports from parties involved in neighbour disputes seeking council's involvement. When a dispute between two neighbours is a civil matter, council will often have no authority to resolve the issue in dispute. Some reports will raise several matters, some of which will require council's involvement and some of which will be personal to the parties.

Council staff will thoroughly assess such reports to determine whether there is evidence of any possible unlawful activity requiring action by council. Care will be taken to explain which aspects of a report council can deal with and which cannot be dealt with and why. Where possible, individuals will be provided with information about how to resolve neighbour disputes including referral information resources such as LawAccess NSW and Community Justice Centres.

It is possible that one party will provide further information about a matter which changes council's decision about whether it will become involved. In such circumstances, council staff will carefully consider the matter before taking action and document reasons for the new decision. Relevant parties will be advised about the reasons council has changed its position on a matter. Council staff will not change a decision about whether or not council should be involved purely as a response to the conduct of an individual such as persistent demands or threats.

The Hills Shire Council has a number of fact sheets providing advice on the most common types of neighbourhood issues including:

- Noise
- Barking dogs
- Dividing fences
- Tree Disputes
- Stormwater complaints

10. Investigation alleged unlawful activity

Not all reports alleging unlawful activity will warrant investigation. A preliminary assessment of all matters will be made to determine whether investigation or other action is required. Council will prioritise matters on the basis of risk to public safety, human health and environment.

A risk rating system has been introduced for common unlawful activity incidents, such as, critical, high, medium and low categories to prioritise action. See Annexure 'C'

If there is insufficient information in the report to undertake a preliminary assessment, further information may need to be sought from the person who made the report or an inspection undertaken. Staff may also need to consult council records and other internal business units to understand the relevant history and context of a matter.

a) Circumstances where no action will be taken:

Council will take no further action if, following a preliminary assessment, it is identified that:

- Council does not have jurisdiction to investigate or is not the appropriate authority to take action on the issues raised. Where there is another appropriate authority or course of action, council may bring the matter to the attention of the authority or provide information and contact details to the individual. For example NSW WorkCover for workplace safety matters, the NSW Environment Protection Authority for possible environmental offences and Community Justice Centres NSW for personal disputes.
- the report relates substantially to a matter previously determined by council and no new or compelling information is presented which would cause council to change its earlier decision. In this case, staff will acknowledge the report and advise that no further action will be taken as no new information had been provided (other than where the person has previously been advised they would receive no further response)
- the allegations relate to a lawful activity (eg where there is an existing approval or the activity is permissible without council approval or consent being required)
- the report is not supported with evidence or appears to have no substance
- the relevant manager, group manager or the general manager determines that investigation or other action would have an unreasonable impact on resources and/or is unlikely to achieve an outcome sufficient to justify the expenditure of resources.

b) Relevant factors guiding decisions as to whether to take action:

When deciding whether to investigate, council will consider a range of factors including whether:

- the activity is having a significant detrimental effect on the environment or it constitutes a risk to public safety
- the report is premature as it relates to some unfinished aspect of work that is still in progress
- the activity or work is permissible with or without permission
- all conditions of consent are being complied with
- time has elapsed since the events the subject of the report took place
- another body is a more appropriate agency to investigate and deal with the matter
- it appears there is a pattern of conduct or evidence of a possible wide spread problem
- the person or organisation reported has been the subject of previous reports
- the report raises matters of special significance in terms of the council's existing priorities

- there are significant resource implications in relation to an investigation and any subsequent enforcement action
- it is in the public interest to investigate the report.

Council staff are not limited in their use of discretion by these considerations and may decide to investigate based on these and other factors.

The objective of the processes council staff use when investigating incidents of alleged unlawful activity is to:

- determine the cause of the incident
- determine if there has been a contravention of law, policy or standards
- gather evidence to the required standard to support any required enforcement action
- determine any necessary action to mitigate the possibility of reoccurrence of similar incidents.

Any decision not to investigate an allegation of unlawful activity will be recorded and the reasons for that decision clearly stated.

11. Taking enforcement action

When deciding whether to take enforcement action in relation to a confirmed case of unlawful activity, council will consider the full circumstances and facts of the matter and the public interest. The following common considerations will assist council staff in determining the most appropriate response in the public interest:

- a) Considerations about the alleged offence and impact:
 - the nature, extent and severity of the unlawful activity, including whether the activity is continuing
 - the harm or potential harm to the environment or public health, safety or amenity caused by the unlawful activity
 - the seriousness of the breach, including whether the breach is merely technical, inconsequential or minor in nature
 - the time period that has lapsed since the date of the unlawful activity.
- b) Considerations about the alleged offender:
 - any prior warnings, instructions, advice that was issued to the person or organisation reported or previous enforcement action taken against them
 - whether the offence was committed with intent
 - whether the person or organisation reported has been proactive in the resolution of the matter and assisted with any council requirements and instructions
 - any mitigating or aggravating circumstances demonstrated by the alleged offender
 - any particular circumstances of hardship affecting the person or organisation reported.
- c) Considerations about the impact of any enforcement action:
 - the need to deter any future unlawful activity

- whether an educative approach would be more appropriate than a coercive approach in resolving the matter
- the prospect of success if the proposed enforcement action was challenged in court
- the costs and benefits of taking formal enforcement action as opposed to taking informal or no action
- what action would be proportionate and reasonable in response to the unlawful activity
- whether council is prevented from taking action based on earlier advice given, i.e. whether an estoppel situation has been created.

d) Considerations about the potential for remedy:

- whether the breach can be easily remedied
- whether it is likely consent would have been given for the activity if it had been sought
- whether there is a draft planning instrument on exhibition that would make the unauthorised use legal.

e) Legal or technical issues

Where legal and/or technical issues are in question, council staff will consider whether legal advice or professional advice from duly qualified staff or other experts should be obtained and considered. Council may also require a person subject to possible enforcement action to obtain professional advice in relation to issues of concern to council for assessment as to whether further action is required.

f) Requirements of council staff considering enforcement action

Prior to taking enforcement action, council staff will take into account the above considerations as well as the evidence gathered during their investigation. Council staff must act impartially, be mindful of their obligations under council's code of conduct and not act as a decision-maker in relation to any matter in which they have a personal interest. Enforcement action will not be taken purely as a response to the conduct of an individual such as persistent demands or threats.

Council staff are required to maintain records about critical thinking and decision-making processes in relation to reports alleging unlawful activity and any enforcement action, as well as records of interactions with relevant parties. Council staff will at all times adhere to council's internal approval processes prior to the commencement of any enforcement action.

Council staff will take steps to ensure that any enforcement action is taken against the correct person or organisation. Where there are multiple possible parties to an alleged unlawful activity, it will generally not be appropriate to take enforcement action against every person who may be liable for the alleged unlawful activity. In such circumstances, council staff will be guided by management and legal advice in determining the appropriate persons to pursue.

The Hills Shire Council has developed a Compliance Strategy / Risk Rating procedure with respect to the specific types of regulatory activity and the circumstances in which enforcement action will or will not be taken. The purpose of this procedure is to provide structure for consistency and transparency in decision-making, and to facilitate a proportional approach to compliance and enforcement. It is also intended to assist council

staff to act promptly, effectively and consistently in response to unlawful activity. Please See Annexure 'D'.

12. Options for dealing with confirmed cases of unlawful activity

Council will try to use the quickest and most informal option to deal with unlawful activity wherever possible, unless there is little likelihood of compliance with such options. Council staff will use discretion to determine the most appropriate response to confirmed cases of unlawful activity and may take more than one approach.

Any enforcement action taken by council will depend on the full circumstances and facts of each case, with any decision being made on the merits.

At all times, council’s key concerns are:

- to prevent or minimise harm to health, welfare, safety, property or the environment
- to influence behaviour change for the common good and on behalf of the community.

The following enforcement options to be considered by council are ordered to reflect an escalation in response that is proportionate to the level of risk, the seriousness of the confirmed breach or the need for a deterrent:

Level of risk	Enforcement options
Very low	take no action on the basis of a lack of evidence or some other appropriate reason; the provision of information/advice on how to be compliant
Low	negotiating with the person to obtain voluntary undertakings or an agreement to address the issues of concern issuing a warning or a formal caution
Medium	issuing a letter requiring work to be done or activity to cease in lieu of more formal action issuing a notice of intention to serve an order or notice under relevant legislation, and then serving an order or notice if appropriate
High	issuing a penalty notice carrying out the works specified in an order at the cost of the person served with the order
Very high	seeking an injunction through the courts to prevent future or continuing unlawful activity commence legal proceedings for an offence against the relevant Act or Regulation.

a) Following up enforcement action

All enforcement action will be reviewed and monitored to ensure compliance with any undertakings given. Reports alleging continuing unlawful activity will be assessed and further action taken if necessary. If the unlawful activity has ceased or the work has been rectified, the matter will be resubmitted for follow up action to ensure compliance outcomes are met. Should initial enforcement action be found to have been ineffective, council staff will consider other enforcement options.

13. Taking legal action

a) Means of Resolving Complaints – Enforcement Options

Councils operate in an increasingly complex legal environment. The amount of legislation that Councils have become subjected to and that is available for them to use, has increased and will continue to do so.

A range of matters are required to be taken into consideration when determining the appropriate course of action and any enforcement of a regulatory matter. A number of alternative approaches could be considered:

- Counsel the person investigated to educate them on the relevant Council requirements;
- Negotiate with the person and obtain some undertakings to address the issues of concern arising from the investigation, e.g. lodgement of a Development Application, or an application for modification of Development Consent, submission of a Building Information Certificate Application. However the lodgement of such applications provides no guarantee that they will be approved; it should be noted that whilst unauthorised buildings works can be retrospectively regulated ex post facto, it does not exclude any person from breaches of an Act or any potential criminal sanctions that come with it.
- Issue a show cause letter requiring work to be done/activity to cease, provide specified information within a specified time in lieu of more formal legal action;
- Issue a stop work order under relevant legislation;
- Issue a Notice of Intention to serve an Order under relevant legislation;
- Issue and serve an Order under relevant legislation;
- Issue a Penalty Infringement Notice;
- Issue a Court Attendance Notice to address the matter in the Local Court;
- Proceeding instigated in the Land and Environment Court for an order to remedy or restrain a breach of legislation;
- Carry out works specified in a Council Order under relevant legislation, at the expense of the person served with the Order;
- Take no action on the basis of a lack of evidence or some other appropriate reason/minor breach.

The council and its delegated staff will be guided by legal advice in deciding whether to commence criminal or civil proceedings and will consider the following:

- whether there is sufficient evidence to establish a case to the required standard of proof
 - whether there is a reasonable prospect of success before a court
 - whether the public interest warrants legal action being pursued.
- b) Whether there is sufficient evidence to establish a case to the required standard of proof

Council considers the decision to take legal action a serious matter, and as such will only initiate and continue proceedings once it has been established that there is admissible, substantial and reliable evidence to the required standard of proof.

The basic requirement of any criminal prosecution is that the available evidence establishes a prima facie case. The prosecutor is required to prove the elements of the offence beyond reasonable doubt.

In civil enforcement proceedings, council will require sufficient evidence to satisfy the court that an actual or threatened breach has occurred on the balance of probabilities.

c) Whether there is a reasonable prospect of success before a court

Given the expense of legal action council will not take legal action unless there is a reasonable prospect of success before a court. In making this assessment, council staff will consider the availability, competence and credibility of witnesses, the admissibility of the evidence, all possible defences, and any other factors which could affect the likelihood of a successful outcome. Advice from the relevant manager and/or corporate lawyer should be sought prior to any legal action be instigated.

d) Whether the public interest requires legal action be pursued

The principal consideration in deciding whether to commence legal proceedings is whether to do so is in the public interest. In making this determination, the same factors to be considered when taking enforcement action apply. (See Section 11, Taking enforcement action).

The following considerations relate more specifically to the decision to commence legal proceedings and will assist council and its delegated staff in making this determination:

- the availability of any alternatives to legal action
- whether an urgent resolution is required (court proceedings may take some time)
- the possible length and expense of court proceedings
- any possible counter-productive outcomes of prosecution
- what the effective sentencing options are available to the court in the event of conviction
- whether the proceedings or the consequences of any resulting conviction would be unduly harsh or oppressive.

e) Time within which to commence proceedings;

Council staff must be aware of legislative time limits in which enforcement proceedings must be commenced. Sometimes legal action will be statute barred despite good evidence that unlawful activity has occurred.

f) Other factors to consider:

1	Is there Estoppel?	<ol style="list-style-type: none"> 1. Has the owner/occupier been notified that Council will not take action 2. Has the matter previously been brought to the attention of Council yet no action taken 3. Has the Council contributed to the owner acting upon a reasonable expectation that no action will be taken
2	Technical breach only?	A breach of a technical or inconsequential change to approved plans in the absence of any other aggravating factor will generally not warrant a decision to take action

3	When was the unlawful activity carried out?	Time limits frequently apply and sometimes prosecution will be statute barred. Courts look unkindly on delays in taking action to prevent or prohibit unlawful activity
4	Has the unlawful activity affected the built or natural environment?	If there is actual or potential detriment to the natural or built environment, to the health and safety of residents, or the amenity of an area, this would normally warrant a decision to act
5	Would consent have been given if it had been sought?	In the absence of aggravating circumstances, Council should be less inclined to proceed with legal proceedings if the unlawful activity could be carried out lawfully if consent had been granted. Similarly if an unauthorised use comes to Council's attention only because the owner has sought approval, it is reasonable to defer action until the application is determined
6	Does the person show due contrition?	If the person accepts their wrongdoing, it may be that the public interest is not best served by prosecuting, especially if the work has been remedied
7	Can the breach be resolved by seeking Council approval?	If the legislation enables the particular matter to be resolved by obtaining relevant approval, such as Development Consent or a Section 96 modification, it may be appropriate to allow a reasonable period of time to seek approval prior to taking enforcement action.
8	Can the unauthorised works be easily remedied?	If there is an issue of non- compliance and that matter can be easily remedied by some action of the part of the person, there is a less compelling case for enforcement.
9	Has the breach affected the health, safety and well-being of the community?	Breaches which affect the health, safety and well-being of the residents or community would warrant affirmative and effective enforcement remedial action.
10	Are there circumstances of hardship?	If enforcement action would cause particular hardship to a person and the impact of the unlawful activity is not otherwise severe, Council may consider taking informal action or no action at all.

14. Enforcement options available:

Investigating officers should decide whether to try to resolve the complaint by using alternative means, or to take legal action in the form of administrative, civil or criminal action. The type of action will depend on the offence being investigated, the likely costs of each type of action and the desired outcome.

The Hills Shire Council has a range of enforcement options available including:

- Alternative Dispute Resolution
- Issuing a Penalty Notice
- Administrative Actions - Notice & Orders
- Legal Proceedings

a) Alternative dispute resolution

Alternative dispute resolution is an effective means of resolving potential litigation. Although there are some instances where litigation is inevitable, all attempts could be made to resolve the issue by mediating and communicating with bodies or individuals with whom Council is in dispute.

Alternative dispute resolution is about balancing issues and optimising strategic responses. Its aims are:

- to minimise costs to Council by exploring dispute resolutions methods
- to provide Council with strategic processes to explore all aspects of a dispute
- to resolve disputes without litigation
- to ensure that Council fully understands all the issues and avenues available to it

b) Penalty Notices

The Penalty Notice (PN) system was introduced to provide an effective and efficient means to deal with minor offences.

PN's are designed primarily to deal with one-off breaches that can be remedied easily. They are not appropriate in situations of an on-going nature. It is generally inappropriate to issue successive penalty notices for multiple breaches. In such instances there is obviously a major, and probably continuing, compliance problem that may need to be dealt with by other administrative action.

c) Administrative Action - Notice and Orders

The Notice of Intention must clearly:

- state that Council intends to issue an Order
- detail the terms of the proposed Order
- detail the period proposed to be specified as the period within which the Order is to be complied with; and
- state that the person to whom the Order is proposed to be given may make representations to a nominated person as to why the Order should not be given or as to the terms of a period for compliance with that Order
- The Notice of Intention may provide that the representations are to be made to the person who gives the Order or a nominated person on a nominated date, being a date that is reasonable in the circumstances in the case. twenty one (21) - days is a reasonable period of time to enable the party receiving the Order to either make submission or cease operating the unlawful activity.

The following matters are critical to the success of a prosecution based on non-compliance with an Order:

- that the notice of the proposed Order had been given under the appropriate section;
- that the period for making of submissions, stipulated in the Notice of Intention is reasonable;
- that the Order is not issued before the expiry of the period for making submissions set out in the Notice of Intention;
- submission made have to be taken into consideration before an Order is issued;
- that the period of compliance, stipulated in the Order, is reasonable.

d) Instigation of Legal Proceedings

Any legal proceedings must be authorised through the investigating officer's Manager and Group Manager, following which approval is required to be sought and obtained from the General Manager.

Civil enforcement action can be taken in respect of an alleged breach of a planning or environmental law. The most common (Class 4 proceedings) are:

- an application by Council to restrain an unauthorised use of land or the carrying out of illegal works upon land
- an application by Council to restrain breaches of conditions of Development Consent
- an application by Council to seek a demolition order or orders that certain works be carried out to put a building in a satisfactory condition.

In cases referred to above, Council also has the option of prosecuting, seeking a monetary penalty in the local Court or through Class 5 Proceedings in the Land and Environment Court. It is critical that in proceeding with a matter through the Local Court or Class 5 proceedings in the Land and Environment Court, Council gather sufficient evidence to prove each of the elements of the offence and that the evidence is admissible in form.

Enforcement	Example scenario
Warning	Issued for minor issues. For example, displaying a small sign or where education is the preferred first option.
Penalty notice	Issued for minor unauthorised works which have no impact on the amenity of surrounding neighbours and there is no ongoing risk to public health or safety. Generally where the breach is a one-off and where the breach is significant enough to require deterrence from further unlawful activity. For example, an unauthorised pergola which does not overshadow or cause loss of solar access/view, residency without an Occupation Certificate (where there are no safety risks).
Notice of intention to issue an order	Issued for unauthorised works which would not be permitted to remain, where there is a threat to public health and safety, works being undertaken without permission. Examples include, renovations undertaken without consent, unauthorised works to a heritage item, installation of a shed which would not be permitted to remain.
Emergency order (without notice)	Issued where a building structure is compromised and is likely to cause imminent threat to public health and safety or works are being undertaken without permission. For example, the failure of the façade of a building, unauthorised demolition works.

15. Shared enforcement responsibilities

Some reports will raise matters involving shared regulatory responsibilities between council and other authorities including the Environment Protection Authority, including the regional illegal Dumping Squad, the NSW Police Force, the Office of Liquor, Gaming and Racing, NSW Fair Trading, SafeWork NSW Food Authority, and Crown Lands.

Council recognises that collaboration and cooperation between authorities to address issues of shared regulatory responsibility is the best approach. To this end, where there are shared legislative responsibilities, council staff will liaise with relevant authorities to establish:

- which authority will take the leading role on any joint investigation

- which activities each authority will carry out
- responsibilities for updating an individual where relevant
- protocols for exchanging confidential information between the relevant authorities.

Council will reasonably endeavour to respond to requests for information or assistance on joint regulatory matters in a timely manner.

16. Role of council where there is a private certifier

Council retains its regulatory role and enforcement powers where a private certifier has been appointed the Principal Certifiers (PC). However, if a private certifier is appointed the PCA, it is not council's responsibility to ensure building and construction compliance.

Whilst Private Certifiers have limited enforcement powers as the PCA, they have a responsibility to issue a Written Direction Notice (WRN) under Section 6.31 of the Environmental Planning and Assessment Act when they become aware of a breach, or possible breach of a planning approval. The WDN is required to be issued and allows the owner an opportunity to remedy the non-compliance or potential non-compliance. If the breach is not rectified the WDN is required to be referred to Council to determine whether enforcement action by way of Notice and Orders will commence.

Council and private certifiers will work together to resolve any issues when they arise to achieve compliance with the development consent or complying development certificate. Council staff will take steps to ensure individuals are clear about which agency performs which role.

17. Role of Councillors in enforcement

Decision making relating to the investigation of reports alleging unlawful activity and taking enforcement action is the responsibility of appropriately authorised council staff or the council itself.

Councillors are able to contact the General Manager or Group Managers. Councillors can help individuals who raise concerns with them by satisfying themselves that their council's policies are being carried out correctly, however they cannot ignore or alter a policy in order to satisfy the demands of special groups.

The General Manager may present certain decisions to be ratified by the elected council if this is necessary or desirable, and the Councillors may also have the right to call for a report about particular issues to a council meeting.

18. Delegations

Council staff delegations for taking action under this policy are included in council's Delegation Register.

19. Review

The next review will occur in June 2023 by the Manager – Regulatory Services and Group Manager – Development and Compliance.

20. Other resources

The NSW Ombudsman website has the following helpful resources at www.ombo.nsw.gov.au:

- Managing unreasonable complainant conduct – a model policy and procedure
- Managing Unreasonable Complainant Conduct Manual 2012
- The Rights Stuff – Tips for making complaints and solving problems
- Effective complaint handling guidelines – 2nd edition
- Managing information arising out of an investigation – Balancing openness and confidentiality
- Reporting of progress and results of investigations
- Good Conduct and Administrative Practice
- Options for Redress
- Investigating Complaints – A manual for investigators
- Enforcement guidelines for councils
- Better Service and Communication for Council

See also:

- Commonwealth Director of Public Prosecutions (2014), Prosecution Policy of the Commonwealth: Guidelines for the making of decisions in the prosecution process
- NSW Planning (2010), Prosecution Guidelines.
- NSW Ombudsman's 'Enforcement Guidelines for Councils' 2015
- Complaint Handling Policies and Procedures
- Relevant Standard Operating Procedures

Annexure ‘A’

CSR REQUIREMENTS AND OBJECTIVES

This script outlines the standard information required for all CSRs lodged by the Contact Centre, it also identifies where specialised information is required.

The objective of lodging Customer Service Requests (CSRs) is to keep an electronic record of Council business transactions while minimising the duplication of works requests.

To minimise duplication, search for an existing open CSR using Phoenix and attach a new customer name and their notes. Where the existing CSR is closed, a new request must be lodged.

Council’s customer service target is to provide all customers with a reference number and the target timeframe – this means we complete the CSR while talking to the customer.

A CSR is a request for service, not a complaint. Customers calling to follow up on a CSR because they haven’t received a response or are dissatisfied with the outcome/timeframe or service are to be escalated to a ‘Complaint against Council Service’ CSR which goes to the Executive. See complaint handling protocol.

We take CSR from the customer over the phone or the counter, describe the customer’s request and electronically forward it to an Actioning Officer to be addressed within a specified timeframe.

CSRs are formal business records, confidentiality and privacy laws apply and officers must not comment on awareness of existing requests or problems.

CSRs contain privileged information, therefore feedback and status updates can only be given to the customer (complainant). Confirm the identity of customers calling for a status update – if you are not satisfied that you’re speaking with the complainant - refer the call to the Actioning Officer and notes placed on the CSR to indicate your action.

Mandatory links: allow us to find the request at a later date using any of the links as a reference

- The CSR type, e.g. POTHOLE
- The customer’s full name
- The location of issue – is always the address of where the problem is happening - if it is on Council land, it will be linked to a council reserve, a council building or a council road. If the problem is happening on private property, the subject property will be an individual private property. Please note this is usually NOT the customer’s address.

Notes in all CSRs:

Notes are to be professional in manner; avoid suggestive words like “massive, etc...”. Include the exact details and nature of the request, summarise the information presented by the customer and include:

- The customer's contact phone number and address
- enough detail that the Actioning Officer can prioritise the request (now or later) and decide whether to take a bucket or a truck;
- the exact location of the subject (nearest landmark as well as the location)
- any advice given or action taken (previous or related CSR numbers, rung through to officers if urgent etc...)
- interpret and include the tone of the customer if necessary or note if customer classifies as urgent.

Urgent Requests

Anything that could potentially cause damage or injury to persons or property should be classified as urgent and must be verbally referred to the Actioning Officer immediately after lodging. See emergency scripts .

Cancelling Requests

If the complainant phones back and wishes to cancel their CSR: add a note to the request stating the customer's comments. Do not close the request – this is the Actioning Officer's responsibility.

Special Requirements

OPERATIONS CENTRE CSRs - to avoid duplication of requests for the Operations Centre, multiple customers are added to an "open" existing request rather than creating a new request for each customer. Search Phoenix and confirm the request is open.

Whenever a second or subsequent customer is added, a new Note must also be added including the precise detail.

The "location of issue" for all Operations Centre CSRs will be a council asset, e.g. council road, council building, council reserve etc...

Environment & Planning CSRs – All CSRs are considered as a new complaint and must be lodged as new.

The "location of issue" linked to Environment & Planning CSRs is always a private property address, and is not the complainant's address.

Anonymous CSRs

Anonymous reports, both written and verbal will be recorded and brought to the attention of the relevant manager/Coordinator to determine whether an investigation is required. Anonymous complaints will not normally be investigated as it is not possible to seek clarification or additional information about a complaint and the anonymity of a complainant does not enable the principles of natural justice or procedural fairness to be upheld. If a complaint is made by phone or by person, the member of staff taking the complaint will encourage the caller to provide their name and contact details. The caller will be advised that unless they provide these details, it may not be possible to investigate their complaint.

Council will protect the complainant's identity under the Personal Information Protection Act 1998.

Contact details may need to be acquired from the customer where the result of a CSR ends in prosecution i.e. enforcement CSR types - the process involves sending a survey to the customer and they must be prepared to testify if needs be.

No Name CSRs (unknown customers)

Where a customer name has not been located/entered into our system - modify your search, nil search results can be due to:

- no previous CSRs with council,
- incorrect spelling
- westernised foreign names
- non resident of THSC

When you are satisfied that the customer's name is not in the system, attach the Customer Name 'UNKNOWN' with address C/- THSC. Include the standard name requirements: Title, Given Name, Surname, Address and Contact Number in the notes.

Pathway is the source of Council's Name and Address Register and the NAR Officer in Rates maintains the data, a report is run on "UNKNOWN" entries and the customer's name is created and the request attached to the name. Enough detail needs to be included in the CSR for the NAR Officer to create the name.

Others logging CSRs

Council field officers (Rangers, Inspectors etc) are expected to be proactive and log their own Customer Service Requests while out and about; they have the technology and the capability and are aware of this expectation.

If you receive phone calls from officers in the field please ask for the reason they are not logging it themselves. There may be a good reason and if there is - provide the customer service - we want to be helpful.

Please let the Senior Coordinator Council CS know of any officers not following the process.

Annexure 'B'

Team Charter – Regulatory Services

The Regulatory Services Team provides an educational, compliance and enforcement service to the organisation and the community. The overall aim of the team is to achieve the highest possible standard of operation and presentation in the protection of the public and the environment whilst carrying out enforcement functions in an equitable, conciliatory, practical and consistent manner.

The Regulatory Services Team provide a service with respect to:

- The investigation of complaints with respect to land use, unauthorised development and compliance with Conditions of Development Consent;
- The investigation of pollution, landfilling and waste dumping incidents;
- The Investigation of Stormwater Complaints
- The efficient monitoring of building construction site management issues
- The processing, assessment and issuing of Building Information Certificate Applications and Development Applications with respect to unauthorised building works;
- The assessment and reporting of buildings with respect to fire safety upgrading and external combustible cladding;
- The maintenance of Council's Annual Fire Safety Statement Program;
- The management of Council's Swimming Pool Inspection Program;
- The processing, assessment and issuing of Swimming Pool Compliance Certificates;
- The Management of Council's Boarding House Inspection Program;
- The provision of enforcement and educational activities with respect to:
 - parking on public roads, school zones and car parks;
 - Vehicle load limits;
 - Abandoned motor vehicles;
 - Unauthorised advertising in public places;
 - Asset defects;
- The investigation of dog attack incidents and barking dog complaints
- The maintenance of the Companion Animal Control Program, including impounding animals, a register for dangerous dogs, dog declarations and impounded animals;
- The provision of Council's 'after hours' services response.
- Investigation of tree removal or harm caused to trees as a result of building works on private and public land
- Investigation of Bushland clearing complaints
- Oversee of the Team's legal matters before the Local and the Land and Environment Courts..

Team Charter – Environmental and Health

Mission Statement

To improve and protect the natural & built environment and public health within the Shire and to educate the community about environment & public health issues. This is achieved through responding to resident's and the community's concerns, assessing the environmental and health impacts of developments and managing trees on private land. Environment and Health programs are carried out in line with The Hills Shire Plan, legislative responsibilities and partnerships with State Government.

The Environment and Health Team undertakes the following work:

Environment and Health

- Provide environmental and health advice, comments and recommend conditions for Subdivision/Development Applications.
- Duties as authorised officers under the Protection of the Environment Operations Act 1997
- Customer requests including noise/water/air pollution, land contamination, environmental emergency response (spills). Safe and healthy conditions including overgrown properties, leaking sewer, unclean pool, hoarding and asbestos or other hazardous substances.
- Public Health including regulatory management of food premises, skin penetration premises, cooling towers and public swimming pool.
- Issuing of approvals and licences under section 68 of the Local Government Act 1993 for caravan parks including approval of structures, on-site sewage management system approvals to install and operate, solid fuel heater approvals and trading on public land.

Environment

- Provide ecology advice, comments and recommend conditions for Subdivision/Development Applications and planning proposals and apply the requirement of the Biodiversity and Conservation Act 2016.
- Provide general biodiversity advice to external customers such as residents, consultants and liaise with state government agencies.
- Biodiversity projects including survey, mapping/Landscaping and monitoring.
- Environment education.
- Energy/Water saving projects.
- Provide advice on energy/water saving measures to small businesses.

Trees/Landscaping

- Provide tree and landscaping advice, comments and recommend conditions of consent for Subdivision/Development Applications.
- Manage trees on private land including applications for tree removal.

Annexure ‘C’

Purpose

A Risk Rating system has been introduced for common non-compliance incidents, such as critical, high, medium and low to assist with prioritisation action. It is also proposed that this procedure will manage people’s expectations and the allocation of resources.

RISK CATEGORY			
CRITICAL	HIGH	MEDIUM	LOW
FEATURES OF CATEGORY			
Permanent, long-term or reoccurring and serious damage to health, property or environment likely or very likely Large scale impacts Very serious offences Very high priority issue for council and community	Moderate, major or severe consequences likely or very likely Medium-large scale impacts Serious offences Very high priority issue for council and community	Moderate consequences are likely, serious impacts are very unlikely Small-medium scale impacts Moderate offence severity Very high priority issue for council and community	Consequences are minor or moderate and are unlikely or very unlikely to occur Small scale, isolated impacts Low level offence severity Very high priority issue for council and community
INDICATIVE TIMEFRAME OF INITIAL RESPONSE			
Immediate and urgent response	Response within 24 hours	Response within 5 working days	Response within 10 working days
RISK RATING FOR SPECIFIC TASK			
Significant pollution incidents Large scale clearing of vegetation Food poisoning incidents Abandoned vehicles in an unsafe location Collapsed or unsafe building works in public areas Dog attack incidents Fire Safety Complaints Straying stock on roads	Roaming dogs Unsafe buildings and building works Rubbish dumped in an unsafe location/hazardous Pollution incidents Breaches of tree preservation order Dangerous/restricted dog complaints Breach of Swimming Pool Regulations	Abandoned vehicles Stormwater or drainage issues Dumped rubbish (not hazardous) Breach of consent conditions (eg waste management) Poor sediment control on building sites Noise complaints affecting several people Unauthorised land use	Noxious weeds Minor consent breaches (eg no signage) Unauthorised signage Overgrown Nuisance complaints (eg domestic noise, barking dogs)

Annexure ‘D’

Purpose

The Hills Shire Council’s Compliance Strategy provides information for all stakeholders and interested parties about council’s position on compliance and enforcement matters

The purpose of this strategy is to provide structure for consistency and transparency in decision-making, and to facilitate a proportional approach to compliance and enforcement. It is also intended to assist council staff to act promptly, effectively and consistently in response to unlawful activity

This strategy is a guide only. The full circumstances and facts of each case needs to be considered and a decision made on merit.

For a complete overview of Council’s position of compliance and enforcement this Compliance Strategy should be read in conjunction with The Hills Shire Council’s Enforcement Policy ([link to the Policy](#)).

Scope

The Hills Shire Council’s Compliance Strategy includes a range of matters investigated by Council’s Development & Compliance Group. The Compliance Strategy is directed to the regulation of the following:

- Parking
- Pollution incidents
- Animal control
- Unauthorised Development
- Non-compliance with conditions of Development Consent
- Public Health and Safety
- Food Safety
- Fire Safety and essential services
- Tree Preservation
- Swimming Pools
- Unauthorised land Use
- Heavy vehicle enforcement
- Abandoned motor vehicle / articles
- Sediment and erosion controls
- Signage

This Compliance Strategy is a tool for the management of Council’s regulatory activities. It aims to provide a consistent approach in the enforcement and resolution of matters, manage regulatory matters in a consistent and transparent manner, through best practice enforcement principles and provide an effective process of education and consultation

FIRE SAFETY AND ESSENTIAL SERVICES

Scope of Council’s role

To ensure a safe environment, Council investigates and takes appropriate action against reported fire safety breaches and fire safety design deficiencies within existing buildings

Council’s Fire Safety Officers attached to the Regulatory Services team inspect premises upon receipt of a fire safety complaint or as part of a proactive fire safety audit.

The Regulatory Services Team also manages Council Annual Fire Safety Statement Program. All premises on Council register must provide to council and NSW Fire and Rescue an Annual Fire Safety Statement (AFSS) every 12 months. The AFSS certifies that each essential fire safety measure installed at the premises has been assessed by a properly qualified person and was found to be capable of performing to the standard specified on the Fire Safety Schedule.

Building owners are responsible for maintaining fire safety measures in their building. This includes ensuring the fire exits and paths of travel to exits are unobstructed.

Relevant Legislation

- The Environmental Planning and Assessment Act, 1979
- (Development Certification and Fire Safety) Regulation 2021

Action taken for Non- compliance

Council officer will take into account a number of factors in determining any compliance action. The type of action chosen will be dependent upon the degree of risk and the impact of the non-compliance. The type of action taken will be proportionate to both the risk and the to the seriousness of the breach

Compliance Options	Example Scenario
Warning	Minor issues, such as poor housekeeping practices. Momentary failure of required fire systems
Penalty Notice / Action Plan	Non-minor issues – lack of fire safety management practices, eg. <ul style="list-style-type: none"> • Blocking of exits / obstructing paths of travel or similar breaches of ‘the Regs’ • Failure to lodge or late lodgement of AFSS • Fire safety system incapable of performing to required standards of performance
Notice / Order	<ul style="list-style-type: none"> • Premises have inadequate provision for fire safety • Maintenance / use constitutes a significant fire safety hazard
Prosecution	<ul style="list-style-type: none"> • Failure to comply with Council’s Order. • Continual failure to lodge AFSS after repeated penalty notices issued

UNAUTHORISED BUILDING WORKS

Scope of Council's Role

Council's role as an enforcement agency under the Environmental Planning and Assessment Act 1979 and Local Government Act 1993 is to protect public health and safety, as well as ensure compliance with the planning and regulatory regime in those Acts, and take appropriate action where there is unlawful activity.

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

Structural and other work to a property, such as decks, pergolas, additions and signage, may require approval by Council or private certifier. This approval process is to help ensure that works done are safe and don't negatively impact on the amenity of neighbours. Additionally, the use of a building for a particular activity may require approval by Council.

Allegations of non-approved building works and uses will be investigated by Council officers.

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 Code) 2008
- State Environmental Planning Policy (Housing) 2021

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

Council uses the principles contained within its Enforcement Policy to address non-compliance. Some examples of how Council officers may decide to act in particular circumstances are outlined below.

The occurrence of an illegal building work may result in any one or more of the following responses. The responses are not mutually exclusive and, in many instances, it will be appropriate to invoke more than one response;

- Take no action
- Modification of an existing development consent
- Submission of a Building Information Certificate Application
- Issue a penalty notice
- Issue an Order pursuant to Part 6 Schedule 5 of the Environmental Planning and Assessment Act, 1979
- To seek injunctive relief
- Proceed by way of prosecution

Compliance options	Example scenario
Warning	Minor issues such as small sign, encroachment, or works which are marginally outside the provisions of Exempt Development.
Advisory letter	<p>Issued for minor non-approved works which have no impact on the amenity of surrounding occupiers. This may include matters in the following categories, assuming there is no ongoing risk to public health or safety:</p> <ul style="list-style-type: none"> • Pergola that does not present an over shadowing/ loss of solar access/loss of view etc. • Non-issue of an Occupation Certificate for a residential house where there is no safety issue or need for Annual Fire Safety Statement.
Penalty Notice	<ul style="list-style-type: none"> • May be issued for any breach where the Officer is satisfied that there has been an intent to knowingly undertake works which would require consent or where the breach is so significant as to require an educative approach for the community to acknowledge that there has been a breach. • This does not prevent Council from issuing NOI/Orders in order to prevent ongoing unlawful activity.
Notice of intention to give an Order (NOI) and subsequent Order	<ul style="list-style-type: none"> • Issued for unauthorised works which would not be supported and would not be permitted to remain. • Likely threat to the general public. • Unapproved works to heritage item where the Officer would seek to have the matter returned to its original or improved state (heritage input is required in these matters.) • Works being undertaken without Construction Certificate/ Complying Development Certificate.
Emergency Order (without NOI)	<ul style="list-style-type: none"> • Structure is compromised and likely to cause imminent threat to the general public e.g. façade failure. / failing retaining wall. • Any non-approved works in progress (Stop Work Order)

In general Council will not take action on the following matters:

- Encroachment issues
- Easement disputes
- Dividing fence issues
- Overcrowding in residential premises (unless accompanied by substantiated building, fire safety or public health risks)
- Matters within a residential property that do not impact on the surrounding environment or neighbourhood
- 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.

- Overland flow of water unless associated with recent non approved works redirecting flow
- **Retaining Wall Exemptions** - With respect to retaining walls in the new release areas (i.e. Box Hill and North Kellyville), Council staff have determined to permit or elect to take no action in relation to the construction of retaining walls that are constructed outside the scope of the SEPP subject to the following criteria:
 - (1) Must be a site within a new release or growth centre residential area.
 - (2) Maximum height of 500mm from natural ground level. Natural ground level is not considered to be post development fill, excavation or benching of sites.
 - (3) Must be located wholly within the site boundary, unless consent is given by the adjoining owner for a common boundary wall/fence.
 - (4) Must comply with relevant Australian Standards and National Construction Code requirements.
 - (5) Must be constructed so that the walls do not prevent the natural flow of stormwater drainage or run-off. All sub-surface drainage lines must be connected to a legal point of discharge.

Role of the Principle Certifiers (PC)

In relation to assessing and approving certain construction works, Council is not the only consent authority. Principle Certifiers (PC) can issue approvals and certification for certain classes of building and construction works. Principle Certifiers (PC) can include the Council or an accredited certifier.

As the consent authority, Council can take action in relation to any development for which it has issued the Development Consent, even where it has not been appointed as the PC for the development. Whilst the Environmental Planning and Assessment Act clearly allow Councils to act in such instances, Councils may first choose to refer such complaints to the PCA in the first instances. This response is appropriate depending on the nature of the complaint and the extent of any non-compliance. Council will take action where there is:

- Environmental harm
- Safety issues
- Major breaches of a development consent

PCAs are required to advise Council of any Written Direction Notice they issue. Council will then undertake its own investigation into the matter and, if required may issue an order or take such other action as it considers appropriate.

UNAUTHORISED LAND USE ACTIVITY

Scope of Council’s Role

Council’s role as an enforcement agency under the Environmental Planning and Assessment Act 1979 and Local Government Act 1993 is to protect public health and safety, as well as ensure compliance with the planning and regulatory regime in those Acts, and take appropriate action where there is unlawful activity.

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 2008
- State Environmental Planning Policy (Housing) 2021

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

Council uses the principles contained within its Enforcement Policy to address non-compliance. Some examples of how Council officers may decide to act in particular circumstances are outlined below.

The occurrence of an illegal use may give rise to one or more of the six possible responses. The responses are not mutually exclusive and, in many instances, it will be appropriate to invoke more than one response;

- Take no action
- Submission of a Development Application
- Issue a penalty notice
- Issue an Order pursuant to Part 6 Schedule 5 of the Environmental Planning and Assessment Act, 1979
- To seek injunctive relief
- Proceed by way of prosecution

Compliance options	Example scenario
Warning	Minor ancillary issues not giving rise to public health or safety issues.
Penalty Notice (no further action)	Proven breach which would not require any further action or modification such as; <ul style="list-style-type: none"> • Operation out of hours on one occasion. • Unauthorised signage.
Penalty Notice and advisory letter	<ul style="list-style-type: none"> • Occupation of a property without issue of occupation certificate where all works safety completed. • Change of use that is not exempt but is of minor impact and requires no upgrade such as the conversion of class

	4 residential property to a small 1b boarding house where there are no amenity impacts.
Notice of intention to give an Order (NOI) and subsequent Order	<ul style="list-style-type: none"> • Uses which would not be supported on planning grounds. • Non approved boarding house/back packer or other short term tourist style accommodation where the risk to the residents or amenity effect on the immediate surrounding is high.
Emergency Order (without NOI)	Where life safety is a concern relating to the use, such as a premises being operated for an unauthorised use without appropriate essential fire safety measures.

SEX PREMISES

Scope of Council’s role

Council has a responsibility under the Environmental Planning and Assessment Act 1979 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
- Public Health Act 2010
- Brothels Act 2007

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 Notice	Initial breach of hours of operation, non-compliance with standard condition.
Notice of intention to give an Order (NOI) and subsequent Order	Evidence is found demonstrating unauthorised use of the premises.
Emergency Order (without NOI) / Brothel Closure Order	Evidence is found demonstrating unauthorised use of the premises, in a venue which has potential to create particular urgent concerns or is operating as a high risk premises.
Local Court or Land and Environment Court Action	If a brothel closure order is not complied with, the Local Court or the Land and Environment Court (L&E Court) may make an order directing a provider of water, electricity or gas to cease providing those services to the relevant premises. Such orders are known as utilities orders. The Court may make such an order on application from the body that issued the brothel closure order

SWIMMING POOLS – FENCING AND BARRIERS

Council has a responsibility under The Swimming Pools Act 1992 to regulate and promote backyard swimming pool safety in their local communities. They do this through locally appropriate swimming pool inspection programs and community education.

There is also a statutory obligation under the Swimming Pools Act 1992 for Council to inspect swimming pools in its area in accordance with the adopted swimming pools inspection program. The Swimming Pool inspection Program was adopted by Council at its meeting of 23 July 2013. The program requires Council staff to inspect properties with Swimming Pools and Spas under the following circumstances:

- I. Inspection as a result of a complaint;
- II. Inspection at the request of a pool owner;
- III. Inspection at the request of a pool owner – sale or lease;
- IV. Inspection of a tourist, visitor, multi occupancy development;
- V. Inspection of Development Applications which have not been finalised;
- VI. Referral of complaints from Council’s internal staff;
- VII. Inspection of a Child care centre / family day care premises

Relevant legislation and standards

- Swimming Pools Act 1992
- Australian Standard 1926.1 Safety Barriers for Swimming Pools

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

Under the Swimming Pools Act 1992 Council officers have a number of compliance options available to deal with non-compliance. The below table provides some examples of how Council may exercise its compliance options in particular circumstances.

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, vegetation growth, furniture within climb zone
Notice of Directive	<ul style="list-style-type: none"> • Non maintained self-closing mechanism on gate. • Vegetation removal required. • Minor penetration issue.
Directive	<p>Most breaches will result in Directive due to risk to child safety e.g.</p> <ul style="list-style-type: none"> a. Gate failing to latch. b. Non-compliant fencing/window opening. c. Lack of resuscitation signage.
Penalty notice	<p>Issued for more serious breaches or where previous warnings given. Can be issued in conjunction with a Directive:</p> <ul style="list-style-type: none"> • Fail to register pool (warning previously given). • Failure to maintain pool barrier. • Fail to keep the pool secure.

	<ul style="list-style-type: none"> • Fail to have resuscitation signage (warning previously given). • Fail to comply with a Directive.
<p>Court attendance notice</p>	<p>For numerous serious breaches and/or where there has been history of non-compliance and directives/penalty notices have not achieved compliance the matter will be referred to Council’s Corporate Lawyer for consideration of the commencement of proceedings.</p>

BOARDING HOUSE

Scope of Council’s role

The *Boarding Houses Act 2012* The Act provides the legislative framework for the regulation of all boarding houses in New South Wales. The Act requires all Council’s to develop a boarding house inspection program

Council is responsible for regulating a part of the Act. It has a responsibility to inspect all registered boarding houses (with the Department of Fair Trading) for compliance with relevant standards relating to health, building and fire safety. Additionally, Council has a responsibility to ensure that the provisions of the Local Government Act and Regulations are complied with in regards to boarding houses and places of shared accommodation and Council adopted boarding house inspection program.

Relevant legislation

- Boarding Houses Act 2012
- Environmental Planning and Assessment Act 1979
- Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021
- Local Government Act 1993
- Local Government (General) Regulation 2005

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

When an officer identifies non-compliance during a fire inspection they will communicate the issue to the proprietor, select a compliance option and give a timeframe for resolution based on the risks to public health and safety.

The Council officer will take into account a number of factors in the selection of the compliance action. “Risk and cause” are two considerations used in determining the enforcement options taken in the circumstance:

Compliance options	Example scenario
Warning	Minor issues, such as poor housekeeping practices; momentary failure of required fire systems.
Penalty Notice and an action plan	Issued in cases of blatant lack of fire safety management practices: <ul style="list-style-type: none"> • blocking of exits. • fire safety systems incapable of performing to required standards of performance. • Breach of Local Government Act Order
Notice/Order	<ul style="list-style-type: none"> • Premises have inadequate provisions for fire safety • Unsafe/unhealthy conditions • Fail to provide required signage
Court Attendance Notice	On expiration of the timeframe given under the Order the Council officer may refer the matter to Council’s Corporate Lawyer for consideration of the commencement of proceedings for failure to comply with the Order.

PARKING ENFORCEMENT

Scope of Council’s role

Council has a regulatory obligation to enforce the laws relating to motor vehicle parking and to manage public safety and traffic flow in accordance with the relevant laws. Council Rangers and Community Safety Officers are responsible for the administration of statutory obligations pertaining to the parking of motor vehicles across The Hills Shire in accordance with the prescribed regulations. The management of vehicle parking and associated traffic laws is an important and necessary function to ensure safety, management of traffic flow and turnover of parking.

Relevant legislation

The following is a list of legislation (but is not limited to) relating to road use and parking enforcement:

- Roads Act, 1993
- Road Rules 2014
- Road Transport Act, 2013
- Road Transport (General) Regulation 2021
- Road Transport (Vehicle Registration) Regulation 2017
- Roads Regulations 2018
- Local Government Act, 1993

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

Efficient and effective parking regulation relies heavily on systematic presence of Council’s Rangers and Community Safety Officers. Consistency in enforcement is the key component in an effective service. Council officers are required to use a number of methods to manage parking and the related legislation, they include; education, cautions and issuing of Penalty Notices.

Compliance options	Example scenario
Warning	<ul style="list-style-type: none"> • The driver of a vehicle who has been asked to move has immediately complied with that direction. • A driver returns to their vehicle immediately before an officer can issue a penalty notice. • A complaint has been received and the vehicle may be half in the no stopping/no parking etc. area, a warning can be issued to deter the action in the future. <p>When an officer issues a caution, it shall be issued electronically where possible and be an official caution with a \$0.00 amount.</p>
Penalty Notice and an action plan	<p>Illegal parking in high risk areas may place a member of the public in danger or adversely affect the flow of traffic. As a result Penalty Notice will be issued for offences in</p> <ul style="list-style-type: none"> • School Zones

	<ul style="list-style-type: none"> • Where a Community Patrol Officer observes a motor vehicle parked in an illegal position and/or dangerous position • No Stopping Zone • Overstaying in Shopping Centres under contractual agreement with Council
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CONTROL OF ANIMALS

Scope of Council’s role

Council has a regulatory obligation to enforce the laws relating Companion Animals in an effort to create an environment where people and pets can peacefully and safely co-exist within the community and where pet owners activities and those of their pets do not adversely affect the rest of the community or environment.

Council supports and facilitates the benefits of animal ownership and companionship, encourages statutory compliance and promotes responsible pet ownership through education and enforcement.

Relevant legislation

- Companion Animals Act 1998
- Local Approval Policy – Keeping of Animals
- State Environmental Planning Policy (Exempt and Complying Code) 2008
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What action may be taken if non-compliance is found?

Council officers will take into account a number of factors in determining any compliance action. The type of action chosen will be dependent upon the degree of risk and the severity of any incident. The type of action taken will be proportionate to both the risk and to the seriousness of the breach

Compliance options	Example scenario
Warning	Minor offence – such as dog not wear collar, fail to prevent dog from escaping (first offence)
Penalty Notice and an action plan	<ul style="list-style-type: none"> • Dog Attack incidents • Companion animal not registered (after requests to do so) • Non-compliance with Nuisance Order • Non-compliance with menacing /dangerous dog declarations
Dangerous /menacing declarations Nuisance Orders	<p>Dangerous Declaration</p> <ul style="list-style-type: none"> • Dog has without provocation killed or attacked a person or threatened to attacked or chase a person or animal <p>Menacing Declaration</p> <ul style="list-style-type: none"> • Dog has displayed unreasonable aggression or has without provocation attacked a person or animal but without causing serious injury of death <p>Nuisance Order</p> <ul style="list-style-type: none"> • Dog is habitually at large, makes a noise by barking or otherwise that unreasonable interferes with the peace and comfort or convenience of any person • Repeatedly defecates • Runs or chases a person, vehicle or animal • Endangers the health of any person or animal <p>Repeatedly caused damage to anything outside the property where it normally is kept</p>
Court Attendance Notice	<ul style="list-style-type: none"> • Severe dog attack incident • Repeatedly fails to comply with provisions of dangerous, menacing or nuisance dog declarations

HEAVY VEHICLE ENFORCEMENT

Scope of Council’s role

The role of Council officers in enforcing road restricted roads is to improve road safety for all road users and to protect local roads from damage caused by heavy vehicles.

Through targeted investigations and heavy vehicle intercepts and inspections, Council’s Community Safety and Compliance Officers and Rangers are able to use its regulatory powers to ensure the practices of drivers and vehicle operators can lead to improved compliance, asset protection and safer roads in The Hills Shire Council area.

Relevant legislation

Action can be taken by Council Officers to enforce local load limited road under a various legislative provisions. These include:

- Road Rules 2014
- Road Transport (General) Regulation 2021
- Heavy Vehicle National Law.

Generally action will be taken to enforce the provisions of the Road Rules 2014 and the Roads Transport (General Act) Regulation 2021 in relation to heavy vehicles unlawfully using load limited roads.

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

Authorised officer of Council have Under the HVNL, powers to issue formal warnings and infringement notices for minor and substantial mass breaches to offending heavy vehicles. Authorised officers will have the powers under the HNVL to:

- Stop a heavy vehicle
- Issue directions to move a heavy vehicle
- Enter and inspect a heavy vehicle
- Issue directions to reduce and adjust
- Issue formal warnings and infringements.

Compliance options	Example scenario
Acceptable reasons for a heavy vehicle to enter a weight restricted include:	<ul style="list-style-type: none"> • The vehicle destination is along the restricted road • The destination cannot be reach except by travelling along the restricted road • Vehicle attending an emergency situation <p>A destination will only be acceptable if access is needed for a matter directly related to the use of that heavy vehicle in its capacity as a road transport freight conveyance.</p>
Warning	<ul style="list-style-type: none"> • Minor non-compliance with road limit restrictions
Penalty Notice and an action plan	<ul style="list-style-type: none"> • Substantial breach of load limit sign • Breach of no truck sign

Enforcement will be carried out by either mobile patrols or by Council's licence plate recognition camera system. Mobile patrols are restricted to surveilling vehicles on local roads from a point of entry to a point of exit. At all times an appropriately marked vehicle shall be used to clearly highlight a visual campaign to reduce the incidences of illegal heavy vehicle movements.

BREACH OF DEVELOPMENT CONSENT

Scope of Council's role

Council's role as an enforcement agency under the Environmental Planning and Assessment Act 1979 and Local Government Act 1993 is to protect public health and safety, as well as ensure compliance with the planning and regulatory regime in those Acts, and take appropriate action where there is unlawful activity.

Development Consent and Complying Development Certificate usually include an approved set of plans and a list of conditions which require actions by the applicant before and during construction or relating to the ongoing use of the site. Compliance with Conditions of Consent needs to be monitored and if necessary enforcement action needs to be taken. Whether monitoring or enforcement is the responsibility of Council or a Private Certifier depends upon the stage of the development. Private Certifiers are responsible for issuing Written Direction Notices under s6.31 of the Environmental Planning and Assessment Act, 1979 where it is suspected or is likely to be aspects of the development that are non-compliant.

Relevant legislation and standards

- Environmental Planning and Assessment Act 1979.
- State Environmental Planning Policy – (Exempt and Complying Development Codes) 2008
- State Environmental Planning Policy (Housing) 2021

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

Council uses the principles contained within its Enforcement Policy to address non-compliance. Some examples of how Council officers may decide to act in particular circumstances are outlined below.

Breach of Development consent may give rise to a range of response. These responses are not mutually exclusive and, in many instances, it will be appropriate to invoke more than one response;

- Take no action
- Issue a penalty notice
- Issue an Order pursuant to Part 6 of Schedule 5 of the Environmental Planning and Assessment Act 1979
- To seek injunctive relief
- Proceed by way of prosecution

In determining the appropriate action Council Staff must exercise discretion, taking into account the evidence, cost to the community of any action, circumstances of the individual case, public policy and legal precedent.

Compliance options	Example scenario
Warning	Proven breach which would not require any further action or modification such as; <ul style="list-style-type: none"> • Operation out of hours on one occasion. • Minor sediment control issues
Penalty Notice and an action plan	<ul style="list-style-type: none"> • Sediment control issue result in pollution incident • Repeated breach of hours of operation • Substantial variation to approved plans
Notice/Order	<ul style="list-style-type: none"> • Repeated incidents of breach of development consent • Incidents requiring urgent attention and immediate
Court Attendance Notice	Failure to comply with Orders issued pursuant to Part 6 of Schedule 5 of the Environmental Planning and Assessment Act 1979

ILLEGAL DUMPING / LANDFILL INCIDENTS

Scope of Councils role

The Hills Shire Council is committed to reducing illegal dumping incidents within its local government area. The Council has partnered with the Regional Illegal Dumping Squad (RID) to provide an integrated approach to the coordination, education and enforcement of illegal dumping in an effort to prevent people from dumping illegally, and to take strong action against those who persist in doing the wrong thing. Illegal dumping includes the unlawful transporting or dumping of waste or land filling without the consent of Council and can vary from small bags of rubbish in an urban environment to larger scale dumping of waste materials in isolated areas, such as bushland. It has an adverse effect on wildlife and the local environment, by encouraging vermin and introducing weeds, and also creates visual and environmental pollution. It can contaminate land and local waterways, and can pose a health risk or fire hazard to the community.

Where incidents of illegal landfill have come to the attention of RID, they are investigated in concert with Council's Regulatory Services Team. Action cannot be taken by RID alone without written authorisation of Council's Manager Regulatory Services.

According to the Schedule 1 (Clause 39) and Section 212C of the Protection of the Environment Operations Act, 1997 ("the Act"), any waste material in excess of 200 tonnes applied to land inside regulated areas is a scheduled activity requiring an environment protection licence from the Environment Protection Authority (EPA). Dependant on the volume of landfill waste materials deposited (i.e exceeding 200 tonnes or possible contamination with asbestos containing materials) the EPA is the appropriate regulatory authority ('ARA') for investigation of such activities. Any matters falling into this category are to be referred to the EPA for investigation.

Relevant legislation

- Protection of the Environment Operations Act, 1997
- Environmental Planning and Assessment Act, 1979
- Local Government Act, 1993

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

Council Officers or Officers attached to the Regional Illegal Dumping Squad can issue warning, on the spot fines or Clean up Notices. For more serious offences a person may be prosecuted with the concurrence of the General Manager in the Local Court or The Land and Environment Court.

Officers will take into account a number of factors in determining any compliance action. The type of action chosen will be dependent upon the degree of risk and the severity of any incident. The type of action taken will be proportionate to both the risk and to the seriousness of the breach.

Compliance Options	Example Scenario
Warning	<ul style="list-style-type: none"> • Minor offences • Owner promptly removes dumped articles/materials
Penalty Notice	<ul style="list-style-type: none"> • Fail to comply with a Clean-up Notice • Fail to pay prescribed fee for issuing a Clean-up Notice • Landfilling causing minor pollution incident • Transport waste offence
Clean up Notice	<ul style="list-style-type: none"> • Landfilling causing pollution incident
Prosecution	<ul style="list-style-type: none"> • Substantial landfilling incident resulting in pollution incidents • Continually fail to comply with Clean Up Notice. • To obtain Consent Order from the Court to carry out remediation works • Transport waste offences involving asbestos • Repeat offenders

FOOD SAFETY

Scope of Council's role

The Hills Shire Council is an authorised agency under the Food Act 2003 and conducts regular inspections of retail food premises with the Hill Local Government Area to ensure food safety standards are met. Enforcement of the Food Act and the Food Standards Code is essential for the effective management of food safety risks.

Relevant legislation

- NSW Food Act 2003
- Food Regulation 2012
- The Food standards code

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

Council officer will take in account a number of factors in determining any compliance action. The Type of action chosen will be dependent upon the degree of risk and the impact of any non-compliance. The type of action taken will be proportionate to both the risk and the to the seriousness of the breach

Compliance options	Example scenario
Warning	<ul style="list-style-type: none"> • 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	<ul style="list-style-type: none"> • Significant cleaning issues across premises. • Significant temperature control issue (>6 degrees outside of legal requirement). • Cross contamination of ready to eat food.
Local Government Act Notice and Order	<ul style="list-style-type: none"> • Issued where cleanliness or pest issues extend outside of the premises e.g. common areas, rear yards.
Prohibition order	<ul style="list-style-type: none"> • Non-compliance with an improvement notice and/or; • Gross hygiene issues throughout premises contributing to pest issue or cross contamination of food. • Severe pest infestation in premises. • Serious temperature control issue.
Penalty notice	<ul style="list-style-type: none"> • May be issued in conjunction with a notice or order for serious food safety breach • 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.

<p>Court attendance notice</p>	<ul style="list-style-type: none"> • Where there has been a history of serious Critical failures / non-compliance of the Food Standards Code of a food business • Where notices/orders etc have been previously issued and the critical failure issue continues the matter will be referred to Council’s Legal Services division for the consideration of the commencement of proceedings. • 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. • Matters relating to non-compliance with a prohibition order and obstruction of officers will also be referred for the consideration of proceedings. • Unsafe/defective equipment leading to serious sanitation or cross contamination risks will lead to a recommendation being made to Council’s Legal Services Division for an urgent injunction to be sought in the Supreme Court.
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TREE REMOVAL / BUSHLAND CLEARING

Scope of Council’s role

Council has a responsibility to preserve the amenity of the area, including biodiversity values, through the preservation of trees and other vegetation.

Trees and Bushland provide a range of benefits including the provision of habitat and corridors for native wildlife, contribution to streetscapes and amenity, privacy and visual screens, reduced impacts of erosion, provision of shade and increased thermal comfort for homes.

Unauthorised tree removal includes the removal of one or more trees from a property that do not form part of a vegetation community. A tree must meet the size requirements as defined within The Hills Shire Council Tree Management Guidelines.

Bushland refers to vegetation including trees of any size, shrubs and understorey or ground cover which forms part of a native vegetation community.

Council officers have the power to investigate unauthorised tree removal and clearing of vegetation at a premises under the *NSW Environmental Planning and Assessment Act 1979*.

Relevant legislation

- NSW Environmental Planning and Assessment Act 1979
- NSW Local Government Act 1993
- NSW Protection of the Environment Operations Act 1997
- Biodiversity Conservation Act 2016

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

Council officers may issue Formal Cautions, Penalty Notices and Orders requiring replacement planting or rehabilitation activities. For more serious offences, offenders can be prosecuted in the Land and Environment Court. Each incident will be dealt with following an assessment of the individual circumstances and the type of action taken will be proportionate to the severity of the breach.

Compliance options	Example scenario
Warning	<ul style="list-style-type: none"> • Minor tree offences; ie, excessive pruning, removal or damage to one tree of low-medium landscape significance not forming part of a bushland community (first offence) • Minor bushland clearing offences; ie, excessive clearing or damage to trees for APZ creation, minor under scrubbing beyond area of approved APZ’s or NSW RFS exemptions. • Reasonable circumstances exist for the removal of the subject trees. • Property owner willing to undertake replacement planting or revegetation of appropriate species and size.
Penalty Notice	<ul style="list-style-type: none"> • Substantial clearing of native bushland.

	<ul style="list-style-type: none"> • Removal of one or multiple trees of high significance and landscape value. • Failure to cease works following verbal or written warning. • Second offence for tree removal or bushland clearing. • Clearing of bushland or tree removal forming part of an endangered, or critically endangered ecological community. ie Shale Sandstone Transition Forest , Blue Gum High Forest. • Contactors or subcontractors (on first offence) working in industry without reasonable cause for undertaking unauthorised works. • Tree contractors using climbing spikes.
Notice/Order	<ul style="list-style-type: none"> • Excessive clearing of bushland where rehabilitation or replacement planting is a viable option. • Property owner has failed to undertake appropriate replacement planting as previously directed.
Court Attendance Notice	<ul style="list-style-type: none"> • Substantial clearing of Endangered or Critically Endangered Ecological community. • Ongoing failure to comply with order or notices. • Repeat offenders.

POLLUTION INCIDENTS

Scope of Council’s role

Council is the appropriate regulatory authority for the investigation of pollution incidents in its local government area for non-scheduled / non-licenced activities except in relation to activities carried on by the State or a public authority

The Environment Protection Authority (EPA) is the appropriate regulatory authority for incidents on Crown Land or major industrial or commercial sites which hold an EPA license.

Relevant Legislation

- Protection of the Environment Operations Act 1997 and Regulations
- Local Government Act 1993

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

Compliance options	Example scenarios
Warning	Generally issued for most minor offences in the first instance.
Clean up notice A statutory administration fee applies	To require works to address an immediate issue, e.g. spills and water pollution. When a Clean-up Notice is used to address a non-urgent but serious pollution or contamination issue which will cause significant costs, a Notice of Intention to issue a Clean-up Notice will be issued first to provide an opportunity for the receipt of a submission on the terms of the Notice. Administration fee can be waived on written application'. Consideration for waiving of the fee includes: <ul style="list-style-type: none"> • Time and resources involved in the investigation and regulatory action taken; • Severity of pollution incident; • Costs incurred in meeting the terms of the notice;
Local Government Act Notice or Order	Minor sewer leaks not resulting in water pollution. Land pollution with hazardous materials which may result in unhealthy or unsafe conditions.
Prevention notice A statutory administration fee applies	Issued to require improvement when an activity is carried on in an environmentally unsatisfactory manner. Issued for ongoing issues such as industrial air pollution (non-licensed premises), noise, and large construction site environmental management.
Penalty 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 deliberate act which has resulted in land, water or air pollution.

<p>Court attendance notice</p>	<p>For ongoing failure to comply with prior notices/directions and/or matters resulting in significant environmental damage the matter will be referred to Council's Legal Services Division for consideration of the commencement of proceedings.</p>
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NOISE COMPLIANCE

Scope of Council’s role

As stated for Pollution Incidents, Council is responsible for the investigation of most noise related matters in its Local Government Area. Other agencies that have some responsibility for noise complaints include the Environment Protection Authority (EPA), the Police and the Office of Liquor, Gaming and Racing.

Relevant Legislation

- Protection of the Environment Operations (POEO) Act 1997
- Protection of the Environment Operations (Noise Control) Regulation 2008
- Environmental Planning and Assessment Act 1979.

What action may be taken if a complaint of offensive noise is found to be justified?

Compliance options	Example scenarios
Warning	<ul style="list-style-type: none"> • Generally issued for most offences in the first instance. E.g. noisy air conditioning unit, pool pump, amplified music, domestic alarms.
Formal Warning As specified under the PEOE Noise Control Regulation	<ul style="list-style-type: none"> • In circumstances where an article listed in the regulations as having time restrictions is used within the restricted hours. The incident must have occurred within the last 7 days and the warning lasts 28 days. • A penalty notice may be issued for a subsequent failure to comply with the time restrictions within 28 days after receipt of the warning.
Noise Abatement Direction	<ul style="list-style-type: none"> • Issued where offensive noise is being or has been emitted from a premises e.g. noisy stereo or amplified music from a residential premises. • A penalty notice may be issued for a subsequent failure to comply with Noise Abatement Direction.
Prevention notice A statutory administration fee applies	<ul style="list-style-type: none"> • 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. • Can also be issued for entertainment noise e.g. concerts, night club music. • Power tools e.g. jack hammers. • A penalty notice may be issued for a subsequent failure to comply with Prevention Notice, within 28 days of the Notice being issued
Noise control notice A statutory administration fee applies	<ul style="list-style-type: none"> • Issued to restrict 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. • Where a noise level is specified noise levels have to have been assessed and measured. • A penalty notice may be issued for a subsequent failure to comply with Noise Control Notice.
Penalty notice	<ul style="list-style-type: none"> • Generally issued for failure to comply with prior warnings or a direction or notice.

UNHEALTHY LAND PREMISES

Scope of Council’s role

The Shire 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.

Relevant Legislation

- Local Government Act 1993
- Local Government (General) Regulation 2005

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

Compliance Options	Example scenario
Notification/Advice	Generally issued for most minor offences in the first instance.
Local Government Act Notice and Order	Issued where a risk to public health/safety has been identified: <ul style="list-style-type: none"> • Accumulation of garbage or other items which are likely to be a harbourage for vermin. • Unkempt properties resulting in unhealthy or unsafe conditions • Sewage surcharges • Hazardous materials
Local Government Act Emergency Order	Issued where risk to public health and safety is very high and it is not appropriate to issue a notice of intention in the circumstances: <ul style="list-style-type: none"> • Sewer line is damaged or blocked and sewage is discharging onto public land. • Serious cleanliness/sanitation issues e.g. boarding houses. • Hazardous materials – eg asbestos
Penalty notice	Generally issued for failure to comply with a notice/order or where there is prior history for the same or similar offence.
Council undertaking the required work	Where non-compliance with an order has occurred and the risk to public health/safety exists Council may do all such things as are necessary or convenient to give effect to the terms of the order, including the carrying out of any work required by the order. As this involves the use of public money to undertake work on a private property so this is considered a last option for extreme situations. Costs will then be recovered from the owners of the subject property.

Court Attendance Notice	Where there has been a history of non-compliance with previous enforcement action for the same or similar offences the matter will be referred to Council's Legal Services Division for consideration of the commencement of proceedings.
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REGULATED SYSTEMS (COOLING TOWERS)

Scope of Council's role

Under the Public Health Act 2010, Council has a responsibility to take appropriate measures to ensure compliance with the requirements of the Act. Council has a responsibility to keep a register of cooling towers in its local government area. Additionally, council ensures that regular maintenance, testing and cleaning of the tower has been completed.

Relevant legislation

- Public Health Act 2010
- Public Health Regulation 2012
- Australian Standard 3666.1 2011
- Australian Standard 3666.2 2011
- NSW Health Code of Practice for the Control of Legionnaires Disease (June 2004)

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

If a cooling tower does not meet the required legislative standards then a range of enforcement tools may be used.

Compliance options	Example scenario
Warning	<ul style="list-style-type: none"> • Not registering a system (cooling tower) • Minor non-conformances with Regulation
Improvement notice	<ul style="list-style-type: none"> • Matters raised as a warning have not been addressed • Significant non-conformances with Regulation
Prohibition order	<ul style="list-style-type: none"> • Issued in instances where the occupier has not complied with an Improvement Notice and the Prohibition Notice is necessary to prevent or mitigate a serious risk to public health. • Issued to address an urgent and serious risk to public health.
Penalty notice	<ul style="list-style-type: none"> • May be issued in conjunction with a notice or order for serious breach. • May also be issued against operators for not registering or notifying Council • May be issued for non-compliance with a Prohibition Order
Court attendance notice	<ul style="list-style-type: none"> • Where there has been an extensive history of serious non-compliance and notices/orders etc. have been previously issued the matter will be referred to Council's Legal Services division for the consideration of the commencement of proceedings. • Matters relating to non-compliance with a prohibition order and obstruction of officers will also be referred for the consideration of proceedings.

Council officers do not routinely undertake sampling of cooling towers however if a cooling tower water sample does not meet the required microbiological levels prescribed in legislative standards then a range of enforcement tools may be used.

Legionella detected	Action to be taken if greater than allowable levels
Less than 10 cfu/ml	No action required – effective maintenance procedures in place.
Up to 100 cfu/ml	Maintenance practices may not be satisfactory: <ul style="list-style-type: none"> • Issue warning letter. • Perform follow up testing.
100 to 1000 cfu/ml	Potentially hazardous situation, maintenance procedures to be re-evaluated including current disinfection process: <ul style="list-style-type: none"> • Improvement notice to be issued. • Perform follow up testing. • Fines may be issued if prior history of non-compliances for similar issues.
> 1000 cfu/ml	Serious risk to public health: <ul style="list-style-type: none"> • Prohibition order to be served. • System to be shut down and decontaminated. • Perform follow up testing. • Fines/court action may be initiated if prior history of non-compliances or significant lack of maintenance of the system.

ON SITE SEWAGE SYSTEM

Scope of Council's role

Council has a responsibility to ensure the satisfactory operation of on-site sewage management systems. There is a requirement that operators/ owners of such systems obtain an approval to operate the systems under the Local Government Act 1993 and that part of the approval process involves an assessment of the performance of systems. The system is assessed against the performance standards provided in Section 29 of the Local Government (General) Regulation 2005.

Council also responds to complaints of failing systems or where a system causes unhealthy or unsafe conditions.

Relevant legislation

- Local Government Act 1993
- Local Government (General) Regulation 2005
- Protection of the Environment Operations Act 1997
- Environmental Planning and Assessment Act 1979

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

Compliance Options	Example Scenarios
Letter of request / Warning	Minor issues that do not create unhealthy or unsafe conditions.
Notice of intention to issue an Order and subsequent Order (LG Act)	In circumstances where the inappropriate disposal of effluent results in unsafe or unhealthy conditions.
Emergency Order	Issued in circumstances of immediate public health concerns.
Clean up Notice (section 91 POEO Act)	In circumstances of effluent escaping the site and causing water pollution. Notice would specify rectification works and possible clean-up of pollution.
Prevention Notice (Section 96 POEO Act)	In circumstances of effluent potentially escaping the site and causing water pollution. Notice would specify rectification works to protect against an incident of pollution.
Penalty Notice	Penalty Notice may be issued for non-compliance with an Order (LGA) or Notice (POEO Act) or for a serious incident of water pollution.
Notice of intention to issue an Order and subsequent Order (EP&A Act)	Systems installed without an approval in circumstances where an approval cannot be obtained will be required to be removed.

SKIN PENETRATION

Scope of Council’s role

Under the *Public Health Act 2010*, Council has a responsibility to take appropriate measures to ensure compliance with the requirements of the Act. Council has a responsibility to keep a register of premises undertaking skin penetrating activities in its local government area. Additionally, Council has a responsibility to take appropriate measures to ensure compliance with the requirements of the Act in relation to premises in which skin penetration procedures are carried out.

Relevant legislation

- Public Health Act 2010
- Public Health Regulation 2012
- Local Government Act 1993
- Local Government (General) Regulation 2005

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

If a premise where skin penetration activities is undertaken does not meet the required legislative standards then a range of enforcement tools may be used.

Compliance options	Example scenario
Warning	<ul style="list-style-type: none"> • Not registering a premises • Minor non-conformances with Regulation
Improvement notice	<ul style="list-style-type: none"> • Matters raised as a warning have not been addressed • Significant non-conformances with Regulation
Local Government Act Notice and Order	<ul style="list-style-type: none"> • Issued where cleanliness or structural issues results in the premises being unhealthy or unsafe.
Prohibition order	<ul style="list-style-type: none"> • Issued in instances where the occupier has not complied with an Improvement Notice and the Prohibition Notice is necessary to prevent or mitigate a serious risk to public health. • Issued to address an urgent and serious risk to public health.
Penalty notice	<ul style="list-style-type: none"> • May be issued in conjunction with a notice or order for serious breach. • May also be issued against operators for not registering or notifying with Council • May be issued for non-compliance with a Prohibition Order
Court attendance notice	<ul style="list-style-type: none"> • Where there has been an extensive history of serious non-compliance and notices/orders etc have been previously issued the matter will be referred to Council’s Legal Services division for the consideration of the commencement of proceedings. • Matters relating to non-compliance with a prohibition order and obstruction of officers will also be referred for the consideration of proceedings.

ADVERTISING AND SIGNAGE

Scope of Council’s role

The Hills Development Control Plan Part C Section 2 – Signage has been prepared to control all forms of advertising signs and advertisements within the Shire that require development consent. These controls have been designed to ensure that land use activities are permitted and appropriate level of signage and advertising space is provided to facilitate the communication of information in an environmentally sensitive manner. There is an emphasis on the need, when designing a signage proposal, to have regard to the nature of the proposed land use, the impact of proposed signage on adjoining development, local amenity and the environmental quality of the Shire.

Council’s role as an enforcement agency under the Environmental Planning and Assessment Act is to protect public health and safety and maintain the amenity of the shire, as well as ensuring compliance with the planning and regulatory regime in the Acts, and take appropriate action where there is unlawful activity.

Relevant Legislation

- The Environmental Planning and Assessment Act, 1979,
- State Environmental Planning Policy (Industry & Employment) 2021
- State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 Part 2 Division 2 - Advertising and Signage Exempt Development Code
- The Hills Development Control Plan Part C Section 2 – Signage

Action taken for Non- compliance

Council officer will take into account a number of factors in determining any compliance action. The type of action chosen will be dependent upon the degree of risk and the impact of the non-compliance. The type of action taken will be proportionate to both the risk and the to the seriousness of the breach

Compliance Options	Example Scenario
Warning	<p>Below are some examples of unauthorised advertising. The person, company or business responsible for erecting the unauthorised sign on private or public property will be requested to remove the sign and warned that further offences may attract further regulatory action.</p> <ul style="list-style-type: none"> • A-frame signage on public • Signage placed on street and telegraph poles • Signage place on land to which it does not relate • Signage installed without approval or contrary to development consent • Real estate signage outside exempt development provisions • Trailer Advertising - for the sole purpose of advertising a business

Penalty Notice / Action Plan	Failure to comply with request to remove unauthorised signs. Repeated breaches of the exempt and complying development standards or blatant breaches of development consent conditions. Non-compliance with Order issued pursuant to Part 6 of Schedule 5 of the Environmental Planning and Assessment Act 1979
Notice / Order	Failure to comply with request to remove unauthorised signs. Repeated breaches of the exempt and complying development standards or blatant breaches of development consent conditions.
Prosecution	Continual non-compliance with Council Orders

Real Estate Signage on Rural Properties.

No action will be taken with respect to signs on rural properties or properties in excess of 2 acres where;

- One sign is installed within the property for sale or rent, up to a maximum of 4.5sqm (effectively allowing the use of the 6x8 foot signboards) on a road with one frontage.
- Two signs are installed within the property for sale or rent, where a property fronts two roads. The signs must be up to a maximum of 2.5sqm each.
- The signs must comply with all other development standards in the SEPP

A temporary real estate sign is required to be advertising real property for sale or rent not solely the agent or agency.

IMPOUNDING OF VEHICLES AND ARTICLES

The Public Spaces (Unattended Property) Act 2021 and accompanying Public Spaces (Unattended Property) Regulation 2022 came into force on 1 November 2022, helping to protect valuable public spaces across the State from abandoned and unattended items and animals. The new Act repeals the *Impounding Act 1993*.

The new laws provide councils, other public land managers and police with powers and penalties to rid footpaths, streets, parks, bushland and waterways of abandoned and unattended property. Under the new laws owners and others responsible for private property left in public, such as shopping trolleys, unregistered and abandoned cars, unattended trailers and stray stock, face regulatory action if they do not remove their property within risk-based timeframes.

This includes on-the-spot fines, higher court penalties, seizure action and enforcement orders. The new laws make it easier for councils to store and dispose of unattended or abandoned items and animals that they take into possession, significantly reducing red tape and cost for local communities.

The changes also improve the ability of council officers to track down owners of shopping trolleys and vehicles, reducing the need for impounding action.

Scope of Council's Role

The objects of the Public Spaces (Unattended Property) Act (PSUP), 2021 are to:

- encourage owners and others responsible for property to act quickly and responsibly to mitigate risks to access, safety and amenity that may be caused by property being left unattended in public; and
- ensure public spaces can continue to be used, shared and enjoyed by the whole community.
- deal with property left unattended in public.
- take regulatory and enforcement action for offences.
- temporarily store or care for unattended property.
- recover costs for dealing with unattended property from the responsible person/s, and
- care for animals to ensure their welfare.

Authorised officers have wide discretion under the PSUP Act, but their regulatory action should be based on the following principles:

- responsive and prompt
- consistent and transparent
- ethical and accountable with good administrative practice
- firm but fair, following clear internal policies and procedures
- discretionary in making decisions and considering appropriate penalties
- proportionate to the nature of an offence, circumstance, harm caused and the offender
- informed by a preliminary assessment with decisions based on evidence
- proactive and collaborative, and
- aware of the objects of the Act and take action to best meet these objects.

Relevant Legislation

- The Public Spaces (Unattended Property) Act 2021
- The Public Spaces (Unattended Property) Regulation 2022
- Local Government Act, 1993

Action taken for Non-Compliance

Each incident will be dealt with following an assessment of the individual circumstances and the type of action taken will be proportionate to the severity of the breach.

Compliance Options	Example Scenario
Warning	<ul style="list-style-type: none"> • An impounded animal returned home or to its owner • Minor articles left unattended, such as A-Frame and real estate directional signs
Penalty Notice Action Plan	<ul style="list-style-type: none"> • An abandoned motor vehicle that has been impounded • An impounded animal taken to Council's holding facility • An impounded article (Class 2 item) such as a shopping trolley not collected within risk based time frames