

Item 6.

Policy – Adoption – Compliance Policy and Prosecution and Civil Enforcement Policy

File No: X026218.018

Summary

Council is a regulatory and enforcement agency under a broad range of legislation, including planning law, and laws governing fire safety, food safety, noise and other forms of pollution and public health and safety.

In August 2017, Council approved a Compliance Policy and a Prosecution and Civil Enforcement Policy. The policies provide structure for consistency and transparency in decision making and facilitate a measured and proportionate approach to compliance and enforcement.

The Compliance Policy provides guidance to Council officers and other stakeholders on the City's approach to compliance and enforcement, including how the City determines its priorities, allocates resources and makes decisions to achieve reasonable and defensible regulatory outcomes for the community. The Compliance Policy is based on the NSW Ombudsman's Model Enforcement Policy and incorporates the principles outlined in the NSW Ombudsman's Enforcement Guidelines for Councils.

The Prosecution and Civil Enforcement Policy separately details the processes and relevant considerations that are taken into account regarding the commencement and ongoing conduct of legal proceedings in relation to enforcement.

City staff are not limited by the policies in their use of discretion and exercise of their authorised functions. The full circumstances and facts of each case are investigated, and a decision made by considering all the relevant matters. In addition, staff are guided by technical procedures, processes and guidance when making a decision. Every decision is documented, and those involved advised of the outcome.

In response to concerns about the impacts of unauthorised building works in heritage conservation areas and to achieve a higher level of consideration in relation to heritage outcomes in the exercise of discretion under the Policies the following will be pursued:

- (a) investigation of a training module and refresher on residential heritage buildings for compliance officers; and
- (b) investigation of heritage workshops for residents who own residential heritage buildings such as in Millers Point and Paddington (subject to 2021-22 budget).

Preliminary decisions to not progress compliance or enforcement action in relation to complaints or breaches in relation to heritage buildings and buildings in conservation areas will be subject to review and concurrence by the Manager of Urban Design and Heritage, Unit Manager, Executive Manager Development and Director City Planning Development and Transport.

Both policies have been reviewed to ensure that they reflect current legislation and current regulatory best practice. Amendments have been made to both policies, as set out in this report. The new Compliance Policy differs significantly from the current policy, and copies of both the new and current policy documents have been attached to this report.

Recommendation

It is resolved that:

- (A) Council endorse the revised Compliance Policy, as shown at Attachment A to the subject report;
- (B) Council endorse the revised Prosecution and Civil Enforcement Policy, as shown at Attachment B to the subject report; and
- (C) authority be delegated to the Chief Executive Officer to make minor amendments to the Compliance Policy and Prosecution and Civil Enforcement Policy, as required from time to time, subject to Councillors being informed of any such changes.

Attachments

- Attachment A.** Revised Compliance Policy 2020
- Attachment B.** Revised Prosecution and Civil Enforcement Policy 2020
- Attachment C.** Compliance Policy 2017 (Current)
- Attachment D.** Prosecution and Civil Enforcement Policy 2017 (Current)

Background

1. In August 2017, Council endorsed the current Compliance Policy and the Prosecution and Civil Enforcement Policy. Both policies are now due for review.
2. The City's Compliance Policy and Prosecution and Civil Enforcement Policy guide the City's enforcement activities and decisions.
3. The Compliance Policy is based on the NSW Ombudsman's Model Enforcement Policy and incorporates the principles outlined in the NSW Ombudsman's Enforcement Guidelines for Councils.

Review of the Compliance Policy

4. This review of the Compliance Policy ensures it remains consistent with the NSW Ombudsman's Model Enforcement Policy and Guidelines for Councils.
5. The current policy has operated effectively, however the review and internal consultation identified that it is repetitive, long and not user friendly. The policy has therefore been revised to be more concise, with repetitive or irrelevant content removed. Much of the content removed already exists within legislation, internal guidance notes and procedures.
6. The structure and format of the revised policy has been changed so that it is consistent with the most up to date City of Sydney policy format, meaning it more clearly articulates the City's outcome and risk-based approach to compliance to the community and internal stakeholders.
7. In response to internal consultation, additional wording has been added to allow flexibility in applying the policy in circumstances that require it, such as a pandemic, and requires that support services be offered to vulnerable persons impacted by any formal action taken by the City, where appropriate.

Review of the Prosecution and Civil Enforcement Policy

8. The review of the Prosecution and Civil Enforcement Policy included a comparison with the current prosecution guidelines of the Commonwealth and NSW Director of Public Prosecutions, and the August 2020 Environment Protection Agency guidelines. The Prosecution and Civil Enforcement Policy is considered to be fit for purpose in guiding the City's decision making in relation to prosecution and civil enforcement. Only minor editorial changes were made to the 2017 Policy.

Key Implications

Strategic Alignment - Sustainable Sydney 2030

9. Sustainable Sydney 2030 is a vision for the sustainable development of the City to 2030 and beyond. It includes 10 strategic directions to guide the future of the City, as well as 10 targets against which to measure progress. Both policies are aligned with the following strategic directions and objectives:
 - (a) Direction 2 - A Leading Environmental Performer – The policies relate to compliance and enforcement of legislation that protects the built and natural environment, including the Environmental Planning and Assessment Act 1979 and the Protection of the Environment Operations Act 1997. Effective regulatory and enforcement functions, and well documented procedures, will ensure the environment is protected.
 - (b) Direction 10 - Implementation through Effective Governance and Partnerships – Having documented policies with respect to the investigation and enforcement of legislation administered by the City promotes effective governance. It provides the framework for Council staff to make decisions and take appropriate action against unlawful activity. It provides information to the public as to how key decisions are made and action taken.

Organisational Impact

10. Staff will be trained in the implementation of the revised policies upon adoption. Where necessary, additional procedural guidance will be provided to relevant staff.

Risks

11. The adoption, publication and application of the revised policies will support transparency, structure and consistency in the exercise of Council's regulatory functions and will consequently reduce risks arising from the exercise of those functions.

Social / Cultural / Community

12. The policies set out the City's approach to compliance and enforcement and how it makes decisions to achieve reasonable and defensible regulatory outcomes for the community.
13. The Compliance Policy states that where appropriate, accessible support services will be offered to vulnerable persons impacted by any formal action taken by the City.

Environmental

14. Part of the City's regulatory function includes the regulation of activities that may degrade or have a significant impact on the environment. These policies support the City's role in this area.

Economic

15. Compliance with legislative regimes ensures a safe and attractive city for residents and visitors. An educational and escalating approach to achieving compliance ensures that this is achieved without excessive impacts on businesses.
16. The policy is sufficiently flexible to allow for the exercise of discretion in situations that require it, such as the recent Covid-19 pandemic.

Financial Implications

17. The implementation of these policies will not require any additional resources.

Relevant Legislation

18. The policies relate to all enforcement action taken in accordance with council's statutory functions under legislation, including, but not limited to:
- (a) Biosecurity Act 2015
 - (b) Boarding Houses Act 2012
 - (c) Companion Animals Act 1998
 - (d) Contaminated Land Management Act 1997
 - (e) Crown Land Management Act 2016
 - (f) Environmental Planning and Assessment Act 1979
 - (g) Fines Act 1996
 - (h) Food Act 2003
 - (i) Heavy Vehicle National Law (NSW)
 - (j) Impounding Act 1993
 - (k) Local Government Act 1993
 - (l) Protection of the Environment Operations Act 1997
 - (m) Public Health Act 2010
 - (n) Roads Act 1993
 - (o) Road Rules 2014
 - (p) Road Transport Act 2013
 - (q) Swimming Pools Acts 1992

Public Consultation

19. While public consultation is not required, if adopted the revised policies will be publicly available on the City's website

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