



Compliance Policy

Application	All Staff
Responsible Officer	Building and Regulatory Services Manager
File No	CM:POL:CWP
Authorised by	Council
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Purpose

This policy provides information about Council's position on compliance and enforcement matters in the Carrathool Shire.

The purpose of this policy is to provide a structure for consistency and transparency in decision making, and to facilitate a balanced approach to compliance and enforcement. It is also intended to assist Council staff to act promptly, effectively and consistently in response to allegations of unlawful activity.

This policy outlines matters to be considered at the various stages of the enforcement process from the receipt and investigation of reports alleging unlawful activity, through to what enforcement option Council will choose and whether to commence criminal or civil proceedings.

Policy Objectives

- a) Enable Council to acknowledge its obligation under Section 8 of the *Local Government Act 1993* to ensure that its regulatory powers are carried out in a consistent manner and without bias.
- b) Establish clear guidelines for Council's authorised officers in dealing with proactive regulatory action, and for assessing and investigating customer service requests or complaints about unlawful activity.
- c) Provide a proactive position regarding enforcement action in regard to Council's regulatory and compliance functions.
- d) Foster responsive and responsible regulation, fairness, consistency and equity in any action taken by Council in response to allegations of unlawful activity.
- e) Establish operational priorities and the factors to be considered when determining how a complaint should be dealt with by Council.
- f) Make Council's policies and requirements for compliance readily accessible and understandable to the public.

Definitions

Word/Acronym/Phrase	Definition
ARA	Appropriate Regulatory Authority
Complaint	<p>A complaint is an expression of dissatisfaction made about Council services, staff or the handling of a complaint, where a response or resolution is explicitly or implicitly expected or legally required.</p> <p>For the purposes of this policy, a complaint does not include:</p> <ul style="list-style-type: none">• a report alleging unlawful activity (see definition below)• a request for information about a Council policy or procedure• a request for an explanation of actions taken by Council• a request for internal review of a Council decision.



Enforcement	Actions taken in response to contravention of laws
Regulation	The use of a variety of tools and strategies to influence and change behaviour to achieve the objectives of an Act, Regulation or other statutory instrument administered by Council.
Report alleging unlawful activity	An expression of concern or a request for service in relation to alleged unlawful activity, where a response or resolution is explicitly or implicitly expected or legally required.
Unlawful activity	Any activity or work that has been or is being carried out contrary to the below and/or failure to take required action in order to be compliant with: <ul style="list-style-type: none"> • terms or conditions of a development consent, approval, permit or licence • an environmental planning instrument that regulates the activities or work that can be carried out on particular land • a legislative provision regulating a particular activity or work • a required development consent, approval, permission or licence.
Council	Carrathool Shire Council

Policy Details

1. Application

This policy applies to regulatory issues within council’s area of responsibility including but not limited to:

- development and building control
- pollution control
- environmental health
- public health and safety
- bio security
- water and sewer
- septic systems
- companion animals
- Stock on roads
- food safety
- fire safety
- dilapidated premises
- overgrown/unsightly premises
- squalor and hoarding

2. Legislation

This policy ensures Carrathool Shire Council’s compliance with Section 8 of the Local Government Act 1993 and relevant legislation and regulations that Council operate under.

3. Compliance Process

The Compliance Process establishes the factors that will be considered when determining how a compliance matter will be handled. This process includes the following:

3.1. Assessment Framework

Council will record and assess every report alleging unlawful activity. Generally, Council’s objectives when dealing with reports alleging unlawful activity are to:

- maintain the collective good and welfare of the community



- prevent or minimise harm to health, welfare, safety, property or the environment
- consider the broader public interest having regard to Council's priorities and any resource limitations
- consider the report fairly and impartially.

Not all reports alleging unlawful activity will warrant investigation. A preliminary assessment of all matters will be made to determine whether investigation or other action is required. Council will prioritise matters on the basis of risk to public safety, human health and environment.

Any decision not to investigate an allegation of unlawful activity will be recorded and the reasons for that decision clearly stated.

An investigation of alleged unlawful activity may take a significant amount of time to complete, particularly where the issues are complex. If Council decides to investigate, staff will give the person who reported the alleged unlawful activity regular feedback on the progress of the investigation, and any reasons for delay. This does not mean that the individual can expect to be given details about every aspect of the investigation or information that would compromise the integrity of the investigation.

Decisions about what action should be taken by Council are made at Council's discretion. The objective is that reports alleging unlawful activity will be resolved to the satisfaction of Council, not necessarily the person raising the matter. Council will generally try to resolve matters as quickly and informally as possible so as to avoid the need to take formal compliance and/or enforcement action, depending on the nature of the breach.

Council staff will endeavour to manage the expectations of people who report alleged unlawful activity, and in particular explain that in the absence of sufficient evidence of unlawful activity, Council may be unable to take further action. They will also explain that Council has limited resources and powers to deal with reports alleging unlawful activity. If Council is unable to fully investigate or take action on a matter because it is restricted by legal or resource limitations this will be explained to the individual.

When there are specific statutory requirements that must be met in relation to notices and orders Council staff will provide all explanatory communications in plain English and explain any technical language the law requires to be used.

3.2. Investigation Process

The objective of the processes Council staff use when investigating incidents of alleged unlawful activity is to:

- determine the cause
- determine if there has been a contravention of law, policy or standards
- determine if Council is the appropriate regulatory authority (ARA) and if not, the matter will be referred to the ARA for action
- gather evidence to the required standard to support any required enforcement action
- determine any necessary action to mitigate the possibility of reoccurrence of similar incidents

Investigation action may include but is not limited to any of the following:

- a) A desktop review
- b) Assessment of likely environmental and public harm and safety
- c) A site inspection



- d) Interviews with any relevant persons

3.3. Compliance and Enforcement Options

Once an investigation has been completed, Council officers will decide whether to take further action on the basis of evidence. Each matter will be considered on a case by case basis, taking into account factors detailed within the compliance framework and enforcement options (see Appendix 2).

4. Councillors Involvement

The General Manager and staff will make all efforts to respond within a timely manner to enquiries made by councillors about compliance.

The General Manager and staff will also arrange confidential briefings to Councillors where it is considered by the General Manager to be appropriate.

Councillors may, through the accepted processes:

- ask questions of the General Manager through formal written submission;
- ask questions to be answered in Council meetings about compliance matters and
- put motions before the Council for resolution.

Councillors are entitled to attend any public legal proceedings in the Court, but are not entitled to direct Council's legal advisers or lawyers unless expressly permitted to do so by the General Manager.

4.1. Complaints received by Councillors

As per the provisions of the Local Government Act 1993 and the Council's Code of Conduct, the *State Records Act 1998* and Councils Customer Service Charter, councillors will:

- a) when in receipt of a complaint about a compliance matter that comes in any form including but not limited to verbal i.e. in person, over the phone / voice messages, written i.e.; emails letters, social media, photos; and /or
- b) becomes aware of an issue that amounts to a complaint pertaining to compliance matters

provide such information to appropriate officer of council in a timely fashion.

5. Confidentiality

Council will respect the privacy and confidentiality of information received however due to statutory obligations and other requirements, confidentiality cannot always be guaranteed. Council may have to disclose information that identifies them in the following cases:

- the disclosure is necessary to investigate the matter
- their identity has already been disclosed to the subject of their report directly or in a publicly available document
- the individual was consulted following receipt of a *Government Information (Public Access) Act 2009* application and did not object to the disclosure
- the individual consents in writing to their identity being disclosed
- the disclosure is required to comply with principles of procedural fairness
- the matter proceeds to court. If matters proceed to prosecution or legal proceedings, complainants may be contacted and requested to provide witness statements or affidavits

Council will take seriously any concerns an individual may have about their physical safety being endangered as a result of making a report. However, this may limit Council's ability to investigate the matter.



6. Vexatious or anonymous complaints

- a) Vexatious complaints will not be investigated by Council. Vexatious complaints are complaints which are clearly made with the sole intent of annoying a person or complaints which are without substance made frequently by the same individual or entity.
- b) Anonymous complaints will not generally be investigated by Council. The nature of the alleged breach may require some level of investigation but, in the main, anonymous complaints will not be investigated.

7. Advance publicity and media statements (Prosecutions)

No public statements are to be made by the Mayor, Councillors or Council staff in connection with any case involving Council where legal proceedings are before the court or are under investigation and may go before the court.

8. Fees and Fines

Council may issue orders or notices which incur administration costs. Additional inspection fees will also apply where Council is to commit staff resources to enforce compliance by way of notices, orders and/or follow up inspections. Fees are listed in Council’s adopted Fees and Charges and will be applied where appropriate. Some fees are identified in the legislation being enforced and are charged accordingly. Failure to pay fees and fines is an offence and may result in further costs or legal actions.

Implementation

Requirements	Responsibility
1 Compliance Process This policy is implemented via Council’s compliance process (Appendix 2) which specifies the actions, procedures and matters to be considered.	Council Officers
2 Management of Process Procedural complaints are to be reviewed by the relevant Manager who bears the responsibility for all outcome decisions (with the exception of criminal prosecutions). If the Manager supports a prosecution or legal proceedings then the matter is referred to the General Manager through the relevant director for a decision on whether to proceed.	Building and Regulatory Services Manager
3 Staff Under supervision, relevant Council staff will be responsible for ensuring that this policy is implemented appropriately within their work area	Council Officers
4 Concerns Public concerns communicated to Council in relation to this policy will be recorded on Council’s records system and handled in accordance with Council’s Customer Service or Complaints policy. These records will be used to determine any follow-up actions and analyse the history of reported public concerns.	All staff, Councillors, Mayor
6 Consultation Any consultation deemed necessary will occur as required with key stakeholders, which may include (but not be limited to) the community, other agencies, statutory and industry bodies. Public submissions regarding this policy are invited for consideration during the exhibition period.	As necessary



Revision Table

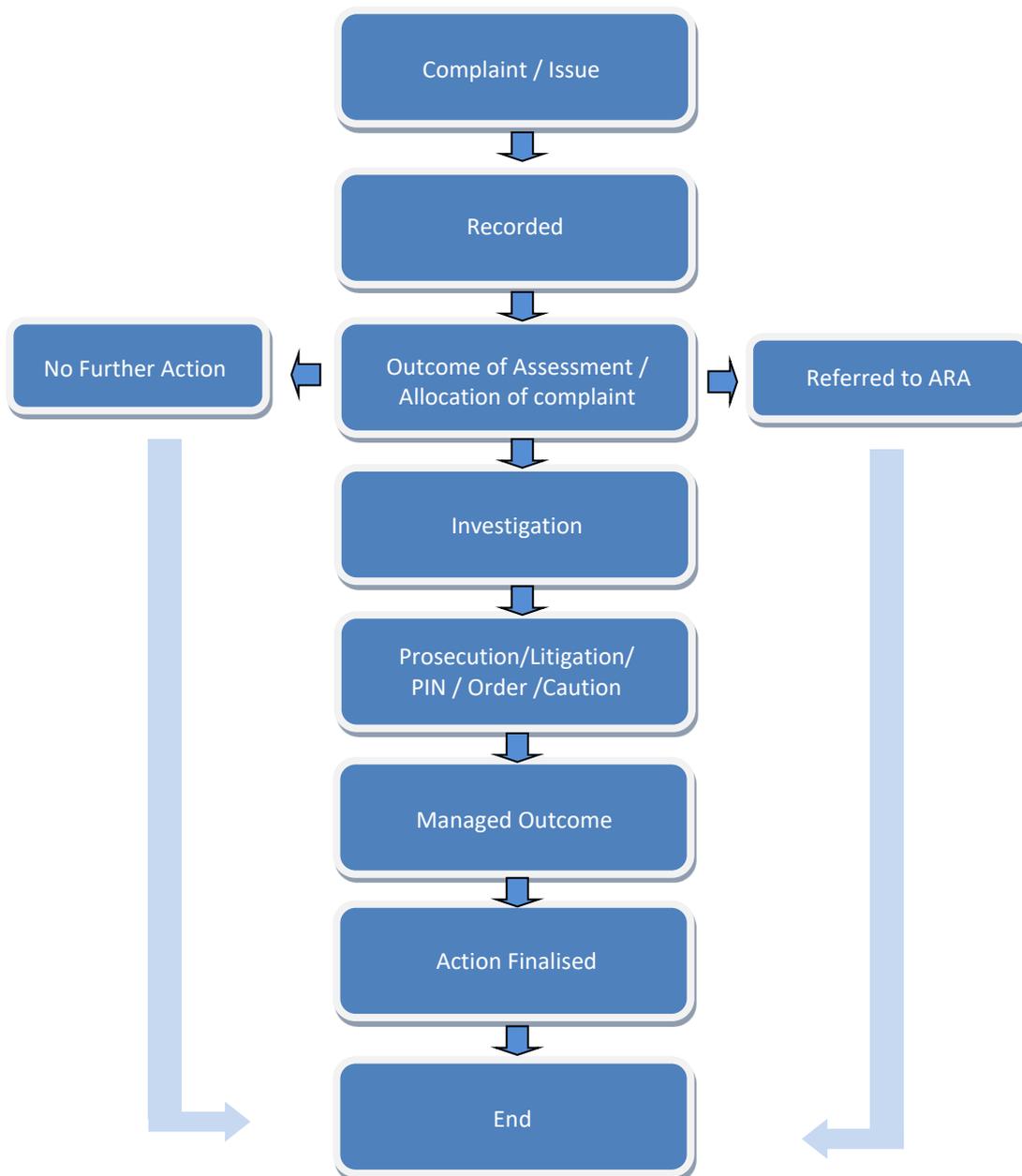
Minute /Date	Amendment Summary	Reason or Reference
0852 / 19.02.2019		

Review

This policy may be amended from time to time and will be reviewed within four years of its adoption (or latest amendment) with reference to any relevant legislation and best practice guides.



Appendix 1. Compliance Flow Chart





Appendix 2. Compliance Process

The Compliance Process establishes the factors that will be considered when determining how a compliance matter will be handled. This includes the following:

1. Assessment Framework
2. Investigation Process
3. Compliance and Enforcement Options

1. Assessment Framework

The Assessment Framework establishes the factors that will be considered when determining how complaints will be initially considered by Council and whether or not a complaint will lead to further detailed investigation by Council.

1.1. Details of Assessment

All matters will be assessed in accordance with the priorities outlined below:

Factors	Description
Incident type	Broad description of the complaint
Legislative responsibility	Is the matter within the jurisdiction and responsibility of the council?
Impact on community	A rating of the perception of community interest in the matter
Impact on Council	How does the matter affect the operations of Council?
Impact on complainant	How does the matter affect council’s customer?
Possible outcome	What will a more detailed investigation be likely to achieve? What are the possible outcomes of a detailed investigation? What are the potentials for remedy?
Response required	Broad description of the urgency of the matter
Resources available	Does council have the available skills and equipment to properly investigate the complaint?
Value	What is the potential, likely or actual environmental, social and economic impact of the incident/activity complained of?
Appropriate defendant	Who is the most appropriate defendant? (It could be the landowner, contractor, occupier or multiple defendants).
WHS risk	Risk to council staff and/or public safety

1.2. Rating of community/complainant impacts:

High	Immediate threat to persons, environment, property, business, council assets etc.
Medium	Significant risk of adversely impacting persons, the environment, property, business, council assets etc.
Low	Some risk of adversely impacting persons, the environment, property, business, council assets etc
Special	Other considerations specific to the circumstances



1.3 Rating of council impacts

Critical	Immediate risk to council assets, structure, staff etc
Significant	Legislative responsibility of council, significant resource implications
Routine	Requires attention in the normal process of business
Special	Other considerations specific to the circumstances

1.4. Types of responses and target times:

Priority	Classification	Initial Response Time
1	Very high	24 hours
2	High	48 hours
3	Medium	7 days
4	Low	21 days if resources are available

Response times are linked with Council’s Customer Service Request targets.

1.5. Outcome of assessment

Outcome	Reasons
No further action	Not in council’s jurisdiction, not a matter requiring attention, low impact, no resources available to attend
Referred to other agency	Not in council’s jurisdiction and in the province of another agency
Referred to other council section	Does not require compliance or enforcement action or falls under the jurisdiction of another section within council
Received for information	Complaint minor in nature and will not be actively investigated. May afford intelligence for proactive enforcement at a later date
Investigation action	Satisfies all factors and will be investigated. See Step 2 – Investigation Process

2. Investigation Process

Investigation action may include but is not limited to any of the following:

- a) A desktop review
- b) Assessment of likely environmental and public harm and safety
- c) A site inspection including interviews with any relevant persons

All investigative procedures are for the purposes of gathering information and evidence to determine if a breach has occurred and who may be responsible for the breach. Evidence may include: digital surveillance, videos, photographs, samples and physical evidence, witness statements, file notes and records of any interviews. The procedure and type of investigation undertaken by Council will depend on the facts and circumstances of each case. Investigating officers are to undertake their investigation in a professional manner that is:



- a) Objective, fair and impartial
- b) Consistent with the presumption of innocence
- c) Within their delegated authority
- d) In accordance with the law

If an investigating officer forms the belief that there is sufficient evidence to establish an individual has committed an offence, when questioning that individual, the investigating officer must caution the individual that he or she does not have to say or do anything but that anything the individual does say or do may be used in evidence.

3. Compliance and Enforcement Options

Once investigation has been completed, Council officers must decide whether to take enforcement and prosecution action on the basis of evidence or unauthorised activity. The significance of the breach is taken into consideration. The same factors for consideration set out in the Assessment Framework will be reviewed when determining the compliance and enforcement action which will be taken. Each matter will be considered on a case by case basis, taking into account the factors set out at 3.1 below. Outcomes include:

No Action	The decision is taken not to proceed, even though the possible offence has been established
Managed Outcome	An agreed settlement, in writing, usually involving some reinstatement or restitution that does not preclude further action should there be any failure to comply or subsequent offences
Caution Verbal	Verbal advice to an individual advising them of the offence and cautioning them that action will be taken on further breaches
Caution Written	Letters and/or preformatted notes addressed to an individual or business advising them of the offence and cautioning them that action will be taken on further breaches
Orders	Written or verbal directions, notice or orders enforceable by law requiring some action by the identified party
Penalty Infringement Notice ('PIN')	The issue of a fine prescribed by relevant regulation for the identified offence
Prosecution or civil enforcement proceedings before a court	The submission of a brief of evidence via supervisor to council's solicitor or the nominated prosecutor so they may undertake a prosecution or civil enforcement proceedings on council's behalf.



3.1 Factors to be considered when choosing an option

Available remedies of law	What remedies are available under the relevant legislation? e.g. orders, fines, prosecution etc
Seriousness of the breach	What type of offence has been committed? How seriously would this breach/unlawful activity impact the community, in terms of time/cost/inconvenience? Is the matter trivial or technical in nature?
Precedent	What actions has council previously taken in similar circumstances?
History of Council dealings with person	Has this person come to the notice of council for other, the same or similar offences? What were the outcomes/results of such dealings?
Contrition	Does the person or corporation exhibit remorse for the offence? In some cases it will be appropriate to have regard to the offender's apparent willingness to prevent a recurrence of the offence.
Council's actions	Have the actions of council created an expectation that no action would be taken in a specific set of circumstances? Has the person responsible been advised that no action would be taken? Has council contributed to the offender's actions, e.g. by providing advice/approval to the activity?
Discretion to not take action based on the facts in issue and relevant material	Is a managed outcome a better alternative? No bias, actual or perceived should influence the decision to exercise discretion. Should discretion be exercised the reasoning should be recorded to support the decision. Council Authorised Officers are able to exercise discretion based on their delegations and authority.
Procedural fairness/natural justice	Has the offender been informed of the nature of the issue and allowed a right of reply? Due consideration of the reply is to be given and the investigation is to be conducted objectively.
Timing and delay	Is the offending action recent? Has there been significant delay in the investigation? Is the proposed action within the statutory limitation period for the offence?
Public interest (costs vs. benefits, likely success, effects – social and environmental)	Are there any mitigating circumstances which will impact on the outcome of any prosecution/legal proceedings? What council resources will be affected and how?