

Policy: ENFORCEMENT

ES-POL-5

Division: Planning

Responsible Officer: Director Planning

1. INTRODUCTION

There are limited resources to undertake investigations into alleged illegal activities and enforcement. Experience indicates that many matters can be satisfactorily resolved without formal enforcement. This will be the approach generally taken unless there is a significant risk to life or the environment. Discretion will also be used to determine whether formal enforcement will be taken or not.

2. POLICY OBJECTIVE

The objective of this policy is to establish clear guidelines for the exercise of discretion in dealing with regulatory action about unlawful activity and to provide consistent responses.

3. POLICY SCOPE

This policy applies to the investigation and enforcement of complaints about unlawful activity or failure to comply with the terms or conditions of approvals and orders in Yass Valley including such matters as:

- Regulation of parking
- Control over animals
- Heavy vehicles
- Pollution control
- Food safety
- Public health and safety issues
- Unauthorised development including buildings
- Non-compliance with Development Consent conditions
- Dumping of waste
- On site wastewater management systems
- Tree/s removal

4. POLICY PROVISIONS

Allegations lodged by telephone or 'in person' will be acknowledged immediately at the time of receipt. The allegations will in turn be recorded in Council's electronic document management system within 1 day.

Council will take a risk based approach to responding to allegations of illegal activity and enforcement i.e.

Risk	Response
Life threatening or serious risk to the environment	Response as soon as practical
Non-life threatening or non-serious risk to the environment	Response within 10 working days
Council identified priority	Response as per program or plan

Any complaints or allegations will be acknowledged immediately they are received and lodged within Council's electronic document management system within one day.

Within 28 days Council will aim to address the full complaint or keep the complainant informed of progress. For long and complicated issues updates will be provided at periodic intervals with the interval determined by the nature of the issue.

Allegations will be initially assessed to determine if investigation is warranted. Investigations will **not** occur if:

- (a) The matter has already been investigated and resolved
- (b) Council has no jurisdiction
- (c) The activity is determined to be lawful
- (d) The complaint is trivial, frivolous or vexatious
- (e) Too much time has elapsed between the activity and the complaint being received
- (f) There is another appropriate agency to investigate the matter

For those matters warranting investigation those that are non-life threatening/non-serious risks to the environment may be progressively escalated from 'counselling' through to formal enforcement options provided for in the relevant legislation if corrective action is not taken.

For life threatening/serious risk to the environment a stronger enforcement response will initially be taken to achieve corrective action.

Where it is established that investigation is warranted then the following guide details the initial enforcement response related to the level of risk the process e.g.

Issue	Risk	Initial Enforcement Response
Annual Fire Safety Statement- non submission by owner	Low	Reminder letter
Advertising signs without approval	Low	Letter
Air pollution – smoky chimney	Low	Letter
Commercial swimming pool not properly maintained	Medium/High	Warning Letter or Notice/Order
Development/Activity without Consent/Approval or not in accordance with conditions <ul style="list-style-type: none"> • Minor development or old unauthorised development • Minor breach of condition/s • Risk to health and safety 	Low Low Medium	Letter Letter Warning letter
Dangerous building/awning	High	Emergency Order
Deposit litter from vehicle	Low	Penalty Infringement Notice
Deposit litter/Dumped rubbish	Low	Letter (if someone can be identified)
Dangerous Dog/Attacking Dog/Restricted Dog	High	Penalty Infringement Notice
Dogs roaming and/or unregistered	Low	Pick up and impound (subject to available resources)

Issue (cont)	Risk (cont)	Initial Enforcement Response (cont)
Dog nuisance	Medium	Letter
Erosion & sediment control (no imminent risk of pollution)	Low	Letter
Erosion & sediment control (risk of pollution)	High	Penalty Infringement Notice/Notice/Order
Environmental damage of a significant nature	High	Penalty Infringement Notice/Notice/Order
Fire hazard (Long Grass)*	Medium	Letter * Hazard risk to be determined by RFS
Fire Hazard (Building Safety)	Medium	Warning Letter
Food safety/hygiene matters	High	Warning Letter
Livestock on public road	Medium	Attend site and make safe
Noise pollution <ul style="list-style-type: none"> • Air conditioner** • Intruder alarm** • Musical instrument and sound equipment** • Power tools** • Motor vehicle on residential premises** • Use of refrigeration equipment fitted to motor vehicle** 	Low Low Low Low Low Low	** Mandatory warning required by legislation
Obstruction of road/public place involving safety.	Low/medium	Letter
Parking offences	Low	As per Parking Patrol Program
Pollution Incident (eg water)	High	Penalty Infringement Notice/Notice/Order
Tree removal/damage	Low	Letter
Swimming Pool fencing/gates/open	Medium/High	Warning Letter or Notice/Order

If a complainant is dissatisfied with the enforcement action taken, the matter should be brought to the attention of the Director Planning for review.

If the complainant is not satisfied with the response of the Director Planning the complaint can be reviewed in accordance with Council's *Complaints Policy* or referred to the NSW Ombudsman.

5. REVIEW

The review of this policy will take account of relevant legislation and State Government policies, best practice guidelines and Council plans and priorities.

This policy will be reviewed following each general election of Council and the Director Planning is responsible for arranging the completion of the review.

6. LEGISLATION AND LEGAL FRAMEWORK

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

- *Local Government Act 1993*
- *Environmental Planning & Assessment Act 1979*
- *Protection of the Environment Operations Act 1997*
- Enforcement Guidelines for Councils – NSW Ombudsman 2002
- *Independent Commission Against Corruption Act 1988*
- Code of Conduct

7. DEFINITIONS

Unlawful activity - means any activity or work that has been or is being carried out:

- Contrary to the terms or conditions of a Development Consent, approval, permission or other written authorisation from the Council
- Contrary to an Environmental Planning Instrument that regulates the activities or work that can be carried out on particular land
- Contrary to any legislative provision regulating a particular activity or work
- Without a Development Consent, approval, permission or the like

8. RESPONSIBILITIES

Environmental Services and Development Assessment staff are required to take into account the provisions of this policy in relation to any investigations and compliance action being taken.

9. HISTORY

<i>EMT Review Date</i>	<i>Report to Council</i>	<i>Minute No.</i>	<i>Exhibition Period</i>	<i>Adoption</i>	<i>Rescission Date</i>
26/07/2010	10/11/2010	450		10/11/2010	
	13/6/2012	246		13/6/2012	
	17/12/2014	306		31/01/2015	
11/09/2019	23/10/2019	245	N/A	23/10/2019	

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