



Randwick City
Council
a sense of community

Enforcement Policy & Guidelines

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1. Introduction

This policy provides information for internal and external stakeholders and interested parties about Council's regulatory, compliance and enforcement activities.

The purpose of the policy is to provide for consistency and transparency in decision making, and to facilitate a proportional approach to compliance and enforcement. The policy is also intended to assist Council staff to act promptly, effectively and consistently in response to concerns about unauthorised activities and offences.

The policy outlines the process and matters to be considered, from receipt of the allegation or matter through to enforcement action.

Randwick City Council also 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.

2. Policy Objectives

The intent of this policy is to establish clear guidelines for Council staff in the management of Council's regulatory activities and implementation of enforcement action.

This policy provides workable guidelines on:

- The investigation of customer action requests relating to regulatory matters.
- Options for dealing with unlawful activities and regulatory breaches
- Matters for consideration in regulatory matters
- Deciding whether enforcement action is warranted
- Taking appropriate regulatory action in a particular matter.

The policy also provides advice and guidance on the role of (private-sector) Accredited Certifiers in the enforcement process.

3. Application of the Policy

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

- Building and development control
- Air, noise and water pollution
- Fire safety
- Food safety
- Public health and safety
- Control over animals
- Roads, footpaths, parks and reserves

- Tree preservation
- Waste disposal and littering

4. Relevant Legislation

This policy applies in relation to compliance and enforcement of all Acts administered by Council, including the following Acts and their associated Regulations, Standards and Rules:

- Local Government Act 1993
- Environmental Planning and Assessment Act 1979
- Food Act 2003
- Protection of the Environment Operations Act 1997
- Public Health Act 2010
- Boarding Houses Act 2012
- Swimming Pools Act 1992
- Liquor Act 2007
- Companion Animals Act 1998
- Roads Act 1993
- Road Transport Act 2013
- Impounding Act 1993 & Regulations
- Fisheries Management Act 1994
- Crown Lands Act 1989
- Noxious Weeds Act 1993

5. Responsibility

All Council staff who deal with reports about alleged unauthorised activities and regulatory matters are responsible for implementing this policy and a range of staff are authorised by Council's General Manager to undertake these functions, including Council's Environmental Health Officers, Building Surveyors, Compliance Officers, Rangers, Parking Officers and other Authorised Officers.

6. Investigation of Alleged Offences and Breaches

Council receives information about alleged unauthorised activities or other regulatory requirements from members of the public, business operators, government agencies and information gathered by its officers during inspections.

All reports alleging unauthorised activities and regulatory breaches will be entered into Council's computerised data base and referred to the relevant team or officer for investigation and action.

Reports should include accurate and complete information about the alleged unauthorised activity or breach, together with details of the impacts or harm arising from the activity or breach.

Except in the case of urgent matters, reports or concerns relating to privately-owned premises should be provided in writing (wherever possible), to ensure that Council can carry out a full and proper investigation of the matter.

Council staff will:

- Investigate matters in accordance with relevant Acts, Regulations, Council policies and procedures
- Communicate with relevant parties and to advise of the outcome of an investigation or action to be taken
- Make proper records of the investigations and include reasons for decisions
- Provide information to the parties about the investigation, matters for consideration and relevant regulatory requirements
- Advise parties of any rights of review or appeal

Neighbour issues

Neighbours are encouraged to communicate with each other directly to resolve concerns relating to neighbourhood disputes and nuisances, prior to making any complaints to Council.

In most cases, neighbours will consider the concerns which have been raised and they will cooperate to address the issues or concerns.

The referral of a neighbourhood concern or dispute directly to the Council without first communicating with the person responsible for the matter directly may also cause unnecessary friction and affect long-term neighbourly relations.

Council is also unable to take action or intervene in neighbour disputes relating to the activities or behaviour of a neighbour or other matters which are of a private or civil nature e.g. dividing fence or retaining wall disputes, trespass or encroachments.

Prioritisation of investigations

Not all reports and allegations made to Council will require an investigation and a preliminary assessment will be undertaken to determine if an investigation is required and the priority for the investigation will be assessed accordingly.

Generally, reports relating to public and occupant safety and environmental harm will be prioritised accordingly, as detailed in the examples below:

Urgent

- Major pollution incident
- Immediate threat to public health or safety
- Food poisoning
- Asbestos incident
- Sewer blockage/leak
- Dog attack

High

- Building safety
- Fire safety
- Swimming pool safety
- Public health and safety
- Unauthorised development (significant impact or in progress)
- Food safety
- Lost or unleashed dog

Medium

- Construction site management
- Unauthorised development (general)
- Noise complaints (major)
- Air or water quality
- Tree removal
- Abandoned vehicles
- Roads, reserves & footpaths
- Stormwater drainage
- Animal control (general)
- Waste dumping

Low

- Animal nuisances
- Food labelling
- Unauthorised development (minor nature or historical)
- Overgrown vegetation
- Noxious weeds
- Noise complaints (minor)
- Health and amenity (minor)
- Waste storage
- Aesthetic issues
- Neighbour nuisances

Some investigations of alleged unauthorised activities or breaches may take some time to be completed, particularly where the issues are complex or where applications may be submitted to council for consideration.

It is also recognised that Council does not have unlimited resources to investigate and enforce all alleged unauthorised activities or breaches.

When prioritising and undertaking investigations, Council officers will take all relevant matters into consideration, including the extent and nature of the alleged breach or activity and the material impacts arising from the activity.

In some cases, the extent of investigation and enforcement action may be limited, due to the absence of sufficient evidence or resources required for lengthy or detailed investigations.

Reports which may not be investigated

All reports regarding alleged unlawful activities will be investigated, except where:

- Advice has been provided to relevant parties and no further investigation is necessary
- The activity is considered to be lawful without further investigation
- The matter has already been investigated and addressed to the satisfaction of the relevant Manager, Director or General Manager
- The report is not supported with sufficient details or evidence or it appears to have no substance
- Council is not the most appropriate authority and/or has no jurisdiction to take regulatory action in relation to the particular matter (i.e. matters under the jurisdiction of a State authority such as WorkCover NSW, the NSW Environmental Protection Authority, NSW Office of Fair Trading or Building Professionals Board)
- The matter principally relates to a private dispute or nuisance or serves to progress a private interest, which should be resolved directly between the parties or through mediation (i.e. via the Community Justice Centre or civil proceedings)
- The matter may be resolved via alternative dispute resolution processes i.e. a strata by-law matter which may be resolved between the parties or through the NSW Civil and Administrative Tribunal (NCAT)
- The complaint is considered to be trivial, frivolous, vexatious or of a retaliatory nature
- The relevant Manager, Director or General Manager has determined that investigation and/or regulatory action is not warranted (i.e. the extent or nature of the investigation requested would have an unreasonable impact upon the effective allocation of Council's resources or the investigation or taking of regulatory action would be unreasonable or not in the public interest).

Council must consider a range of factors when determining whether the particular matter will warrant further investigation, but if a decision is made not to investigate or act upon a complaint or matter, the decision must be recorded with clear reasons why. The customer must be advised of the decision and the reasons for not taking further action.

Alleged unlawful activities outside business hours

Council may receive reports about alleged unauthorised activities or breaches which are occurring outside of business hours and on weekends (e.g. alleged failure to comply with conditions relating to operating hours or use of plant or equipment). Due to operational and resource constraints investigations outside of business hours will be limited and based on an assessment of the risk of harm to public health, safety, the environment and public interest.

Anonymous reports

Anonymous reports will be recorded and assessed in accordance with this policy. However, because it is not possible to seek clarification or additional information about a matter, it may be more difficult to evaluate the allegations or impacts, obtain evidence of a breach or take enforcement action.

Confidentiality

Council officers will not advise parties of the person making a report about an alleged unauthorised activity or breach. However, the identity of the person may be apparent, due to the nature and location of the matter being investigated. The identity of the person making the report may be disclosed in the following cases:

- The identity has already been disclosed to the subject of the report directly
- The identity has already been disclosed in a publicly available document or report
- The disclosure has been made after determination of an application made under the *Government Information (Public Access) Act 2009*
- The individual consents to their identity being disclosed
- The disclosure is required to comply with principles of procedural fairness
- The disclosure is necessary to properly investigate the matter
- The matter is the subject of a Subpoena or Court proceedings.

Complaints about Council staff or actions

Any complaints about Council staff or the handling of reports or investigations will be recorded and handled separately, in accordance with Council's Complaints Handling Policy and Code of Conduct.

7. Options and Enforcement

Following an investigation, there are a range of possible options available for Council to deal with a particular matter, depending on the nature and extent of the alleged offence or breach, relevant legislative provisions, circumstances of the case and the preferred outcome.

Enforcement options may include:

- Take no further action due to the lack of evidence of an offence or breach
- Take no further action having regard to the minor nature of the offence or breach and/or the circumstances of the case
- Counsel the person investigated to educate them on the relevant Council or regulatory requirements
- Referring parties to the Community Justice Centre (CJC) for mediation (i.e. in instances

where it is considered that mediation would be more appropriate to resolve a particular matter rather than taking enforcement action)

- Issue a warning and advise the person that any further breaches may result in possible regulatory action or penalties
- Direct the person, or issue a letter requiring the person, to; cease specified activities; carry out specified works; provide specified information, documentation or certification; or obtain necessary approvals, within a specified timeframe
- Consult and negotiate with the parties and/or obtain undertakings, to achieve a reasonable outcome and resolution of a particular matter
- Issue a formal *Notice of Intention* to serve an *Order* under relevant legislation, which allows the person to make representations to Council, prior to determining any appropriate action
- Issue a formal Order or Notice under relevant legislation, requiring specified work to be undertaken or, to cease specified activities or, to provide specified documentation, certification or the like to Council
- Issue a formal 'caution' for the offence or breach
- Issue a Penalty Notice (on-the-spot fine) for the offence or breach
- Take legal proceedings for the offence or breach (i.e. Local Court or Land & Environment Court)
- Take civil enforcement proceedings to obtain a Court Order or Injunction (i.e. to remedy or restrain a breach of relevant legislative provisions)
- Council may carry out the works specified in a Council Order under relevant legislation, at the expense of the person served with the Order.

The appropriate course of action will depend upon a number of factors including; the evidence available; the nature, extent and impact of the offence or breach; the circumstances of the case and the public interest.

Further details on the use of discretion by regulatory authorities can be found in the Enforcement Guidelines for Councils published by the NSW Ombudsman and the NSW Department of Planning Practice Note – Exercising Discretion.

8. Determining Appropriate Action and Enforcement

Council is not required to take enforcement action in the case of every unauthorised activity or breach. Council has discretion to determine whether or not enforcement action should be taken in relation to a particular matter. The level of enforcement action should be proportionate to the level of risk and seriousness of the breach, with more severe breaches attracting a more severe action.

Enforcement action should:

- Aim to change the behaviour of the offender
- Aim to eliminate any financial gain or benefit from the offence
- Be responsive and consider what is appropriate for the particular offender and issue
- Be proportionate to the nature of the offence and level of harm caused
- Aim to rectify or minimise the harm where appropriate
- Aim to deter future non-compliance

A range of matters may be taken into consideration when determining the appropriate course of action and enforcement of a regulatory matter, including:

- 1) The nature, extent and severity of the offence or breach
- 2) The impact or potential impact of the offence or breach upon the natural or built environment
- 3) The impact or potential impact of the offence or breach upon the health, safety and amenity of the locality and community
- 4) Whether or not the breach is of a technical, inconsequential or minor nature
- 5) Whether or not Council is legally *estopped* from taking action
- 6) The time period that has lapsed since the date of the offence or breach
- 7) Whether or not the breach has been remedied or rectified
- 8) Whether or not an informal warning, a formal caution or provision of education would be appropriate in the circumstances
- 9) Whether or not the particular matter satisfies relevant regulations, standards and requirements (i.e. Building Code of Australia)
- 10) Whether or not the person has demonstrated genuine mitigating circumstances, hardship or contrition
- 11) Whether or not the person has been proactive in the resolution of the matter and assisted with any Council requirements and instructions
- 12) Whether or not a relevant development consent has been obtained or sought for the particular matter (i.e. a variation to a development consent)
- 13) The extent, level and nature of the matter and comparison with other provisions and criteria (e.g. comparison of unauthorised development against relevant or similar provisions for exempt or complying development)

- 14) Whether or not any previous warnings, instructions or advice was provided which has not been followed
- 15) Whether or not it is likely that consent would have been issued for the particular matter if consent had been sought
- 16) Whether or not any modifications or works have or will be carried out to reasonable address or minimise potential impacts of the particular matter (i.e. removal of part of unauthorised works having the greatest impacts)
- 17) Whether or not it was likely that the person was aware or should have been aware of the relevant regulatory provisions and requirements
- 18) Whether or not the action would be reasonable and proportionate in the particular case
- 19) Whether or not there are available alternative disputes resolution options, including the availability of options to resolve the matter that do not require the involvement of Council (e.g. resolution of disputes relating to building work, or tenancy matters and strata by-laws, which can be determined and resolved by the NSW Civil and Administrative Tribunal (NCAT))
- 20) Whether or not the Council has sufficient admissible evidence to prove each element of the offence or breach
- 21) The likely chances of success if the enforcement action was challenged in Court and relevant 'case-law'
- 22) The costs and benefits of further investigating a particular matter, taking enforcement action or implementing proceedings (i.e. resources and cost of lengthy investigations or enforcement action would be excessive and/or outweigh the likely benefits or outcomes)
- 23) The circumstances of the particular case
- 24) The public interest

Further details on the matters to be taken into consideration when deciding whether or not to take enforcement action are provided in *Annexure 1*.

Examples of the key options available and possible courses of action for a number of regulatory scenarios are provided in *Annexure 2*.

9. Legislative Provisions and Requirements

Specific provisions are contained within each piece of legislation relating to the appointment of

Authorised Officers, Powers of Entry, Inspections & Investigations, Search Warrants, Issuing of Notices & Orders, Issuing Penalty Infringement Notices, Legal Proceedings, Appeals, Court Orders, Penalties, Compensation and other associated activities.

Specific provisions are also contained in most legislation to restrict Authorised Officers' access to residential premises, unless permission has been obtained accordingly or the inspection relates to a current approval or Council has obtained a Search Warrant.

Although Councils are provided with a range of Acts and Regulations, to regulate and enforce, the provisions are, in most cases, very specific and action may only be taken if certain matters or circumstances are evident and can be demonstrated by the Authorised Council Officer.

The Acts and Regulations do not provide Council with unfettered powers to take action in matters which are not specifically provided for in the legislation (e.g. actions or behaviour of parties and neighbour nuisances).

Council officers are required to be duly authorised and carry out their regulatory functions fully in accordance with these provisions. Failure to do so may affect any potential proceedings or appeal and could result in a determination against Council or possible compensation.

10. Offences

Specific provisions for offences are contained within relevant legislation. Offences include:

- Failure to comply with a particular requirement of an Act or Regulation which Council has jurisdiction (i.e. a provision of the Environmental Planning and Assessment Act, Local Government Act, Protection of the Environment Operations Act, Food Act or Roads Act etc)
- Failure to obtain development consent or a construction certificate for development and building work (where required)
- Failure to comply with the conditions of a development consent or other approval (i.e. carrying out development contrary to a condition of consent)
- Failure to comply with the terms of a Council Order or Notice
- Failure to provide specified documentation or certification to Council by a specified date (e.g. Annual Fire Safety Statement)
- Parking or driving a vehicle contrary to the Road Transport Regulation - Australian Roads Rules

- Failure to register a companion animal or comply with various animal control provisions under the Companion Animals Act
- Failure to comply with the terms of a Notice (a sign) provided by Council in a public place (e.g. a park, reserve or beach)
- Failure to comply with a lawful direction or Order given by an authorised Council officer

Prior to taking enforcement action, Council must have sufficient evidence of the offence and persons responsible for the offence or breach. It is important to note that most offences whereby Council is the prosecuting authority attract criminal sanctions. Therefore, Council must be able to prove the particular offence 'beyond reasonable doubt'. Whereas, in the 'civil jurisdiction' (e.g. Land & Environment Court class 4 proceedings), the level of proof is based on the 'balance of probability', which is less onerous than that in the criminal jurisdiction.

11. Notices of Intention to Serve an Order

Most of the legislation administered by Councils contain provisions requiring Council to issue a *Notice of Intention* prior to the service of a formal Order (except in the case of an emergency). A Notice of Intention must contain specific information and it, in effect, provides the person with the opportunity to make representations to Council, to demonstrate why Council should not issue a formal Order or commence proceedings or take other regulatory action.

This process follows the principles of procedural fairness. However, at times, it may also have the effect of prolonging the effective resolution of a particular matter.

Representations may be made by the recipient or the recipient's legal representative or agent and any representations are required to be made in writing to ensure that all correspondence are appropriately recorded and considered.

Any representations made within the specified timeframe are required to be considered by Council prior to determining the appropriate course of action.

Statistically, in the majority of cases, matters are often addressed or resolved to an acceptable level during the Notice of Intention and Representations stages and it may not be necessary to serve a formal Order (i.e. development consent has been obtained in relation to a previously unauthorised use of a premises or by the person carrying out certain works).

12. Orders

Council may issue an *Order* (Notice or Direction depending on the legislation) directing a person to cease a particular activity or, to carry out specified works or, to provide specified information, documentation or the like, within a specified timeframe.

The legislation contains specific provisions relating to the service of Orders, which must be strictly followed. Council is also only able to issue an Order directing a person to do the matters specified in the legislation.

It is an offence to fail to comply with an Order and the relevant legislation generally contains provisions for the implementation of legal proceedings, penalties and in some cases, the issuing of penalty infringements for the offence.

13. Appeals against an Order

The relevant legislation contains provisions by which a person may lodge a formal Appeal against an Order in the Land & Environment Court within a specified timeframe (generally this period is 28 days from the date the Order has been served).

Appeals are required to be considered on the merits of the case and the legality and scope of the Order. Concerns relating to any initial offence (e.g. the undertaking of unauthorised work) are not relevant matters for consideration by the Court as separate provisions are available for criminal sanctions in relation to any initial offence. Therefore, detailed consideration must be given to the possible service of any Orders and the likely outcome in the event of an Appeal.

For example, a Notice of Intention and/or a Penalty Infringement Notice may be issued in relation to a particular breach (e.g. an unauthorised structure). However, following the consideration of the persons representations, provision of information and certain works being undertaken, it may not be appropriate to proceed to serve an Order, having assessed the impacts upon the locality, compliance with relevant planning instruments and regulatory standards, as the likelihood of successfully defending the issue of a demolition order in Court may be minimal.

14. Court Directions & Procedures

Councils are required to observe any relevant Court directions and procedures when implementing regulatory action. For example, the Land & Environment Court has issued a direction which, in most cases, precludes Councils from seeking to

enforce an Order or take other enforcement action, whilst a matter (e.g. development application relating to the same matter) is undetermined. In such cases, any proposed enforcement action would generally need to be held in abeyance and reviewed upon determination of the particular application.

15. Penalty Notices

A number of the Acts and Regulations which Council administer provide the ability for Council officers to issue Penalty Notices for certain offences. The Penalty Notice system was introduced to provide an effective and efficient means to deal with those offences which are generally not serious enough to warrant instituting Court proceedings.

A Penalty Notice may be served if it is evident that an offence has been committed, but payment of the fine does not result in the recording of a criminal conviction. Non-payment of the fine is not dealt with by way of criminal sanctions, but is recoverable as a civil debt. However, a person may elect to have the matter heard in proceedings in the criminal jurisdiction of the Local Court.

Penalty notices may be issued by designated authorised officers under the relevant legislation. In many instances, authorised officers are not only Council officers, but include officers from other agencies such as the Police, Roads & Maritime Services, Environment Protection Authority and Building Professionals Board.

Penalty notices are generally most appropriate where:

- the breach is minor,
- the facts are apparently indisputable,
- the penalty is proportionate and appropriate for the particular offence or breach;
- the breach is a one-off situation that can be remedied easily, and
- the issue of a penalty notice is likely to be a practical and viable deterrent.

It may not be appropriate to issue penalty notices where:

- the breach is on-going,
- the penalty prescribed in the penalty notice would be clearly inadequate for the severity of the offence,
- the extent of impact or the harm to the environment or locality cannot be assessed immediately,
- the evidence may be insufficient or controversial and the matter may be unlikely to succeed in the event of a Court hearing,
- a significant period of time has elapsed since the alleged breach,
- negotiations to find a resolution to the problem which is the subject of the breach are being conducted,

- a direction has been issued to perform specified work (i.e. via a Notice of Intention to serve an Order) within a timeframe and the time limit for such performance has not expired,
- multiple breaches have occurred.

Penalty Notices are generally most suitable for immediate and straight-forward offences or breaches, to uphold the objectives of the relevant regulatory requirements and to act as a deterrent against further similar breaches, including:

- Public place offences
- Roads, traffic and parking offences
- Waste and littering offences
- Failure to comply with public notices
- Certain animal control offences
- Low-impact pollution incidents
- Minor fire safety offences
- Low-impact development control offences
- Essential Services certification offences

16. Penalty Notice Review

To ensure that Council manages the penalty notice process and enforcement action in a consistent, transparent, accountable and unbiased manner, any requests or representations seeking reconsideration or waiving of a penalty notice should be made directly to the NSW Office of State Debt Recovery.

The NSW Office of State Debt Recovery have in place specific guidelines (SDRO Review Guidelines), to assist and guide them when considering requests for the review of a penalty notice, in a consistent and transparent manner. As recommended by the NSW Ombudsman.

When reviewing a penalty notice, the Office of State Debt Recovery may seek further information or refer the representations regarding the issue of the penalty notice to the Council for comment and advice.

Where representations seeking reconsideration or waiving of a penalty notice, are made to Council via the Office of State Debt recovery or directly, the General Manager's delegate will have due regard to upholding the integrity of the Council's regulatory and enforcement functions.

Council will generally not support the waiving of a penalty infringement notice unless:

- it is evident that an error has been made in the issuing of the penalty notice, or
- documentary evidence is provided from a registered Health Practitioner that the offence occurred due to the result of a medical emergency or incident, or
- the extent of evidence or circumstances may affect the successful prosecution of the offence the subject of the penalty notice in the event of a Court hearing or appeal, or

- it is evident that Council has acted unreasonably or inappropriately in the issuing of the penalty notice, or
- after consideration of legal advice or the exceptional circumstances of the case and it considered appropriate to do so.

Where representations are made to the NSW Office of State Debt Recovery seeking reconsideration or waiving of a penalty notice, the decision to waive a penalty notice is a matter for the NSW Office of State Debt Recovery alone. In some cases, the Office of State Debt Recover may consult with Council prior to making a determination.

Penalty Notice – Caution Guidelines

In certain circumstances it may be appropriate that Council instead of issuing a penalty notice gives an official *Caution* to an offender.

Council may give an official Caution for minor or inconsequential breaches or in other exceptional circumstances (e.g. in circumstances where there has been no environmental impact or harm and there are no safety concerns or material impact upon the community).

An official Caution should be given by Council's authorised officer in accordance with the Caution Guidelines approved by the NSW Attorney General.

It is generally not appropriate to issue an official caution for parking offences to ensure that the objectives and requirements of the Australian Road Rules are maintained and upheld in a consistent, accountable and transparent manner, except in exceptional circumstances (e.g. medical or health reasons) or in relation to inconsequential or trivial matters.

17. Follow-Up Of Regulatory Action

Council's investigating officers will follow up enforcement matters to determine compliance with Council's directions, Notices and Orders, to an acceptable level. If Council's Notices and Orders are not reasonably complied with, consideration will be given to taking further regulatory action, legal proceedings or penalties, having regard to the matters for consideration in this Policy and Council's standard procedures.

18. Education And Awareness

Council aims to take a proactive approach in preventing unauthorised development and other activities or breaches, including the provision of

information to the public and applicants about planning and building requirements, conditions and regulatory requirements to be satisfied.

Council provides information to raise awareness and educate the community about compliance, enforcement and regulatory requirements.

Council's website contains a significant amount of information in relation to relevant approval requirements and environmental health, building and development regulatory matters and provisions.

Council also recognises that advice, negotiation and mediation may achieve compliance or a reasonable solution for the parties without the need to take enforcement action in certain circumstances.

19. Certification of Development

The 'certification' of development in NSW is carried out by building certifiers known as Accredited Certifiers and Principal Certifying Authorities. Accredited Certifiers and Principal Certifying Authorities can be private certifiers or Council certifiers. The NSW Building Professionals Board is the statutory authority that administers building certifiers under the *Building Professionals Act 2005*.

Construction Certificates, Compliance Certificates, Subdivision Certificates and Occupation Certificate (collectively known as Part 4A Certificates) and Complying Development Certificates are determined and issued by an Accredited Certifier or a Principal Certifying Authority appointed for a particular development.

Part 4A Certificates, including Construction Certificates and Complying Development Certificates (whether issued by a council certifier or a private certifier) are statutory Certificates. Council has no power to revoke or amend a Part 4A Certificate or a Complying Development Certificate. These types of certificates may only be declared "invalid" by the Land and Environment Court of NSW as a result of judicial review proceedings.

The NSW Building Professionals Board (BPB) is the responsible authority to investigate complaints about all Certifiers and the BPB also undertake proactive audits of Certifiers.

Accredited Certifiers must comply with the relevant requirements of the *Environmental Planning and Assessment Act 1979* and *Building Professionals Act 2005*. The Building Professionals Board (BPB) can take appropriate disciplinary action against Certifiers, if found to be in breach of relevant legislative provisions or the terms and conditions of their accreditation, including the BPB Code of Conduct.

Reports regarding alleged non-compliance should be referred directly to the appointed Certifier for investigation and appropriate action.

In the case of a non-compliance and depending on the nature and extent of the non-compliance, the Certifier would generally inform the owner or builder of the non-compliance and the action to be taken to address the matter. If the matter is not resolved within a given period or if the non-compliance is of substantial or sensitive nature, the Certifier may directly issue a *Notice of Intention to serve an Order* upon the owner or builder.

A *Notice of Intention to serve an Order* outlines the particular alleged breach or non-compliance and it advises the person (i.e. owner or builder) to make representations to Council, for consideration prior to Council determining the appropriate course of action in the matter.

The representations may provide reasons for the alleged breach or non-compliance and they may seek to demonstrate why Council should not take regulatory action in the matter (e.g. issue an Order and/or issue a penalty notice or commence legal proceedings for the offence). Council must consider representations made within the specified period, prior to determining whether or not to serve an Order (e.g. to remove unauthorised works or comply with a development consent requirement).

In most cases, reports regarding alleged non-compliance should be referred directly to the Certifier for appropriate action. Except in the case of an emergency or urgent matter, in which case, the report may also be provided to Council.

Generally speaking, matters relating to the construction of the development and compliance with the approved plans and conditions of consent should be referred directly to the Certifier for appropriate action. Matters relating to 'off-site' environmental or amenity impacts (e.g. pollution incident, working hours breach or public safety matter) may be referred directly to Council for investigation and prompt regulatory action may be able to be taken by a Council Ranger or Compliance Officer to address the matter.

The *Environmental Planning and Assessment Act 1979* and Regulation provides Certifiers with a degree of discretion in specified matters (e.g. to determine if a particular matter is not inconsistent with the development consent or condition of consent).

Council does not carry out any assessment of construction certificates, complying development certificates or other certificates issued by an accredited certifier and any enquiries or concerns regarding the certificates and development encompassed in the certificates must be referred directly to the certifier for assessment and response. All accredited certifiers are subject to the BPB Code

of Conduct and a complaint may be lodged with the BPB if the certifier is in breach of the Code or other regulatory provision.

Council is generally unable to take regulatory action in respect to development where a Council or Accredited Certifier has lawfully determined a Part 4A Certificate or a Complying Development Certificate or the Certifier has exercised lawful discretion in a particular matter.

20. Exempt & Complying Development

The scope and application of *exempt development* and *complying development* has been significantly expanded in the past few years, under various statutory planning instruments, including the NSW Codes SEPP.

Exempt development relates to specified minor development, building work and renovations which do not require any approval from Council or an Accredited Certifier, subject to compliance with specified limitations and requirements.

Exempt development does not require any notification to Council or any approval from Council. The owner or builder is responsible to ensure compliance with the relevant requirements in the planning instrument for exempt development.

If the relevant requirements are not satisfied, an authorised Council officer can investigate the matter and take any necessary appropriate regulatory action, having regard to the considerations detailed in this policy.

Regulatory action may however not be warranted if the works are generally in accordance with the relevant limitations and requirements outlined in the planning instrument and Building Code of Australia.

Council acknowledges that home-owners and business proprietors have the right to undertake exempt development in accordance with the requirements without undue interference by Council, and reasonable cause or evidence should be provided to Council to warrant investigation of work or development which may fall within this category of development.

Complying development relates to a wide range of development types (including new dwellings, alterations and additions to dwellings, granny flats, outbuildings, swimming pools, use of premises, alterations and additions to commercial and industrial development and other development). Complying development may be approved by a Council or private-sector Accredited Certifier and if the pre-determined prescriptive criteria is satisfied, it must be approved.

It is the role and responsibility of the appointed Certifying Authority (Council or private-sector Accredited Certifier) to ensure that *complying development* meets all of the prescriptive requirements before issuing a Complying Development Certificate. The certifier is also required to undertake relevant inspections and check compliance with the Complying Development Certificate including conditions of the Complying Development Certificate, before issuing an Occupation Certificate.

Councils do not have any authority to review or change the determination of a Complying Development Certificate and the validity of a Complying Development Certificate may only be challenged in the Land & Environment Court.

It is the role and responsibility of the Building Professionals Board (BPB) to investigate the conduct and complaints relating to Council and private-sector Accredited Certifiers. Under the *Building Professionals Act 2005* the BPB has the ability to take appropriate regulatory action against a Certifier if found guilty of an offence or breach of the BPB Code of Conduct or Accreditation Scheme, including the issue of fines, education training and cancellation of accreditation.

Any queries and concerns relating to complying development should be referred directly to the relevant Certifier and the Certifier has an obligation to investigate the matter and to take appropriate action.

If the development is not being carried out in accordance with the Complying Development Certificate, the Certifier may issue a notice of intention to serve an order. A copy of which is forwarded to Council for assessment and any necessary regulatory action.

21. Parking Offences

Whilst the enforcement of parking offences can, at times, cause concerns to drivers, residents and businesses, it is important to consider the rationale and importance of the road rules and parking restrictions which apply.

The Australian Road Rules contain the relevant rules and restrictions relating to traffic, parking and the safe-use of our roads. The Rules are adopted throughout NSW under the *Road Transport Act 2013* and associated Regulations.

Council's authorised officers will implement regulatory enforcement of parking offences in accordance with the relevant legislation, Road Rules, and Council's policies and procedures in a professional, appropriate, consistent and accountable manner.

22. Neighbour And Private Disputes

Council encourages positive relationships between neighbours but recognises that disputes can occur for various reasons. In some circumstances people complain to Council about their neighbour's behaviour or actions without discussing the issue with their neighbour beforehand.

Many neighbour disputes relate to the noise, trees, fences, retaining walls, nuisances, trespass, pets and work on or near property boundaries.

Neighbour disputes and nuisances are best resolved by neighbours engaging in constructive discussion and implementation of reasonable and amicable solutions. Involving Council in these types of disputes before attempting to resolve the issue with your neighbour may also be counter-productive and detrimental to on-going neighbourly relations.

Before referring reports about neighbour issues to Council, reasonable efforts should be made to resolving the matter between the parties beforehand.

Council also has limited authority and resources and is unable to intervene in neighbour issues and disputes which:

- are related to the behaviour or actions of persons (e.g. rude or aggressive behaviour, trespass, vandalism or deliberate actions aimed at annoying or disturbing neighbours)
- are of a minor, trivial, infrequent or inconsequential nature
- principally related to a private nuisance or dispute between neighbours or other parties
- do not have a material impact upon other parties
- relate to 'tit-for-tat' neighbour complaints of a minor, technical or historical nature
- are able to be addressed through other dispute resolution processes (e.g. Strata by-law disputes or civil proceedings)
- may be resolved between the parties under other legislation (e.g. access to neighbouring lands, dividing fences, encroachments)
- would have an unreasonable impact upon Council's resources.

These matters should be resolved directly between the parties directly or through mediation or civil proceedings.

The NSW Community Justice Centre also provides mediation services to assist neighbours to resolve these types of disputes and Council encourages neighbours to attend mediation before contemplating any possible regulatory action.

Disputes relating to Strata developments and By-laws can be resolved directly through the Owners Corporation, relevant managing agent or NSW Civil and Administrative Tribunal (NCAT).

Disputes relating to dividing fences, retaining walls, encroachment of buildings or other work on or over property boundaries or damage to private properties should be resolved directly between the parties or via alternate dispute resolution processes, mediation and/or civil proceedings under relevant legislation (e.g. *Dividing Fences Act 1991*, *Access to Neighbouring Land Act 2000* and *Encroachment of Buildings Act 1922*).

Importantly, Council has no jurisdiction or power to address the alleged inappropriate behaviour or actions of a person. Concerns about anti-social, threatening, intimidating, offensive or criminal behaviour or trespass should be made directly to NSW Police.

23. Discretion

The taking of enforcement action by Council is a discretionary power. This means that, whilst Council is provided with the authority to enforce a law, this does not mean that there is legal obligation to do so, or at the insistence of a third party.

Council's decision whether or not to take regulatory action is determined, essentially, by the following criteria:

- there is sufficient evidence to prove that the offence has occurred and the person/s responsible for the offence
- it must be evident from the facts and the circumstances of the case, that the taking of regulatory action would be appropriate (having regard to the matters for consideration as outlined in this policy)
- the action is in the public interest.

When exercising discretion, Councils are obliged to:

- use discretionary powers in good faith, including for the intended and authorised purpose
- base their decisions on facts and findings supported by evidence, only relevant considerations and not irrelevant ones
- give proper, genuine and realistic consideration to the merits of the case, including weighing-up the importance of relevant factors
- exercise discretion independently and not under the dictation of a third party or body
- make decisions in accordance with relevant rules or policies but not inflexibly
- observe the basic rules of procedural fairness.

The decision to pursue regulatory action will also be made impartially and will not be influenced by any inappropriate reference to race, religion, sex, national origin or political association, nor will it be influenced by matters that are of a civil nature or a private dispute.

Council's regulatory powers will not be used to address matters that have been the subject of assessment under a statutory approval process.

24. Related Guidelines, Policies and Procedures

- Enforcement Guidelines for Council's - NSW Ombudsman
- NSW Department of Planning Practice Note - Exercising Discretion
- Health, Building & Regulatory Services, Business Rules and Standard Procedures
- Ranger Services, Business Rules and Standard Procedures
- Relevant Council Policies, procedures and lawful resolutions

This Policy is principally based on the Enforcement Guidelines for Councils, published by the Office of the NSW Ombudsman, December 2015.

Annexure 1

Examples of matters taken into consideration when determining appropriate regulatory action and enforcement

Considerations	Comments/Examples
1. Does Council have sufficient evidence to prove the alleged offence?	<p>To be able to implement any enforcement action, Council is required to possess sufficient evidence of the alleged offence (which can be substantiated in Court if required), including evidence of the person responsible for the offence to be successful in the event of a hearing or appeal.</p> <p>In some cases, it may be evident that an offence has been committed, however Council may not be able to prove in Court the identity of the person that committed the offence, or, the required evidence may not be readily obtained.</p>
2. Is the offence or breach of a technical or inconsequential nature?	<p>Consideration is to be given to the nature, extent and severity of the offence or breach and any material impacts upon the health, safety and amenity of the environment and community.</p> <p>Consideration should be given to the likely costs and benefits of any enforcement action where breaches are solely of a minor technical nature or having only minor material impacts upon any other party or the environment.</p>
3. How long has the unlawful activity or breach been occurring and is enforcement action statute barred?	<p>The legislation may provide time limits in which to commence proceedings or take enforcement action.</p> <p>In addition, consideration should be given to the time which the offence or breach occurred and the 'reasonableness' of taking enforcement action if a significant time has lapsed since the time of the offence or breach. For example, a breach may have been in existence for a number of years, without any concerns, but the matter may be reported to Council some years later, because of poor neighbourly relations or a change in land-owner. In such cases, it may be difficult to justify the taking of regulatory action.</p>
4. Is the matter subject to estoppel?	<p>Estoppel is a legal rule which prevents a person from later denying something which may have previously been relied upon by another person. For example Council may not be able to take action if Council has contributed in some way to the person acting upon a reasonable expectation that no action would be taken or if a matter had previously been brought to Council's attention and no action was taken at the time.</p>
5. Has the offence or breach affected the natural or built environment and/or amenity of the area?	<p>Consideration should be given to the nature and extent of any actual or potential impact that the breach has or may have upon the natural or built environment, or upon the amenity of the locality and community.</p>
6. Has the offence or breach affected or potentially affected the health, safety and well-being of the residents or community?	<p>Offences or breaches which affect, or potentially affect, the health, safety and well-being of the residents or community would generally warrant affirmative and effective enforcement and remedial action.</p>
7. Can the matter be resolved by seeking and obtaining the relevant approval from Council (i.e. development consent or a Section 96 amendment to an existing consent)?	<p>If the legislation enables the particular matter to be resolved by obtaining the relevant approval (i.e. a development consent or a Section 96 amendment to an existing development consent), it is generally appropriate to allow a reasonable period for the person to seek the necessary consent/s from Council, prior to taking any enforcement action, such as the service of possible orders to demolish unauthorised works or commencement of legal proceedings.</p>

Considerations	Comments/Examples
	<p>If the matter is the subject of an application under consideration by Council or the Court, it is in most cases, standard legal/court practice to hold enforcement action in abeyance pending determination of the application.</p> <p>Consideration should also be given to all other relevant factors, in particular, any current impacts upon the community and environment, which require the matter to be remedied expeditiously.</p> <p>If appropriate, having regard to the circumstances of the case, Council may still be able to issue a penalty infringement notice or commence legal proceedings for the initial offence or breach.</p>
<p>8. Has the relevant approval (i.e. development consent or section 96 amendments to the existing consent) already been obtained from Council in relation to the particular breach or offence?</p>	<p>If development consent (or Section 96 amendment to an existing consent) has been obtained from Council in relation to the particular matter, Council would not be able to issue further Notices or Orders in relation to the subject matter.</p> <p>Council may (if it has not already done so), issue a penalty infringement notice/s or implement legal proceedings for the initial offence or breach, following consideration of the circumstances of the case and the nature and severity of the offence.</p> <p>However, if consent has been obtained from Council in relation to a previous breach (i.e. a section 96 application) and the matter was of a minor nature, with minimal impact, consideration would need to be given to the likelihood of success and the likely outcome of any possible enforcement action or legal proceedings for the initial offence.</p>
<p>9. Could the non-compliance or breach be easily remedied by the person responsible?</p>	<p>Generally, where appropriate, Council will attempt to ensure compliance by informal means, however, there is a need to consider and balance the public interest in enforcing the law. Consideration is also to be given to whether or not it is possible to remedy a breach and at what cost.</p> <p>In some cases, upon being advised of the regulatory requirements or breach, the responsible person may be proactive and remedy the matter, rather than being subject to possible enforcement action.</p>
<p>10. Can the matter be reasonably resolved or addressed via negotiation and consultation.</p>	<p>The issue of notices and orders to undertake works or demolish unauthorised or non-complying building work requires serious and detailed consideration of various factors, including the extent, nature and impact of the breach or non-compliance and comparison with relevant building and planning requirements, together with the costs, practicalities and community benefits associated with such a direction.</p> <p>Consideration should also be given to the likelihood of successfully defending an appeal against the order in the Land & Environment Court.</p> <p>In some cases, it is appropriate, reasonable and practical to resolve to a reasonable and appropriate level by consulting and negotiating with the parties to achieve a reasonably acceptable outcome.</p>
<p>11. Does the unauthorised work or activity comply with relevant criteria and Standards?</p>	<p>Consideration should be given to compliance with relevant criteria and Standards (i.e. Building Code of Australia and fire safety requirements) and the extent and suitability of evidence provided to confirm compliance.</p> <p>If relevant criteria and Standards are not satisfied, appropriate and affirmative enforcement action may be</p>

Considerations	Comments/Examples
	warranted.
12. Has the breach or unauthorised activity detrimentally affected a heritage item or the heritage significance of the area?	Where applicable, relevant Council planning and heritage officers will be consulted in assessing the detriment to the natural or built environment and possible remedies.
13. What is the intent and importance of the regulatory requirements?	Regulatory requirements which aim to ensure the health, safety and well-being of the community are considered to be of paramount importance and any offences or breaches of this nature would generally warrant affirmative and effective enforcement action.
14. Have any previous warnings, instructions or advice been provided to the person, which have not been followed?	If the investigation reveals that previous instructions, advice or a warning has been provided in relation to the particular matter, which has not been followed or complied with, a more formal enforcement approach is generally appropriate for any offences which have occurred.
15. Is it likely that the person would generally have been aware, or should have been aware, of the relevant regulatory provisions, requirements or offence?	<p>When deciding whether to take an educative approach or enforcement approach, consideration should be given to the following matters:</p> <ul style="list-style-type: none"> ▪ the reasonable likelihood that the person may have known or should have known the relevant requirements or rules (i.e. it is reasonable to expect that a suitably qualified or experienced person e.g. licensed builder would be generally aware of the relevant approvals and regulatory obligations), ▪ level of contrition shown by the responsible person, ▪ whether the parties have previously been advised of the regulatory requirements or provisions, ▪ whether or not any previous warnings or instructions have been provided, ▪ the apparent level of intent shown by the responsible person.
16. Does the person or corporation exhibit contrition for the breach or offence?	In some cases, it will be appropriate to have regard to the behaviour of the offender and their willingness to remedy the breach or prevent a recurrence of the problem.
17. Is the particular requirement (i.e. condition of development consent) which has not been complied with, unreasonable, ambiguous or ultra vires?	A condition that is unreasonable, ambiguous or ultra vires may be unenforceable and may preclude Council from taking enforcement action or issuing Orders or the like.
18. Does the legislation provide for representations or submissions to be made in the matter?	<p>Certain legislation contains provisions for the person responsible to make representations to Council prior to Council taking certain enforcement action (i.e. service of an Order to do certain things), which must be considered on their merits.</p> <p>However, in most cases, the provisions do not provide for representations to be sought or made prior to taking enforcement action in relation to an offence or breach of the Act or regulations (i.e. failure to obtain or comply with a development consent or causing a pollution incident). A penalty notice may be issued or legal proceedings commenced in respect of a direct breach of the Act or Regulation, without the giving of any notice or warning.</p>
19. Would the enforcement action be in the public interest or is the matter related to a private interest or dispute?	<p>Councils should perform their official functions and duties, and exercise their regulatory powers, in ways that promote or preserve the public interest.</p> <p>Public interest relates to the effect or benefit on the community as a whole, rather than to individual or sectional</p>

Considerations	Comments/Examples
	<p>interests.</p> <p>Considerations include:</p> <ul style="list-style-type: none"> • Does the breach or unlawful activity affect the public interest (i.e. affect a number of people or the community as a whole), or does the breach primarily affect a private interest? • Would enforcement action be in the public interest or would it primarily benefit only a private interest? • Would enforcement action by Council impact unreasonably on certain parties or population groups (i.e. disadvantaged or elderly residents)? • Are there any circumstances of hardship applicable? • Matters which principally relate to a private interest or dispute (e.g. neighbour disputes) should be resolved directly between the parties or via alternative dispute resolution processes (i.e. mediation), tribunals or civil proceedings (i.e. disputes regarding trespass, alleged damage to premises or encroachments). • Where alternative dispute resolution processes or provisions are available to determine and resolve matters, this course of action should be undertaken by the relevant parties, without involvement by Council (e.g. mediation or tribunal). • Matters related to a breach of contract, or other obligations between two or more parties should also be resolved between the parties (e.g. a building defects, tenancy disputes, strata by-laws) • Is the breach minor, trivial or technical nature e.g. minor matter which does not cause any safety concern, community impact or environmental impact and which does not materially impact upon the intent and integrity of the relevant regulations or provisions? • Does the breached legislation provide direct recourse by an affected party i.e. where the legislation contains provisions which enable a person to take their own action to remedy a particular matter, it is generally most appropriate for the affected person to seek advice and implement their own action to resolve the matter? Particularly if the matter relates to the activities or behaviour of another party and/or if the matter is principally reliant upon the evidence of the affected person (e.g. alleged impacts occur out-of-hours or intermittently or they may be due to the alleged deliberate actions of a person).
<p>20. Are the enforcement costs and resources likely to be excessive having regard to the nature and impact of the offence?</p>	<p>Consideration should be given to the relative costs and benefits of taking formal enforcement action as opposed to taking informal action or an educative approach. Council's action should be commensurate with the seriousness of the breach and any impacts or potential impacts on other parties and the environment.</p> <p>e.g. the allocation of resources and costs to enforce a particular matter may not be commensurate with the seriousness or limited impact of the breach or public interest, to warrant further or particular regulatory action.</p>
<p>21. What are the chances of success if challenged?</p>	<p>Council should take into consideration what the likelihood is of a successful appeal or court challenge against the proposed enforcement action.</p> <p>It may not be appropriate to take enforcement action (i.e. service of an Order or commencement of legal proceedings) if the chances of success, in the event of any appeal or hearing, are unlikely.</p>
<p>22. Is the proposed course of action reasonable and</p>	<p>The proposed course of action for a particular breach or offence should be reasonable and proportional to the nature</p>

Considerations	Comments/Examples
proportionate?	<p>and extent of the breach or offence and the circumstances of the case.</p> <p>The costs and benefits of particular enforcement action must also be considered and compared against other possible solutions or action.</p>
23. Has consideration been given to other relevant factors and the circumstances of the case?	To ensure that Council's enforcement action is appropriate, effective, reasonable and successful, particularly in the event of an appeal or Court hearing, consideration should be given to any other relevant factors and the circumstances of the particular case.

Annexure 2

Examples of key options and possible courses of action*

Offence Scenario	Act / Reg.	Details of the case	Warning / Education	Penalty Infringement Notice	Notice &/or Order	Local Court Proceedings	L&EC Proceedings (e.g. class 4)
Dangerous dog/dog Attack	Companion Animals Act	Dog has attacked another animal or person			✓	✓	
Nuisance Dog Order	Companion Animals Act	Failure to comply with a Nuisance Dog Order (i.e. possible danger to other people, unrestrained or barking dog)		✓		✓	
Potential for pollution	POEO Act	Location of stockpile of soil/sand may cause pollution incident (i.e. in rain)	✓ (first occasion)				
Pollution incident - minor	POEO Act	Soil, sand or other waste has or is likely to enter stormwater system		✓	✓		
Pollution incident - major	POEO Act	Pollutant e.g. oil or paint has entered stormwater system creek or ocean			✓	✓	
Site management	Local Govt. Act or EP&A Act	Articles located on footpath without approval - Possible safety hazard		✓	✓		
Building work outside of hours	Env. Planning and Assessment Act	Carrying out building works outside of hours permitted in DA	✓ (first occasion)	✓	✓		
Unauthorised development	Env. Planning and Assessment Act	Unauthorised development or non-compliance with consent conditions - generally		✓	✓		
Unauthorised building works (minor) - owner builder	Env. Planning and Assessment Act	Construction of pergola awning by home-owner and the structure has no material impact on other parties and locality - No building or structural issues	✓ (first occasion)	✓			
Unauthorised building works - licensed builder	Env. Planning and Assessment Act	Unauthorised building work or non-compliance with consent - building or planning issues to be resolved		✓	✓		
Unauthorised building works - major	Env. Planning and Assessment Act	Substantial unauthorised building work or non-compliance with consent - Planning and BCA compliance issues			✓	✓	✓
Variation to DA (minor) - Owner Builder	Env. Planning and Assessment Act	Minor variation to Development Consent (resolved promptly e.g. section 96 obtained)	✓ (first occasion)	✓	✓ (if not resolved promptly)		
Variation to DA or work without CC - General	Env. Planning and Assessment Act	Unauthorised variation to Development Consent or building work without prior Construction Certificate		✓	✓	✓ (major or multiple breaches)	

Offence Scenario	Act / Reg.	Details of the case	Warning / Education	Penalty Infringement Notice	Notice &/or Order	Local Court Proceedings	L&EC Proceedings (e.g. class 4)
Unauthorised/non complying use of premises - general	Env. Planning and Assessment Act	Unauthorised or non-complying use of premises - Issues able to be reasonably addressed or resolved		✓	✓		
Unauthorised use of premises - major	Env. Planning and Assessment Act	Unauthorised use of premises as a boarding-house, backpacker accommodation or brothel			✓	✓	✓
Fire safety offence - general	Env. Planning and Assessment Act	Failure to submit an annual fire safety statement after due date or failure to maintain fire safety measure or exit system		✓	✓		
Fire safety - major	Env. Planning and Assessment Act	Substantial fire safety breach or fire safety upgrading of development			✓	✓	✓
Traffic/Parking	Aust. Road Rules	Parking of vehicle in a 'School-Zone' or in a 'No Stopping' area		✓			
Traffic/Parking	Aust. Road Rules	Parking of vehicle contrary to relevant adopted and sign-posted parking requirements		✓			
Tree Preservation Order- minor	Env. Planning and Assessment Act	Tree covered by TPO lopped without approval – minor impact on tree / amenity of locality	✓				
Tree Preservation Order - major	Env. Planning and Assessment Act	Tree covered by TPO removed without approval – significant impact on amenity of site / locality				✓	
Food Safety - general	Food Act	Failure to comply with Food Safety Standards	✓ (minor breach only)	✓	✓		
Food Safety - major	Food Act	Multiple/substantial breaches of Food Safety Standards			✓ (inc. possible 'prohibition order')	✓	

* Notes:

- In some cases, the particular breach may be remedied or resolved prior to proceeding to the service of Notices, Orders or legal proceedings i.e. via negotiation or by promptly obtaining relevant approvals.
- Prior to determining an appropriate course of action, consideration is required to be given to the circumstances of the case and the courses of action contained in the above table may not be suitable or sufficient in all cases.
- In the case of a minor, inconsequential or trivial breach, Council's authorised officer may issue a written warning or a formal caution, where appropriate.