

MURRAY RIVER COUNCIL
COUNCIL POLICY

DRAFT
**COMPLIANCE
&
ENFORCEMENT
POLICY**

POL-410.V#1



murray river
council

1. INTRODUCTION

The intent of this Policy is to provide the structure for a transparent decision-making process to ensure enforcement is carried out in an efficient, fair and consistent manner.

It is also intended to assist Council staff to act promptly, effectively, and consistently in response to allegations of unlawful activity.

Internal decision-making processes on compliance and enforcement decisions are also guided by the NSW Ombudsman's Enforcement Guidelines.

2. OBJECTIVES

This Policy applies to the process of receiving, acknowledging, assessing and investigating reports of alleged unlawful activity.

The purpose of this Policy is to establish a framework to guide the most efficient and effective use of Council's regulatory resources to achieve the best environmental, health and safety outcomes for the community.

3. SCOPE

This Policy applies to Authorised Officers of Murray River Council with delegation to carry out enforcement action under relevant legislation. It applies to the investigation and enforcement of complaints about unlawful activity and/or failure to comply with the terms or conditions of approvals.

Only Council Officers with the appropriate delegations from the Chief Executive Officer (CEO) can undertake investigations and enforcement activities associated with this Policy.

Delegated Council Officers are provided with authority identification cards attesting to the powers and functions they are empowered to act upon under the relevant legislation.

4. LEGISLATION

Includes, but is not limited to:

- › Local Government Act 1993 (NSW).
- › Local Government (General) Regulation 2021 (NSW).
- › Government Information (Public Access) Act 2009 (NSW)
- › Privacy and Personal Information Protection Act 1998 (NSW)
- › State Records Act 1998 (NSW)
- › Companion Animal Act 1998 (NSW) and associated Regulation.
- › Companion Animals (Rehoming Animals) Amendment Act 2022 (NSW)
- › Environmental Planning and Assessment Act 1979 (NSW) and associated Regulation.
- › Food Act 2003 (NSW) and associated Regulation.
- › Protection of the Environment Operations Act 1997 (NSW) and associated Regulation.
- › Public Health Act 2010 (NSW) and associated Regulation.
- › Public Spaces (Unattended Property) Act 2021 (NSW) and associated Regulation.
- › Roads Act 1993 (NSW) and associated Regulations.
- › Swimming Pool Act 1992 (NSW) and associated Regulations.

5. POLICY STATEMENT

Murray River Council is committed to balancing individual and community interests to appropriately allocate finite resources to issues that present the highest risk.

Murray River Council will always seek to achieve voluntary compliance with the legislation it administers through education, guidance and advice to individuals and businesses.

However, we will be vigilant in monitoring compliance with those laws and take enforcement action where people or businesses are unwilling to comply with the law.

5.1 COMPLIANCE AND ENFORCEMENT PRINCIPLES

Best practice	▸ MRC is committed to delivering compliance and enforcement functions efficiently and effectively in line with best practice principles to foster public confidence in our approach.
Communication	▸ We will acknowledge the receipt of requests and keep customers informed regarding the progress of investigations. ▸ We will communicate in a transparent, timely, efficient, empathetic and informative manner so that expectations are clear, and issues can be resolved prior to escalation. ▸ We will work with our customers to identify and facilitate solutions that will address non-compliances; and ▸ We will refer customers to alternate government services when Council can no longer assist. (e.g. Community Justice Centres, Local Court, Police, RSPCA, Fair Trading, Safe Work, Food Authority, NSW EPA, NSW Health).
Timeliness	▸ We investigate requests in an impartial and timely manner, providing fair, reasonable and appropriate timeframes for non-compliances to be addressed before further enforcement is considered.
Consistency	▸ Ensuring all compliance and enforcement action is implemented consistently; and ▸ Encouraging reports about possible unlawful activity by acting reasonably in response to the circumstances and facts of each matter.
Proportionality	▸ We ensure enforcement action is proportionate to the level of risk and the seriousness of the breach. ▸ We make cost effective decisions about enforcement action; and ▸ We take action to address harm and deter future unlawful activity.
Accountable and transparent	▸ We act in the best interests of public health and safety and in the best interests of the environment. ▸ We ensure accountability for decisions to take or not take action. ▸ We act fairly and impartially and without bias or unlawful discrimination. ▸ We provide information about compliance and enforcement priorities and reasons for decisions to improve understanding and certainty and promote trust by the community. ▸ We ensure meaningful reasons for decisions are given to all relevant parties, particularly when there is a departure from this Policy; and ▸ We act on any complaints or concerns about the service provided or conduct of compliance officers in accordance with Council's <u>Customer Feedback and Complaints Management Policy</u> and procedures advising people and organisations subject to enforcement action of any avenues available to seek an internal or external review of a decision.

5.2 RESPONDING TO CONCERNS ABOUT UNLAWFUL ACTIVITY

5.2.1 How reports alleging unlawful activity will be dealt with by Council

- Council will record and assess every report alleging unlawful activity.
- Council will respond to every report, unless the person raising the matter has indicated they do not wish to receive a response, or the report is anonymous.
- Not all reports will need to be investigated. A preliminary assessment of all matters will be made to determine the priority for a response, and whether investigation or other action is required.
- If investigated, Council Officers will give the person who reported the matter 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 or the protection of personal information).
- Decisions about what action should be taken by Council are made at Council's discretion. This means 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 to avoid the need to take formal action.
- Council Officers will endeavour to manage the expectations of people who report alleged unlawful activity and 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 does not have unlimited resources and powers to deal with reports alleging unlawful activity. If Council is unable to fully investigate or act on a matter because it is restricted by any legal or resource limitations this will be explained to the individual; and/or
- While there are certain statutory requirements that must be met in relation to notices and orders, Council Officers will ensure that all explanatory communications are made in plain English and explain any technical language the law requires to be used.

5.2.2 Confidentiality of people who report allegations of unlawful activity

Council will respect the privacy and confidentiality in respect to information received. However, people who report allegations of unlawful activity should not expect that their identities will remain confidential from the subject of their report in all circumstances. The identity of a person may be apparent due to the nature or location of the matter being investigated. Council may have to disclose information that identifies a person 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; and/or
- The matter proceeds to court.

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

5.2.3 Anonymous reports

Anonymous reports will be recorded and assessed in accordance with the above requirements. However, because it is not possible to seek clarification or additional information about a matter, it may be more difficult to evaluate the allegations and therefore these reports are less likely to warrant investigation.

5.2.4 Unlawful activity outside business hours

Unlawful activity can occur outside business hours. In particular, Council may receive reports about matters such as offensive noise and failure to comply with limitations on hours of operation during nights and weekends.

Due to resource and operational capability restraints on Council, investigations into alleged unlawful activity outside business hours will be assessed on the basis of risk of harm to health, welfare, safety, property or the environment or it is otherwise in the public interest to take such action.

5.3 INVESTIGATING ALLEGED UNLAWFUL ACTIVITY

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.

Decisions about whether the matter will be investigated or not are made at Council's sole discretion and in view of this policy's principles and any relevant considerations.

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

Council may develop procedures to guide investigations. In addition, guidance material such as NSW Ombudsman Enforcement Guidelines for Councils 2015 and NSW Ombudsman Investigating complaints - A Manual for Investigators 2004 may be referred to

5.4 TAKING ENFORCEMENT ACTION

When deciding whether to take enforcement action in relation to a confirmed case of unlawful activity, Council will consider the full circumstances and facts of the matter and the public interest. The following common considerations will assist Council Officers in determining the most appropriate response in the public interest:

- ▶ The nature, extent and severity of the unlawful activity, including whether the activity is continuing;
- ▶ The harm or potential harm to the environment, public health, safety or amenity caused by the unlawful activity;
- ▶ The seriousness of the breach, including whether the breach is merely technical, inconsequential or minor in nature; and/or
- ▶ The time that has lapsed since the date of the unlawful activity.

Any prior warnings, instructions or advice that was issued to the person or organisation reported or previous enforcement action taken against them.

- ▶ Whether the offence was committed with intent;
- ▶ Whether the person or organisation reported has been proactive in the resolution of the matter and assisted with any Council requirements and instructions;
- ▶ Any mitigating or aggravating circumstances demonstrated by the alleged offender; and/or
- ▶ Any circumstances of hardship affecting the person or organisation reported.

The need to deter any future unlawful activity.

- ▶ Whether an educative approach would be more appropriate than a coercive approach in resolving the matter;
- ▶ The prospect of success if the proposed enforcement action was challenged in court;
- ▶ The costs and benefits of taking formal enforcement action as opposed to taking informal or no action;
- ▶ What action would be proportionate and reasonable in response to the unlawful activity; and/or
- ▶ Whether Council is prevented from taking action based on earlier advice given, i.e. whether an estoppel situation has been created.

Whether the breach can be easily remedied.

- Whether it is likely consent would have been given for the activity if it had been sought; and/or
- Whether there is a draft planning instrument on exhibition that would make the unauthorised use legal.

5.4.1 Requirements of Council Officers considering enforcement action

- Prior to taking enforcement action, Council Officers will take into account the above considerations as well as the evidence gathered during their investigation;
- Council Officers must act impartially, be mindful of their obligations under Council's Code of Conduct Policies and not act as a decision-maker in relation to any matter in which they have a personal interest;
- Enforcement action will not be taken purely as a response to the conduct of an individual such as persistent demands or threats;
- Council Officers are required to maintain records about critical thinking and decision-making processes in relation to reports alleging unlawful activity and any enforcement action, as well as records of interactions with relevant parties;
- Council Officers will at all times adhere to Council's internal approval processes prior to the commencement of any enforcement action;
- Council Officers will take steps to ensure that any enforcement action is taken against the correct person or organisation. Where there are multiple possible parties to an alleged unlawful activity, it will generally not be appropriate to take enforcement action against every person who may be liable for the alleged unlawful activity. In such circumstances, Council Officers may be guided by legal advice in determining the appropriate persons to pursue;
- Council Authorised Officers can issue statutory notices, orders and penalty notices in response to an investigation of an unlawful activity in accordance with their delegation and the Penalty Notice Sign Off Process. In addition to this Policy, Council may also adopt guidelines and procedures for Council Officers about specific types of regulatory activity and the circumstances in which enforcement action will or will not be taken.

5.5 OPTIONS FOR DEALING WITH CONFIRMED CASES OF UNLAWFUL ACTIVITY

Council will try to use the quickest and most informal option to deal with unlawful activity wherever possible unless there is little likelihood of compliance with such options. Council Officers will use discretion to determine the most appropriate response to confirmed cases of unlawful activity and may take more than one approach.

Any enforcement action taken by Council will depend on the full circumstances and facts of each case, with any decision being made on the merits and in the public interest.

At all times, Council's key concerns are:

- to prevent or minimise harm to health, welfare, safety, property or the environment; and
- to influence behaviour, change for the common good and on behalf of the community.

The following enforcement options to be considered by Council are ordered to reflect an escalation in response that is proportionate to the level of risk, the seriousness of the confirmed breach or the need for a deterrent:

Significance of Breach	Enforcement Options	Examples
Very low	▸ Take no action based on a lack of evidence or not in the public interest or some other appropriate reason	▸ Low risk anonymous requests ▸ Illegal Camping

	› Provision of information/advice on how to be compliant	› Woodsmoke concerns › Minor/unknown non-compliance with development consent
Low	› Negotiate corrective action and timeframes issuing a warning or a formal caution	› Residential parking › Minor activities in public places without approval › Small scale works without consent
Medium	› Negotiate corrective action › Issuing a letter requiring work to be done or activity to cease in lieu of more formal action › Issuing a penalty notice › Issuing a notice of intention to serve an order or notice under relevant legislation and then serving an order or notice if appropriate	› Noise issues › Minor food premise non-compliances › Overgrown land › Unregistered dog › Abandoned vehicles › Illegal dumping › Tree removal
High	› Issuing a penalty notice › Issuing a notice of intention to serve an order or notice under relevant legislation and then serving an order or notice if appropriate › carrying out the works specified in an order at the cost of the person served with the order	› Dog attack › Pollution of land/water › Development without/not in accordance with consent; › Large scale clearing, earthworks, dumping, pollution › Non-compliance with an Order › Public health incidents › Non-compliant pool barriers posing a risk to the public.
Very High	› Seeking an injunction through the courts to prevent the future or continuing unlawful activity commence legal proceedings for an offence against the relevant Act or Regulation.	› Major dog attacks on people › Large scale/irreversible damage to environment › Major development without/not in accordance with consent

5.5.1 Actions by Authorised Officers

Pursuant to relevant legislation, Council will delegate authority to (and thereby authorise) regulatory officers to carry out inspections and take necessary action as part of their duties. Council views the power to enter private property to carry out investigations very seriously and will ensure that these powers are exercised in accordance with all relevant legal requirements.

All Council Officers who carry out investigations and inspections on private land for regulatory purposes must:

- › Have a delegation from Council to enter the premises to carry out investigations.
- › Be authorised by the Council where it is required by specific legislation to permit inspections on private property.
- › Carry appropriate photographic identification and delegations demonstrating their authorisation to enter private property under the relevant legislation.
- › Provide adequate notice where required in the relevant legislation.
- › Be courteous and helpful.
- › Be conscious of any requirements relating to work health and safety.

5.5.2 Following up enforcement action

All enforcement action will be reviewed and monitored to ensure compliance with any undertakings given by the subject of enforcement action or advice, directions or orders issued by Council. Reports alleging continuing unlawful activity will be assessed and further action taken if necessary. If the unlawful activity has ceased or the work has been rectified, the matter will be resubmitted for follow up action to ensure compliance outcomes are met. Should initial enforcement action be found to have been ineffective, Council Officers will consider other enforcement options.

5.6 TAKING LEGAL ACTION

Council and its delegated Officers will be usually guided by legal advice in deciding whether to commence criminal or civil proceedings. and will consider the following:

- ▶ Whether there is sufficient evidence to establish a case to the required standard of proof.
- ▶ Whether there is a reasonable prospect of success before a court.
- ▶ Whether the public interest warrants legal action being pursued.
- ▶ Any decision to commence legal proceedings, except for legal proceedings in respect of breaches of the Companion Animals Act 1998, will be at the sole discretion of the CEO.

5.7 ROLE OF COUNCIL WHERE THERE IS A PRIVATE CERTIFIER

Council retains its regulatory role and enforcement powers where a private certifier has been appointed the Principal Certifying Authority (PCA). However, if a private certifier is appointed the PCA, it is not Council's responsibility to ensure building and construction compliance.

Community members making requests regarding a development under the responsibility of a private certifier will be advised to contact the private certifier in the first instance.

Private certifiers have limited enforcement powers as the PCA. They have the power to issue a notice of intention to issue an order to the owner or builder to comply with the conditions of consent or rectify any breaches. A copy of any notice of intention issued by a private certifier must be provided to Council for assessment as to whether Council will enforce the notice by issuing an order.

Council and private certifiers will work together to resolve any issues when they arise to achieve compliance with the development consent or complying development certificate. Council Officers will take steps to ensure individuals are clear about which agency performs which role.

Council will lodge concerns with NSW Fair Trading, through the CEO or delegated officer, if it considers that a PCA has not acted in accordance with their obligations under legislation or has not acted in the public interest.

6. ROLES AND RESPONSIBILITIES

Role	Responsibilities:
Chief Executive Officer	Is responsible and accountable for implementing and communicating this Policy. Ensuring this Policy is reviewed and updated to reflect external changes in legislation or government policy or administrative guidelines. Council Officer's delegations for taking action under this Policy are included in Council's <u>Delegations of Authority (CEO to Council Officers) Policy</u>
Authorised Council Officers	All who deal with written and verbal customer requests or complaints alleging unlawful activity are responsible for implementing this Policy.

7. EVALUATION AND REVIEW

It is the responsibility of the Director Sustainability & Growth to monitor compliance with this Policy and the adequacy of this Policy and recommend appropriate changes.

This Policy will be formally reviewed every four (4) years or as needed, whichever comes first.

8. ASSOCIATED DOCUMENTS, DEFINITIONS & ACRONYMS

External:

- NSW Ombudsman - Enforcement Guidelines for Councils 2015;
- NSW Ombudsman - Investigating complaints - A Manual for Investigators 2004

Internal:

- MRC Policy - Code of Conduct Policies
- MRC Policy - Delegations of Authority (CEO to Council Officers) Policy
- MRC Policy - Customer Feedback and Complaints Management Policy
(or any amended or replacement Policy).

Definitions:

Term	Definition
Authorised Officer	A person who is delegated by the CEO to have statutory powers for the administration and enforcement of local laws and the relevant legislation.
Council Officer	An officer is defined as being one of the following: ▸ An employee, or ▸ A contractor or subcontractor, or ▸ An employee of a contractor or subcontractor, or ▸ An employee of a labour hire company who has been assigned to work in the person's business or undertaking, or ▸ An outworker, or ▸ An apprentice or trainee, or ▸ A student gaining work experience, or ▸ A volunteer

9. DOCUMENT CONTROL

Version No.	Details	Dates	CM9 Reference	Resolution No.
1	Initial Issue	DRAFT	VF/25/253	TBA

Council reserves the right to review, vary or revoke this policy at any time

This Policy is scheduled for review in before 2029

NOTE:

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DISCLAIMER:

This document was formulated to be consistent with Murray River Council's legislative obligations and with the scope of Council's powers. This document should be read in conjunction with relevant legislation, guidelines and codes of practice. In the case of any discrepancies, the most recent legislation should prevail. This document does not constitute legal advice. Legal advice should be sought in relation to particular circumstances and liability will not be accepted for losses incurred as a result of reliance on this document.

It is recognised that, from time to time, circumstances may change leading to the need for minor administrative changes to this document. Where an update does not materially alter this, such a change may be made administratively. Examples include a change to the name of a Business Unit, position title or a change to the name of a Federal or State Government department, and a minor update to legislation which does not have a material impact. When such changes are made the version number will be amended and an extension added (eg V#1.1)

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Table 1: Risk Categories for prioritising investigation of unlawful activity

Risk Assessment Matrix		Consequences				
		Miniscule (1)	Minor (2)	Moderate (3)	Major (4)	Catastrophic (5)
Likelihood	Almost Certain (5)	Medium 5	Medium 10	Significant 15	Extreme 20	Extreme 25
	Likely (4)	Low 4	Medium 8	Significant 12	Significant 16	Extreme 20
	Possible (3)	Low 3	Medium 6	Medium 9	Significant 12	Significant 15
	Unlikely (2)	Low 2	Low 4	Medium 6	Medium 8	Medium 10
	Rare (1)	Low 1	Low 2	Low 3	Low 4	Medium 5

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