

# Wagga Wagga City Council

## ENFORCEMENT AND PROSECUTION POLICY

<b>REFERENCE NUMBER</b>	POL 012		
<b>ORIGINAL APPROVAL DATE</b>	July 2009		
<b>RESPONSIBLE MANAGER</b>	Manager Environment and City Compliance		
<b>RESPONSIBLE DIRECTOR</b>	Director Community		
<p>This document is to be reviewed: every four years or in the first twelve months of the new term of Council, whichever is the earliest. Next Review Date: September 2020</p>			
<b>Revision number</b>	<b>Issue Date</b>	<b>Council Resolution</b>	<b>Council Meeting Date</b>
1		Res No: 09/077	27 July 2009
2	January 2013	E-Team	22 January 2013
3	August 2013	Res No: 13/224.1	26 August 2013
4	July 2017	E Team	1 August 2017
5	August 2017	Res No: 17/279	28 August 2017

## **PART 1: INTRODUCTION**

Wagga Wagga City Council is involved in a broad range of regulatory activities which has increased over a number of years. The Enforcement and Prosecution Policy reflects the need for the decision making process of the Council authorised officers to be carried out in a transparent, efficient, fair and consistent manner having regard to all the circumstances.

This policy addresses the requirements within the Local Government Act 1993, section 159 (Preparation of Draft Local Orders Policy) to specify the criteria which the council must take into consideration in determining whether or not to give an order under section 124 of the Local Government Act 1993.

The inclusion of Appendices A and B at the rear of the policy can be interpreted as a guide to indicate the relative level of seriousness of some offences and therefore, from a consistency viewpoint, to determine whether or not the Council may issue a warning prior to some level of formal action.

### **1.1 Policy Objectives**

The purpose of this policy is to:

- Enable the Council to acknowledge its obligation under the Local Government Act 1993 to ensure that its regulatory powers are carried out in a consistent manner and without bias, and
- Provide a proactive policy statement and clear reporting lines regarding the enforcement of compliance with legislation and/or condition/s of development consent, and
- Foster prompt, consistent and effective action by Council in response to allegations of unlawful activity whilst ensuring that the principles of natural justice are respected.

### **1.2 Scope of Policy**

The aim of this policy is to establish clear guidelines for the exercise of discretion in dealing with proactive regulatory action by Council and customer service requests or complaints about unlawful activity. It provides workable guidelines on:

- How to assess whether complaints of unlawful activity require investigation;
- Options for dealing with unlawful activity;

- How to decide whether enforcement action is warranted.

### 1.3 Definitions

<p><b>Authorised Officer means</b></p>	<p>An employee of a council generally or specially authorised by the council in respect of or whose duty it is to deal with, or to act in regard to, any acts, matters or things in relation to which the expression is used.</p>
<p><b>Unlawful activity</b></p>	<p>is any activity or work that has been or is being carried out:</p> <ul style="list-style-type: none"> <li>• Contrary to the terms or conditions of a development consent, approval, permission or other written authorisation from Council;</li> <li>• Contrary to an environmental planning instrument that regulates the activities or work that can be carried out on particular land;</li> <li>• Contrary to a legislative provision regulating a particular activity or work;</li> <li>• Without a required development consent, approval, permission or the like;</li> <li>• Contrary to New South Wales legislation for which Council is the appropriate regulatory authority.</li> </ul>

## 1.4 Legislative Context

The following documents are related, either directly or indirectly, to the Policy:

- Local Government Act 1993 - particularly Chapter 7
- Local Government (General) Regulation 2005
- Environmental Planning & Assessment Act 1979
- Protection of the Environment Operations Act 1997
- Wagga Wagga Local Environmental Plan 2010
- Wagga Wagga Development Control Plan 2010

## 1.5 Application

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.

While primarily directed at the regulation of development activity, the Policy is also applicable to pollution control, regulation of parking, control over animals, unauthorised development including buildings, non-compliance with development consent conditions, food safety, public health and safety issues, tree/s removal and land clearing.

Council will try to use the quickest and most informal option to deal with unlawful activity wherever possible unless there is little likelihood of compliance with such options. Approaches to be considered will include:

- Referring the complaint to an external agency for further investigation or prosecution.
- Taking no action on the basis of a lack of evidence or for some other appropriate reason.
- Counselling the subject of the investigation to educate them on the relevant Council requirements.
- Negotiating with the subject of the investigation and obtaining some undertakings to address the issues of concern arising from the investigation e.g. an application for modification of development consent.
- Referring the parties for mediation with the Community Justice Centre or alternatively for private mediation.
- Issuing a letter requiring work to be done or activity to cease in lieu of more formal action.

- Issuing a notice of intention to serve an order or notice under relevant legislation, followed by service of an appropriate order or notice (Local Government Act (LG Act) ss. 124-128A, Environmental Planning & Assessment Act (EP&A Act) s. 121B, and the Protection of the Environment Operations Act (POEO Act) Pts 4.2-4.4 and 8.6).
- Issuing a notice requiring work to be done under various legislation.
- Starting proceedings in the Land & Environment Court for an order to remedy or restrain a breach of the relevant Act or Regulation (s.673 LG Act; s. 123 EP&A Act).
- Seeking injunctions from the Land & Environment Court or the Supreme Court.
- Issuing a Court Attendance Notice in the local court.
- Issuing a penalty infringement notice.
- Taking proceedings for an offence against the relevant Act or Regulation (s. 691 LG Act, s.125 EP&A Act, Chapter 5 POEO Act).
- Carrying out the works specified in an order under the LG Act at the cost of the person served with the order (s.678 LG Act).

All enforcement action will be monitored and a decision made in relation to non-compliance within 2 weeks of any deadline imposed.

## 1.6 Related Documents

- Code of Conduct,
- POL 112 Conflicts of Interest Policy

## 1.7 Responsibilities

### ***1.7.1 RESPONDING TO CUSTOMER REQUESTS***

Every effort will be made to ensure that all Customer Service Requests about alleged unlawful activity are actioned within the 'service standard' time allowed for resolving the category of request as indicated in the Customer Service Request system.

Action will be instigated within the following time frames:

- Urgent and life threatening matters will be actioned as soon as possible following receipt of the request. Examples include unsafe building works, dangerous awnings, collapsed building/wall, serious pollution, food safety issues and public health and safety matters, etc. As a guide these matters should be dealt with on the day of the receipt of arequest.
- General compliance matters will be dealt with on a priority basis having regard to the relative seriousness of the matter. These examples include works not in accordance with consent or construction without consent, illegal use, noise and food requests.
- Nuisance matters will be actioned within ten working days; examples include domestic noise matters, minor non-compliance such as overgrown land or other matters in which there are no likely immediate health or safety implications.

Note that response times may vary depending on staff and other resources. However Council will acknowledge the request and keep the person informed in accordance with the service standards of the Council.

### **1.7.2 ENFORCEMENT PRINCIPLES**

Wagga Wagga City Council is committed to:

- Acting in the interest of protecting community health/safety and/or the environment;
- Acting consistently, fairly and impartially;
- Preventing discrimination on the basis of race, religion, sex, national origin, political association or other personal reason/s;
- Ensuring the proposed enforcement action is in keeping with the relative severity of the offence/s;
- Ensuring enforcement action is taken against the right person for the correct offence;
- Ensuring that any actual or potential conflict of interest situations are managed in a fair, consistent and impartial manner;
- Disclosing all evidence relevant to the alleged offence/s;

- Assisting the Court by providing all necessary information whether or not that information is in favour of the Council case;
- Issuing cautions to the alleged offender/s, where necessary;
- Making cost effective decisions concerning enforcement action having regard to the likely outcome at court;
- Ensuring action is instigated within the specified time limits.

### **1.7.3 INVESTIGATING UNLAWFUL ACTIVITIES**

All customer requests and matters regarding unlawful activities will be reviewed to determine whether the matter requires enquiry or investigation. Further enquiries/investigation will not be initiated where:

- The matter has already been investigated and resolved, or
- Council has no jurisdiction, or
- The activity is determined to be lawful without an investigation.

In considering whether a complaint will warrant enquiry or investigation Council will consider a range of factors. These include:

- Is the matter within the jurisdiction of the Council?
- Is the customer request premature e.g. does it relate to some unfinished aspect of work that is still in progress?
- Is the activity or work permissible with or without consent?
- If the activity is permissible with consent, is there a consent in place?
- Is it possible to determine from the information available to Council whether the activity or work is permissible without consent and/or whether all conditions of consent are being complied with?
- Is the complaint trivial, frivolous or vexatious?
- Has too much time elapsed since the events at the subject of the complaint took place?

- Is there another body that is a more appropriate agency to investigate and deal with the matter?
- Is the activity having a significant detrimental effect on the environment, or does it constitute a risk to public safety?
- Does the complaint indicate the existence of a systemic problem e.g. if the complaint is one of a series, could there be a pattern of conduct or a more widespread problem?
- Is there a history of related complaints against this person or organisation?
- Does the complaint have special significance in terms of the priorities of Council?
- Are there significant resource implications in relation to an investigation and any subsequent enforcement action?
- Is it in the public interest to investigate the complaint?
- The effective use of resources having regard to the circumstances of the case.

If a decision is made not to investigate a complaint, this decision must be recorded with the reasons for that decision and the complainant so advised.

## **1.8 Reporting Requirements**

All Customer requests will be recorded in Councils Property and Rating system for investigation and enforcement of unlawful activity or failure to comply with the terms or conditions of approvals and orders.

## **1.9 Responsibility**

All Council staff who deal with the proactive enforcement of relevant legislation in addition to written and verbal action requests or complaints alleging unlawful activity are responsible for implementing these policy guidelines.

All notifications of alleged unlawful activity will be appropriately recorded by the Council.

## 1.10 Review procedures

All representations relating to enforcement action undertaken by an authorised Council officer will be reviewed by a supervising officer not involved in the enforcement action prior to return correspondence being forwarded.

## PART 2: POLICY CONTENT

### 2.1 General Provisions

#### APPENDIX A

**As a guide the following offences may result in a prior warning being given before any enforcement action in the form of the service of an order or notice or penalty infringement notice or court action is undertaken.**

- Annual Fire Safety Statement- non submission by owner
- Advertising signs without approval or unsightly
- Air pollution – smoky chimney
- Barking / Roaming dog, unregistered dog
- Commercial swimming pool not properly maintained
- Development / Activity without consent or not in accordance with a condition/s of consent
  - o Minor development or old unauthorised development
  - o Minor breach of consent condition/s
- Erosion & sediment control matters (owner builder / no prior warning) involving no imminent risk of pollution.
- Fire hazard of a less serious nature.
- Food safety/hygiene matters of a less serious nature
- Noise pollution
  - o Air conditioner\*
  - o Intruder alarm\*
  - o Musical instrument and sound equipment\*
  - o Power tools\*
  - o Motor vehicle on residential premises\*
  - o Use of refrigeration equipment fitted to motor vehicle\*
- Non compliance with an Order/Notice/Direction
- Work partly done or other mitigating circumstances

- Obstruction of Public Place / Road – (minor matters)
- Residential swimming pool issue not serious (eg resuscitation chart not provided)
- Revocation of an approval (eg footpath dining/ place of public entertainment).

\* Mandatory warning required by legislation

Note that the above list of offences is an indication only and any offences not listed will be considered on their individual merits.

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## APPENDIX B

**As a guide the following offences may result in NO prior warning being given before any enforcement action in the form of the service of an order or notice or penalty infringement notice or court action is undertaken.**

- Dangerous Dog Order / Attacking Dog/ Restricted Dog
- Dangerous building/ awning
- Dangerous waterhole
- Deposit litter from vehicle
- Development not in accordance with consent / risk to health & safety/bush fire protection/ Notice of Intention issued by PCA
- Deposit litter / Dumped Rubbish
- Development without consent – unsatisfactory explanation / no explanation / repeat offender / prohibited development / risk to health & safety or environment
- Dilapidated building
- Environmental damage of a significant nature
- Erosion & sediment control matters
- Fire hazard threatening an asset
- Food safety matters of a serious nature
- Failure to pay Clean Up / Prevention Notice fee
- Failure to comply with order / notice / cease use of premises / failure to comply with order regarding development consent / demolish remove unlawful building / threatening life / public safety / environment / amenity protection/ fence land / keeping of birds and animals/ remove object from public place/ contravene noise control notice/ noise pollution
- Land clearing of a significant nature
- Littering
- Noise abatement direction
- Noise pollution generally after prescribed mandatory warning
- Not comply with condition of development consent/approval to operate
- Nuisance Dog Order
- Obstruction of road / public place involving safety
- Obstruction / intimidation/ assault of a Council officer
- Open burning without approval or not in accordance with an approval or cause excessive smoke
- Pollute Waters
- Parking offences
- Pollution Incident – Failure to notify
- Remove and /or damage tree/s
- Swimming Pool fencing / gates / open
- Street Trading without consent / approval

Note that the above list of offences is an indication only and any offences not listed will be considered on their individual merits.