



FACT SHEET

Information for Complainants

Obligations of all parties

Council is obliged to properly deal with allegations about compliance matters and alleged unlawful activities, which include activities that are prohibited or unauthorised, or contrary to the terms of a consent, licence, approval or other legislation.

The responsibilities of Council	Your responsibilities when you make a complaint
<ul style="list-style-type: none"> Handling your complaint professionally, efficiently and fairly. 	<ul style="list-style-type: none"> Providing us with a clear idea of the problem and the solution you want.
<ul style="list-style-type: none"> Keeping you informed of our progress. 	<ul style="list-style-type: none"> Giving us all the relevant information you have (or know about) at the beginning.
<ul style="list-style-type: none"> Giving you reasons for our decisions. 	<ul style="list-style-type: none"> Telling us new facts or letting us know you no longer want our help.
<ul style="list-style-type: none"> Treating you with respect. 	<ul style="list-style-type: none"> Cooperating with us.
	<ul style="list-style-type: none"> Treating us with respect.

Note: If complainants do not meet their responsibilities, Council may set limits or conditions on the handling of a complaint. Any abuse, harassment or threats to the safety or welfare of staff at Council will result in the immediate discontinuation of the complaint and all contact with the complainant will stop.

Initial response to complaints about unlawful activity

Many complaints can be resolved informally by providing prompt and accurate advice. Council staff will generally, in the first instance, seek to resolve difficulties, disagreements or disputes by discussion, provision of information (e.g. about policies, procedures and practices, and decisions affecting complainants), negotiation, mediation or conciliation wherever appropriate.

This could be, for example, by advising that an activity or work is lawful, or advising a person of the nature of the complaint to enable them to fix the problem. When deciding whether a complaint requires investigation, a range of matters will be considered which are contained in Council's Corporate Enforcement Policy.

Determining whether enforcement action is appropriate

Council has discretion in deciding whether to take enforcement action on the basis of evidence of unlawful or unauthorised activity, and has a Corporate Enforcement Policy to consider certain matters and guide this decision-making process.

In exercising these discretionary powers, Council staff are required to:

- Use discretionary powers in good faith and for a proper purpose.

- Base their decision on logically probative material (e.g. logical reasons, information that proves the issues in question or relevant and reliable evidence).
- Consider only relevant considerations and not consider irrelevant considerations.
- Give adequate weight to a matter of great importance but not give excessive weight to a relevant factor of no great importance.
- Exercise their discretion independently and not act under the dictation or at the behest of any third person or body.
- Give proper, genuine and realistic consideration to the merits of the particular case, and not apply policy inflexibly.
- Observe the basic rules of procedural fairness (e.g. natural justice).

The rules or principles of natural justice, also known as procedural fairness, exist to ensure that decision-making is fair and reasonable. Put simply, natural justice involves Council informing people of the case against them or their interests, giving them a right to be heard (the 'hearing' rule), not having a personal interest in the outcome (the rule against 'bias'), and acting only on the basis of logically probative evidence (the 'no evidence' rule).

It is therefore important when lodging a complaint with Council to understand and accept that:

- Council's powers under various legislation are not unlimited.
- Council will try and resolve a matter in cooperation with the person who is the subject of a complaint, prior to taking more formal action.
- The investigation process can sometimes be lengthy in order to ensure that the principles of natural justice are observed.
- If there is an absence of evidence available to prove an offence, Council is unlikely to be able to take action or pursue the matter further.
- If a complainant is unwilling to cooperate with Council or provide evidence (including statements that may be used in Court), there may not be sufficient evidence to enable Council to take further action.

Options for action

Council must determine whether there is evidence of an unlawful activity. This may take some time. If the issue is complex, Council may need to conduct more inspections, undertake monitoring, seek legal advice or consult other government agencies. It is reasonable to expect progress reports from Council staff. Ask to be advised in writing when a decision is reached.

If there is evidence of unlawful activity, Council staff must decide if further action is warranted. It is wrong to assume that all cases justify enforcement action. If an unlawful development is minor and would most likely have been approved had an application been made, it could be reasonable for Council to take no action. Similarly, if a breach of legislation is minor or has little impact on the environmental or third parties, it may be also be reasonable for Council to take limited or no further action.

There are a range of possible outcomes or actions that Council may take to respond to concerns about unlawful activity, including:

- Referring the matter to another/relevant agency for further action.

- Counselling or educating the person investigated to educate them on the relevant requirements.
- Negotiating a resolution of the complaint between the parties or to obtain undertakings to address the issues of concern.
- Issuing a warning or caution to the offender, requiring work to be done or activity to cease in lieu of more formal action.
- Issuing a notice of intention to serve an order or notice or a notice requiring work to be done under relevant legislation.
- Taking proceedings in a relevant court for an order to remedy or restrain a breach of the relevant Act or Regulation or for an injunction.
- Issuing a penalty notice or starting legal proceedings for an offence against a relevant Act or Regulation.

Understanding Council's response and other alternatives

If Council staff decide to take limited or no action in relation to a matter, you are entitled to ask for the reason(s) for that decision. It is the responsibility of Council staff to decide how a complaint is to be dealt with, how quickly, with what priority, what resources will be given to it and what will be the outcome – not the person making the complaint. If Council has made a decision and provided you with reasons for its actions, continuing to raise the matter is unlikely to result in a different outcome.

If you are dissatisfied with Council's response, and you wish to pursue the matter further, you could consider the following options:

- Referring the issue and actions and outcomes from Council's response to a body that oversees the activities of Council for review, such as the NSW Ombudsman.
- Seek to have the matter considered independently by a Community Justice Centre who provide **free** mediation and conflict management services to help people resolve disputes. Further details on Community Justice Centres can be found at www.cjc.nsw.gov.au.
- Seek your own legal advice and take legal action through the courts if necessary to remedy the issue.