

Attachment A

Revised Compliance Policy 2020

Compliance Policy

Purpose

This policy sets out the City of Sydney’s approach to compliance and supporting enforcement processes. It explains how we determine our priorities, allocate resources and make decisions to achieve reasonable and defensible regulatory outcomes for the community.

Internal decision-making processes on compliance and enforcement decisions are also guided by the NSW Ombudsman’s Enforcement Guidelines for Councils as well as industry guidance.

Scope

This compliance policy applies to City of Sydney employees with responsibility for managing and investigating regulatory issues that are the City of Sydney’s responsibility including:

- development and building control
- heritage preservation
- pollution control
- environmental health
- public health and safety
- water and sewer
- animal control
- food safety
- fire safety
- tree preservation.

This policy does not apply to parking related matters.

Definitions

Term	Meaning
Authorised Officer	Employee authorised under legislation and by internal delegations to carry out compliance action on behalf of the City of Sydney
Unlawful Activity	Any activity or work that has been or is being carried out: <ul style="list-style-type: none"> • contrary to the terms and conditions of a development consent, approval, permit or licence • contrary to an environmental planning instrument that regulates the activities or work that can be carried out on particular land • contrary to a legislative provision regulating a particular activity or work

Term	Meaning
	<ul style="list-style-type: none"> without a required development consent, approval, permit or licence and includes any activity, place or structure which is a risk to public health and safety but excludes any parking or traffic offences, which are dealt with in accordance with the Road Rules 2014 (NSW).
Report of unlawful activity	An expression of concern or a request for service about an alleged unlawful activity where a response or resolution is explicitly or implicitly expected or legally required.

Policy Statement

The City of Sydney is committed to balancing individual and community interests to appropriately allocate resources to issues that present the highest risk. Choosing the appropriate regulatory option involves weighing up sometimes competing interests and priorities.

The following principles underpin our compliance and enforcement program.

Fairness and Consistency

We will monitor and enforce the law in a fair, balanced and consistent manner, applying discretion where appropriate. Procedural fairness will be provided in all investigations and enforcement actions. Where appropriate, accessible support services will be offered to vulnerable persons impacted by any formal action taken by the City.

Proportionality

Our enforcement action will be proportionate to the level of harm, the risk posed, the seriousness of the breach and the culpability of the offender in the particular circumstances. Our officers will exercise regulatory discretion where appropriate.

Accountability & Transparency

We will be accountable for the efficiency and effectiveness of our compliance and enforcement activities. Our activities will aim to achieve the desired outcome with an appropriate level of resources. Our actions will be open to scrutiny. We will document our reasons for decisions and provide access to them.

Flexibility

We will be flexible in applying this policy in circumstances that require it, such as during a pandemic.

Risk Based Approach to Compliance

A risk-based approach to compliance ensures our effort is focussed on activities that pose the greatest risk to the public, the environment or the integrity of our regulatory framework.

Proactive Compliance

The City of Sydney undertakes a number of proactive inspection programs. We use a risk assessment approach and intelligence to determine which premises should be included in a program of compliance inspections. We prioritise the monitoring of premises and activities based

on trends in noncompliance, feedback from the community and where the public interest is greatest.

We seek to reduce the amount of unlawful activity reports that we respond to, by working with businesses and the community to improve their understanding of what they need to do to improve levels of compliance.

Reactive Compliance

The City of Sydney triages incoming reports of unlawful activity as outlined in the 'responsibilities' section of this policy. Low risk cases may be recorded but no action taken. Cases that pose a higher level of risk may be subject to varying degrees of investigation and enforcement.

Not every report will require an investigation. Based on the principles and responsibilities outlined within this policy, if a decision is made not to investigate, the decision will be recorded by the investigating officer and the reasons for that decision clearly explained to the person who reported it.

Anonymous reports will be recorded and assessed but because the complainant cannot be contacted, it may not be possible to accurately evaluate the allegation.

Responsibilities

When making compliance decisions, all Authorised Officers will have regard to the following.

What we will and won't investigate

When triaging incoming reports employees will consider the following:

- Is the activity permissible without any consent or approval?
- Are the conditions of a consent or approval being complied with?
- Is the complaint trivial, frivolous, vexatious or unreasonable in accordance with the City of Sydney's Unreasonable Conduct by Customers Policy?
- Is the activity having a significant detrimental effect on the environment or does it constitute a risk to public health, safety and amenity?
- Have there been previous complaints about the subject premises or this person or organisation?
- Does the complaint have special significance in relation to existing enforcement priorities?
- Overall, is it in the public interest to investigate the complaint?

Taking Enforcement Action

When determining whether to take enforcement action and the level of enforcement action that is appropriate, Authorised Officers will consider all the circumstances of the case including:

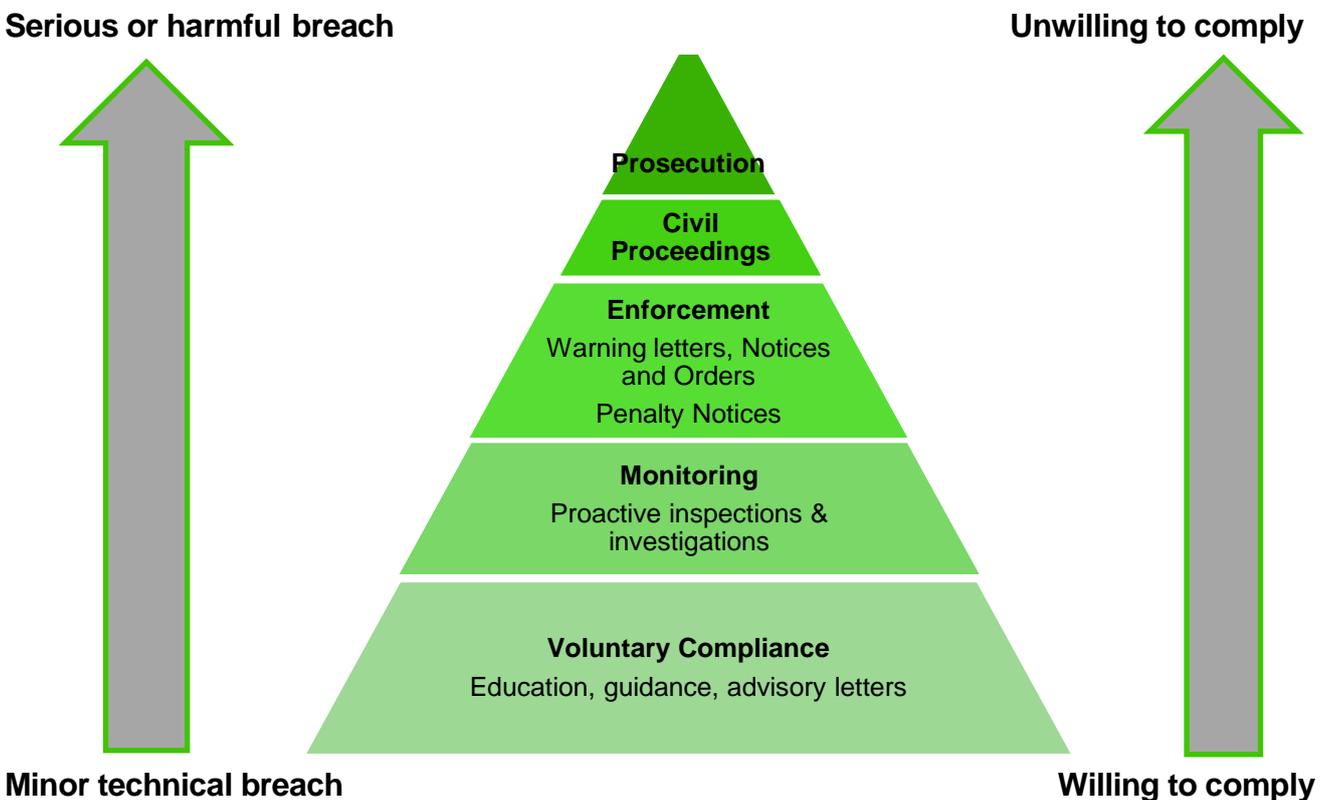
- the seriousness of the breach, including whether the breach is merely technical or "trivial" in nature
- when the unlawful activity was carried out, including whether the breach is continuing
- the harm or potential harm to the environment or public health, safety or amenity caused by the unlawful activity and whether that harm is ongoing
- the need for general and specific deterrence

- whether the breach can be easily remedied
- any particular circumstances of hardship affecting the complainant or the person who is the subject of the complaint
- any mitigating or aggravating circumstances
- any prior warnings that have been issued to the person or previous enforcement action taken against the person
- the degree of responsibility of the alleged offender
- whether an educative approach would be more appropriate than a coercive approach
- the costs and benefits of taking formal enforcement action as opposed to taking informal or no action
- the prospects of success if the proposed enforcement action were challenged in court
- what action would be proportionate and reasonable
- what would be in the public interest, and
- any precedent which may be set by not taking enforcement action.

Responsive Regulation

The City of Sydney will always seek to achieve voluntary compliance with the legislation it administers through education, advice and guidance to individuals and businesses. However, we will be vigilant in monitoring compliance with those laws and take enforcement action where people or businesses are unwilling to comply with the law. Figure 1 below represents the responsive regulation model.

Figure 1 – Responsive regulation model¹



¹ Figure based on *Responsive Regulation by Ayres and Braithwaite (1992)*

Delegations

The delegations relevant to this policy are included in the City of Sydney's Register of Delegations from the CEO to Directors and staff.

Consultation

The review of this policy has been carried out in consultation with Health & Building, City Rangers, Legal Services and Governance. A review of external compliance policies was carried out however no additional consultation with external agencies was undertaken.

References

Laws and Standards

- Biosecurity Act 2015
- Boarding Houses Act 2012
- Companion Animals Act 1998
- Contaminated Land Management Act 1997
- Crown Land Management Act 2016
- NSW Ombudsman – Enforcement guidelines for councils – December 2015
- Environmental Planning and Assessment Act 1979
- Fines Act 1996
- Food Act 2003
- Heavy Vehicle National Law (NSW)
- Impounding Act 1993
- Local Government Act 1993
- Protection of the Environment Operations Act 1997
- Public Health Act 2010
- Roads Act 1993
- Road Rules 2014 (NSW)
- Road Transport Act 2013
- Swimming Pools Act 1992

Policies and Procedures

- Prosecution and Civil Enforcement Policy
- Unreasonable Conduct by Customers Policy

Review period

This policy will be reviewed every 3 years.

Approval Status

Council approved this policy on [XXX].

Approval History

Stage	Date	Comment	TRIM Reference
Original Policy	7 April 2014	Approved by Council/ Endorsed by the Executive	
Reviewed	7 August 2017	Full review, rewritten to ensure a risk and outcomes based approach to compliance. Approved by Council	2017/407075
Reviewed	[] October 2020	Full review. Updated to provide a clearer policy.	[Governance to populate]
Commence Review Date	[] February 2023		
Approval Due Date	[] October 2023		

Ownership and approval

Responsibility	Role
Author	Investigative Specialist, Health & Building
Owner	Standards & Policy Manager, Health & Building
Endorser	City of Sydney Executive
Approver	City of Sydney Council