

Cessnock City Council Compliance and Enforcement Policy

Policy Owner:	Director Planning and Environment
Relevant Legislation:	<p>Includes but not restricted to:</p> <ul style="list-style-type: none"> • Local Government Act 1993 & Regulations; • Environmental Planning and Assessment Act 1979 & Regulation; • Food Act 2003, Regulations & NSW Food Safety Standards; • Protection of the Environment Operations Act 1997 & Regulations; • Waste Avoidance & Resource Recovery Act 2001 & Regulations; • Biodiversity Act 2015; • Public Health Act 2010 & Regulations; • Companion Animals Act 1998 & Regulations; • Roads Act 1993 & Regulations; • Contaminated Land Management Act 1997; • Road Transport Act 2013, Regulations and Australian Road Rules; • Impounding Act 1993 & Regulations; • Plumbing & Drainage Act 2011; • Swimming Pools Act 1992 & Regulations; • Land and Environment Court Act 1979; • Rural Fires Act 1997; • Liquor Act 2007 & Regulations; • Building Professionals Act 2005
Related Policy:	<ul style="list-style-type: none"> • Code of Conduct • Customer Request Response System • Privacy Management Plan • Public Information Access Policy (GIPA)
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1. Objective

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.

2. Policy Statement

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 document.

Cessnock Council acknowledges that it has an obligation under section 8 of the *Local Government Act 1993* to ensure that the exercise of its regulatory power is carried out consistently and without bias.

Council's Charter and Values are committed to serving the community with integrity, innovation, fairness, impartiality, teamwork and the encouragement of mutual respect.

The aims of this policy are:

- To 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;
- To confirm Council's adherence to core values of respect, ethics, quality and communication while adopting a minimum tolerance approach to unlawful activity;
- To specify the criteria which Council will consider when deciding:
 - If enforcement action is necessary; and
 - The most appropriate form of action.
- To improve Community and Council understanding of the importance of compliance in protecting the environment and human and public health;
- To confirm Council's focus on educating the community on legislative requirements and the importance of acting in accordance with the law;
- To ensure compliance activities are undertaken in an effective, timely, transparent, fair, consistent and lawful manner by applying best practice decision making principles and processes;
- To 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.

3. Application

This Policy relates to regulatory issues within Council's area of responsibility including but not limited to development and building control, pollution, environmental health, public health and safety, parking, fire safety, food safety, signage, public/private swimming pools, control over the keeping of animals and companion animals.

4. Responsibility

All Council staff and Councillors who have responsibilities for compliance as defined by this Policy are responsible for its implementation.

Only staff with appropriate delegations from the General Manager can undertake investigation and enforcement activities associated with particular legislation. Council keeps a central register of all delegations.

5. Principles

Anonymous Complaints

Anonymous requests for investigations are frequently found to be unsubstantiated and result in resources being wasted. Contact names, addresses and phone numbers are important to confirm or if necessary obtain additional information to allow investigations to be properly conducted.

Anonymous requests for disputes and grievance investigation have frequently been found to be as a result of a neighbourhood dispute or involve issues that Council should not be party to.

Given this, the complainants need to provide sufficient information to enable Council to identify the activity, its location and nature. Anonymous complaints will be accepted however Council's decision as to how to action the complaint will be based on the considered risk category and the quality of information disclosed. Because seeking clarification or additional information from the discloser is not possible it may be more difficult to evaluate the allegations and therefore less likely to warrant an investigation. Research and experience indicates the chances of a successful outcome are greatly increased when those disclosing the information make their identity known at the time they report the activity.

Confidentiality of complainants

Council operates in accordance with the Privacy and Personal Information Protection Act 1998; however as Council is a government entity certain information is obtainable under the Government Information (Public Access) Act 2009 (GIPA). All access to information applications are considered by delegated staff and/or Council's Public Officer.

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.

Community education

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.

6. Investigating and Prioritising Unlawful Activity

Council becomes aware of unlawful activities in a variety of ways, from the proactive actions of Council staff to the receipt of complaints or requests from members of the public. Council records the information into Council's Customer Request Management System and allocates the request to the appropriate staff and/or management based on the type of unlawful activity. Although Council staff will respond to all notifications, not every complaint will require investigation.

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.

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.

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 complainants.

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

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:

- Unsafe buildings or unsafe building works;
- Collapsed buildings;
- Fire damaged buildings or fire safety breaches;
- Serious pollution incidents;
- Food poisoning incidents;
- Abandoned vehicles posing immediate safety hazard;
- Dog attacks (after the event);
- Livestock on roads;
- Dangerous/aggressive dog complaints;
- Roaming dogs;
- Swimming pool fencing;
- Parking safety issues (Business hours only, after hours Police);
- Other serious incidents where the environment or public health and safety is at immediate risk.

Priority 2

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

- Significant unauthorised and non complying land use;
- Significant unauthorised and non complying construction/demolition works;
- Works not carried out in accordance with development consent;
- General noise matters affecting several persons;
- Standard complaints about food premises;
- Abandoned vehicles not posing immediate safety hazard;
- Dog Barking (complaints from 2 or more premises);
- Parking general complaint;
- Unhealthy premises (rubbish, stored materials, domestic swimming pool water quality);

- Illegal signage public place;
- Illegal dumping.

Priority 3

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

- Minor non-compliance of development consents;
- Minor non-compliances such as overgrown land;
- Minor matters where there is no immediate adverse health or safety impacts.

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 and the reasons why no further action is being taken.

Customers should also be made aware that timeframes will also vary according to staffing levels and other resources. Acknowledgment letters and customer feedback will advise of revised investigation times in such instances.

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 resources to be targeted to the areas where they are most needed and will prove most effective in protecting the environment and human and public health.

How does Council decide on what action to take?

When deciding whether unlawful activity requires investigation, Council staff will consider the following factors:

- Is the matter within the jurisdiction of Council or of a civil or private nature eg. is it a workplace health and safety matter where NSW WorkCover is the appropriate regulatory authority or does it relate to a civil matter such as a dividing fence issue?
- Does the complaint relate to some unfinished aspect of works that are still in progress eg. 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.
- Has the unlawful activity affected the health, safety and well-being of the residents or the community, eg - breaches which affect the health and safety of the residents or the community would warrant affirmative and effective enforcement remedial action.
- Is the activity or work permissible with or without development consent? If the work is permissible with development consent, is there a consent in place, eg - a complaint relating to a 600mm high retaining wall is lodged with Council, however a check of the State Environmental Planning Policy (Exempt & Complying Development Codes) 2008 indicates that the works are exempt development and do not require consent.
- 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, eg - 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.

- Has too much time elapsed since the alleged unlawful activity took place? eg - 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.

- Is there another body that is more appropriate to investigate or deal with the matter? eg - a pollution incident is lodged with Council relating to a large industrial facility which is regulated by the NSW EPA.
- 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.
- Is it in the public interest to investigate the complaint? eg - does the breach affect a number of people; would enforcement action be in the public interest or merely benefit only private interests; are there hardships applicable; would enforcement action impact unreasonably on disadvantaged groups?

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.

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

- The matter has already been actioned and resolved;
- 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 NSW Workcover such as workplace health and safety matter.
- The activity is determined to be lawful without an investigation;
- The complaint is frivolous, vexatious or trivial in nature as determined by a suitably delegated officer; or
- The complaint is anonymous and there is insufficient information to support a risk to public health or safety or a prima facie case.

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.

Options for investigating unlawful activity

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

1. Record only (no response).
2. Verbal warnings.

3. Written warnings or cautions.
4. Penalty Infringement Notices.
5. Orders.
6. Notices.
7. Prosecution/Civil proceedings.

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.

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

Options for informal action may include:

- Taking no action on the basis that there is no reliable evidence or other appropriate reason (frivolous/vexatious complaints, no legal jurisdiction, etc);
- Counselling the person who carried out an unlawful activity to educate them on the relevant requirements. Cessnock City Council recognises that educational initiatives may lead to compliance being achieved without enforcement action in some circumstances;
- 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;
- Council can refer parties to the Community Justice Centre for mediation in instances where it is determined that mediation would be more appropriate to resolve an issue, rather than enforcement;
- 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.

If informal action is unsuccessful or the unlawful activity is deemed significant, formal action may be undertaken.

Options for formal action may include:

- Issuing of Notices, Notices of Intention, Orders, Directions and Declarations requiring compliance with legislative requirements;
- Issuing of Penalty Infringement Notices (PINs);
- Commencement of civil or criminal proceedings in a Court to either remedy or restrain unlawful activity.

Following up enforcement action

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 attachment 2).

Therefore Council staff will:

- Follow up all defective inspections where matters are deemed non-compliant in relation to a caution, notice, order, direction or the like;
- Record all notes in Council's Customer Requests Management System chronologically;
- Contact all relevant parties as necessary to advise what action has or will be undertaken in relation to the alleged unlawful activity.

Use of discretion by authorised officers in enforcement action

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.

In this regard, Council's Authorised Officers will comply with the following:

- Use discretionary power in good faith and for a proper purpose. That is to use the powers honestly and only within the scope of the purpose for which the power was given;
- 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;
- Consider only relevant considerations and not consider irrelevant considerations;
- Give weight to matters of greater risk and importance and not to matters of low risk or low importance;
- Exercise discretion independently and not under the dictation or order of any third party;
- Give proper, genuine and realistic consideration to the merits of each particular case and not apply policy inflexibly;
- Observe the rules of procedural fairness and natural justice.

7. Adjudication of Penalty Infringement Notice Appeals

Adjudication is a process required of Council under a Deed of Agreement with the NSW Office of State Debt Recovery (OSR). Appeals must be forwarded by offenders directly to the OSR where they are recorded and the OSR may then send to Council for adjudication where OSR deem necessary. Offenders who wish to have infringements withdrawn or cancelled as part of this process must be advised to make representations to the OSR directly to enable Council to comply with the Deed. In this way all representations are collected by the OSR and Council considers them in a consistent and standard format. On occasion, the OSR 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.

All appeals regarding the issuing of infringements must therefore in the first instance be adjudicated on by the Office of State Revenue 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.

Using the OSR 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 the OSR guidelines are published on their web site.

It is acknowledged that the OSR 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.

The relevant Manager and/or the relevant Team Leader have the discretion to convene an Adjudication Panel to review all client representation Schedules from the OSR. The Adjudication Panel will consist of the relevant Section Manager, relevant Team Leader and an independent delegate or other panel members as authorised by the relevant Director. The Client Representation Schedules contain representations from persons who have received a penalty infringement notice for an offence.

Adjudication will be carried out in accordance with the OSR Policy on Infringement Representations.

In considering infringement appeals, the relevant Manager and/or relevant Team Leader will:

- Refer to and abide by any NSW Office of State Debt Recovery Guidelines
- Operate in accordance with the Adjudication Panel Charter (see attachment 1)
- Refer to and abide by the principles outlined in this and other Council policies

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.

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.

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

8. Special Provisions

8.1 Development & Building Compliance

Principal Certifying Authority (PCA) and Private Certifiers

Council will only investigate matters where a Private Certifier is nominated as PCA in relation to development where the PCA:

- fails or is not able to appropriately action a matter;
- has not acted in accordance with their obligations under legislation; or
- has not acted in the public interest.

It is Council policy to inform the nominated PCA in writing of complaints Council may receive regarding their sites.

Council recognises that the PCA is the authority responsible for ensuring compliance with the conditions of development consent. Persons making complaints (verbal or in writing) regarding a site where the PCA is private must be advised to contact the PCA in the first instance. This will give the PCA an opportunity to address the issues and take the appropriate action.

Complainants who are not satisfied with the performance of a private certifier will be advised to contact the Accreditation Body (Building Professionals Board). The complainant should be advised

to consider whether their complaint is reasonable and discuss it with the PCA and the accreditation body before lodging.

Should the PCA not address the issues raised by the complainant within a reasonable timeframe, Council will act to investigate the complaint. Complainants must be made to understand that Council does not have legal control over private certifiers.

Council will only make complaints to the Accreditation Body (Building Professionals Board) if we believe a Private Certifier has not acted in accordance with their obligations under legislation or has not acted in the Public Interest. Only staff with appropriate delegations will be authorised to make complaints to the Building Professional Board.

Building Certificate Applications under Section 149D of the Environmental Planning and Assessment Act 1979

Council does not support or encourage the submission of Building Certificate Applications under section 149D of the Act to justify or rectify unlawful works. Council supports the lawful processes intended to ensure that consent is obtained from Council or a consent Authority where development consent is required and that such consent is obtained before works are carried out.

However it is recognised that persons who may have carried out unlawful works may apply for a Building Certificate to regularise or formalise those unlawful works. Council is legally obliged to process an application once it is made to Council, however applications submitted as a result of unlawful works will receive secondary priority to those applications received in good faith where there are no unlawful works.

The test for whether a building certificate should be issued is to ask whether development consent would have been granted had it been applied for initially. On some occasions however it is prudent and appropriate for Council to encourage the submission of a building certificate application to regularise a breach of the Environmental Planning and Assessment Act 1979. Authority for this approach is to be found in the decision of Justice Bignold of the Land and Environment Court in *Ireland v Cessnock City Council* [1999] NSWLEC 153.

Council does not tolerate unreasonable pressure from applicants generally and this particularly applies to applicants who carried out unlawful works.

Council may still take legal action against a person who has carried out unlawful works irrespective of whether a Building Certificate has been applied for and such action could include the issue of penalty infringement notices or prosecution in the Courts.

Development Compliance

Council will investigate and monitor unauthorised and non-complying development within the Cessnock Local Government Area 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:

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

Signage

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.

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:

- Cessnock Local Environmental Plan 2011;
- State Environmental Planning Policy (Exempt and Complying Development Codes) 2008;
- State Environmental Planning Policy (Infrastructure) 2008; and
- State Environmental Planning Policy No 64 – Advertising and Signage.

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.

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.

Council will also commence enforcement action against dangerous signage when it is observed during patrols, or when a complaint is received.

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

Council officers will impound all signs erected unlawfully on public land, including the public road or road related areas.

Council becomes aware of unauthorised signage through customer complaint, Councillor enquiry or by officers during routine patrols.

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.

Illegal signage that is attached to another agency's infrastructure (e.g. Ausgrid's power poles) will be referred to that agency for removal.

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

Illegal signage on private land

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.

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.

If development consent is not granted for the signage or the signage is not removed within the specified timeframe an Order to remove the signage may be issued to the property owner.

In exceptional circumstances Council may prosecute in relation to illegal signage in accordance with relevant legislation.

Swimming Pool Safety fencing requirements

The Swimming Pools Act 1992 requires the owner of premises on which a swimming pool is located to ensure that the pool is at all times surrounded by an approved child resistant barrier.

A swimming pool includes every excavation, structure or vessel:

- (a) that is capable of being filled with water to a depth greater than 300 millimeters, and
- (b) that is solely or principally used, or that is designed, manufactured or adapted to be solely or principally used, for the purpose of swimming, wading, paddling or any other human aquatic activity and includes a spa pool, but does not include a spa bath, anything that is situated within a bathroom or anything declared by the regulations not to be a swimming pool for the purposes of this Act.

All inflatable or portable swimming pools that are capable of being filled with 300mm of water or more also require a four-sided approved child resistant barrier erected in accordance with the Swimming Pools Act 1992 and relevant Australia Standards.

If you are the owner of a swimming pool or spa you are required to maintain the barrier ensuring that all gates or doors are kept securely closed and latched. A CPR chart is also required to be displayed within the pool enclosure in a prominent position.

You are also required to register your swimming pool or spa on the [state-wide register](#). Penalties will apply for failing to register.

If you are unsure if your swimming pool complies you may wish to apply for a Swimming Pool Certificate of Compliance. Once the application has been received by Council an officer will conduct an inspection of the swimming pool and barrier. If a defect is identified a Notice or Direction may be issued to require the pool and/or barrier to be brought into compliance with the Swimming Pools Act 1992 and relevant Australian Standards. Upon re-inspection and once all matters are compliant a certificate of compliance will be issued. Legislation now states that all properties that are to be leased or sold that contain a swimming pool are required to obtain a Certificate of Compliance.

Non-compliance with the legislative requirements for swimming pool barriers is considered an urgent and life threatening risk and will result in prompt compliance action being taken in accordance with this Policy.

For further details on swimming pool safety and your legal obligations under the Swimming Pools Act 1992 please refer to Council's website at www.cessnock.nsw.gov.au.

Building Fire Safety Compliance

The Environmental Planning and Assessment Regulation 2000 contains a list of statutory fire safety measures that may be installed in a building and also specifies inspection, maintenance and certification requirements.

A fire safety measure include installations, equipment, or a feature of construction that is required to ensure the safety of a buildings occupants in the event of a fire or other emergency. Examples include, Exit Signs, Portable Fire Extinguishers, and Emergency Lighting, Fire Hose reels, Smoke Detection and Alarm Systems, etc.

Cessnock City Council implements relevant NSW legislation to ensure buildings are maintained with appropriate fire safety measures. A legislative requirement is that an Annual Fire Safety Statement (AFSS) must be supplied to Council once every 12 months after the initial Fire Safety Certificate is completed. The AFSS certifies that a qualified person has inspected the building and determined that the fire safety measures within the building meet the relevant standards.

It is an offence to fail to provide an Annual Fire Safety Statement.

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

8.2 Environmental Health and Protection Compliance

Food safety

Cessnock City Council supports proactive and routine inspections of food businesses to prevent food borne illness and ensure compliance with the Food Act 2003 and NSW Food Safety Standards.

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 Local Government Area.

Under the Food Act 2003 Council has delegated authority to act as an Enforcement Agency. Council's authorised Environmental Health Officers carry out food safety inspections in all food premises in accordance with Council's adopted program and inspection fees are charged in accordance with Council's adopted Fees and Charges. This is to ensure we fulfil the requirements of a Category B Enforcement Agency under the food regulation partnership with the NSW Food Authority and under relevant food legislation. 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 Food Authority and in keeping with other Councils in NSW. The legislation provides for a range of compliance and enforcement options where breaches are found.

Council will implement the legislative provisions fairly and consistently in accordance with the minimal tolerance approach outlined in this policy.

Legionella – Prevention of Legionnaire's Disease

Council will cooperate fully with NSW Health and immediately investigate any outbreak of Legionnaire's Disease occurring within Cessnock.

In an effort to prevent outbreaks of Legionnaire's Disease, Council strictly implements the legislative provisions of the Public Health Act 2010 and Public Health Regulation 2012 in an effort to ensure owners of regulated systems fully comply.

Under Clause 12 of the Regulation Council is required to maintain a register of water-cooling systems and warm water systems.

Council will:

- Maintain a register of regulated systems;
- Audit each registered regulated system once annually for compliance with the legislation, codes of practice and Australian Standards in terms of maintenance and operation requirements;
- Charge inspection and registration fees, in accordance with Council's adopted Fees and Charges to cover costs of regulation; and

- Take prompt action where there are non-compliances with the legislation.

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.

Skin Penetration

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 in these premises.

Premises where skin penetration is carried out will be inspected by Council's Authorised Officers under the Public Health Act 2010 at least once annually to ensure the legislation, Skin penetration Guidelines and Code of Practice is being complied with. Council will also maintain a register of skin penetration premises and inspection fees will be charged in accordance with Council's adopted Fees and Charges to cover costs of regulation and maintaining the register.

Operators of these premises must comply with the Code of Practice and legislation. Failure to comply is an offence under the Act.

On-site Sewage Management Systems

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.

Council is committed to managing the local environment and protecting public health from the risks associated with the operation of OSSM systems.

Our Environmental Health Officers and Building Surveyors are authorised under the Local Government Act 1993 to assess applications for approval under section 68 of the Act.

There are two separate types of approvals:

- Approval to install; and,
- Approval to operate.

All approvals issued by Council are followed up to ensure compliance with the conditions of approval. This involves authorised staff carrying out inspections and taking action where non-compliance is identified.

Under the Local Government (General) Regulation 2005, 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.

This means that all on-site sewage management systems within the Cessnock LGA are inspected in accordance with Council's OSSM program and adopted On-Site Sewage Management Strategy. This inspection program is based on risk with a maximum inspection turnover of five (5) years. The risk of the system to the environment and public health, not the type of system, determines the frequency of inspections.

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.

This On-Site Sewage Management Strategy provides an integrated approach to OSSM within a self regulating framework of community education, local support services and environmental and public health protection. The three key objectives of this Strategy are:

1. Promote Sustainability
 - Ensure sustainable management of wastewater generated on all unsewered properties within the LGA, including best practice and the approval of systems advocating treated wastewater reuse.
 - Monitor and manage cumulative impacts from OSSM systems.
 - 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.
2. 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.
3. 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.

Although approvals under Section 68 of the Act 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.

Domestic grey water treatment systems are considered to be on-site sewage management systems and require the same approvals and monitoring processes as other on-site sewage management systems.

Failure to comply with an approval is an offence under section 627 of the Local Government Act 1993. Failure to obtain the approval in the first instance is an offence under section 626 of the Local Government Act 1993.

Pollution incidents

Council is an “appropriate regulatory authority” for the purposes of the Protection of the Environment Operations Act 1997 (POEO Act) for non-scheduled activities in its area.

Council will respond to all reports of air, noise, land or water pollution in accordance with Council Policies and section 6 of this Policy.

Council will implement the provisions of the POEO Act where there are offences identified. Provisions to consider where there are offences include:

- 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;
- Prevention Notice under section 96. This applies where an activity is being carried out in an environmentally unsatisfactory manner;
- 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.
- Issuing penalty infringement notices or alternatively commencing proceedings for an offence

All actions will be carried out in consideration of the principles outlined in this Policy.

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 POEO Act 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.

Water pollution generally

Council recognises that pollution can severely impact on marine and aquatic ecosystems and action to prevent it should be taken as a priority.

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.

Persons who pollute any waters are guilty of an offence under Section 120 of the POEO Act.

Erosion & sediment control and water pollution on building sites

Council will audit construction sites to ensure compliance with erosion & sediment control requirements.

Under the Environmental Planning & Assessment Act 1979 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.

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:

- It is an offence under the Protection of the Environment Operations Act 1997 and Council may issue a penalty infringement notice and/or Environment Protection notices requiring works to be carried out or clean up to occur; and
- It is also an offence under the Environmental Planning & Assessment Act 1979 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 penalty infringement notice may be issued and Notices and Orders may be issued requiring compliance with the development consent.

The course of compliance action will be determined in accordance with the principles outlined in section 6 of this Policy.

Air pollution

Air pollution may include discharges of dust, smoke, soot, fumes or odours from a range of sources. Sources might include backyard burning, smoky vehicles, emissions from commercial and industrial premises, domestic solid fuel heaters and open fireplaces.

Council will investigate complaints and incidents and implement the provisions of the POEO Act 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. 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.

Noise pollution

Council will investigate noise complaints where Council is considered to be the appropriate regulatory authority under the POEO Act and in accordance with Council's Policy N15.1 – Noise Complaints.

Common noise sources where Council has jurisdiction to act include:

- Air conditioners
- Swimming pool and spa pumps
- Commercial and Industrial equipment and air ventilation systems
- Musical instruments and sound equipment
- Power tools and equipment
- Motor bikes on private property

Council supports the time restrictions contained within the Protection of the Environment Operations (Noise Control) regulation 2008 and applies these restrictions in issuing Noise Control Notices and also in conditions of development consents where such equipment is proposed.

Council will apply the Industrial Noise Policy published by the NSW Environmental Protection Authority in relation to noise from Commercial and Industrial premises.

Under the POEO Act, there are additional regulatory provisions to control noise from premises. These include:-

- Noise abatement directions under section 276 - Council will issue these where offensive noise has been emitted within the last 7 days. It is essentially a warning. If the noise reoccurs within 28 days of the direction being given an offence has occurred. Council will use these to control local noise sources such as amplified music and issue Penalty Infringements for offences.

- Noise Control Notices under section 264 - These are more technical and allow Council to restrict the use or times of use of a noise source. Council will use these where work is required to control or prevent noise or where there is no co-operation by the owner or operator of a noise source. Non-compliance will be addressed in accordance with the provisions of section 6 of this Policy.

Council can also issue a Prevention Notice under section 96 of the POEO Act if there are specific noise issues which would be better resolved by the issuing of a Prevention Notice. This includes consideration of the technical nature of the noise, the amount of time to monitor compliance and the resulting cost to Council.

Under Council's adopted Noise Complaints Policy (N15.1) residents are advised that Council requires complaints from two (2) or more affected parties from two (2) or more separate premises for Council to carry out an investigation.

Difficulty resolving noise issues

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:

- An inability to find or isolate a noise source; and/or
- Where authorised officers are unable to hear the noise; and/or
- Where Council has taken all action to ensure compliance but noise is still emitted within levels considered acceptable under the legislation or guidelines; and/or
- Where the complaint is of a private nature involving only two parties; and/or
- Further enforcement may result in Council incurring unreasonable costs commensurate with the number of persons allegedly affected.

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

Civil remedies – Noise Abatement Orders

Where it is identified that Council has no jurisdiction or is not able to action a noise issue as outlined above there are civil remedies available under the POEO Act and common law.

Where Council is unable to take further action, the customer can be advised of their right under section 268 of the POEO Act 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.

The customer can also be referred to the Community Justice Centre 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 the website www.cjc.nsw.gov.au for further information.

Noise from Licensed Premises

Council often receives complaints in relation to noise from licensed premises. The Office of Environment & Heritage recommends that such complaints be referred to the NSW Office of Liquor Gaming & Racing (OLGR) for investigation.

Council recognises the conditions of a liquor licence issued under the Liquor Act 2007 are very strict, and that OLGR 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.

In the interests of assisting those parties affected, noise from licensed premises as defined under the Liquor Act 2007 will be referred to the OLGR 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 OLGR subject to resources being available. Often these complaints relate to times when Council does not have staff on duty. Council will also assist OLGR where requested subject to available technical knowledge and resources.

8.3 Weed Control

Overgrown properties

Council receives a large number of customer requests about overgrown properties. To ensure this is managed and resources can be directed to where they are most needed a procedure has been developed.

In the first instance and prior to contacting Council you are encouraged to contact the property owner and discuss your concerns with them. Often a property owner is not aware of the situation and most of the time they are eager to address the matter once informed.

It helps to keep in mind that not all property owners wish to maintain their properties in a perfect 'park like' condition and whether a property is considered overgrown also depends on the property zoning.

If you are unable to contact the owner or your concerns are ignored then Council may be able to assist but only if the property is deemed to be in an unsafe or unhealthy condition.

The following guidelines will help you determine if Council can assist:

- 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);
- The overgrown vegetation has been confirmed as a harbourage for vermin likely to create unsafe or unhealthy conditions. Evidence of vermin can include rodent sightings, faeces, nests, runs or eggs. (Vermin however does not include any native fauna); and/or
- 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.

Weed Management

The definition of a Weed is a plant that is growing in the wrong place at the wrong time. Some plants are declared noxious weeds due to their detrimental impact on human health, agriculture and/or our environment.

Private land owners or occupiers have obligations under the Act 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.

Authorised officers of Council enforce the management of weeds within the local government area. This includes but is not limited to inspecting, entering and searching property or premises as well as issuing notices and Control Orders.

For further details on weed management and your legal obligations under the Biodiversity Act 2015 please refer to Council's website at www.cessnock.nsw.gov.au.

8.4 Tree Preservation

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.

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

Approval

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 Area trees and vegetation on public and private land across the Local Government Area.

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.

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.

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.

When approval is not required

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

- is less than 3 metres in height and has a branch spread (crown) of less than 3 metres; or
- base of the trunk or stem is within 3 metres of the face of a lawful existing building; or
- 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.

Numerous pieces of legislation outline other circumstances when approval is not required and these are listed in the CLEP 2011 and DCP 2010.

Unauthorised damage, lopping or removal of trees and vegetation

Council maintains a good rapport with Arborists working in the Local Government Area. 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.

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 Penalty Infringement Notices to legal action may be taken.

8.5 Companion Animal Compliance

Cessnock City Council has an adopted Companion Animals Management Plan which addresses issues associated with companion animal ownership against the framework of Council's legislative requirements under the NSW Companion Animals Act 1998.

The Companion Animals Management Plan 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 Companion Animals Management Plan a companion animal is defined as a dog or a cat.

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.

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.

The framework for regulating companion animals and the relevant legislation is outlined in Council's Companion Animals Management Plan.

Dog attacks

The Companion Animals Act includes provisions for liability of owners whose dogs are involved in attacks.

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.

Council encourages responsible dog ownership and views dog attacks very seriously. Council Rangers will take immediate action on receipt of notification regarding dog attacks.

Dangerous and menacing dogs

Under the provisions of the Companion Animals Act 1998 an authorised officer of Council may declare a dog that is ordinarily kept in the Council's Local Government Area to be dangerous or menacing.

A dog can be declared dangerous if it:

- Has, without provocation, attacked or killed a person or animal (other than vermin), or
- Has, without provocation, repeatedly threatened to attack or repeatedly chased a person or animal (other than vermin), or
- 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* and its regulations)

A dog can be declared menacing if it:

- Has displayed unreasonable aggression towards a person or animal (other than vermin), or
- Has, without provocation, attacked a person or animal (other than vermin) but without causing serious injury or death.

Once a dog is declared dangerous or menacing the owner must comply with specified control conditions as detailed within the Companion Animals Act 1998.

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 to ensure compliance with control requirements.

Failure to comply with any of the control measures required under the Companion Animals Act 1998 will result in further enforcement action.

Restricted breeds

Under the Companion Animals Act 1998 a breed or kind of dog can be prescribed as restricted breeds.

The following dogs are examples of restricted dogs for the purposes of the Companion Animals Act 1998:

- Pit Bull Terriers
- American Pit Bull Terriers
- Japanese Tosas
- Argentinean Fighting Dogs
- Brazilian Fighting Dogs

The owner of any restricted dog must comply with the control requirements under the Companion Animals Act 1998. Inspections by Council's authorised officers will be undertaken annually in accordance with the provisions of the Companion Animals Act 1998 to ensure compliance with these requirements.

Failure to comply with any of the control measures required under the Companion Animals Act 1998 will result in further enforcement action.

Seizure, impounding

Standard investigation procedures will be strictly followed to determine the required action in each instance.

Council will comply with legislation and make all reasonable attempts to contact owners where microchipped dogs have been found away from home.

If the owner cannot be contacted the dog will be taken to Council's pound facility – RSPCA Rutherford facility.

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 if needed in such cases to obtain a search warrant if required.

Nuisance dogs

Under the Companion Animals Act 1998, a dog is a nuisance if it:

- Is habitually at large;
- 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;
- repeatedly defecates on property (other than a public place) outside the property on which it is ordinarily kept;
- repeatedly chases any person, animal or vehicle;
- endangers the health of any person or animal;
- repeatedly causes substantial damage to anything outside the property on which it is ordinarily kept.

Nuisance Orders can be applied when companion animal owners allow their pet to continually breach the Act and remain in force for a period of six months.

Barking dog complaints

For Council to take action in relation to ongoing allegations regarding nuisance from barking dogs the council officer must have a brief of evidence that can prove a breach of the law. The 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.

Therefore Council officers need to be satisfied that a breach has occurred through either:

- Council's authorised officer witnessing the breach, or
- Evidence from witnesses in adjoining/adjacent premises. Witnesses must be prepared to give evidence in Court to support their complaint.

Under Council's adopted Noise Complaints Policy (N15.1) residents are advised that Council requires complaints from two (2) or more affected parties from two (2) or more separate premises for Council to carry out an 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.

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:

- The Community Justice Centre 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 the website www.cjc.nsw.gov.au for further information.
- Under Section 268 of the Protection of the Environment Operations Act 1997 an occupier of any premises can take their own action through the Local Courts for noise abatement orders to be issued.

8.5 Policy on Parking, Roads, Vehicles and Abandoned Articles

Parking offences

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 Penalty Infringement Notices for all breaches.

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.

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 concerned to accusations of partiality and potential claims for damages where an unsafe situation has arisen.

Council will co-operate with the NSW Police in enforcement of parking on roads and in school safety zones.

Load limits for heavy vehicles

Council will enforce the provisions of the Road Transport Act 2013 and Road Rules 2014 in relation to heavy vehicles unlawfully using load limited roads.

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.

Penalty Infringements will be issued for all breaches.

Vehicle and article sales on Public Roads

Article Sales

Under Part F of the Approvals Table to section 68 of the Local Government Act 1993, 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 Act including the issuing of penalty infringement notices and/or court proceedings.

Vehicle Sales

Council Rangers can issue Penalty Infringement Notices under the Road Rules 2008 for various offences related to the sale of vehicles, including:

- Stop on path/strip in built up area;
- Not parallel park in direction of travel
- Not parallel park near left
- Not parallel park in direction of travel (road related area).

Vehicles for sale parked in accordance with the provisions of the Road Rules 2014 do not attract penalties.

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.

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.

Compliance monitoring will be carried out and failure to comply will result in appropriate enforcement action.

9. Legislation and References

Council has authority to take regulatory action under a number of NSW Acts and Regulations including, but not restricted to:

- Local Government Act 1993 & Regulations;
- Environmental Planning and Assessment Act 1979 & Regulation;
- Food Act 2003, Regulations & NSW Food Safety Standards;
- Protection of the Environment Operations Act 1997 & Regulations;
- Waste Avoidance & Resource Recovery Act 2001 & Regulations;
- Biodiversity Act 2015;
- Public Health Act 2010 & Regulations;
- Companion Animals Act 1998 & Regulations;
- Roads Act 1993 & Regulations;
- Contaminated Land Management Act 1997;
- Road Transport Act 2013, Regulation;
- Impounding Act 1993 & Regulations;
- Plumbing & Drainage Act 2011;
- Swimming Pools Act 1992 & Regulations;
- Land and Environment Court Act 1979;
- Rural Fires Act 1997;
- Liquor Act 2007 & Regulations;
- Building Professionals Act 2005.
- Australian Road Rules 2014.

10. Definitions

In this policy, the following definitions apply:

Authorised Officer:	A person who is empowered to carry out specific legislative functions as defined within the respective Act and Regulation.
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 staff:	Includes staff employed under permanent, part-time, casual or contractual arrangement who undertakes compliance and enforcement action on behalf of Cessnock City Council.
Customer Request Management System (CRMS):	The electronic database utilised by Council to document and record information and actions taken in relation to an alleged unlawful activity.
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
Legal advice:	The interpretation of legislative matters as provided to Council by lawyers, solicitors or other legal advisors as appointed by Council for that purpose.
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:	A process by which decisions are made adhering to the principles of justice and equality. Procedural fairness and the term natural justice are interchangeable. The rules of procedural fairness require: <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:	Is any activity or work that has been or is being carried out: <ul style="list-style-type: none"> a) Contrary to the terms or conditions of a development consent, approval, permit or licence; b) Contrary to the Cessnock Local Environmental Plan 2000, as amended, that regulates the activities or work that can be carried out on particular land; c) Contrary to a legislative provision regulating a particular work or activity without a development consent, certificate, approval, permission or licence; d) 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

Attachment 1 - ADJUDICATION PANEL CHARTER - July 2012

1. Purpose

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

2. 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 OSR 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.

3. Outcomes

- Reduction in the number of inconsistencies in relation to Penalty Infringement Notice 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.

4. 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 OSR Guidelines, Council records, Penalty Infringement Notices, 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.

5. Panel Appointment

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

6. 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 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.

7. 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 Team Leader have the discretion to refer any item to the adjudication panel for consideration.

8. 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 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 the OSR 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 Team Leader and/or relevant Manager to enable the issue to be addressed.

Attachment 2 - 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.