

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:	<ul style="list-style-type: none"> • <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> 		

	<ul style="list-style-type: none"> • <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:	<ul style="list-style-type: none"> • 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	<p>Is an expression of dissatisfaction made about Council services, staff or the handling of a customer service request.</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.
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