

1 PURPOSE

The purpose of this policy is to summarise City of Darwin's general approach to compliance and enforcement. The community has a high expectation that Council will comply with applicable legislation. The policy explains how City of Darwin manages activities to achieve compliance.

Council's role is to uphold its statutory responsibilities for regulatory activities in accordance with legislation. This policy provides the framework for the investigation and enforcement of regulated activities and Council's response to unlawful activities.

The policy also provides a level of confidence that Council's compliance and enforcement practices demonstrate:

- That Council values those who voluntarily comply with the law.
- Proportionality in decision making.
- Transparency in the process of investigation and enforcement.

2 SCOPE

City of Darwin acknowledges that it has an obligation under Chapter 13 of the *Local Government Act 2008* (NT) to ensure the exercise of its regulatory power is carried out with consistency and without bias.

The objectives of this policy are to provide the framework so that Council will:

- Provide consistency in enforcement action.
- Ensure transparency, procedural fairness and natural justice principles are applied.
- Ensure that enforcement action is proportionate to the alleged offence.

3 POLICY STATEMENT

This policy relates to the activities undertaken in accordance with legislation or Council policy and includes activities related to the control of animals, parking, environmental protection, advertising signs and other regulatory activities.

Council has established Enforcement Guidelines for the management of Council's regulatory activities and implementation of enforcement actions.

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The policy ensures that Council's enforcement practices are lawful, safe, fair, practical, and consistent and that Council discharges its statutory obligations in the investigation and enforcement of unlawful activities.

3.1 PRINCIPLES

Enforcement actions are taken within the context of both a legal and policy framework. Council staff will carry out their enforcement related work with due regard to the Enforcement Guidelines and the following principles –

- Proportionality
- Consistency
- Transparency
- Evidence based decision making

3.2 WORKING WITH OTHER REGULATORS

Council will liaise with other external agencies, for example Northern Territory Police Service, Environmental Protection Authority, Department of Housing and Northern Territory Health, to minimise duplication, avoid inconsistencies and to ensure that any proceedings instituted are for the most appropriate offence.

3.3 WORKS IN DEFAULT

Under some legislation Council may execute works in default instead of, or as well as, taking legal action. In such cases the expenses of default work may be recovered by Council and can be charged against the land, or in the case of a negotiated cost, met by the defaulter on completion of the works.

Where Council takes such action it will take all reasonable steps to notify the interested parties.

Council may consider exercising its work in default power where it is legally possible, reasonably practicably and/or there is a will on behalf of the defaulter. For example, in the interest of community health, safety, amenity or environmental harm, Council may consider an immediate remedy by agreement, or by seeking compliance without prosecution.

Where Council takes such action it will notify the interested parties, seek agreement where possible and carry out the works.

3.4 INJUNCTIONS

An injunction may be sought where there are sufficient grounds and in particular where the circumstances present a potential and/or immediate threat to community health, safety, amenity, environmental harm or are causing extreme distress. Consideration at this time will be given to the possibility that Council may face a damages claim in the event that the eventual prosecution is not proven.

3.5 AUTHORISED OFFICERS

Council will appoint staff and maintain a register of authorised persons to regulate in accordance with By-Laws, Council Policy, and Enforcement Guidelines. Authorised persons will be provided with the appropriate training and attain qualifications required to perform their role.

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The role of the authorised person is to mitigate, guide, educate and enforce in order to uphold community standards and reflect the values and culture of Council.

For serious offences (where the nature of the offence points towards prosecution or seizure), decisions about enforcement action are collaborative.

4 DEFINITIONS

Authorised Person means a person who is authorised by an Act, Regulation or By-Law to exercise prescribed powers.

Compliance refers to an agency, corporation, or person meeting or taking steps to comply with relevant laws and regulations or is penalised for non-compliance.

Council means the City of Darwin.

Enforcement means a range of procedures and actions taken by Council to ensure that a person or organisation complies with their statutory obligations.

Proportionality means Council will be considerate of cost, ensuring that any enforcement action is proportionate to the risk. As far as the law allows, Council will take into consideration the circumstances of the concern, behaviours and risk when deciding on an enforcement action.

Prosecution means conduct of legal proceedings against a person, organisation or corporation, for alleged unlawful activity.

Statutory Obligation means an obligation that is created under a law.

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

- contrary to the terms or conditions or in the absence of a licence, permit, registration, approval, permission or other written authorisation from Council
- contrary to a legislative provision regulating a particular activity or work.

Voluntary Compliance generally means a person or business that manages their activity within the law and/or condition of approval, licence or permit.

5 LEGISLATIVE REFERENCES

Local Government Act 2008 (NT)

6 PROCEDURES / RELATED DOCUMENTS

City of Darwin 0026.100.E.R Complaints Handlings and Review of Decisions Policy

City of Darwin 0033.100.E.R Privacy Policy

City of Darwin 0047.100.E.R Regulatory – Miscellaneous Policy

City of Darwin Enforcement Guidelines

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7 RESPONSIBILITY / APPLICATION

The Council, Chief Executive Officer and General Manager Community and Regulatory Services are responsible for ensuring that this policy is adhered to and understood.

The General Manager Community and Regulatory Services is accountable for maintaining the currency and accuracy of this policy, associated procedures and guidelines.

Regulatory Services will enforce compliance activities within the Darwin municipality in line with this policy.

This Policy will be reviewed once per term of Council or in response to significant changes in legislation or other circumstances which affect its effectiveness and validity.

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