Policy 4.05  Enforcement and compliance

<table>
<thead>
<tr>
<th>Directorate</th>
<th>Planning and Environment Group</th>
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<tbody>
<tr>
<td>Responsible Officer</td>
<td>Manager</td>
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Scope
This Policy provides the basis for consistency, fairness and transparency in regards Council’s compliance and enforcement activities.

Purpose
The purpose of this policy is to establish direction and guidelines for Council staff in the management of Council’s regulatory function. It provides workable guidelines on:

- Responding to reports alleging unlawful activity.
- Assessing whether reports alleging unlawful activity require investigation.
- Deciding on whether enforcement action is warranted.
- Options for dealing with confirmed cases of unlawful activity.
- Taking legal action, and
- Implementing shared enforcement responsibilities.

Definitions

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
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<tr>
<td>Enforcement</td>
<td>Actions taken in response to serious or deliberate contraventions of laws.</td>
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<tr>
<td>Regulation</td>
<td>Using a variety of tools and strategies to influence and change behaviour to achieve the objectives of an Act, Regulation or other statutory instrument administered by Council.</td>
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| Unlawful Activity | Any activity or work that has been or is being carried out contrary to an Act of legislation administered by Council the below listed factors, and/or failure to take required action in order to be compliant with:  
  - Terms or conditions of a development consent, approval, permit or licence,  
  - An environmental Planning Instrument that regulates the activities or work that can be carried out on particular land,  
  - A legislative provision requiring a particular activity or work,  
  - A required development consent approval, permission or licence. |
Legislative requirements

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

- Environmental protection
- Public health and safety
- Development and building control
- Environmental health and food safety
- Biodiversity conservation & tree protection
- Biosecurity
- Animal control in public places
- Fire safety
- On Site Sewage Management

Responsibility

Council receives information about alleged unlawful activity from members of the public, information gathered by staff during proactive inspections, and contact from other government agencies such as NSW EPA. Only staff with the appropriate delegations from the General Manager can undertake investigation or compliance and enforcement action. Council staff delegations for taking action under this Policy are included in Council’s Delegations Register.

All staff with responsibility for investigating reports alleging unlawful activity are responsible for implementing this Policy.

Staff are also responsible for ensuring that any other possible unlawful activity identified as a result of an inspection or information received, is brought to the attention of the relevant Council section or government agency.

Policy Statement

Bega Valley Shire Council will manage Enforcement and Compliance activities in a systematic manner by:

- Ensuring its obligations under Section 8 of the Local Government Act 1993 are adhered to ensuring regulatory powers are carried out in a consistent manner and without bias.
- All decision making relating to the investigation of reports alleging unlawful activity and taking enforcement action is the responsibility of appropriately authorised staff or of the Council itself.
- Following the principles of the ‘NSW Ombudsman’s Enforcement Guidelines for Councils’(2015), the NSW Director of Public Prosecution ‘Prosecution Policy and Guidelines’, the NSW EPA Enforcement Guidelines and the BVSC 'Enforcement and Compliance' and 'Parking Enforcement' Guidelines in regard to the enforcement and compliance functions that comprise the procedures and guidelines associated with this Policy.
- Ensuring all Council compliance and enforcement actions are underpinned by the following principles.
### Accountability & transparency
- Acting fairly and impartially and without bias or unlawful discrimination.
- Acting in the best interest of public health and safety and in the best interests of the environment.
- Providing information about compliance and enforcement priorities and reasons for decisions.
- Acting on any complaints or concerns about the conduct of compliance officers in accordance with Council’s complaint management procedures.
- Advising people and organisations subject to enforcement action of avenues available to seek a review of a decision.

### Consistency
- Ensuring all compliance and enforcement action is implemented consistently.
- Encouraging reports about possible unlawful activity by acting reasonably in response to the circumstances and facts of each matter.

### Timeliness
- Ensuring responses to reports alleging unlawful activity and decision making in relation to those is timely and within statute of limitations and reporting obligations.

### Proportional
- Ensuring the level of enforcement action is proportional to the level of risk and seriousness of the breach or offence.
- Making cost effective decisions about enforcement action.
- Taking action to address harm and deter future unlawful activity.

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### Related BVSC policies

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<th>Policy No.</th>
<th>Title</th>
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<tr>
<td>4.03</td>
<td>Public Regulation</td>
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