

RICHMOND VALLEY COUNCIL POLICY REGISTER

Policy No: 2.2.2

Reference: Regulatory Control

POLICY:	ENFORCEMENT – UNLAWFUL ACTIVITY
FUNCTION:	Regulatory Control
OBJECTIVE:	To establish clear guidelines for the exercise of discretion in dealing with action requests or complaints about unlawful activity.
DIRECTORATE:	ENVIRONMENTAL DEVELOPMENT SERVICES

POLICY

PREAMBLE

The policy is to establish clear guidelines for the exercise of discretion in dealing with action requests or complaints about unlawful activity. It provides workable guidelines on:

- How to assess whether complaints of unlawful activity require investigation
- Options for dealing with unlawful activity
- How to decide whether enforcement action is warranted.

APPLICATION

This policy applies to the investigation and enforcement of complaints about unlawful activity or failure to comply with the terms of conditions of approvals, licences and orders. While primarily directed at the regulation of development activity, the policy is also applicable to pollution control, regulation of parking and control over keeping animals.

RESPONSIBILITY

All council staff who deal with written and verbal action requests (complaints) alleging unlawful activity are responsible for implementing these policy guidelines.

All notifications of alleged unlawful activity should be logged in Council's Request Action Management system (or Document Management System) which are automatically, through the workflow process, directed to the responsible officer.

DEFINITIONS

Unlawful activity is any activity or work that has been or is being carried out:

- Contrary to the terms of conditions of a development consent, approval, permission or licence
- Contrary to an environmental planning instrument that regulates the activities or work that can be carried out on particular land
- Contrary to a legislative provision regulating a particular activity or work
- Without a required development consent, approval, permission or licence
- Contrary to the requirements of a directional sign

- Contrary to the requirements local government regulatory legislation ie. Companion Animals Act, Protection of the Environment Operations Act etc.

INVESTIGATING UNLAWFUL ACTIVITY

Not all complaints will warrant investigation. Council will consider a range of factors when deciding whether to investigate. These include:

- Is the matter within the jurisdiction of Council?
- Is the complaint premature, eg: does it relate to some unfinished aspect of work that is still in progress?
- Is the activity or work permissible with consent, is there a consent in place?
- Is it possible to determine from the information available to council whether the activity or work is permissible without consent and/or whether all conditions of consent are being complied with?
- Is the complaint trivial, frivolous or vexatious?
- Has too much time elapsed since the events of the subject of the complaint took place?
- Is there another body that is a more appropriate agency to investigate and deal with the matter?
- Is the activity having a significant detrimental effect on the environment or does it constitute a risk to public safety?
- Does the complaint indicate the existence of a systemic problem, eg: if the complaint is one of a series, could there be a pattern of conduct or a more widespread problem?
- Has the person or organisation complained of been the subject of previous complaints?
- Does the complaint have special significance in terms of the Council's existing priorities?
- Are there significant resource implications in relation to an investigation and any subsequent enforcement action?
- Is it in the public interest to investigate the complaint?

If a decision is made not to investigate a complaint, this decision must be recorded with the reasons for that decision.

RESPONDING TO COMPLAINANTS

All Request Action Management (Complaints) about alleged unlawful activity should be acknowledged within 14 days and a report should be provided if possible, within a further 14 days on what action Council has taken or plans to take.

The person the subject of the complaint should be advised that a complaint has been received and that an inspection will be undertaken by Council.

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, or that option is not considered appropriate in the circumstances, eg. stronger action is warranted.

APPROACHES TO BE CONSIDERED INCLUDE:

- Negotiating with the person(s) subject of the investigation and obtaining some undertakings to address the issues of concern arising from the investigation eg: an application for modification of development consent, ceasing activity which is subject of the complaint.
- Issuing a letter requiring work to be done or activity to cease in lieu of more formal action.
- Issuing a notice requiring work to be done under various legislation.
- Issuing a notice of intention to serve an order or notice under relevant legislation, followed by service of an appropriate order or notice (Local Government Act (LG Act) ss. 124-128, Environmental Operations Act (PEO Act) Pts 4.2-4.4 and 8.6)).
- Starting proceedings in the Land and Environment Court for an order to remedy or restrain a breach of the relevant Act or Regulation (s.673 LG Act; s.123 EPA Act)
- Seeking injunctions for the Land & Environmental Court or the Supreme Court
- Issuing a summons in the local court
- Issuing a penalty infringement notice
- Taking proceedings for an offence against the relevant Act or Regulation (s.691 LG Act, s.125 EPA Act; C15 PEO Act)
- Counselling the subject of the investigation to educate them on the relevant council requirements
- Referring the complaint to an external agency for further investigation or prosecution
- Taking no action on the basis of a lack of evidence or for some other appropriate reason

All enforcement action will be monitored and a decision made in relation to non-compliance within 14 days of any deadline imposed.

TAKING ENFORCEMENT ACTION

When deciding whether to take enforcement action, Council will consider the circumstances of the case. These include:

- Has the council created an estoppel situation?
- Is the breach a technical breach only?
- When was the unlawful activity carried out and for how long?
- How has the unlawful activity affected the natural or build environment and the health, safety and amenity of the area?
- Would consent have been given if it had been sought?
- Can the breach be easily remedied?
- Does the person in breach show contrition?
- Are there any particular circumstances of hardship affecting the complainant or the persons the subject of the complaint?
- What would be in the public interest?
- Is there a draft planning instrument on exhibition that would make the unauthorised use legal?
- What are the costs and benefits of taking formal enforcement action as opposed to taking informal action or no action?
- What are the chances of success if the proposed enforcement action was challenged in court?

- What are the costs and benefits of taking formal enforcement action as opposed to taking informal action or no action?
- Would an educative approach be more appropriate than a coercive approach?
- Has the person the subject of the complainant received warning or other non-coercive approach or has formal legal action been taken?
- What action would reasonable and proportionate in this case?

DELEGATIONS FOR ENFORCEMENT ACTION

Each member of Council staff who initiate various levels of enforcement action are to have the appropriate delegations to enable the conduct of such enforcement action.

VARIATION

Council reserves the right to review, vary and/or revoke this Policy from time to time.