
Cessnock City Council Compliance and Enforcement Policy

Date Adopted **20/05/2020** Revision: **1**

1. POLICY OBJECTIVES

- 1.1. To establish clear principles and guidelines to assist Council staff, Council and the community on best practice enforcement principles and procedures so as to ensure Council acts promptly, consistently and effectively in response to allegations of Unlawful Activity while upholding the principles of Procedural Fairness and Natural Justice.
- 1.2. This policy is developed to:
 - 1.2.1. ensure Compliance with legislation and policies that Council administers by encouraging voluntary Compliance through education, implementing monitoring programs to detect non-Compliance and taking appropriate enforcement action in cases of non-Compliance;
 - 1.2.2. confirm Council's adherence to core values of respect, ethics, quality and communication while adopting a minimum tolerance approach to Unlawful Activity;
 - 1.2.3. specify the criteria which Council will consider when deciding:
 - a) if enforcement action is necessary; and
 - b) the most appropriate form of action.
 - 1.2.4. improve Community and Council understanding of the importance of Compliance in protecting the environment and human and public health;
 - 1.2.5. confirm Council's focus on educating the community on legislative requirements and the importance of acting in accordance with the law;
 - 1.2.6. ensure Compliance activities are undertaken in an effective, timely, transparent, fair, consistent and lawful manner by applying best practice decision making principles and processes; and
 - 1.2.7. minimise negative impacts to the environment and human health as a result of non-Compliance by applying a risk based approach to investigating Unlawful Activity.

2. POLICY SCOPE

- 2.1. Authorised Officers who have responsibilities for regulatory Compliance as defined by their job descriptions and/or their delegations are responsible for the implementation of this policy and undertaking investigation and enforcement activities in line with relevant legislation.
- 2.2. The scope of this policy does not extend to handling complaints made to or about Council, Council services, Council staff or the handling of a complaint where a response or resolution is explicitly or implicitly expected or legally required. Such Complaints will be handled in accordance with Council's [Complaints Handling Policy](#).

3. POLICY STATEMENT

- 3.1. Council is strongly opposed to Unlawful Activity at any time or under any circumstances. Council will initiate enforcement action where appropriate in accordance with this policy.
- 3.2. Council acknowledges that it has an obligation under section 8 of the *Local Government Act 1993* (NSW) to ensure that the exercise of its regulatory power is carried out consistently and without bias.
- 3.3. Council's Charter and Values are committed to serving the community with integrity, respect, teamwork, accountability and excellence.

4. PRINCIPLES

4.1. Anonymous Complaints

- 4.1.1. We accept anonymous Complaints and will carry out an investigation of the issues raised where there is sufficient information provided to substantiate the complaint.

4.2. Confidentiality of complaints

- 4.2.1. Council operates in accordance with the *Privacy and Personal Information Protection Act 1998* (NSW); however as Council is a government entity certain information is obtainable under the *Government Information (Public Access) Act 2009* (NSW) (**GIPA**). All access to information is considered by appropriately delegated staff and/or Council's Public Officer.
- 4.2.1. In order for Council to help resolve the matter circumstances may require the details of the Complainant to be made public, however, this will not be done unless it is deemed justified under GIPA or the Complainant approves the disclosure of the details to another party.

4.3. Community education

- 4.3.1. Council has a focus on educating the community and will take a proactive approach by developing programs to educate the community on legislative requirements and the importance of acting in accordance with the law. Education programs will be adopted and resources allocated in accordance with Council's adopted yearly budget.

5. INVESTIGATING AND PRIORITISING UNLAWFUL ACTIVITY

- 5.1. Many complaints are able to be resolved informally by providing prompt and accurate advice to the Complainant. For minor alleged Unlawful activities, if considered appropriate, Council will encourage the Complainant to approach the person undertaking the alleged Unlawful Activity with the aim of resolving the matter amicably and civilly.
- 5.2. Timeframes for responding to complaints about unlawful activities may vary, however every effort will be made to ensure that all complaints about Unlawful Activity are actioned within a timely manner and the Complainants are given appropriate feedback on the progress of their complaint.
- 5.3. Council will prioritise notifications of potential non-Compliance on the basis of risk to public safety, human health and environment. The risk category will determine

priorities for allocation of Council resources to investigate matters and will also determine response times to Complainant.

5.4. Priority will be given to complaints in accordance with the following risk categories:

5.4.1. Priority 1

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 can include:

- i. Buildings declared unsafe by an experienced professional practitioner;
- ii. Collapsed or fire damaged buildings that pose an immediate risk to life and safety;
- iii. Fire safety breach relating to a public building;
- iv. Serious pollution incidents;
- v. Food poisoning incidents;
- vi. Abandoned vehicles posing immediate safety hazard;
- vii. Dog attacks (after the event);
- viii. Livestock on roads;
- ix. Dangerous/aggressive dog complaints;
- x. Roaming dogs;
- xi. Swimming pool fencing confirmed by evidence of immediate risk to life and safety;
- xii. Parking safety issues (Business hours only, after hours Police);
- xiii. Other serious incidents where the environment or public health and safety is at immediate risk.

5.4.2. Priority 2

General Compliance matters within 15 working days. Examples can include:

- i. Significant unauthorised and non-complying land use;
- ii. Significant unauthorised and non-complying construction/demolition works;
- iii. Works not carried out in accordance with development consent;
- iv. General noise matters affecting several persons from two (2) or more separate premises;
- v. Standard complaints about food premises;
- vi. Abandoned vehicles not posing immediate safety hazard;
- vii. Dog Barking (complaints from two (2) or more separate premises);
- viii. Parking general complaint;
- ix. Unhealthy premises posing a risk of environmental harm or public health such as – putrescible waste, residential swimming pool water quality);
- x. Illegal signage public place;
- xi. Illegal dumping.

5.4.3. Priority 3

Minor matters will be actioned within 30 working days. Examples can include:

- i. Minor non-Compliance of development consents;
- ii. Minor non-Compliances such as overgrown land;
- iii. Minor matters where there is no immediate adverse impacts to the environment, public health or safety

5.5. Council must consider a range of factors when determining whether the particular matter will warrant further and detailed investigation. However if a decision is made not to investigate or act upon a complaint, the decision must be recorded with clear reasons as to why the investigation did not proceed. The Complainant must then be advised of the decision in an outcome letter within 20 working days.

5.6. It is important to emphasise that Council resources are partly funded by public funds therefore, Council has an obligation to the community and rate payers for these funds to be used in a justified manner. In this context, Council will apply a risk-based approach to Compliance assurance for both proactive and reactive activities in accordance with Council's risk management framework and ISO 31000. This involves identifying, analysing and prioritising non-Compliance risks, followed by application of appropriate Compliance measures to control the risks. Applying a risk based approach will enable Council resources to be expended on matters that justify the use of public funds in the interests of protecting the environment and preserving human and public health.

5.7. How does Council decide on what action to take?

5.7.1. When deciding whether Unlawful Activity requires investigation, Council staff will consider the following factors:

- a) Is the matter within the jurisdiction of Council or of a civil or private nature e.g. is it a workplace health and safety matter where Safework NSW is the appropriate regulatory authority or does it relate to a civil matter such as a dividing fence or neighbourhood amenity issue?
- b) Does the complaint relate to some unfinished aspect of works that are still in progress e.g. has enforcement action already been taken and/or continuing such as a Notice/Order has been issued allowing for a period of time to have the matter resolved? It may be unreasonable to take action prematurely.
- c) Has the Unlawful Activity affected the health, safety and well-being of several residents or the wider community? Breaches which affect the health and safety of several residents or the wider community would warrant affirmative and effective enforcement remedial action.
- d) Is the activity or work permissible with or without development consent? Does the development meet the exempt provisions in accordance with the State Environmental Planning Policy (Exempt & Complying Development Codes) 2008?
- e) Whilst a use or activity may not be approved is it possible that the works or use (as built) would have been approved if a development application had been submitted to Council, e.g. according to the land zoning a deck is permitted with consent, however the owner acts on the incorrect advice from a builder and builds the deck. Upon further investigation the owner discovers consent was required and actively seeks out Council in an attempt to have the works regularised.

- f) Has too much time elapsed since the alleged Unlawful Activity took place? E.g. a pollution incident is lodged with Council a month after the actual incident. Given the nature of the incident it is likely that too much time has passed since the event and little to no evidence exists for Council to take action.

NB – Council may also be restricted in enforcement activities due to statute of limitations under various legislation.

- g) Is there another body that is more appropriate to investigate or deal with the matter? E.g. a pollution incident is lodged with Council relating to a large industrial facility which is regulated by the NSW EPA or a noise complaint relates to a pattern of harassing, intimidation or offensive behaviour more appropriately dealt with by the Police.
- h) Is it cost effective to take action. 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 offence.
- i) Is it in the public interest to investigate the complaint? E.g. does the breach affect a number of people; would enforcement action be in the public interest or merely benefit only private interests in the case of neighbourhood disputes; are there hardships applicable; would enforcement action impact unreasonably on disadvantaged groups?

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

5.7.3. 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.

5.7.4. There are however certain matters that may not warrant investigation. These may include the following:

- a) The matter has already been actioned, resolved or deemed finalised (in these circumstances unless a new issue is raised or new evidence is presented to Council officers will not action matters previously resolved or deemed finalised);
- b) Council is not the appropriate authority to regulate the activity, for example, a private certifier who has responsibility regarding a building under construction or matters involving Safework NSW for workplace health and safety matters.
- c) The activity is determined to be lawful without an investigation;
- d) The complaint is Frivolous, Vexatious or Trivial in nature as determined by a suitably delegated officer; or
- e) The complaint is anonymous and there is insufficient information to support a risk to public health or safety or a Prima Facie case.

5.7.5. Where a decision is made not to investigate an alleged Unlawful Activity, the Complainant will be advised of the decision and the reasons why no further action is being taken. The decision must be recorded in Council's Customer

Service Management System with clear reasons as to why the investigation did not proceed.

5.8. Options for investigating Unlawful Activity

5.8.1. A number of enforcement options are available to council, when a breach or non-Compliance action is identified and proven. These include:

- a) Record only (no response).
- b) Verbal warnings.
- c) Written warnings or Cautions.
- d) Penalty Infringement Notices (**PINs**).
- e) Orders.
- f) Notices.
- g) Prosecution/Civil proceedings.

5.8.2. These options are arranged to reflect an escalation in response that is proportionate to the severity of the offence. The severity of the offence can be considered to be the combination of the level of harm to the environment and culpability of the offender.

5.8.3. Enforcement action may vary for each circumstance and situation. Action may be either informal or formal.

5.9. Options for informal action may include:

5.9.1. Taking no action on the basis that there is no reliable evidence or other appropriate reason (Frivolous/vexations complaints, no legal jurisdiction, etc.);

5.9.2. Counselling the person who carried out an Unlawful Activity to educate them on the relevant requirements. Council recognises that educational initiatives may lead to Compliance being achieved without enforcement action in some circumstances;

5.9.3. Negotiating with the person who carried out the Unlawful Activity to obtain an agreement that certain processes and actions will be followed to rectify and/or regularise the breach;

5.9.4. Council can refer parties to the Community Justice Centre (**CJC**) for mediation in instances where it is determined that mediation would be more appropriate to resolve an issue, rather than enforcement such as for civil matters or neighbourhood disputes;

5.9.5. Formal written or verbal Cautions requiring an activity to be carried out or works to cease. Verbal warnings may also be given and these are recorded in Council's Customer Request Management System for future reference and consideration.

5.10. If informal action is unsuccessful or the Unlawful Activity is deemed significant, formal action may be undertaken.

5.11. Options for formal action may include:

5.11.1. Issuing of Notices, Notices of Intention, Orders, Directions and Declarations requiring Compliance with legislative requirements;

5.11.2. Issuing of PINs;

5.11.3. Commencement of civil or criminal proceedings in a Court to either remedy or restrain Unlawful Activity.

5.12. Following up enforcement action

5.12.1. It is important for consistency, Transparency and Procedural Fairness that Council's authorised officers follow up and review enforcement action undertaken in relation to Unlawful Activity. Failure to review and finalise enforcement action may expose Council to significant liability such as has been proven to be the case in past incidents where the High Court has deemed Council liable for failure to fulfil their statutory obligations (e.g. *Sutherland Shire Council v Heyman* (1985) 157 CLR 424 & *Pyrenees Shire Council v Day; Eskimo Amber Pty Ltd v Pyrenees Shire Council* (1998) 192 CLR 330) – (See Appendix B).

5.12.2. Therefore Council staff will:

- a) Make decisions whether to act or not so as to protect Council's liability, risk or interests;
- b) Follow up all defective inspections where matters are deemed non-compliant in relation to a Caution, notice, order, direction or the like;
- c) Record all notes in Council's Customer Requests Management System chronologically;
- d) Contact all relevant parties as necessary to advise what action has or will be undertaken in relation to the alleged Unlawful Activity.

5.13. Use of discretion by authorised officers in enforcement action

5.13.1. Council will use discretion in considering the most appropriate enforcement action. The NSW Ombudsman defines discretionary powers as "...powers granted either under statute or delegation which do not impose a duty on the decision maker to exercise them or to exercise them in a particular way." Though authorised officers may have discretion in the decisions they make, this power is not unrestrained and must be based on applicable legal requirements and utilised reasonably, impartially and avoid oppression and coercion.

5.13.2. In this regard, Council's delegated staff will comply with the following:

- a) Use discretionary power in good faith and for a proper purpose. That is to use the powers with integrity and only within the scope of the purpose for which the power was given;
- b) Base decisions on logically probative material. This means decisions are based on logical reasons, information that proves the issues in question as well as reliable and relevant evidence;
- c) Consider only relevant considerations and not consider irrelevant considerations;
- d) Give weight to matters of greater risk and importance and not to matters of low risk or low importance;
- e) Exercise discretion independently and not under the dictation or order of any third party;
- f) Give proper, genuine and realistic consideration to the merits of each particular case and not apply policy inflexibly;

- g) Observe the rules of Procedural Fairness and Natural Justice.

6. ADJUDICATION OF PENALTY INFRINGEMENT NOTICE (PIN) APPEALS

- 6.1. Adjudication is a process required of Council under a Deed of Agreement with Revenue NSW. Appeals must be forwarded by offenders directly to Revenue NSW where they are recorded and Revenue NSW may then send to Council for adjudication where Revenue NSW deem necessary. Offenders who wish to have infringements withdrawn or cancelled as part of this process must be advised to make representations to Revenue NSW directly to enable Council to comply with the Deed. In this way all representations are collected by Revenue NSW and Council considers them in a consistent and standard format. On occasion Revenue NSW may adjudicate on a matter without reference to Council. It is important the process is followed to ensure Compliance with the Deed and that all representations are handled consistently and in the correct way.
- 6.2. All appeals regarding the issuing of infringements must therefore in the first instance be adjudicated on by Revenue NSW and it is acknowledged that the interference, demanding behaviour, placing pressure including the use of threats or enticements upon Council staff or adjudication panel members for any infringement notice to be withdrawn therefore bypassing or interfering with the infringement notice review process in any way by Councillors, Council staff or third parties may be perceived to be corruption and the matter of the interference may be referred to ICAC for determination.
- 6.3. Using Revenue NSW to undertake the adjudication allows a third party to independently rule on the facts outlined in the infringement notice and any correspondence relating to the infringement notice whilst allowing the alleged offender the opportunity to elect the matter to be determined by the Courts. It should be noted that Revenue NSW guidelines are published on their web site.
- 6.4. It is acknowledged that Revenue NSW may refer infringements to Councils Adjudication Panel for clarification, especially regarding Environmental Planning and Assessment Act and Protection of the Environment Operations Act infringements and these rulings are open to appeal to the Local Courts where Magistrates have the ultimate discretion.
- 6.5. The relevant Manager and/or the relevant Principal/Team Leader have the discretion to convene an Adjudication Panel to review all client representation Schedules from Revenue NSW. The Adjudication Panel will consist of the relevant Section Manager, relevant Principal/Team Leader and an independent delegate or other panel members as authorised by the relevant Manager or Director. The Client Representation Schedules contain representations from persons who have received a PIN for an offence.
- 6.6. Adjudication will be carried out in accordance with Revenue NSW Policy on Infringement Representations.
- 6.7. In considering infringement appeals, the relevant Manager and/or relevant Team Leader will:
- 6.7.1. Refer to and abide by any Revenue NSW Guidelines
 - 6.7.2. Operate in accordance with the Adjudication Panel Charter (see **Appendix A**)

6.7.3. Refer to and abide by the principles outlined in this and other Council policies

6.8. The process by which the panel considers appeals is in itself an avenue for an infringement to be reviewed, in addition to the statutory right to have the matter determined in a Court.

6.9. Council acknowledges that once the adjudication panel have decided on a matter that no further consideration will be given unless new supporting evidence is received.

6.10. This ensures consistency and Transparency in all adjudications relating to infringement notices.

7. SPECIAL PROVISIONS

7.1. Development & Building Compliance

7.1.1. **Complaints relating to Private Certifiers**

- a) Council is not the regulatory authority for private certifiers and will not investigate or take action in relation to a private certifier unless it is in the public interest to do so. Only delegated staff are authorised to make a complaint against a private certifier on behalf of Council.
- b) Council will advise customers of their need to make contact with the relevant private certifier to discuss their concerns with them. Alternatively, any person may make a complaint to the relevant state authority (e.g. NSW Fair Trading) regarding the actions of a private certifier.

7.1.2. **Building Information Certificate Applications (Division 6.7 Environmental Planning and Assessment Act 1979)**

- a) Council does not solicit or encourage the submission of Building Information Certificate (**BIC**), applications to justify or rectify unlawful works. Council supports the lawful processes intended to ensure that development consent and associated building approvals are obtained from Council or other authorised authorities. Regardless, in certain circumstances it may be considered prudent and appropriate for Council to encourage the BIC process to be followed in the regulation of unauthorised development (refer *Ireland v Cessnock City Council* [1999] NSWLEC 153).
- b) It is acknowledged that the EP&A Act makes provision for particular persons to make application to Council for a BIC. If issued, the BIC prevents Council from issuing certain orders relating to the demolition, rebuilding or alteration of the subject building for a period of seven (7) years but does not preclude the taking of legal action in relation to fire safety or offences such as undertaking development without the benefit of consent. Matters relating to the application process, fees, supporting documentation and the like are addressed within the *Environmental Planning & Assessment Act 1979* and Council's procedures.

7.1.3. **Development Compliance**

- a) Council will investigate and monitor unauthorised and non-complying development within the Cessnock Local Government Area (LGA) in accordance with the provisions contained in Section 6 of this Policy. This involves enforcing the requirements of various Acts, Regulations, planning controls, conditions of consent and other statutory requirements

surrounding development approvals and/or unauthorised development. Specifically, Council's role includes, but is not limited to:

- i. Investigating and monitoring unauthorised and non-complying development within the LGA in response to complaints from the community, customers and staff;
- ii. Developing and implementing educational programs, and initiatives of a proactive nature in relation to unauthorised and/or non-complying development; and
- iii. Commencing informal/formal enforcement action to rectify breaches of legislation.

7.1.4. **Signage**

- a) Council will respond to illegal signage when a complaint is received in relation to an alleged breach, or when dangerous signage is observed during patrols.
- b) Development consent is required for all building and business identification signage and advertising signs and structures, unless the signage is specifically identified as exempt development in an environmental planning instrument, including:
 - i. Cessnock Local Environmental Plan 2011;
 - ii. State Environmental Planning Policy (Exempt and Complying Development Codes) 2008;
 - iii. State Environmental Planning Policy (Infrastructure) 2008; and
 - iv. State Environmental Planning Policy No 64 – Advertising and Signage.
- c) Despite any exemption afforded to signage under an environmental planning instrument, any signage that is erected in, on or over public land, including the road or road related area also requires an approval under the *Local Government Act 1993* or *Roads Act 1993*.
- d) When a complaint is received in relation to illegal signage the complaint will be registered in Council's Customer Request Management System. Following investigation if it is determined by Council that the signage requires a consent or approval that has not been obtained, enforcement action will be commenced.
- e) Council will also commence enforcement action against dangerous signage when it is observed during patrols or when a complaint is received.

7.1.5. **Illegal signage erected on public land, including the public road or road related area**

- a) Council officers will impound all signs erected unlawfully on public land, including the public road or road related areas.
- b) Council becomes aware of unauthorised signage through customer complaint, Councillor Enquiry or by officers during routine patrols.
- c) Impounded signage will be held by Council for a minimum of 28 days after which time the signage will be disposed of in accordance with the *Impounding Act 1993* (NSW).
- d) Illegal signage that is attached to another agency's infrastructure (e.g. Ausgrid's power poles) will be referred to that agency for removal.

- e) In exceptional circumstances Council may prosecute in relation to illegal signage in accordance with relevant legislation and the provisions of this Policy.

7.1.6. **Illegal signage on private land**

- a) Council will contact the owner of the land and/or the person to whom the sign relates to show cause as to why Compliance action should not be taken.
- b) A reasonable timeframe will be afforded to the property owner to allow them to seek development consent for the signage, or to remove the signage. The timeframe may vary depending upon the nature of the illegal signage.
- c) If development consent is not granted for the signage or the signage is not removed within the specified timeframe further action may be instigated by Council in accordance with relevant legislation.

7.2. **Swimming Pool Safety fencing requirements**

- 7.2.1. The *Swimming Pools Act 1992* (NSW), associated Regulation and Australian Standards AS1926 outlines the obligations of pool owners and safety requirements in relation to private backyard swimming pools.
- 7.2.2. Due to the significant risk to life and safety, especially to children aged 0 – 5 years old Council will take strict action in relation to breaches of swimming pool safety requirements. Council has a statutory duty of care and obligation to respond to complaints received relating to backyard swimming pools.
- 7.2.3. Council has an adopted Swimming Pool Inspection Program that guides the functions and services provided in relation to swimming pool regulation and education. Council actively promotes swimming pool safety via annual education campaigns. Council will seek to educate pool owners of their obligations and pool safety requirements in the first instance but must act promptly to enforce Compliance for matters of immediate risk or where voluntary Compliance is unsuccessful.
- 7.2.4. All pools (including spa pools) must be registered on the NSW Swimming Pool Register. In addition, tenanted properties or properties for sale that contain a pool must obtain a valid Swimming Pool Certificate of Compliance which can be sought from Council or an accredited certifier.
- 7.2.5. For further details on swimming pool safety and your legal obligations under the *Swimming Pools Act 1992* (NSW) please refer to Council's website at www.cessnock.nsw.gov.au.

7.3. **Existing Building Fire Safety Compliance**

- 7.3.1. Along with Fire and Rescue NSW, Council is the regulatory authority for the fire safety of existing buildings. Council has a Building Fire Safety Strategy that guides Council's functions and services in relation to regulating fire safety matters.
- 7.3.2. Although all residential buildings must maintain fire safety requirements such as smoke alarms, Council's resources are focused on public buildings such as hotels/motels, shopping centres and other commercial and industrial buildings.
- 7.3.3. The *Environmental Planning and Assessment Regulation 2000* contains a list of statutory fire safety measures such as exit signs, smoke detection and alarm systems that may be installed and maintained within a building. A building owner has a legal obligation to submit to Council at least annually, a Fire Safety Statement that certifies that the relevant fire safety measures and exits within the

building are being maintained. Council has statutory powers to require the submission of an annual Fire Safety Statement as well as the inspection and upgrading of existing buildings for the purposes of improving fire safety.

7.3.4. It is an offence not to submit an annual Fire Safety Statement. The penalties under the legislation are significant emphasizing the legislative importance of maintaining fire safety standards.

7.3.5. For further details on your legal obligations under relevant legislation please refer to Council's website at www.cessnock.nsw.gov.au.

7.4. Environmental Health and Protection Compliance

7.4.1. Food safety

- a) Council is appointed as an enforcement agency under the food regulation partnership with the NSW Food Authority. As part of this appointment Council inspects retail food businesses to prevent food borne-illness and to ensure Compliance with the national food safety standards in the Australia New Zealand Food Standards Code, the *Food Act 2003* (NSW) and the *Food Regulation 2015* (NSW).
- b) It is considered this preventative approach has contributed to a high standard of hygiene in food businesses and to a low incidence of food borne illness in the Cessnock LGA.
- c) Under the *Food Act 2003* (NSW) Council's authorised Environmental Health Officers carry out food safety inspections of all food businesses in accordance with NSW Food Authority requirements. Inspection fees are charged in accordance with Council's adopted Fees and Charges. Fees are graduated according to the risk assessment of the premises and the cost of carrying out the service. This is as recommended by the NSW Food Authority and in keeping with other Council's in NSW. The legislation provides for a range of Compliance and enforcement options where breaches are found.
- d) Enforcement of the *Food Act 2003* (NSW) is essential for the effective management of food safety risks and the prevention of misleading conduct in connection with the sale of food.
- e) Council will implement the legislative provisions fairly and consistently in accordance with the minimal tolerance approach outlined in this policy.

7.4.2. Bed and Breakfast Accommodation

- a) Establishments which accommodate up to four (4) guests or six (6) guests where all guests come from one family unit are not required to comply with the requirements of Australian Standard 4674-2004 'Design, construction and fit-out of food premises' but are subject to the following requirements:
 - i. The kitchen area shall be provided with a suitable portable fire extinguisher and fire blanket.
 - ii. All refrigerators shall be capable of maintaining food temperatures at 5°C and shall be supplied with a thermometer located in an accessible position within the refrigerator so as to ensure adequate temperatures are being maintained.
 - iii. A dishwashing machine and single bowl sink OR a double bowl sink shall be installed in the kitchen area to ensure adequate provision is made for

the hygienic cleansing of utensils and materials. Such fixtures shall be provided with a continuous supply of hot water.

- iv. A wall mounted liquid soap dispenser and disposable hand towel shall be provided in close proximity to the kitchen sink so as to provide adequate hand-washing and drying facilities.
- v. A comprehensive cleaning schedule shall be provided and clearly displayed within the kitchen detailing regular areas to be cleaned and the methods of cleaning.
- vi. The changing or storage of soiled nappies is prohibited within the kitchen area.
- vii. The premises shall be maintained free of any vermin and shall be regularly treated with approved pest control measures.
- viii. No animals are to be permitted within the dining room or kitchen area, with the exception of assistance animals that are permitted in the dining room.
- b) Bed and Breakfast establishments which accommodate more than four (4) guests or six (6) guests where all guests come from one family unit are required to comply with the requirements of Australian Standard 4674-2004 'Design, construction and fit-out of food premises'.

7.4.3. Legionella – Prevention of Legionnaire's Disease

- a) Within the Cessnock LGA there are a number of cooling towers which are subject to regulation under the *Public Health Act 2010* (NSW) (the *Act*) & *Public Health Regulation 2012* (NSW) (the *Regulation*). Residents and visitors have the potential for exposure to the risk of Legionnaires' disease on a daily basis if these systems are not properly operated and maintained.
- b) Correct installation, operation and maintenance of systems are legal requirements under the *Act* and *Regulation*. The purpose of the *Act* and *Regulation* is to ensure owners and occupiers of buildings comply with minimum legislative responsibilities in order to prevent or prohibit the growth of microorganisms in these regulated systems that are liable to cause Legionnaires' disease.
- c) Building owners and occupiers have the prime responsibility to properly install and maintain all regulated systems (as defined by legislation), including water-cooling systems, air-handling systems and hot and warm-water systems. Building occupiers who fail to meet these requirements are liable to fines and legal action for not implementing adequate controls.
- d) In an effort to prevent outbreaks of Legionnaire's Disease, Council works closely with NSW Health in the implementation of the legislative provisions of the *Act* and *Regulation* in an effort to ensure owners of regulated systems fully comply.
- e) Non-Compliance with the legislative requirements is considered a serious public health risk and will result in prompt Compliance action being taken in accordance with this Policy.

7.4.4. Skin Penetration

- a) Council acknowledges that certain practices carried out in hairdressers, beauty salons, tattoo studios and the like have the potential to spread infection to consumers. Practices where the skin of customers is pierced or penetrated and where sterile procedures are not followed increases the risk

of infection with serious blood borne diseases including Human Immuno-deficiency Virus (HIV), Hepatitis B and Hepatitis C. Other skin diseases can also be transmitted through poor hygienic practices.

- b) Premises where skin penetration is carried out must be registered with Council and will be inspected by Council's Authorised Officers under the *Act* at least once annually to ensure the legislation, Skin penetration Guidelines and Code of Practice are being complied with. Council maintains a register of skin penetration premises within the local government area.
- c) Operators of these premises must comply with the Code of Practice and legislation. Failure to comply is an offence under the *Act*.

7.4.5. On-site Sewage Management Systems

- a) Council acknowledges that certain lands within the Cessnock local government area do not have access to the Hunter Water Corporation Sewerage System and are therefore reliant on providing on-site sewage management (OSSM) systems to treat and dispose of waste water.
- b) Council is committed to managing the local environment and protecting public health from the risks associated with the operation of OSSM systems.
- c) Our Environmental Health Officers and Building Surveyors are authorised under the *Local Government Act 1993* (NSW) to assess applications for approval under section 68.
- d) There are two separate types of approvals:
 - i. Approval to install; and,
 - ii. Approval to operate.
- e) Under the *Local Government (General) Regulation 2005* (NSW), all Councils have a duty to monitor the performance of existing systems and take action in relation to defective systems or systems which pose a risk to public health or the environment.
- f) This means that all on-site sewage management systems within the Cessnock local government area are subject to proactive monitoring and Compliance in accordance with Council's [OSSM program](#) and adopted [On-Site Sewage Management Strategy](#). System inspections are prioritised based on the risk of the system to the environment and public health.
- g) The framework for managing approvals and inspections and the relevant legislation, standards and guidelines used by Council in assessing approvals are outlined in Council's On-site Sewage Management Strategy.
- h) This On-Site Sewage Management Strategy incorporates three key objectives:
 - i. Promote Sustainability
 - o Ensure sustainable management of wastewater generated on all unsewered properties within the local government area, including best practice and the approval of systems advocating treated wastewater reuse.
 - o Monitor and manage cumulative impacts from OSSM systems.
 - o Implement and facilitate best management practice in relation to the installation and operation of onsite sewage management systems.

- Pursue long term, viable sewage management solutions for identified high risk areas.
- ii. Effective Management of On-Site Sewage Management Systems
 - Ensure that all sewage management systems have the required operating approval and are operating in accordance with approval conditions.
 - Progressively eliminate illegal discharges of effluent from OSSM systems.
 - Protect surface water, stormwater, land and vegetation, public health and community amenity from the impacts associated with OSSM systems.
- iii. Education & Stakeholder Involvement
 - Ensure that all stakeholders are aware of their responsibilities and have access to enough appropriate information to ensure their responsibilities are met.
 - Work in partnership with the community and other stakeholders to ensure sustainability of on-site sewage management within Cessnock LGA.
 - Ensure that the community is provided with an efficient, cost effective OSSM program which meets both the needs of the stakeholders and the responsibilities of Council.
- a) Although approvals under Section 68 of the *Local Government Act 1993 (NSW)* are separate to Development Consents under the Environmental Planning and Assessment Act 1979, Council may require that section 68 approvals are required as a condition of development consent under the *Environmental Planning and Assessment Act 1979 (NSW)*.
- b) Domestic grey water treatment systems are considered to be OSSM systems and require the same approvals and monitoring processes as other OSSM systems.
- c) Failure to comply with an approval is an offence under section 627 of the *Local Government Act 1993 (NSW)*. Failure to obtain the approval in the first instance is an offence under section 626 of the *Local Government Act 1993 (NSW)*.

7.4.6. Pollution incidents

- a) Council is an “appropriate regulatory authority” for the purposes of the *Protection of the Environment Operations Act 1997 (NSW)* for non-scheduled activities in its area.
- b) Council will respond to all reports of air, noise, land or water pollution in accordance with section 6 of this Policy.
- c) Council will implement the provisions of the *Protection of the Environment Operations Act 1997 (NSW)* where offences are identified. Provisions to consider where there are offences include:
 - i. Clean-up Notices under section 91 - Where a pollution incident has occurred or is likely to occur. They may be given verbally but will

- have no effect after 72 hours if not followed up with a written Clean-up Notice;
- ii. Prevention Notice under section 96 - This applies where an activity is being carried out in an environmentally unsatisfactory manner;
- iii. Compliance Cost Notice under section 104 - This may be issued where a Clean-up Notice was issued under section 91 and Council has incurred costs monitoring Compliance with that Notice or where Council has cleaned up a pollution incident.
- iv. Issuing PINs or alternatively commencing proceedings for an offence
- d) All actions will be carried out in consideration of the principles outlined in this Policy.
- e) Additionally Council recognises certain administrative law principles in terms of issuing Notices generally and affording representations prior to issuing those Notices and enforcing those Notices once issued. It is noted that some of these provisions are over-ridden by the *Protection of the Environment Operations Act 1997* (NSW) and will only be considered where necessary and in accordance with legal advice. For example, a written warning of Council's impending action may be advisable in the circumstances where the Act has not provided such an avenue, to permit representations to be submitted by an alleged polluter.

7.4.7. Water pollution generally

- a) Council recognises that pollution can severely impact on marine and aquatic ecosystems and action to prevent it should be taken as a priority.
- b) Authorised Officers will respond as soon as practicable to reports of water pollution in accordance with section 6 of this Policy. It is acknowledged that the quicker an officer gets to the scene the more likelihood there is of tracing the pollution, identifying an offender and arranging mitigating measures to prevent the water pollution continuing or recurring.
- c) Persons who pollute any waters are guilty of an offence under Section 120 of the *Protection of the Environment Operations Act 1997* (NSW).

7.4.8. Erosion & sediment control and water pollution on building sites

- a) Council will audit construction sites to ensure Compliance with erosion & sediment control requirements.
- b) Under the *Environmental Planning & Assessment Act 1979* (NSW) a notice of commencement must be submitted to Council prior to commencement of construction. Council will conduct audits of sites following submission of the notice of commencement.
- c) There are two (2) possible courses of enforcement action where sediment controls are not maintained and/or there is water pollution coming from a building site:
 - i. It is an offence under the *Protection of the Environment Operations Act 1997* (NSW) and Council may issue a PIN and/or Environment Protection notices requiring works to be carried out or clean up to occur; and
 - ii. It is also an offence under the *Environmental Planning & Assessment Act 1979* (NSW) to fail to comply with a condition of development consent. Development consents should have a standard condition

requiring sediment controls to be maintained to prevent pollution.
Again a PIN may be issued and Notices and Orders may be issued requiring Compliance with the development consent.

- d) The course of Compliance action will be determined in accordance with the principles outlined in section 6 of this Policy.

7.4.9. Air pollution

- a) Air pollution may include discharges of dust, smoke, soot, fumes or odours from a range of sources. Sources might include emissions from commercial and industrial premises as well as backyard burning and domestic solid fuel heaters and open fireplaces.
- b) Council will investigate complaints and implement the provisions of the *Protection of the Environment Operations Act 1997 (NSW)* to remedy any breaches. It is accepted however that the air pollution provisions of the legislation are convoluted and difficult to enforce. Distinct from the water pollution provisions, there is no specific offence.
- c) The type of air pollution is important and determines the legislative options available to regulate it. Authorised Officers must have appropriate evidence of the air pollution, which includes visiting the site affected and smelling or seeing the pollution first hand.

7.4.10. Noise pollution

- a) Council will investigate noise complaints where Council is considered to be the appropriate regulatory authority under the *Protection of the Environment Operations Act 1997* (NSW). Council officers will where practicable investigate noise complaints during normal office hours (between 8.30am to 5.00pm Monday to Friday). When alleged offensive noise occurs outside of Council's normal operating hours the affected persons should be referred to the Police who are the appropriate regulatory authority to attend to after hour's complaints.
- b) Residents are advised that Council requires complaints (that in the opinion of Council are justified) from two (2) or more affected parties from two (2) or more separate premises for Council to carry out an investigation.
- c) Persons with complaints of a private nature involving only one (1) Complainant are to be advised that the following civil remedies are available under the *Protection of the Environment Operations Act 1997* (NSW) and common law:
 - i. Where Council is unable to take further action, the customer can be advised of their right under section 268 of the *Protection of the Environment Operations Act 1997* (NSW) to obtain a Noise Abatement Order from the local court. Council may also advise the customer to seek their own legal advice in relation to pursuing a Noise Abatement Order or other remedies which may be available under common law.
 - ii. The customer can also be referred to the CJC as an independent, government funded centre that specialises in settling neighbourhood disputes. This approach can avoid lengthy and costly legal processes. The phone number is (02) 4929 1211 or they can visit: www.cjc.nsw.gov.au for further information.
- d) Common noise sources where Council has jurisdiction to act include:
 - o Air conditioners,
 - o Swimming pool and spa pumps,
 - o Commercial and Industrial equipment and air ventilation systems,
 - o Musical instruments and sound equipment,
 - o Power tools and equipment, and
 - o Motor bikes on private property.

7.4.11. Difficulty resolving noise issues

- a) Council recognises that in some cases it will not be able to resolve a noise issue to the satisfaction of an affected party. This is a common occurrence and situations where this may occur include:
 - o inability to find or isolate a noise source,
 - o authorised officers are unable to hear the noise,
 - o Council has taken all action to ensure Compliance but noise is still emitted within levels considered acceptable under the legislation or guidelines,
 - o the complaint is of a private nature involving only two parties, and/or
 - o further enforcement may result in Council incurring unreasonable costs commensurate with the number of persons allegedly affected.

- b) In those circumstances Council will clearly advise the affected party as to why further action will not be taken.

7.4.12. Civil remedies – Noise Abatement Orders

- a) As stated in clause 7.4.10 (c) Complainant is to be advised that the following civil remedies are available under the *Protection of the Environment Operations Act 1997* (NSW) and common law:
 - o Where Council is unable to take further action or it is determined that the matter would be more appropriately settled privately the customer can be advised of their rights under section 268 of the *Protection of the Environment Operations Act 1997* (NSW) to obtain a Noise Abatement Order from the local court. Council may also advise the customer to seek their own legal advice in relation to pursuing a Noise Abatement Order or other remedies which may be available under common law.
 - o The customer can also be referred to the CJC, an independent, government funded centre, which specialises in settling neighbourhood disputes. This approach can avoid lengthy and costly legal processes. The phone number is (02) 4929 1211 or they can visit: www.cjc.nsw.gov.au for further information.

7.4.13. Noise from Licensed Premises

- a) Council often receives complaints in relation to noise from licensed premises. All complaints should be referred to Liquor and Gaming NSW for investigation.
- b) Council recognises the conditions of a liquor licence issued under the *Liquor Act 2007* (NSW) are very strict and that Liquor and Gaming NSW has an effective tool to ensure the licensed premises complies. Noise conditions on liquor licences are more comprehensive and more restrictive than Council imposed conditions of consent.
- c) In the interests of assisting those parties affected by noise from licensed premises, as defined under the *Liquor Act 2007* (NSW), will be referred to Liquor and Gaming NSW as a general rule. However, where there is a condition of a development consent relating to noise that is being breached it is considered reasonable that Council will take Compliance action itself in addition to referring the matter to Liquor and Gaming NSW subject to resources being available. Often these complaints relate to times when Council does not have staff on duty. Council will also assist Liquor and Gaming NSW where requested subject to available technical knowledge and resources.

7.5. Overgrown Vegetation

7.5.1. Overgrown Property complaints

- a) Council receives a large number of customer requests about overgrown properties. To ensure this is managed effectively and resources are directed to where they are most needed a procedure has been developed.
- b) It helps to keep in mind that not all property owners wish to maintain their properties in a perfect 'park like' condition. Often a property owner is not aware of the situation and most of the time they are eager to address the matter once informed.

- c) In the first instance and prior to contacting Council Complainants are encouraged to contact the property owner and discuss their concerns first to have the situation resolved without the involvement of Council.
- d) Property owner information may be sought under the GIPA by lodging an access to information request via Council's [website](#).
- e) If you are unable to contact the owner or your concerns are ignored Council requests you contact the CJC to arrange mediation with the property owner prior to contacting Council for investigation.
- f) The CJC is an independent, government funded centre that specialises in settling neighbourhood disputes. This approach can avoid lengthy and costly legal processes. Call (02) 4929 1211 or visit: www.cjc.nsw.gov.au for further information.
- g) If you are concerned the overgrown vegetation poses a bushfire hazard, you may contact the NSW Rural Fire Service local fire control centre on 02 4015 0000 or by completing the online *Bush Fire Hazard Complaint Form* at: www.rfs.nsw.gov.au.
- h) The following guidelines will help you determine if Council can assist:
 - i. The customer has attempted to resolve the matter themselves with the property owner;
 - ii. The customer has attempted mediation through the CJC;
 - iii. The property in question must be located in a residential zone (R1, R2, R3, R4 or R5). As a general rule Council will not respond to customer requests in rural, semi-rural or those classified Environment Protection (E1 and E2);
 - iv. The overgrown vegetation has been confirmed as a harbourage for vermin likely to create unsafe or unhealthy conditions. Evidence of vermin will be required and can include rodent sightings, faeces, nests, runs or eggs. (Vermin however does not include any native fauna); and/or;
 - v. The vegetation in question is more than 600mm (approximately) in height and covers a significant portion of the property. Please note: Overgrown Vegetation does not include any vegetation that is protected by the Threatened Species Conservation Act, Environment Protection or Council's Tree Preservation Order, and does not include a commercial crop.

7.5.2. **Weed Management**

- a) The definition of a Weed is a plant that is growing in the wrong place at the wrong time. Some plants are determined to be noxious weeds due to their detrimental impact on human health, agriculture and/or our environment.
- a) All land owners or occupiers have general biosecurity duty under the *Biosecurity Act 2015* (NSW) to control any declared weed on their property. All residents or property owners, occupiers or people leasing or renting properties are responsible for the control of noxious weeds on their land.
- b) Authorised officers of Council enforce the management of weeds within the LGA. This includes but is not limited to inspecting, entering and searching property or premises as well as issuing notices and Control Orders.
- c) For further details on weed management and your legal obligations under the *Biosecurity Act 2015* (NSW) please refer to Council's website at www.cessnock.nsw.gov.au.

7.6. Tree Preservation

7.6.1. Trees and vegetation play an important role in our natural and built environment. In the urban environment trees provide valuable shade and soften the general appearance of a sometimes harsh and hard urban landscape. They make our urban environment a pleasant place to live and visit through the array of heights, shapes, colours and general form they offer.

7.6.2. Certain trees and vegetation cannot be damaged, lopped or removed without the approval of Council or other authorities.

7.6.3. **Approval**

- a) The *Cessnock Local Environmental Plan 2011* (CLEP 2011) is the principal statutory item that determines when consent is required to damage vegetation in the Cessnock LGA. Chapter 7 of the *Cessnock Development Control Plan 2010* (DCP 2010) outlines Council's approach to the management of urban urea trees and vegetation on public and private land across the LGA.
- b) Approval to damage, lop or remove trees and vegetation may be via Development Consent or by the granting of a permit in accordance with Clause 5.9 (3) of the CLEP 2011.
- c) Where the damage, lopping or removal of trees is not considered as part of the assessment of a development application, Council considers applications for the damage, lopping or removal of trees using a set criteria based predominantly on the evaluation of hazards. Following a site inspection of the tree/s or vegetation officers issue a Tree Preservation Permit or a Denial. In some cases Council may request a professional report from an appropriately qualified Arborist (or the like) to further substantiate damage, lopping or removal of trees.
- d) In non-urban zones the removal or damage of native vegetation is considered to be solely regulated by the provisions of the *Native Vegetation Act 2003* (NSW).

7.6.4. **When approval is not required**

- a) In the simplest terms approval is not required where the tree or vegetation:-

- i. is less than 3 metres in height and has a branch spread (crown) of less than 3 metres; or
 - ii. base of the trunk or stem is within 3 metres of the face of a lawful existing building; or
 - iii. base of the trunk or stem is within 3 metres of the face of a proposed building authorised under a current development consent under the *Environmental Planning and Assessment Act 1979* (NSW).
- b) Numerous pieces of legislation outline other circumstances when approval is not required and these are listed in the CLEP 2011 and DCP 2010.

7.6.5. **Unauthorised damage, lopping or removal of trees and vegetation**

- a) Council maintains a good rapport with Arborists working in the LGA. The conditions around the damage, lopping or removal of trees are widely known resulting in very little unauthorised activity. Where a new service provider is identified Council will approach them to discuss the approval process.
- b) From time to time Council receives enquiries and reports of unauthorised damage, lopping or removal of trees and vegetation. These matters are investigated on a case by case basis and depending on the outcome of the investigation a number of activities varying from issuing warning letters and/or PINs to legal action may be taken.

7.7. Companion Animal Compliance

- 7.7.1. Cessnock City Council has an adopted [Companion Animals Management Plan \(CAMP\)](#) which addresses issues associated with companion animal ownership against the framework of Council's legislative requirements under the *Companion Animals Act 1998* (NSW).
- 7.7.2. The CAMP also details Council's initiatives and actions that are being undertaken to meet these legislative requirements and which promote responsible companion animal ownership. Under the CAMP a companion animal is defined as a dog or a cat.
- 7.7.3. All dog and cat owners must complete a "two-step" process to identify and register their pet. **Step one** is permanent identification through micro chipping which can be done by your veterinarian, RSPCA or Council Rangers. **Step two** is lifetime registration through Council.
- 7.7.4. All cats and dogs in NSW are required to be registered for life by 6 months of age and must be microchipped by the age of 12 weeks, or earlier if there is a change of ownership.
- 7.7.5. The framework for regulating companion animals and the relevant legislation is outlined in Council's CAMP.
- 7.7.6. **Dog attacks**
 - a) The *Companion Animals Act 1998* (NSW) includes provisions for liability of owners whose dogs are involved in attacks.
 - b) An attack is deemed to have occurred if a dog rushes at, attacks, bites, harasses or chases any person or animal (other than vermin) regardless whether or not injury is caused to the person or animal.
 - c) Council encourages responsible dog ownership and views dog attacks very seriously. Council Rangers will take immediate action on receipt of notification regarding dog attacks.

7.7.7. Dangerous and menacing dogs

- a) Under the provisions of the *Companion Animals Act 1998* (NSW) an authorised officer of Council may declare a dog that is ordinarily kept in the Council's LGA to be dangerous or menacing.
- b) A dog can be declared dangerous if it:
 - i. Has, without provocation, attacked or killed a person or animal (other than vermin), or
 - ii. Has, without provocation, repeatedly threatened to attack or repeatedly chased a person or animal (other than vermin), or
 - iii. Is kept or used for the purposes of hunting (This provision is not intended to include hunting dogs that are kept and used by responsible owners and are no threat to the public. Legitimate and responsible hunting is dealt with under the *Game and Feral Animal Control Act 2002* (NSW) and its regulations)
- c) A dog can be declared menacing if it:
 - i. Has displayed unreasonable aggression towards a person or animal (other than vermin), or
 - ii. Has, without provocation, attacked a person or animal (other than vermin) but without causing serious injury or death.
- d) Once a dog is declared dangerous or menacing the owner must comply with specified control conditions detailed within the *Companion Animals Act 1998* (NSW).
- e) Council will follow standard process in issuing dangerous dog or menacing dog declarations and inspections by Council's authorised officers will be undertaken annually in accordance with the provisions of the *Companion Animals Act 1998* (NSW) to ensure Compliance with control requirements.
- f) Failure to comply with any of the control measures required under the *Companion Animals Act 1998* (NSW) will result in further enforcement action.

7.7.8. Restricted breeds

- a) Under the *Companion Animals Act 1998* (NSW) a breed or kind of dog can be prescribed as restricted breeds.
- b) The following dogs are examples of restricted dogs for the purposes of the *Companion Animals Act 1998* (NSW):
 - i. Pit Bull Terriers
 - ii. American Pit Bull Terriers
 - iii. Japanese Tosas
 - iv. Argentinean Fighting Dogs
 - v. Brazilian Fighting Dogs
- c) The owner of any restricted dog must comply with the control requirements under the *Companion Animals Act 1998* (NSW). Inspections by Council's authorised officers will be undertaken annually to ensure Compliance with these requirements.

- d) Failure to comply with any of the control measures required under the *Companion Animals Act 1998* (NSW) will result in further enforcement action.

7.7.9. Seizure, impounding

- a) Standard investigation procedures will be strictly followed to determine the required action in each instance.
- b) Council will comply with legislation and make all reasonable attempts to contact owners where microchipped dogs have been found away from home.
- c) If the owner cannot be contacted the dog will be taken to Council's pound – RSPCA Rutherford facility.
- d) Council will not unlawfully enter any land or premises to seize an animal however, lawful entry and seizure may be carried out in accordance with the legislation. For example, where an inspection reveals there is a non-Compliance with a Dangerous Dog Declaration, Council will work with the NSW Police Service to obtain a search warrant.

7.7.10. Nuisance dogs

- a) Under the *Companion Animals Act 1998* (NSW), a dog is a nuisance if it:
 - i. is habitually at large,
 - ii. makes a noise by barking or otherwise, that persistently occurs or continues to such a degree or extent that it unreasonably interferes with the peace, comfort or convenience of any person in any other premises,
 - iii. repeatedly defecates on property (other than a public place) outside the property on which it is ordinarily kept,
 - iv. repeatedly runs at or chases any person, animal or vehicle,
 - v. endangers the health of any person or animal, or
 - vi. repeatedly causes substantial damage to anything outside the property on which it is ordinarily kept.
- b) Nuisance Orders can be applied when companion animal owners allow their pet to continually breach the *Companion Animals Act 1998* (NSW) and remain in force for a period of six months.

7.7.11. Barking dog complaints

- a) In order for Council to take action in relation to allegations regarding nuisance from barking dogs the council officer must have a brief of evidence that can prove a breach of the law. Council must prove that the dog makes a noise, by barking or otherwise, that persistently occurs or continues to such a degree or extent that it unreasonably interferes with the peace, comfort or convenience of any person in any other premises.
- b) Residents are advised that Council requires complaints (that in the opinion of Council are justified) from two (2) or more affected parties from two (2) or more separate premises for Council to carry out an investigation.
- c) Prior to contacting Council regarding a barking dog complaint, Council requires Complainants who believe they are affected by noise from a barking dog(s) to communicate with the owner of the dog(s) in the first instance to seek a resolution.

- d) Property owner information may be sought under the *GIPA* by lodging an access to information request via Council's [website](#).
- e) If you are unable to contact the owner or your concerns are ignored Council requests you contact the CJC to arrange mediation with the dog owner prior to contacting Council for investigation.
- f) The CJC is an independent, government funded centre that specialises in settling neighbourhood disputes. This approach can avoid lengthy and costly legal processes. Call (02) 4929 1211 or visit www.cjc.nsw.gov.au for further information.
- g) Should mediation not resolve the barking issue the Complainant may report the matter to Council for investigation. Where complaints are lodged in accordance with this policy, noise diaries are provided to affected residents for them to record dates and times that the noise is occurring to determine the noise frequency and its impact. Residents that complete noise diaries must be prepared to give evidence in Court to support their complaint.
- h) If a person with a complaint is not prepared to go to court or the complaints are of a private nature involving only two parties then the customer is advised of the following alternate options available to them to address nuisance from barking dogs:
 - i. Where Council is unable to take further action, the customer can be advised of their right under section 268 of the *Protection of the Environment Operations Act 1997* (NSW) to obtain a Noise Abatement Order from the local court. Council may also advise the customer to seek their own legal advice in relation to pursuing a Noise Abatement Order or other remedies which may be available under common law.
 - ii. The customer can also be referred to the CJC – as detailed above.

7.8. Policy on Parking, Roads, Vehicles and Abandoned Vehicles/Articles

7.8.1. Parking offences

- a) Roads and regulated car parks in Cessnock are patrolled routinely to ensure Compliance with parking and traffic restrictions. Offences are considered strict liability, meaning Council will issue PINs for all breaches.
- b) School safety zones will be monitored on a rotating roster by Council Rangers for breaches of parking restrictions. Rangers will be highly visible within school zones.
- c) It is noted that Council Rangers have very limited discretion in their enforcement of parking offences. To fail to take action in relation to an observed offence may first create hazards or risks for the community. In addition, it may expose Council and Council officers to accusations of partiality and potential claims for damages where an unsafe situation has arisen.
- d) Council will co-operate with the NSW Police in enforcement of parking on roads and in school safety zones.
- e) For information in relation to on-street parking please refer to Council's [Parking Enforcement Policy](#).

7.8.2. Load limits for heavy vehicles

- a) Council will enforce the provisions of the *Road Transport Act 2013* (NSW) and Road Rules 2014 in relation to heavy vehicles unlawfully using load limited roads.
- b) Heavy vehicles cause traffic problems for other road users and road damage to local roads. The structure of these local roads was never built to accommodate heavy vehicles and the cost of repairs over time to the community is significant. Licensed heavy vehicle drivers carry specially modified street directories indicating which roads are load limited. Council will not accept non-local residency as an excuse for non-Compliance.
- c) PINs will be issued for all breaches.

7.8.3. **Vehicle and article sales on Public Roads**

a) Article Sales

Under Part F of the Approvals Table to section 68 of the *Local Government Act 1993* (NSW), approval from Council is required in order to use a standing vehicle or article to sell any article on a public road. It is an offence under section 626 of the Act if a person does not obtain the approval of Council before carrying out this activity. Penalties apply under the *Local Government Act 1993* (NSW) including the issuing of PINs and/or court proceedings.

b) Vehicle Sales

- i. Council Rangers can issue PINs under the Road Rules 2014 for various offences related to the sale of vehicles, including:
 1. Stop on path/strip in built up area;
 2. Not parallel park in direction of travel;
 3. Not parallel park near left;
 4. Not parallel park in direction of travel (road related area).
- ii. Vehicles for sale parked in accordance with the provisions of the Road Rules 2014 do not attract penalties.
- iii. It is acknowledged however that vehicles for sale on public roads attract and encourage pedestrian traffic onto roads to view the exterior and interior of vehicles. Potential buyers are placed into unsafe circumstances and are at increased risk of being hit by passing vehicular traffic. Additionally passing drivers may also be distracted by signage and pedestrian buyers creating a further hazard to following traffic and pedestrians alike.
- iv. Council therefore encourages persons with vehicles for sale to ensure the vehicle is advertised and available for inspection in a safe location in accordance with the Road Rules 2014 as Council has a duty of care to ensure Compliance with the legislative provisions in terms of the protection of public safety.
- v. Compliance monitoring will be carried out and failure to comply will result in appropriate enforcement action.

8. **ROLES AND RESPONSIBILITIES**

- 8.1. Reporting in respect to issues outlined within the policy are with each responsible Manager in accordance with relevant legislation.

9. POLICY DEFINITIONS

Authorised Officer:	A person who is empowered to carry out specific legislative functions as defined within the respective Act and Regulation.
Bed and Breakfast	An establishment operated by the permanent residents of the dwelling house which: <ol style="list-style-type: none"> 1. Provides temporary accommodation for the short-term traveller; 2. Offers meals for guests only; 3. Does not accommodate more than (12) persons; 4. Does not have a floor area greater than 300m²; 5. Does not contain cooking facilities in rooms for the preparation of meals by guests; and 6. Is not used in whole or in part for the permanent or long-term accommodation of any person other than the person or persons who normally reside in the dwelling
Caution:	A formal warning that further enforcement action may occur should further Unlawful Activity be undertaken.
Community Land:	Same meaning as defined in the Local Government Act 1993.
Complainant:	A person or agency who notifies Council of an alleged Unlawful Activity. This is the person/agency Council will liaise with regarding the matter including requests for additional information and/or response on what action was taken in relation to the matter.
Compliance	The act of adhering to and demonstrating adherence to laws, regulations, conditions, standards or policies.
Consistency:	Remaining consistent in how matters of similarity are actioned.
Council	means Cessnock City Council
Council staff:	Includes staff employed under permanent, part-time, casual or contractual arrangement who undertakes Compliance and enforcement action on behalf of Cessnock City Council.
Delegated Authority:	The authority to carry out specific functions in behalf of Cessnock City Council as delegated by the General Manager under section 377 of the Local Government Act 1993.
Frivolous:	Lack of seriousness or sense, of little weight or importance
Natural Justice:	See Procedural Fairness

Operational Land:	Same meaning as defined in the Local Government Act 1993.
Penalty Infringement Notice (PIN):	A penalty or fine issued in accordance with the New South Wales Self Enforcing Infringement Notice (SEIN) System in lieu of court prosecution for an offence. Now commonly referred to as a "Penalty Notice".
Prima Facie:	A Latin term describing matters that are self-evident or obvious upon first appearance without further investigation.
Prioritising:	The process by which decisions are made based on the category or risk and importance.
Procedural Fairness:	<p>A process by which decisions are made adhering to the principles of justice and equality. Procedural Fairness and the term Natural Justice are interchangeable.</p> <p>The rules of Procedural Fairness require:</p> <ul style="list-style-type: none"> i) a hearing appropriate to the circumstances; ii) lack of bias; iii) evidence to support a decision; and iv) inquiry into matters in dispute.
Punitive Action (Informal):	Legal action that involves issuing of Cautions, warnings, consultation, mediation and the like.
Punitive Action (Formal):	Legal action that involves the issuing of PINs, Notices, Orders, court prosecutions and the like.
Senior Management Staff:	The General Manager and contractual senior staff appointed under the Local Government Act 1993.
Transparency:	To ensure all actions and procedures are understood, auditable and open for critique as necessary.
Trivial:	Of insignificant value or importance
Unlawful Activity:	<p>Is any activity or work that has been or is being carried out:</p> <ul style="list-style-type: none"> • Contrary to the terms or conditions of a development consent, approval, permit or licence; • Contrary to the Cessnock Local Environmental Plan 2000, as amended, that regulates the activities or work that can be carried out on particular land; • Contrary to a legislative provision regulating a particular work or activity without a development consent, certificate, approval, permission or licence; • Contrary to the laws of New South Wales where Cessnock City Council is the Appropriate Regulatory Authority
Vexatious:	A complaint instituted without real grounds, chiefly to cause annoyance

10. POLICY ADMINISTRATION

Business Groups	Planning and Environment Works & Infrastructure
Responsible Officers	Director Planning and Environment Director Works & Infrastructure
Associated Procedure (if any, reference document(s) number(s))	NIL
Policy Review Date	Three years from date of adoption unless legislated otherwise
File Number / Document Number	DOC2017/083408
Relevant Legislation (reference specific sections)	<ul style="list-style-type: none"> • <i>Biosecurity Act 2015</i> (cth); • <i>Building Professionals Act 2005</i> (NSW); • <i>Companion Animals Act 1998</i> (NSW); • <i>Contaminated Land Management Act 1997</i> (NSW); • <i>Environmental Planning and Assessment Act 1979</i> (NSW); • <i>Food Act 2003</i> (NSW); • <i>Impounding Act 1993</i> (NSW);

<p>Relevant Legislation (reference specific sections) cont...</p>	<ul style="list-style-type: none"> • <i>Land and Environment Court Act 1979</i> (NSW); • <i>Liquor Act 2007</i> (NSW); • <i>Local Government Act 1993</i>; • <i>Environmental Planning and Assessment Act 1979 & Regulation</i> (NSW); • <i>Food Act 2003</i> (NSW), Regulations & NSW Food Safety Standards; • <i>Plumbing & Drainage Act 2011</i> (NSW); • <i>Protection of the Environment Operations Act 1997</i> (NSW); • <i>Public Health Act 2010</i> (NSW); • <i>Roads Act 1993</i> (NSW) & Regulations; • <i>Road Transport Act 2013</i> (NSW); • <i>Rural Fires Act 1997</i> (NSW); • <i>Swimming Pools Act 1992</i> (NSW); • <i>Waste Avoidance & Resource Recovery Act 2001</i> (NSW); • <i>Companion Animals Regulation 2018</i>; • <i>Environmental Planning and Assessment Regulation 2000</i> (NSW); • <i>Food Regulation 2015</i> (NSW); • <i>Impounding Regulation 2013</i> (NSW); • <i>Liquor Regulation 2018</i> (NSW); • <i>Local Government (General) Regulation 2015</i> (NSW); • <i>Protection of the Environmental Operations (General) Regulation 2009</i> (NSW); • <i>Public Health Regulation 2012</i> (NSW); • <i>Roads Regulation 2018</i> (NSW); • <i>Swimming Pools Regulation 2018</i> (NSW); • <i>Road Rules 2014</i> (NSW); • <i>Australia New Zealand Food Standards Code</i> (FSANZ).
<p>Relevant desired outcome or objectives as per Council's Delivery Program</p>	<p>Civic Leadership and Effective Governance Objective 5.3: Making Council more responsive to the community</p>
<p>Related Policies / Protocols / Procedures / Documents (reference document numbers)</p>	<ul style="list-style-type: none"> ▪ Agency Information Guide ▪ Complaint Handling Policy ▪ Parking Enforcement Policy ▪ Records Management Policy

11. POLICY AUTHORISATIONS

No.	Authorised Function	Authorised Business Unit / Role(s)
	Reporting in respect to issues outlined within the policy in accordance with relevant legislation.	Managers

12. POLICY HISTORY

Revision	Date Approved / Authority	Description Of Changes
1	17 April 2013 QS27/2013	New Policy
2	1 May 2013	Review
3.	18 September 2013 PM91/2013-581	Review
4.	1 November 2017 PE59/2017	Review
5	20 May 2020 PE15/2020	Update to new template, review

13. Appendices

Appendix A – Adjudication Panel Charter

Appendix B – *Ireland v Cessnock City Council* [1999] NSWLEC 153

Appendix A - ADJUDICATION PANEL CHARTER

1. Purpose

To review client representation schedules sent to the Council for adjudication by Revenue NSW and advise Revenue NSW of the Panel's decision to either, let the Penalty Stand, Caution or No action (cancel the Penalty infringement notice (PIN)).

1. Objectives

To improve outcomes by ensuring openness, Transparency, Procedural Fairness and Natural Justice principles are followed in the decision making process with regard to PIN appeals and representations.

Ensure a balanced assessment is made against each representation and that standard Revenue NSW Guidelines and Council Policies are consistently and fairly considered and applied; and,

To prevent Council process being called into question by external parties or the Office of the NSW Ombudsman.

2. Outcomes

Reduction in the number of inconsistencies in relation to PIN appeals.

A reduction in the number of Court Appeals.

Full and transparent records of all decisions made by the Panel will be kept on Council's electronic records management system.

3. Functions

1. To assess requests relating to infringement notices issued and to make determinations on the matters presented to the panel having regard to:
 - The information available to the Panel, including Acts, regulations, Council Policies, any Revenue NSW Guidelines, Council records, PINs, contemporaneous notebooks, EDMS records, photographs or Authorised Officer Interviews; and
 - The recommendation of the relevant Team Leader.
2. To ensure that the referring officer has demonstrated to the adjudication panel that they have considered the following matters in forming a recommendation:
 - Compliance with statutory requirements.

- The standard NSW Infringement Processing adjudication guidelines and principles.
- Specific considerations outlined in Council's Compliance and Enforcement Policy.
- Whether the PIN was correctly issued by the Officer. Significant Officer Error in issuing a PIN will lead to cancellation without the need to consider the representation further.
- Did the Issuing Officer act professionally, lawfully and in accordance with Council Policy and standard procedure?
- Has the person who received the PIN admitted the offence?
- Are there any mitigating or aggravating factors to consider?
- Is there any doubt over the evidence relied upon to issue the PIN?

NB - The Adjudication Panel will not recommend cancellation of PIN's based on the grounds of age, gender, nationality, race, length of driving record, whether there is an illness in the family or of an associate which had no bearing on the offence at the time or if the representation does not have the required documentary evidence to support the reasons provided.

4. Panel Appointment

The Adjudication Panel will consist of the relevant Section Manager, relevant Principal/Team Leader and an independent delegate or other panel members as authorised by the relevant Manager or Director.

- No member of the Panel shall have an interest in the matters being reported to the Panel.
- Should a Panel member or alternate not be available for a meeting, the relevant Manager or Director can make an appointment as required.

5. Meeting Notification and Reporting

- Agendas for meetings shall include information on meeting date, venue, business proposed to be conducted and reports prepared by the relevant Team Leader.
- Agendas should be made available to Panel Members and staff prior to the meeting.
- Additional to the meeting agenda containing the Report from the relevant Principal/Team Leader, Panel members shall be provided with associated documents from Council records, including copies of the infringement notices, any photos taken, as well as copies of contemporaneous notebook entries where relevant. The relevant Team leader will source the required documents for Administration to collate into the agenda.
- Panel meetings will be held as required.

6. Meeting Procedures

- All matters are confidential;
- Any member of the Panel can request further information for clarification;
- Any matter presented can be deferred for the purpose of clarification;
- Two (2) members shall form a quorum;
- The first item of business at Panel inspections and the meeting will be members identifying any pecuniary or non-pecuniary conflicts of interest that may prevent them from participating in or considering any item on the agenda;
- The relevant Manager and the relevant Principal/Team Leader have the discretion to refer any item to the adjudication panel for consideration.

7. Determination Procedures

- The Panel's decision can be a recommendation for a PIN to be cancelled, to stand, for a Caution to be issued or for a decision to be deferred for clarification.
- In assessing each matter the panel members may request additional information and have the matter deferred.
- If the Panel members do not support the relevant Principal/Team Leader's recommendation reasons are to be provided in the resolution.
- All Panel decisions shall be by unanimous decision. Where a Panel member requires additional information to enable a unanimous decision to be reached the item shall be deferred and referred to the next meeting.
- Where a unanimous decision is not reached at the next meeting the application shall be referred to Revenue NSW for a decision.
- Should the Panel in its deliberation, note significant officer errors in process or performance it shall refer such matters to the relevant Principal/Team Leader and/or relevant Manager to enable the issue to be addressed.

Appendix B - Ireland v Cessnock City Council [1999] NSWLEC 153

"In the case Ireland v Cessnock City Council [1999] NSWLEC 153, it was determined that a Council has discretion in the issuing of a building certificate under sections 149A(1) and 149B-149E of the Environmental Planning and Assessment Act in respect of a building that already existed (including one that had been unlawfully erected). The express terms of section 149E of the Act did not refer to the 'lawfulness' of the erection of a building and the issuing of a building certificate did not declare the erection to be lawful. A building certificate does in certain forms prescribe legal immunity (by no means complete or absolute) in respect of the building. It was also determined that where a building certificate has been issued, it is appropriate to consider development consent for the use of an unlawfully erected building."

Sutherland Shire Council v Heyman (1985)

In the case of Sutherland Shire Council v Heyman (1985) 157 CLR 424, the High Court recognised that in some circumstances liability could arise for failure to exercise a statutory function. Mason CJ said (at page 464) that there may be a 'general expectation' by the community that a power will be exercised.

"...there will be cases in which the plaintiff's reasonable reliance will arise out of a general dependence on an authority's performance of its function with due care, without the need for contributing conduct on the part of a defendant or action to his detriment on the part of a plaintiff. ...The control of air traffic, the safety inspection of aircraft and the fighting of a fire...by a fire authority...may well be examples of this type of function. ...Whether the inspection of motor vehicles for registration purposes could generate such a general reliance is a more complex question..."

Pyrenees Shire Council v Day; Eskimo Amber Pty Ltd v Pyrenees Shire Council (1998)

The 'doctrine of general reliance' was rejected by the High Court in the case of Pyrenees Shire Council v Day; Eskimo Amber Pty Ltd v Pyrenees Shire Council (1998) 192 CLR 330. The majority of the High Court said that the doctrine was a 'fiction'. It was considered that it would lead to great uncertainty if the general expectations of the community were to be the touchstone of liability. There is no doubt that often it would be difficult for a plaintiff to prove that a 'general expectation' existed.

The case concerned a negligence action brought against a council arising out of a fire that destroyed adjoining premises. The fire spread from a defective fireplace. The council was aware of the defective fireplace and had ordered that it be repaired. However, it did not follow up its order.

The High Court justices all gave separate judgments. It is clear however that they all recognise there can sometimes be liability for failure to exercise a statutory function. For example, Brennan CJ found that the council was under a public law duty to enforce the legislation relating to fire prevention and was liable for failure to do so, where such failure was 'irrational'. Kirby J considered liability differently and relied upon concepts such as 'proximity' and 'fairness'.

(An analysis of the different reasons is published in Litigation Notes, No. 2, 27 May 1998. The note points out that because of the case, serious questions arise as to the principle to be applied in determining liability in negligence.