

Name of policy:	Compliance and Enforcement		
Adoption by Council:	26 October 2022	Minute number:	415/2022
Last review date:	October 2022		
Review timeframe:	4 years		
Next scheduled review date:	October 2026		
Related legislation:	• <i>Biodiversity Conservation Act 2016</i> • <i>Boarding Houses Act 2012 & Regulations</i> • <i>Building Professionals Act 2005 & Regulations</i> • <i>Companion Animals Act 1998 & Regulations</i> • <i>Contaminated Land Management Act 1997</i> • <i>Crown Lands Act 1989</i> • <i>Environmental Planning & Assessment Act 1979 & Regulations</i> • <i>Evidence Act 1995</i> • <i>Fines Act 1996 & Regulations</i> • <i>Food Act 2003 & Regulations</i> • <i>Graffiti Control Act 2008 & Regulations</i> • <i>Impounding Act 1993 & Regulations</i> • <i>Liquor Act 2007 & Regulations</i> • <i>Land & Environment Court Act 1979</i> • <i>Local Government Act 1993 & Regulations</i> • <i>Protection of the Environment Operations Act 1997 & Regulations</i> • <i>Public Health Act 2010 & Regulations</i> • <i>Recreational Vehicle Act 1983</i> • <i>Roads Act 1993 & Regulations</i>		

	• <i>Roads Transport Act 2013 & Regulations</i> • <i>Road Rules 2014</i> • <i>Rural Fires Act 1997</i> • <i>Swimming Pools Act 1992 & Regulations</i> • <i>Waste Avoidance and Resource Recovery Act 2001 & Regulations</i>
Associated policies/documents:	• MidCoast Council Compliance and Enforcement Guideline • Code of Conduct • MidCoast Council Complaints Handling Policy & Procedure • MidCoast Council Abandoned Vehicles & Vessels Policy • MidCoast Council Barking Dogs (Animal Noise) Policy • MidCoast Council Caravan Parks for Long Term Residence Policy • Contaminated Land Policy • Legislative Compliance Policy • Markets Policy • Temporary Accommodation Policy • Vehicles on Beaches Policy
Responsible division:	Liveable Communities

Policy objective

The policy objective is to:

- Ensure that Council's regulatory functions are applied consistently, without bias, and in accordance with legislation;
- Assist Council's officers to respond consistently and effectively to complaints of unlawful activity, and undertake proactive investigation of the unlawful activity;
- Provide a mechanism to receive and review appeals / representations;
- Provide information for all stakeholders about Council's position in relation to compliance and enforcement with the relevant legislation;
- Ensure that Council's officers apply their discretion in relation to responding to any unlawful activity in an appropriate manner, including allocation of any resources.

Policy statement

This policy applies to the management and investigation of unlawful activity, and any enforcement action required in relation to the unlawful activity, within the MidCoast Council Local Government Area.

The unlawful activity this policy applies is where Council is the regulatory authority and includes (but not limited to) development, environmental harm, food safety, public health, parking, abandoned articles and companion animals.

It is intended that the principles in this policy will have a general application. It is noted there may be cases where a different approach is required.

Specific MidCoast Compliance & Enforcement Operational Guidelines have been developed to inform and assist Council staff in implementing this policy.

An internal Compliance and Enforcement Review Panel (CERP) has been established to review all appeals / representations. The CERP Charter is attached as Appendix A to this policy.

All reviews of appeals / representations will be undertaken by the CERP to ensure openness, transparency, balance and consistency.

Appeals / representations can be received by Council in two ways:

1. Directly to Council

Through an internal review of any enforceable Notice, Direction or Order issued by Council. Internal review will be conducted after receipt of a written application or representation in relation to any such enforceable instrument.

2. Through Revenue NSW

All appeals / representations in relation to a Penalty Notice issued by Council, must be made directly to the Revenue NSW who will forward the request to Council. Once the review has been completed a response will be provided by Council to Revenue NSW.

Coverage of the policy

Council staff who manage unlawful activities are responsible for implementing this policy.

Strategic Plan link

This Policy is directly linked to Community Strategic Plan 2022 – 2032 Outcomes 1 and 2.

Community Outcome 1: A Resilient and Socially Connected Community

1.4 We protect the health and safety of our communities.

1.4.1 Uphold public health and safety standards and increase the capacity of our community to understand and meet them

Community Outcome 2: An Integrated and Considered Approach to Managing Our Natural and Built Environments

2.1 We protect, manage and restore our natural environment and our biodiversity

2.1.1 Protect, maintain and rehabilitate natural areas

Policy content

In meeting its compliance objectives, Council will:

- Act in the public interest.
- Act consistently, impartially and fairly according to law and in accordance with Council's Code of Conduct, policies and procedures.
- Act in accordance with the MidCoast Compliance & Enforcement Operational Guidelines endorsed by this policy.
- Organise Compliance and Enforcement Review Panel (CERP) meetings to review and determine any appeals / representations.
- Manage and prioritise reports of non-compliance consistently and not discriminate based on race, religion, sex, position, national origin or political association.
- Provide a level of customer service within Council's resources.
- Focus on environmental and public health benefits and outcomes.
- Actively pursue partnerships with industry, the community and other government agencies which facilitate beneficial outcomes the community.
- Ensure a risk-based approach in accordance with Council's Risk Management Framework.

Definitions

Appeal / representation	A request for an enforcement matter to be reviewed
Breach	To break or act contrary to a law
Compliance	The act of conforming with a law
Complaint about service	Is an expression of dissatisfaction made about Council services, staff or the handling of a customer service request. For the purposes of this policy, a complaint does not include: • 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.
Council	MidCoast Council

Enforcement	Actions taken in response to the contravention of law.
Estoppel	Impediment preventing a party from asserting a fact or a claim inconsistent with a position he or she previously took, either by conduct or words, especially where a representation has been relied or acted upon by others.
Internal review	A review undertaken by a Coordinator or supervising officer
Non-compliance	Failure or refusal to comply with a law
Penalty Notice (PN)	A penalty or fine, also known as an “on the spot fine” issued in lieu of prosecution for an offence and in accordance with the New South Wales Self Enforcing Infringement Notice (SEIN) System
Regulation	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.
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.
Representation	See Appeal / representation above
Unlawful activity	Any activity, work or behaviour that has been or is being carried out contrary to any relevant legislation.

Attachments

Appendix A – Compliance & Enforcement Charter

Responsible officer (position)

Manager Major Assessment and Regulatory Services

Compliance & Enforcement Review Panel (CERP)

Overview

The Compliance & Enforcement Review Panel (CERP) has been established to ensure openness, transparency, balance and consistency in reviewing compliance and enforcement matters.

The CERP will review and make determinations on appeals / representations that have been made directly to Council or referred to Council by Revenue NSW in relation to Directions, Notices, Orders and Penalty Infringement Notice.

Structure

The CERP will consist of three (3) impartial and independent Council staff members.

From time to time additional advice may be sought at the discretion of the General Manager. The CERP may also seek specific legal advice on any matter before the panel. Any person providing advice to the CERP is not eligible to participate in the decision made by the panel.

Decisions made by the Panel are by majority vote.

The Panel will consist of the following:

Panel Member	Alternate
Manager Governance	Governance Coordinator
Manager Major Assessments & Regulatory Services	Manager Building & Environmental Health Services
Executive Manager Liveability and Sustainable Development	Executive Manager Community Spaces
Secretary Function	Secretary Alternate
Senior Administration Assistant Compliance Team	Executive Assistant Liveable Communities

- The CERP is considered a closed and confidential meeting.
- CERP is to meet fortnightly (if required) to review any appeals / representations received.
- The first meeting of each quarter will undertake a review of all Penalty Infringement Notice's commenced by Officers but voided before being issued.
- Out of session meetings may be required depending if any matters are received that require an immediate determination.
- Meetings can be held face to face, by Zoom / Teams or electronically (if out of session).
- Determinations and any decisions of the CERP is by consensus.

All members of the Panel are expected to:

- Have a high level of personal integrity and ethics, as well as acting honestly and in good faith
- Perform their duties in a manner that engenders public trust in the integrity, objectivity, and impartiality of the Panel

- Comply with this Charter
- Have strong interpersonal skills
- Broadly be aware of and understand the relevant legislative and regulatory requirements appropriate to MidCoast Council
- Apply good analytical skills, objectivity and with good judgment
- Express opinions frankly and ask questions that go to the fundamental core of issues

Functions

The functions of the CERP are to:

- To undertake a review of appeals / representations made to Council regarding the issuing of enforceable Directions, Notices and Orders issued under the relevant Acts & Regulations made thereunder where permissible.
- Make determinations on appeals / representations on enforceable Directions, Notices and Orders issued under the relevant Acts & Regulations.
- To undertake a review of representation made to Revenue NSW, that have been referred to Council by Revenue NSW, in response to Penalty Infringement Notice's issued by Council;
- Make reviews / determinations on Penalty Infringement Notice's issued by Council (irrespective of their amount). Determinations available to the CERP include:
 - cancelling the Penalty Infringement Notice
 - cancelling the Penalty Infringement Notice and issuing a formal caution
 - requiring the Penalty Infringement Notice to stand
 - seeking additional or clarifying information
- Undertake a review of all Penalty Infringement Notice's commenced by Officers but voided before being issued.
- Provide advice to the relevant Manager in relation to regulatory matters as required.

Considerations

In undertaking the functions of the CERP consideration should be given to:

- Council's Compliance and Enforcement Policy
- MidCoast Compliance & Enforcement Operational Guideline
- Was the Direction, Notice, Order or Penalty Infringement Notice lawfully issued?
- Are there any reasonable mitigating or aggravating factors to consider?
- Did the Issuing Officer act professionally, lawfully and in accordance with Council policies and standard procedures?
- Does the evidence obtained establish clearly that the offence is proven?
- Any legal advice received by Council.

Governance

Meetings of the CERP

The Panel is bound by Council's adopted Code of Conduct. All Panel meetings must be run fairly, and the procedures used should improve decision making and not be used for personal or political advantage. All matters should be considered consistently, fairly, promptly, and on their individual merits.

Privacy and Confidentiality

The Panel will comply with Council policies and the Act in relation to confidentiality, privacy and reporting. Members of the Panel will not disclose matters dealt with by the CERP to third parties except with the express approval of the Panel. Members are to declare any potential

conflict of interest that may arise in the considerations of the CERP and physically remove themselves from any relevant discussions. A conflict of interest exists where a reasonable and informed person would perceive that members of the Panel could be influenced by a private interest when carrying out their public duty. All members of the Panel must avoid or appropriately manage any conflict of interests. The onus is on members of the Panel to identify a conflict of interest and take the appropriate action to manage the conflict in favour of their public duty. All members of the Panel must comply with Council's Code of Conduct at all times.

Quorum

A quorum of the CERP is three members.

Reporting

Quarterly updates and outcomes from CERP meetings are to be provided to the General Manager.

Record keeping

The secretary is responsible for keeping an accurate record of the meeting, including any outcomes of the meeting.

The CERP must ensure that full and accurate notes of the meetings are kept. In particular, the secretary is to ensure that the following matters (at a minimum) are recorded in the notes and kept in Council's electronic document management system (ECM):

- date and time of meetings, attendees and any apologies
- the endorsement (or otherwise) of the notes from the previous meeting
- whether there was business arising from previous notes
- notation of reports, correspondence or reviews
- CERP recommendations
- items of general business

Notes of the CERP meetings to be maintained in accordance with Council's Record Management requirements.

Media and Public Comment

All public comments and any statements to the media representing MidCoast Council must be approved by the General Manager.

Administration

Appeals / representations received directly to Council and from Revenue NSW will be documented and collated by the Secretary ahead of each meeting for distribution to Panel members.

Meeting notes

Determinations and decisions will be documented by the secretary and distributed to the relevant Manager or Coordinator for action.

Review

This Charter is to be reviewed in conjunction with the Compliance & Enforcement Policy. The review will be undertaken by the Panel, in consultation with the Policy Working Group and General Manager.