

POLICY NAME	Compliance and Enforcement Policy	
Date Adopted	25 February 2026	
Resolution Number	30/26	
Policy Custodian	Director of Infrastructure Services	
Policy Development Officer	Administration Assistant	
Review Date	(3 years from resolution date)	
Relevant Legislation	<ul style="list-style-type: none"> • <i>Local Government Act 1993</i> • <i>Environmental Planning and Assessment Act 1979</i> • <i>Protection of the Environment Operations Act 1997</i> • <i>Companion Animals Act 1998</i> • <i>Crown Land Management Act 2016</i> • <i>Road Rules 2014</i> • <i>Public Spaces (Unattended Property) Act 2021</i> • <i>Rural Fires Act 1997</i> • <i>Swimming Pools Act 1992</i> • <i>Food Act 2003</i> • <i>Public Health Act 2010</i> • <i>The Government Information (Public Access) Act 2009</i> 	
Related Documents	<ul style="list-style-type: none"> • Customer Service Policy • Delegation of Authority Register • Local Orders for the Keeping of Animals in Urban Areas of Tenterfield Shire • Local Orders Policy • Complaints and Unreasonable Conduct Policy 	

POLICY OBJECTIVES

The objectives of this policy are to establish clear guidelines for the management of unlawful activity, having regard to all the relevant information, including the available evidence, cost to the community, the circumstances of the individual case, public interest and precedent considerations.

Council's own employees and contractors carrying out works must do so in accordance with the law and this policy.

POLICY SCOPE

Councils implement regulations in accordance with legislation, to uphold social order and prevent or minimise harm to health, welfare, safety, property or to the environment.

This policy applies to all Planning, Health and Building Staff and Council Rangers, where staff are authorised to enforce local government, planning & environmental and other legislation in accordance with Council's Delegations of Authority Register.

This policy does not limit council officers' discretion in the exercise of their enforcement functions. The full circumstances and facts of each case need to be considered and decisions made on the merits of those circumstances.

POLICY STATEMENT

Tenterfield Shire Council has a minimal tolerance approach to unlawful activity while ensuring natural justice principles are respected.

This policy applies to the investigation, compliance and consistent enforcement of regulatory issues within Council's area of responsibility including, but not limited to:

- food safety
- public health and safety
- environmental health, heritage and preservation (including trees, sediment and erosion)
- pollution control including breaches of noise restrictions
- development and building control
- swimming pool safety
- fire safety
- water and sewer
- animal control
- regulation of public spaces (including seizure of unattended property)
- regulation of parking

Tenterfield Shire Council's corporate values relating to responsive and responsible regulation, fairness and equity, accountability and integrity also apply to any action taken in accordance with this policy, whilst recognising that Council's resource capacity, is a factor in determining compliance and enforcement action.

Council acknowledges that it has an obligation under section 8 of the *Local Government Act 1993* to ensure that the exercise of its regulatory powers is carried out consistently, without bias and in a way that provides best possible value for residents and ratepayers.

COMPLIANCE AND ENFORCEMENT PRINCIPLES

PRINCIPLE	ACTION
Proportionality	<ul style="list-style-type: none"> • Taking action that is reasonable, ensuring the level of enforcement action relates directly to the actual breach, and is proportionate to the level of risk and seriousness of the breach • Making cost-effective decisions about enforcement action • Addressing wrong doing and deterring future unlawful activity
Consistency	<ul style="list-style-type: none"> • Ensuring that similar issues are dealt with in the same way • Acting fairly and impartially, without bias or unlawful discrimination
Transparency	<ul style="list-style-type: none"> • Ensuring that what we do and why we do it is easily understood, i.e. being open about the way we go about doing things • Ensuring reasons for decisions are given to relevant parties, particularly when there is a departure from this policy • Public disclosure is an integral part of both specific and general deterrence. The disclosure of information relating to Council's compliance and enforcement activities is undertaken in accordance with the requirements of the GIPA Act and Regulation • Continuing to improve community awareness of compliance and enforcement matters through Council's media avenues
Customer Service	<ul style="list-style-type: none"> • Working with the business or individual to achieve compliance with the law by being approachable, courteous and efficient
Prioritising	<ul style="list-style-type: none"> • Ensuring that resources are targeted primarily on the unlawful activities that pose the most serious risk
Timely Response	<ul style="list-style-type: none"> • Ensuring Council's responses and decision making in respect of reports alleging unlawful activity is timely
Accountability	<ul style="list-style-type: none"> • Acting in the best interests of public health, safety and the environment • Only officers with the appropriate appointment or delegations are authorised to approve an enforcement action. They are required to comply with this policy, Council's code of conduct and disclosing pecuniary interests • Acting on any complaints or concerns about the conduct of compliance and enforcement officers in accordance with Council's Complaints and Unreasonable Conduct Policy • Council may seek legal advice prior to proceeding with more serious enforcement actions, such as prosecution

ACCOUNTABILITY, ROLES AND RESPONSIBILITY

Elected Council

Adoption of policy to enable the implementation of legislation by appropriate authorised officers.

The public should note that individual councillors do not have the ability to direct Council staff in their day-to-day activities. Councillors can help individuals who raise concerns with them by satisfying themselves that their Council's policies are being carried out correctly, however they cannot ignore or alter a policy to satisfy the demands of special groups.

Leadership and Management

- General Manager
- Leadership Executive Management Team
- Manager Planning & Regulation
- Manager Open Space, Regulatory & Utilities

are responsible for the development, approval and maintenance of procedures that support Council's policies.

Council Staff

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

Council's Planning and Regulation staff/Senior Environmental Health and Building Surveyor, will ensure this policy is implemented and associated procedures are followed and maintained.

Council's Rangers must also ensure activities where they investigate and take enforcement action are in accordance with this policy.

Council's Manager Workforce, Safety, Risk and Records will ensure staff are provided with access to training to ensure this policy is implemented.

Powers to enter premises and carry out investigations are separately defined by specific pieces of legislation, under various Government Acts.

Shared Enforcement Responsibilities

Some reports of unauthorised activity will raise matters involving shared regulatory responsibilities between Council and other authorities including, but not limited to, the NSW Environment Protection Authority (EPA), NSW Fair Trading, the NSW Department of Customer Service, Liquor & Gaming NSW and other ARA (Appropriate Regulatory Authorities), and the NSW Police Force.

Threats of, or actual physical violence or abuse are matters for the Police and should be reported by the concerned party to their nearest police station (not Council), without delay.

COMPLIANCE AND ENFORCEMENT ACTION

1. Responding to complaints of alleged unlawful activity

All complaints or notifications to Council relating to alleged unlawful activity should be acknowledged to the complainant within 10 working days and in accordance with Council's Complaints Policy. Action should be instigated within the following time frames:

- Urgent and life threatening matters should be actioned as soon as possible following receipt of the complaint. This means either on the day received or the day immediately following. Examples include: unsafe building works, collapsed buildings, surcharging drains, serious incidents where public health or the environment is at risk and unauthorised demolition of heritage items or contributory items.
- General compliance matters within 10 working days. Examples include: works not in accordance with consent or constructed without consent, illegal uses, noise affecting several persons, food complaints.
- Nuisance matters actioned within 10 working days. Examples include: domestic noise, minor non-compliances such as overgrown land or matters where there are no immediate adverse health or safety impacts.
- Out of hours action requests are dealt with by Rangers in the first instance, followed by a more formal investigation by the Planning and Regulatory staff, if required. Examples include: out of hours works without approvals, pollution incidents and companion animals matters.

All complaints should receive communication from the Council Officer handling the complaint within 21 days, detailing the action taken by Council or the action that Council plans to take.

Timeframes may vary depending on staff and other resources. In such instances, complaint acknowledgment communications may include temporarily revised investigation times.

2. Investigating unlawful activity

Any investigation or enforcement action undertaken by Council with respect of alleged unlawful activity is at the discretion of Council.

All complaints and matters regarding unlawful activity will be investigated, unless:

- The matter has already been actioned and resolved; or
- A private principle certifying authority (PCA) is responsible for monitoring compliance with the conditions of development consent; or

Note: Council will investigate matters where:

- a) The PCA fails or is unable to appropriately action a matter or where it is in the public interest;*
- b) The PCA has taken all the action available under the legislation, but the offence continues or re-occurs despite that action;*
- c) Where the complaint relates to Council property: and/or*
- d) Complaint relates to an environmental pollution incident.*

- The Council has no jurisdiction (e.g. NSW Work Cover issues on building sites or some internal matters within strata or community title buildings, etc.); or
- The activity is determined to be lawful without an investigation; or
- The complaint is vexatious in nature; or
- When a dispute between two neighbours is a civil matter, Council will often have no authority to act and/or resolve the dispute; or
- Because generally public resources will not be applied to resolve private disputes unless there are significant public amenity, safety or environmental risks of concern to the broader community, that have an enforcement basis relevant to Council's responsibilities and statutory powers.

If a decision is made not to investigate a complaint, the decision must be recorded with clear reasons why it was not investigated. The complainant must then be notified.

Council will not provide details of an investigation that would compromise the integrity of the investigation, unless required under legislation or it is determined that there is an overriding public interest basis for the release of the information.

3. Options for action in confirmed cases of unlawful activity

Council will consider a range of matters before taking regulatory action.

Regulatory action is any formal and informal action taken to prevent or rectify infringements of the legislation. The regulatory options will differ where different pieces of legislation are used, but the principles of application should remain constant.

Approaches to be considered without taking formal regulatory action include:

- Taking no action based on the absence of reliable evidence or other appropriate reason.
- Counselling the person who carried out an unlawful activity to educate them on the relevant requirements. Council acknowledges the role of educational initiatives to achieve compliance in some situations.
- Negotiating with the person who carried out the unlawful activity to obtain an undertaking from them to address the issues of concern arising from an appropriate application for the remaining works to be completed. (Undertakings are sometimes used as a method of settling a compliance or enforcement dispute with Council.)
- Referring parties for mediation with the Department of Communities and Justice in-house mediation service (new service operational from 1 July 2025).
- A letter requiring works to be carried out or works to cease in lieu of more formal action, i.e. a Warning Notice and letter.

Such action may be all that is required in minor breaches where no serious impacts have occurred.

Whilst these approaches recognise that Council may use discretion in the process, Council is also obliged to uphold the law, including compliance with relevant administrative law principles (for example – acting fairly and equitably), and to act in the public interest.

Where appropriate, a staged approach may be taken. This is to ensure compliance will be adopted by giving businesses and individuals the opportunity to discuss and remedy the breach before action is taken, unless immediate action is required.

4. Enforcement Action

Enforcement action will be taken with a minimal tolerance approach.

Enforcement action includes:

- Recording the Breach (no further action – for very minor breaches only)
- Warning or advisory letter to encourage future compliance and caution that further action may be taken
- Negotiation with the alleged offender and written confirmation of undertaking/commitments made
- Letter requesting undertaking that corrective action will be taken within a certain time frame
- Issuing of Penalty Infringement Notice (PIN) or Orders requiring compliance with legislative requirements or those of an environmental planning instrument
- Commencement of criminal proceedings for an offence under legislation
- Commencement of civil proceedings in a Court to either remedy or restrain unlawful activity

However, before any enforcement action is taken, the action officer, management or the Council must acknowledge the circumstances in each case and consider the following questions:

- **Could the unlawful activity be carried out lawfully if development consent or an exemption from development consent was sought?** In these circumstances, Council will be less inclined to proceed with legal action, especially if an owner actively and positively attempts to regularise the situation.
- **Are the breaches technical or inconsequential in nature with no aggravating circumstances?** Consideration will be given to the material implications that the breach might have on the interests of any party, as well as any detrimental affect on the amenity of the area or environment in general.

- **Could the non-compliance be easily remedied by some action on the part of the person responsible?**
 In general Council will attempt to ensure compliance by informal means however there is a need to balance the public interest in enforcing the law with whether it is possible to remedy a breach and at what cost.
- **Has the unlawful activity created a health, safety or environmental hazard?**
 Consideration should be given to the degree of detriment or risk to the environment.
- **Are the unlawful activities or works carried out on a heritage item and did they adversely affect the heritage significance?**
 In most cases, Council's Heritage Advisor will be consulted in assessing the detriment to the natural or build environment and whether formal action is warranted.
- **Would it be in the public interest?**
 Some of the issues that should be considered are: Has the unlawful activity affected a significant number of people and would enforcement action impact unreasonably on certain population groups, particularly disadvantaged or marginalised groups. Are there any circumstances of hardship affecting both the complainant and the person or business subject to the complaint?
- **How long has the unlawful activity been occurring and is enforcement action statute barred?**
 A time limit may apply or existing use rights may apply, that prevent Council from taking legal action.
- **Have previous warnings been issued?**
 If the investigation reveals that a previous warning has been issued and the unlawful activity is not resolved, a more formal approach would be appropriate.
- **Has the person responsible been educated about Council policy and unlawful activity? (That is: did the person know their actions were unlawful?)**
 When deciding whether to take an educative approach, consideration will be given to issues such as the level of contrition shown by the wrongdoer, whether they have previously been warned as a result of this or similar behaviour, and the level of intent shown.
- **Are the costs of enforcing likely to be prohibitive for the nature of the offence?**
 Consideration should be given to the relative costs and benefits of taking formal enforcement action as opposed to taking no action or taking informal action. Council's action should be commensurate with the seriousness of the 'breach'.

- **Is the condition of development consent not being complied with unreasonable, or ambiguous?**
A condition of consent that is unreasonable or ambiguous can be unenforceable.
- **Would a draft local environment plan or amendment make the unlawful activity or work legal in future?**
If there is a draft Local Environmental Plan (LEP) that would make the unauthorised use legal, consideration should be given to deferring any enforcement action.
- **Is there any doubt over the evidence or the offence?**
Consideration should be given to whether the collected evidence clearly identifies an actual breach. Council should not take untimely or unwarranted action.
- **What are the chances of success if challenged?**
Council should take into consideration what the likelihood is of a successful appeal or court challenge against the proposed enforcement action.
- **Does the person or business exhibit contrition for the offence?** In cases it will be appropriate to have regard to the attitude of the offender and their willingness to prevent a recurrence of the problem.
- **Has the person or company who carried out the unlawful activity had an opportunity to provide representations or submissions on the matters?**
Council should consider all elements pertaining to the circumstances of the case leading to the non-compliance.

If the process is being used as a delaying action or there has been a blatant attempt to flout the law, appropriate enforcement action will be instigated without delay.

If it is considered that enforcement action is required, it will be taken in accordance with existing procedures and legislative processes.

In taking enforcement action, Council must recognise that the statutory process also provides avenues for representation and appeal, and thereby natural justice principles will still be observed.

5. Importance of Subsequent Action

To determine compliance, Council staff will follow up matters reasonably required to be followed up. This includes conducting follow up inspections or re-inspections.

6. Building Information Certificate Applications under sections 6.24, 6.25 & 6.26 of the Environmental Planning and Assessment Act 1979

Council recognises that persons who may have carried out unlawful works may apply for a Building Information Certificate under sections 6.24, 6.25 & 6.26 of the EPA Act. However, it is Council's policy that such applications should not be encouraged to justify unlawful works, and in some instances will still warrant the issue of a fine and/or Notice or Order.

Council will also require lodgement of a development application (including payment of all relevant fees) where it is possible to consent to the use of the building.

In circumstances where Council decides to commence or continue with enforcement action whilst a development application has been lodged, the aggrieved party may seek relief from the court under section 9.46(3) of the Environmental Planning and Assessment Act 1979.

7. Community Education

Council will ensure adequate information is available to raise awareness and educate the community about compliance and enforcement. This may involve awareness programs and publication of information on Council's website and Facebook pages.

RELATED DOCUMENTS, STANDARDS AND GUIDELINES

The policy should be read in conjunction with the following Tenterfield Shire Council Policies:

- Customer Service Policy
- Delegation of Authority Register
- Complaints & Unreasonable Conduct
- Local Orders Policy
- Local Approvals Policy
- Local Orders for the Keeping of Animals in Urban Areas of Tenterfield Shire

This Policy is adapted for Tenterfield Shire Council from *Enforcement Guidelines for Councils*, published by the Office of the NSW Ombudsman, December 2015.

Any amendment to this policy must be by way of a Council resolution.

POLICY DEFINITIONS

DEFINITION	MEANING
Council	Tenterfield Shire Council
Delegations of Authority Register	The Delegations Register adopted by Tenterfield Shire Council periodically.
GIPA	Government Information (Public Access) Act 2009, and as amended periodically.
Minimal tolerance	The least amount of tolerance allowance to non-compliance for: Environment/Amenity; Health/Safety; Approvals Compliance; Fire Safety or the Keeping of Animals, whilst taking into consideration Council's core values of fairness and equity as well as responsive and responsible regulations. It is a method of ensuring a consistent approach by all Council officers. The enforcement action taken will be dependent upon the circumstances in each case and consideration will be given to the various questions, as specified within Part 4 of this Policy.
Penalty Infringement Notice (PIN)	An infringement notice issued by a regulatory agency setting out the particulars of an alleged contravention of an offence or civil penalty provision. A person who is given an infringement notice can choose to pay the amount specified in the notice as an alternative to court proceedings.
Undertaking	A written commitment to Council by an alleged offender declaring that the person will do or will not do certain things.
Unlawful activity	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 licence: <ul style="list-style-type: none"> • Contrary to the Tenterfield Shire Local Environmental Plan as amended, that regulates the activities or work that can be carried out on particular land; • Contrary to a legislative or policy provision regulating a particular activity or work;
	<ul style="list-style-type: none"> • Without a development consent, approval, permission or licence; and includes unauthorised works and uses; and • Contrary to the laws of New South Wales in which Council is the regulatory authority.
Unreasonable complaint	One that is repetitious, insists on pursuit of issues without merit, or as otherwise defined by Council's Policy Complaints & Unreasonable Conduct , and will be handled in line with the same.
Vexatious Complaint	A complaint that has been submitted to Council with the sole intention of annoying a person or company/entity, or is without any substance. These will be handled in line with Council's Policy Complaints & Unreasonable Conduct .

VERSION CONTROL & CHANGE HISTORY

Previous Versions	Date of Adoption by Council	Resolution #	Author/Editor	Summary of Changes
V1.0	28/03/12	118/12	Council	
V2.0	25/03/15	68/15	Council	
V3.0	23/08/17	168/17	Council	
V4.0	25/11/20	253/20	Council	
V5.0	21/12/22	248/22	Council	
V6.0	26/02/26	30/26	Administration Assistant	Major review and amendment