

Adoption - Compliance Policy and Prosecution and Civil Enforcement Policy

File No: X098706

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 December 2020, Council approved the Compliance Policy and the 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. Both policies are due for review.

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.

Recommendation

It is resolved that:

- (A) Council endorse the revised Compliance Policy 2024, as shown at Attachment A to the subject report;
- (B) Council endorse the revised Prosecution and Civil Enforcement Policy 2024, 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 2024 (amendments highlighted)

Attachment B. Revised Prosecution and Civil Enforcement Policy 2024 (amendments highlighted)

Background

1. In December 2020, 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 City staff 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. The current policy continues to operate effectively and this review has confirmed that it is consistent with current legislation and regulatory best practice. Only minor amendments are recommended based on internal stakeholder feedback. The amendments have been highlighted within the revised policies.

Review of the Prosecution and Civil Enforcement Policy

5. The review of the Prosecution and Civil Enforcement Policy included a comparison with the current prosecution guidelines of the NSW Director of Public Prosecutions 2021, and the Environment Protection Agency 2022. The Prosecution and Civil Enforcement Policy is considered to be fit for purpose in guiding City staff decision making in relation to prosecution and civil enforcement. Only minor editorial changes are recommended to the 2020 Policy.

Key Implications

Strategic Alignment - Sustainable Sydney 2030-2050 Continuing the Vision

6. Sustainable Sydney 2030-2050 Continuing the Vision renews the communities' vision for the sustainable development of the city to 2050. It includes 10 strategic directions to guide the future of the city, as well as 10 targets against which to measure progress. This policy is aligned with the following strategic directions and objectives:
 - (a) Direction 1 - Responsible governance and stewardship - 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.
 - (b) 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.
 - (c) Direction 3 - Public places for all - The protection of public safety and health is at the core of both policies, providing a compliance framework for staff working towards this target.

Organisational Impact

7. City Compliance and Legal staff have been using these policies since adoption and the minor amendments proposed will have no impact on the continued application of these policies.

Risks

8. 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

9. 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.
10. 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

11. 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 protecting the City's environment.

Economic

12. Compliance with legislative frameworks ensure a safe and attractive city for residents and visitors. An educational and escalating approach to achieving compliance ensures this is achieved without unnecessary impacts on businesses.
13. The policy is sufficiently flexible to allow for the exercise of discretion in appropriate circumstances.

Relevant Legislation

14. The policies relate to 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) Local Government Act 1993
- (k) Protection of the Environment Operations Act 1997
- (l) Public Health Act 2010
- (m) Public Spaces (Unattended Property) Act 2021
- (n) Roads Act 1993
- (o) Road Rules 2014
- (p) Road Transport Act 2013
- (q) Swimming Pools Acts 1992

15. These policies do not apply to on-street parking related matters.

Public Consultation

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

GRAHAM JAHN AM

Director City Planning, Development and Transport

Josh Bradshaw, Standards and Policy Manager

Mardi Flick, Principal Lawyer

KIRSTEN MORRIN

Director Legal and Governance