
Community and Stakeholder Engagement Report

Draft Compliance and Enforcement Policy

Consultation period: Friday 2 June to Sunday 9 July 2023

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1. Summary

This report outlines the outcomes of the community and stakeholder engagement undertaken as part of the public exhibition of the amended Compliance and Enforcement Policy.




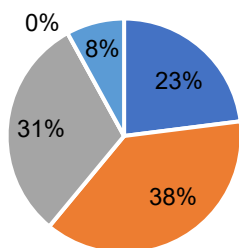

This policy informs Council's approach to compliance and enforcement and outlines the rationale upon which compliance and enforcement activities are undertaken to achieve positive public and environmental safety outcomes.

The feedback collected during the consultation period indicates a high level of support for the amended Compliance and Enforcement Policy, and further amendments have been suggested to matters relating to the role of private certifiers, and the approach to risk categorisation proposed within the document.

Further explanatory guidance has also been incorporated to expand upon the purpose and scope of the Policy, including the principles which inform Council's role and actions, the application of procedural fairness in undertaking investigations and enforcement actions, as well as expanding on information provided on the role of private certifiers.

Respondents who were not supportive of the Policy felt it would not resolve customers' concerns where the risk priority is not considered as being high.

1.1. Key outcomes

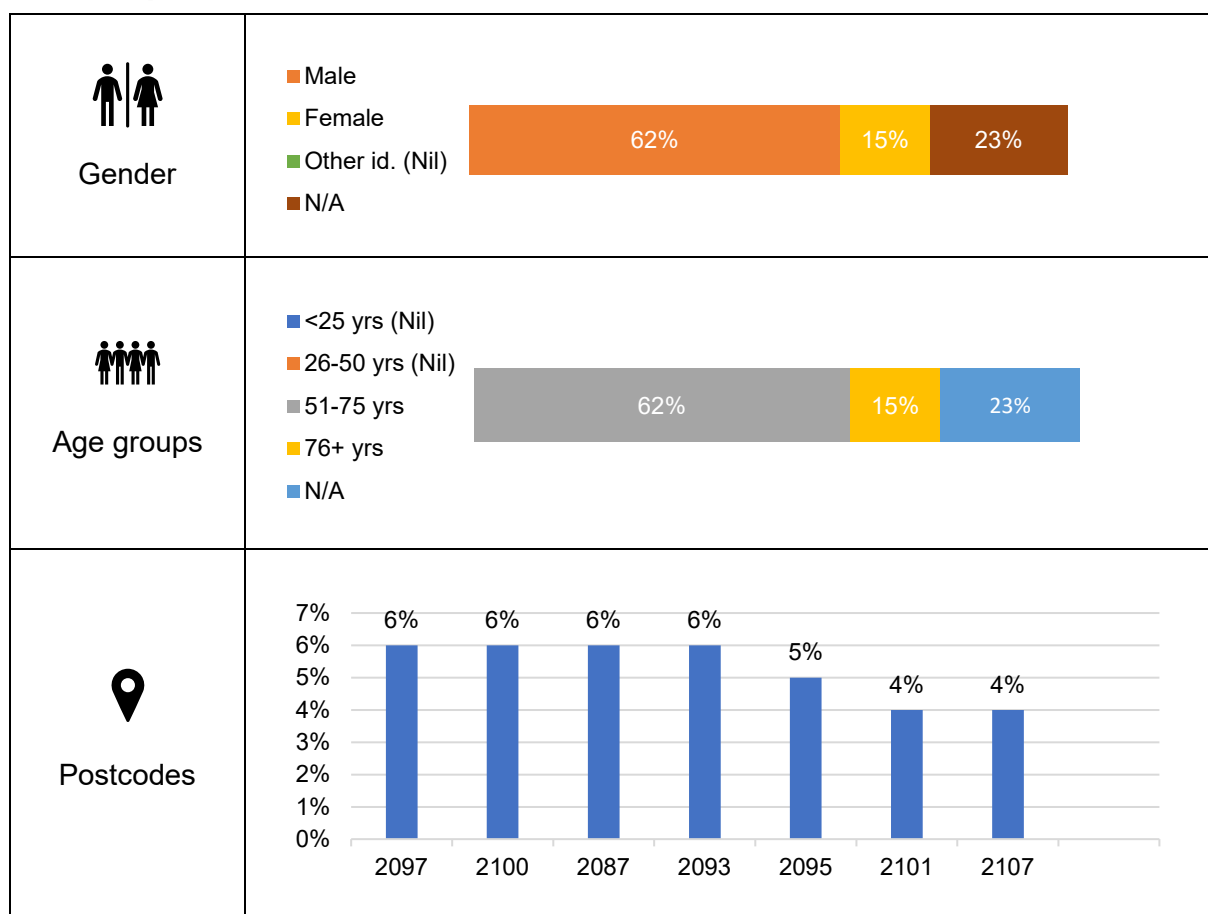
 <p>Total unique responses</p>	18*	
 <p>How responses were received</p>	<p>Submission form</p> <p>Written responses (email/letter)</p>	<p>Completions: 13</p> <p>Number received: 5</p>
 <p>Online sentiment question: Do you support the draft policy?</p>	 <ul style="list-style-type: none"> ■ Yes ■ Yes with changes ■ No ■ Unsure/Prefer not to say ■ N Total responses = 13 	
 <p>Feedback themes</p>	<p>Private Certification Scheme</p> <p>Discretion</p> <p>Lack of action/enforcement</p>	<p>Risk Classification</p> <p>Lack of resources</p> <p>Timeliness of investigation</p>

*Not every respondent made a comment in addition to answering the sentiment question

1.2. How we engaged

 Have Your Say: visitation stats	Visitors: 806	Visits: 640	Average time onsite: 1 min 17 secs
 Electronic direct mail (EDM)	Community Engagement (fortnightly) newsletter: 3 editions Council (weekly) e-News: 2 editions Stakeholder email: 3		Distribution: 23,000 subscribers Distribution: 61,500 subscribers Distribution: 705

1.3. Who responded¹



¹ Demographic data was gathered by request only. The data represented only includes those respondents who provided this detail.

2. Background

Council receives approximately 27,000 customer reports on matters relating to public safety, environmental harm, or unauthorised development. Each of these matters are reviewed, investigated, and where necessary, enforcement action is taken seeking to remedy matters of concern.

The Compliance and Enforcement Policy provides an objective, evidence based decision-making 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.

The Policy applies to all delegated employees of Northern Beaches Council with responsibility for investigating regulatory and enforcement concerns under legislation which Council has powers to enforce. The Policy provides guidance to Council's authorised officers on the approach to be taken in reviewing and investigating concerns raised by the community. Additionally, the Policy also provides guidance to the community on what to expect when Council investigates their concern, including the process with which concerns are investigated, the factors which determine whether enforcement action will be taken, and the enforcement options available to Council in order to address matters relating to public safety, environmental harm, or unauthorised development.

The Compliance and Enforcement Policy is subject to a four yearly review cycle, which is the reason for this review.

3. Engagement objectives

Community and stakeholder engagement aimed to:

- inform the community of the revised amended Compliance and Enforcement Policy.
- publicly exhibit the amended Compliance and Enforcement Policy, to seek community and stakeholder input on the amendments.
- build community and stakeholder awareness of participation activities.
- provide accessible information so community and stakeholders can participate in a meaningful way.
- provide balanced and objective information to assist in understanding the problem, alternatives and/or solutions.

4. Engagement approach

Community and stakeholder engagement on the amended Compliance and Enforcement Policy was conducted between Friday 2 June and Sunday 9 July, and consisted of a series of activities that provided opportunities for community and stakeholders to contribute.

The engagement was planned, implemented and reported in accordance with Council's [Community Engagement Strategy](#) (2022).

A project page² was established on our have your say platform with information provided in an accessible and easy to read format.

The project was primarily promoted through our regular email newsletter (EDM) channels.

² <https://yoursay.northernbeaches.nsw.gov.au/draft-compliance-and-enforcement-policy>

Feedback was captured through an online submission form embedded onto the have your say project page. The form included a question that directly asked respondents for their level of support on the policy.

An open-field comments box provided community members a space to explain or elaborate on their support, not support or neutral sentiment as well as any other feedback they wished to contribute.

Email and written comments were also invited.

5. Findings

During the consultation period we received 18 submissions. Half of the submissions received support the policy with proposed amendments. These proposed amendments relate to the role of private certifiers and the proposed approach to risk categorisation.

Some submissions received (25%) do not support the policy for reasons relating to the application of discretion by officers, the general lack of enforcement action by Council and Council's role in managing private certifiers and seeking clarity on the application of procedural fairness in undertaking investigations and enforcement actions.

We also received 5 submissions (18%) directly by email, which sought explanatory guidance regarding the purpose and scope of the Policy, as well as seeking more information on the role of private certifiers and application of discretion by officers.

7% of submissions received were neutral in terms of support for the Policy.

The following table summarises the themes, feedback raised and Council's response.

Table 1: Issues, change requests and other considerations

Theme	Comments	Council's response
Private certification scheme	Comments raised in relation to the dissatisfaction with the private certification scheme and how certifiers issue approvals and regulate compliance. In addition, one submission suggests that Council must address the private certification issue with the State Government.	<p>The private certification scheme was an initiative introduced by the NSW State Government to enable developments to be approved within a faster timeframe.</p> <p>This scheme is formalised under the <i>Environmental Planning and Assessment Act 1979</i>, and Council does not have any statutory power to change the private certification scheme.</p> <p>Council reviews all enquiries made by customers where a certifier has been appointed and will investigate if any action is required.</p> <p>On 18 August 2023, Council wrote to the NSW government ministers responsible for administering the private certification scheme to identify common concerns and suggestions for change.</p>
Discretionary powers	A number of submissions raised concerns with the application of discretion in determining whether	The compliance and enforcement powers of local government authorities is discretionary in nature, and there is

Theme	Comments	Council's response
	<p>enforcement action should be taken, as outlined in Section 5 of the amended Policy.</p> <p>The amended Policy states that Council and enforcement officers have discretionary powers in determining whether to pursue enforcement action, and the sentiment of the submissions is that as a result of this discretion, Council staff will take less enforcement action.</p>	<p>no compulsion on councils to take enforcement action for every breach.</p> <p>The inclusion of information relating to discretion within the amended Policy is to clearly inform the community of Council's discretionary powers that have always been in place. This will not change the way enquiries are managed and is simply included to inform and assist.</p>
Maintaining privacy/anonymity	A concern was raised about the need to preserve privacy of complainants and circumstances where a complainant wishes to remain anonymous.	Anonymous complaints are addressed within Section 5.3.4 of the amended policy. The use, storage and disclosure of personal information is guided by legislation and Council's privacy policy. A reference to the Privacy Policy has been included within the amended policy.
Unclear areas of responsibility	A concern was raised about a lack of clarity over which area of council is responsible for addressing concerns, for example tree removal, which might involve several areas of Council for input into the investigation.	The power to undertake Council regulatory powers in relation to Compliance and Enforcement functions is primarily delegated to Councils Environmental Compliance team, who would seek advice from specialised team within Council. Additional information has been added to the policy document to clarify this point.
Reporting on compliance action	A comment was made about the need to report on the compliance actions such notices, orders and fines undertaken by Council	Some compliance and enforcement activities undertaken by Council currently reported to the Community Safety Committee on a quarterly basis. It is anticipated that a regular update of compliance activities will be reported to Council commencing at the next quarter, and on an ongoing basis.
Decision to take enforcement action	A suggestion was made to include consideration of the compliance history of the owner/builder/certifier, their attitude towards being regulated, and level of cooperation.	An additional point has been added to the policy document to reflect this.
Use of drones	A concern was raised about the use of drones and the need for guidance material on the use of drones for collecting evidence.	The use of drones for the purpose regulatory compliance is undertaken only by qualified staff who have undertaken a Certificate III in Aviation. A reference to the NSW EPA guideline on the use of unmanned aircraft has also been added to the policy document.
Undertaking inspections	A submission raised the need for prior notice and specific particulars such as owners concern, legal advice being	Council's powers of entry on premises and powers to collect evidence and take statements are informed and

Theme	Comments	Council's response
	sought, reasons for the inspection, proof being relied upon, to be provided at each instance where a site inspection is required.	<p>delegated by the particular legislation being relied upon to undertake the enforcement action.</p> <p>Although in most instances prior notice is given to afford procedural fairness to the property owner/occupier, this either may not be required if there is a statutory power to inspect without the requirement for prior notice as may be the case for non-residential premises or emergency situations.</p> <p>There may also be instances where officers can make observations without the need to physically attend a property, such as cases where a non-compliance can clearly be observed from neighbouring land.</p> <p>The legislation being relied upon are referenced within the amended policy.</p>
Reference to EPA Guideline	<p>A submission was made to include a reference to the following guidelines published by the Department of Environment:</p> <p>https://www.epa.nsw.gov.au/~media/EPA/Corporate%20Site/resources/legislation/guidenotices06173.ashx</p>	The guideline referred to has been superseded by the NSW <i>EPA Powers and notices guideline for authorised officers and enforcement officers</i> , and this new guidance has been referenced as a resource within the policy document.
Notifying of offending parties of the complaint	A concern was raised that when Council is informed of a concern, they notify the offending party of the concern.	In order to afford procedural fairness, in most instances and particularly for low-risk amenity-based concerns such as noise and smoke pollution nuisances, Council would inform the offending party to cease the activity in the first instance.
Statutory reforms	Concerns were raised in relation to the current statutory framework which administers Building Information Certificates (BICs), Complying Development and Private Certifiers.	Though not within the scope of the Compliance and Enforcement Policy, Council did on 18 August 2023, write to relevant NSW Government Ministers to highlight the concerns the community has with the current statutory framework and identified a number of opportunities for improvement.
Lack of action/enforcement	A number of submissions raised general commentary regarding a lack enforcement action by Council staff relating to particular investigations.	Councils' role when investigating compliance matters is to act impartially and in an unbiased manner. A determination to take enforcement action must consider a number of factors to ensure a successful outcome. This has been identified in section 4.4 of the amended Policy.

Theme	Comments	Council's response
		<p>At times, Council will make a decision not to take action on a certain matter and this may not meet the customer's expectations, however, this does not mean that the decision is incorrect.</p> <p>Customers who are not happy with a determination by Council, can seek a review of the decision, and information on this has been included in the policy under section 6.</p>
Risk classification of customer concerns	A number of submissions have sought changes to the risk classification table shown in section 4 of the amended Policy to attribute higher degree of risk to issues such as geotechnical risks illegal works, waste storage for example, seeking a reclassification of these issues. Another issue raised is that some concerns may not receive the same degree of attention due to the attribution of risk.	Based on the submissions, the approach to utilising a risk classification table has been reconsidered, and the risk classification table has now been deleted from the amended Policy. A general risk matrix will be developed to guide investigation officers and will be included within the Compliance and Enforcement Guidelines.
Proactive compliance	A comment was made around the need for Council to take a proactive role in compliance, such as undertaking proactive monitoring and random inspections.	At present and based on Council's current resourcing capacity, the compliance and enforcement function is primarily reactive, however the opportunity for proactive monitoring is being considered as part of the service review of the compliance and enforcement services.
Council's role where there is another regulator for an issue	A comment was made in relation to instances where there may be another regulator for a concern who should be acting, but isn't, and instances where Council could have a role as co-regulator.	Additional content has been added to the policy document to clarify that where appropriate, where Council does have a role as co-regulator, we will continue to engage with the other regulatory agency to identify opportunities to assist and address matters of public safety or environmental impact where it is appropriate to do so.
Lack of resources	A number of submissions suggest there is a lack of resources within Council to investigate customer concerns and that more staff are needed so action can be taken.	<p>The resourcing levels for the compliance team are not a matter for consideration within the scope of the Policy, however this issue is being considered as part of the service review of Council's compliance and enforcement services.</p> <p>The Policy has been amended to incorporate a risk-based approach to allow Council to allocate resources to matters that are deemed to have a high risk to public safety, the environment and public health. Matters that are considered to have a medium or lower risk, will still be considered</p>

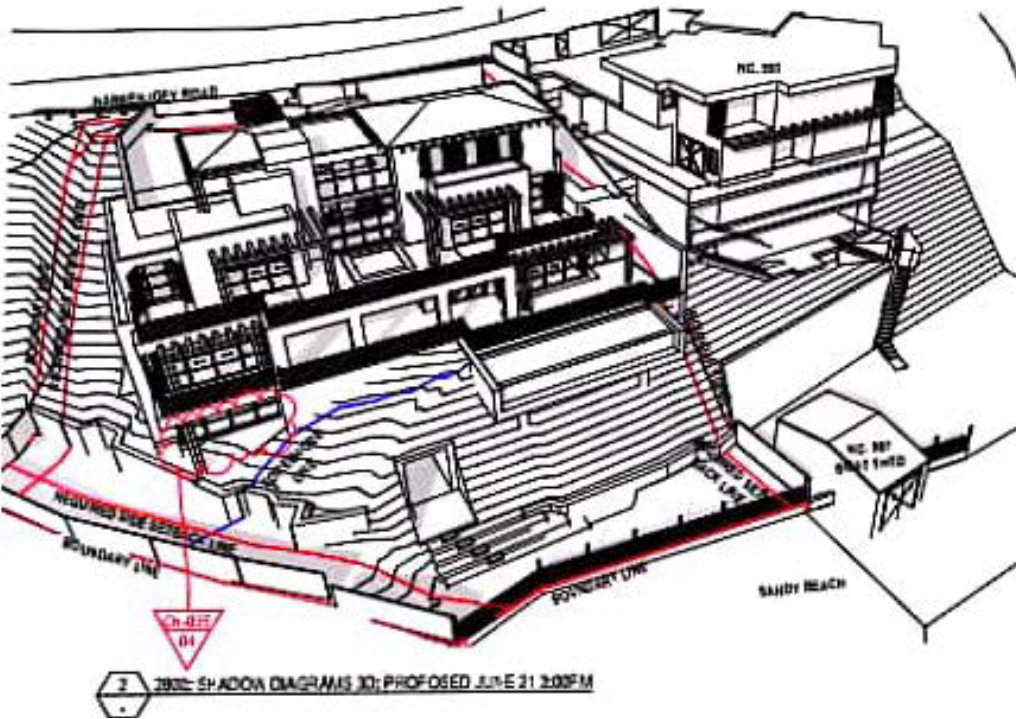
Theme	Comments	Council's response
		but may take longer to resolve. Council will continue to manage all high-risk matters as a priority and to ensure that resources are allocated as such.
Customer expectations	A number of submissions have raised the issue that the Policy will not address a customer's concerns, as Council may not deem their concern a priority if it is not classified a high risk. These submissions state that customers feel that their concerns are a high priority regardless of the risk classification.	Council responds to all customer enquiries. The policy does not state that matters of lower priority will not be investigated, rather outlines that matters which pose a significant public safety or environmental harm will be prioritised over lower-risk matters. This is to ensure that any matters that pose a risk to the environment or public safety are addressed as a priority.

Appendix 1 Verbatim community and stakeholder responses*

Number	Submission
1	I support the new draft Compliance and Enforcement Policy and I am pleased that Council has added a new section that provides guidance to Council's authorised officers and the community on the application of discretion in determining whether to take regulatory action, as well as the obligations on Council officers to ensure the discretion is applied in good faith.
2	Seems comprehensive and well set-out. Its accessibility is the issue as current council practice suggests that the document will be lost to the public. I give for example, private domestic swimming pools.
3	<i>No comment provided</i>
4	<p>My input refers to private certifiers. I may be wrong, but I don't see that your draft policy sets limits, under the law of equity, on the power of non council employed / contracted private certifiers to self certify a, presently so called, "Compliant Development" to serve self interest on their own block of land. If I read the policy correctly, as long as the Certifier can prove that their compliant development meets all the local and state government ordinances, regulations, Australian Standards etc. etc., then no notice needs to be given to neighbours and others who may be negatively impacted by said development. Work can commence, proceed to completion and be ticked off as "Compliant" without any recourse to other parties. And to hell with any objections they may have had, which objections would have seen the light of day - to be evaluated independently under the principles of equity - if the proposed project had been a development application under the strict control of Council Processes and Officers. Then, as several times in the past 40 odd years, we would have received a letter from Council advising of a proposed development locally, by whom it was made and a copy of the plans attached with a note that invites comment to Council on objections to or modification of aspects of the proposed development. These would then be submitted to Council review and a decision made to PASS the development or require aspects of it to be modified or adjusted before being PASSED or rejected entirely. Examples could be Building Certifier self certifying the positioning of his new house (after prior demolition of an existing dwelling that a neighbour had built sited his own house to enable good views of beaches and headlands) such that the new house structure wiped out half of the neighbour's valuable views with up close brick walls OR a Pool Certifier self certifying a "Compliant Development" wherein a pool gets built within a meter of their dividing fence line.</p> <p>I would require a specific clause that states that where a private or contract certifier has a proposed development on their own property that lies within their area of expertise and power to certify, then that proposed development must, by Ordinance, be ceded to Council control, administration, supervision and regular DA vetting involving neighbours and interested parties. And the project must not be able to be handed off to a "third party mate" to certify for them. It must be only Council control.</p>
5	Add Geotechnical failure and risk to urgent matters to respond to.
6	Council have a responsibility to assist ratepayers and to ensure that complaints are taken seriously and actually dealt with. Many ratepayers have complained about the lack of follow up by Council to problems they have reported.
7	The policy does not provide any assurances whatsoever that council will investigate or enforce any non-compliance to the relevant acts. The discretion to act on any complaint are subjective with no accountability as to how a decision to act or not was reached and therefore open to undue influence from external forces. For example, the standard of evidence is determined by the council officer alone. There is no objective measure of for the standard of evidence of non-compliance with an Act. Further there are a number of discretionary options that allow Council not to act on complaint with no recourse or traceability for the complainant.

*Personal details and inappropriate language have been redacted where possible. Spelling and grammatical errors have been amended only where misinterpretation or offence may be caused.

Number	Submission
	<p>There is a significant gap in the enforcement of compliance by private certifiers in that the Council has subject matter expertise on whether a development approval is compliant or not. However, if the Private Certifier does not adhere to the development standards in the various approvals due to incompetence or deliberate act, the Department of Fair Trading requires evidence of that the Private Certifier is not compliant to the DA or CDC standards. However the Department of Fair Trading will say they have no jurisdiction to determine whether a Private Certifier has complied with the prescribed development controls, which leads to non-compliant developments to proceed with no enforcement which makes the whole DA process carried out by Council rather pointless. There needs to be a way to close the loop between the approved development controls issued by council and the private certifier.</p> <p>The updates to the policy only formalises the subjectivity and discretion of a council officer to act on a specific complaint.</p>
8	<p>The complainant advised in writing that the offender has been notified.</p> <p>Council should have the power to fine repeat offenders, this power being clearly stated in their policies.</p> <p>Smoke entering a residence where there are vulnerable people is life threatening and feared by those breathing it.</p> <p>Smoke.</p> <p>Fire Pit.</p> <p>Comply with existing regulations.</p> <p>Should be completely extinguish by 1am</p> <p>If required after 1am a permit would be necessary.</p> <p>Council, having received a complaint will notify the offender, in writing, of the complaint.</p>
9	<p>This draft policy effectively explains why the NBC cannot or will not ensure enforcement or compliance regarding any of the regulations or legislation listed in the document.</p> <ul style="list-style-type: none"> • Local Government Act 1993 • Environmental Planning and Assessment Act 1979 • Food Act 2003 • Protection of the Environment Operations Act 1997 • Public Health Act 2010 • Boarding Houses Act 2012 • Swimming Pools Act 1992 • Companion Animals Act 1998 • Roads Act 1993 • Road Transport Act 2013 • Public Spaces (Unattended Property) Act 2021 • Biosecurity Act 2015 • Contaminated Land Management Act 1997 • Crown Land Management Act 2016 • Fines Act 1996 • Heavy Vehicle National Law (NSW) <p>The policy very neatly explains that the Council takes a 'risk-based approach' stating that All enquiries are managed using a risk-based approach and are triaged to determine their priority/urgency, with matters identified as greatest risk (urgent/high), to be actioned as a priority.</p> <p>Whilst this may suit a resource starved Compliance team, community members consider that their 'complaint' or 'compliance issue' is in fact a priority and should be dealt with by a Council officer with appropriate training and resources in a timely fashion.</p> <p>The draft policy further describes the Council Compliance risk priorities, listing as Medium or Low risk the most common, often and likely complaints or issues requiring compliance.</p> <p>Construction site management • Unauthorised development (general) • Food non-compliances (minor) • Noise complaints • Air or water quality • Abandoned vehicles • Stormwater drainage • Animal control (general) • Waste dumping • Trees (already removed) Low • Animal nuisances • Unauthorised development (minor nature or historical) • Overgrown vegetation • Noxious weeds • Noise complaints (minor) • Health and amenity (minor) • Waste storage • Neighbour nuisances • Minor issues, technical or administrative breaches • Signage</p> <p>Urgent or High-risk matters are the least likely or least often to occur and should be dealt with appropriate resources and speed to resolve when they do occur.</p> <p>The draft policy pretty much states that if you are nice to us we will be nice to you. Citing a variety of Code of Conduct documents. Frustration will arise on all sides if, even so-called low</p>

Number	Submission
	<p>risk matters remain unresolved. Council has a role in assisting residents, at a very minimum providing advice on how a matter can be resolved, if not by Council action then by some other authority.</p> <p>This policy should be evidence based. If thousands of calls are received regarding dogs matters in public places, then this should be considered a priority by the Compliance team and they should act and find a resolution to the issues sought. If there are complaints about parking non-compliance then Council should deal with these matters, not deem that are low risk and ignore the situation.</p> <p>Council should consider processes that can be used to enhance and improve compliance.</p> <p>This policy fails in its stated purpose and scope.</p>
10	<p>It would solve a lot of the compliance issues if the current requirement were enforced. This may require an increase in the number of of compliance offices.</p>
11	<p>So it basically now adds a clause saying council at the discretion of an employee, it doesn't have to take any action! What will councils role actually be other than to take money to process something that they take no responsibility for. What does/ will council do for the money they receive during a development? Private Certifiers should NOT be able to be used. The certifier should be employed by council so there is some sort of control.</p> <p>As it is now you can build whatever you want if you pay a private Certifier. Even with a dispute raised before certification it is unstoppable. Once certified is unchangeable. A DA condition should be enforced. Not near enough or in the general vibe. The whole process is corrupt as it is. These changes make it worse. Relieves council of any responsibility at all. The property in the image has been physically built with another 2 lower floors ignoring the foreshore line. Will the new draft have this removed or just issue a fine?????</p> 
12	<p>Apologies for the direct wording of the below submission and that its incompleteness. These are intended as ideas of improvements to the policy and not a criticism.</p> <p>The document is written with the point of view of Building Control and does not appear to sufficiently incorporate the Environmental Health side of Environmental Compliance. (This is not intended to be a criticism of the author, as it is acknowledged that there has been insufficient</p>

Number	Submission
	<p>time to prepare the document and consider the all points of view that the document needs to consider).</p> <p>There are inconsistencies throughout the document with terms: customers/complainants; enquiries/reports/customer requests; unlawful activity/unauthorised (where these terms are stated, they should always have “alleged” as a precursor when they refer to reported matters prior to them being confirmed by Council as being illegal).</p> <p>There needs to be consistent terms throughout the document.</p> <p>The grammar and punctuation of the policy needs to be reviewed.</p> <p>2. Penalty Infringement Notices – Penalty Notices</p> <p>3. This section outlines Environmental Compliance's responsibilities, however, there is merit to include what isn't Council's responsibility under an investigation.</p> <p>It is not Council responsibility, under an investigation, to solve a noncompliance or illegal activity. It is actually inappropriate for Council to provide advice in relation to resolutions as Council is the regulatory body and the assessing body. Council can assist with general advice, however, will not provide specific advice to residents or perpetrators regarding a compliance matter. It is the responsibility of the perpetrator to seek independent advice to resolve a compliance matter.</p> <p>4. “Council receives enquiries from the community in relation to allegations of illegal use, unauthorised or non-compliant works, pollution concerns, or unhealthy or unsafe conditions.”</p> <p>Does this incorporate all the types of enquiries Council receives? Is this sentence trying to state everything that Council receives, or is it simply a guide to what is incoming? Is there merit in stating after the first sentence that: Not all enquiries made to Council will be investigated?</p> <p>“In these instances, Council staff will communicate an anticipated timeframe of an investigation to the customer.”</p> <p>In these instances, Council staff can communicate to the complainant the priority rating and a general timeframe of an investigation.</p> <p>“Council staff will.”</p> <p>“Make reasonable enquiries or investigations before a decision is made, including seeking information from the property owner where appropriate”</p> <p>There is not precursor point to the above. There is not point to state that Council will seek information first and foremost from the complainant to validate their complaint. Council should not be seeking information from an owner to clarify a complaint where the complaint does not have merit or substance. Council should not be assuming that a person has committed unlawful activity just because someone complains. As such, the first point of call should be to the complainant not the owner.</p> <p>“Communicate with all relevant parties and provide feedback on the progress of an investigation and any reasons for delay without compromising the integrity of the investigation.”</p> <p>The above point is overly burdensome on Council to divulge information and gives a reader of this policy a false expectation that Council will provide substantial updates and communication throughout an investigation. A alternative wording is suggested below:</p> <p>Communicate, where appropriate and at the discretion of Council, with the relevant parties and provide feedback on an investigation without compromising the integrity of the investigation.</p> <p>4.1. “Treating Council's staff with courtesy and respect.”</p> <p>Treating Council's staff with courtesy and respect. Any instances of disrespectful behaviour or abuse of staff or Council is inappropriate and unacceptable, and will not be tolerated.</p> <p>“Not giving any information that is intentionally misleading or wrong.”</p>

Number	Submission
	<p>It is expected that complainants are truthful and not give any information that is intentionally misleading or false.</p> <p>4.2. "Upon receipt of an enquiry in relation to a breach or non-compliance, Council's officer will undertake a preliminary assessment of the matter to determine next steps."</p> <p>Upon receipt of an enquiry relating to an alleged breach or non-compliance, Council's officers will undertake a preliminary assessment of the matter to determine the next steps.</p> <p>"A preliminary assessment is undertaken of each customer request to attribute a risk rating, as well as to determine if a detailed investigation is required into the concern."</p> <p>A preliminary assessment is undertaken of each customer request to attribute a risk rating, as well as to determine whether the matter requires investigation.</p> <p>"Priority will be given to matters that pose serious risks including matters which are life threatening, or pose serious risk to health or are associated with significant environmental harm or repeatedly detrimentally affect a significant number of people."</p> <p>Priority will be given to matters that pose serious risks, including: matters that are life threatening, pose serious risk to public health and safety, are associated with significant environmental harm, or repeatedly and/or detrimentally affect a significant number of people.</p> <p>There may be a better way to phrase the above statement.</p> <p>"Without sufficient information Council, may not be able to progress the matter."</p> <p>Without sufficient information, Council may not be able to progress the matter and the matter may be closed.</p> <p>"Does the request relate to a civil matter?"</p> <p>Does the request relate to a civil matter? Can the matter, whether unauthorised or not, be resolved through a civil pathway?</p> <p>"Is the allegation unfounded, trivial, frivolous or vexatious?"</p> <p>Vexatious definition:</p> <ol style="list-style-type: none"> 1. Causing vexation; vexing; annoying. 2. Law (of legal actions) insinuated without sufficient grounds and serving only to cause annoyance. <p>By the above definition, being vexatious in law requires that a complaint be both without substance and meant to only cause harm.</p> <p>"Due to the need to preserve the integrity of the investigation so as not to compromise any prospective enforcement action and to afford procedural fairness to the person who is the subject of the investigation, it is not possible to provide details of a live investigation until the investigation is finalised."</p> <p>Add sentences (words to the effect):</p> <p>It is at the sole discretion of Council and the investigating officer as to what information is provided externally.</p> <p>It may be in the public interest to not disclose information relating to an open investigation.</p> <p>Council does not disclose any information that relates to any criminal matter or potential criminal proceedings.</p>
13	<p>Please see attached file ref Submission Draft Compliance and Enforcement Policy Northern Beaches Council.</p> <p><i>(Attachment begins on next page)</i></p>

To: Northern Beaches Council – Submission – Draft Compliance and Enforcement Policy.

From: [REDACTED]

Date: 09/07/2022

In reference to Draft Compliance and Enforcement Policy Submissions to Share Feedback, I wish to raise the following points which come from direct experience interacting with the Policy subject matter, and offer examples to highlight areas that require improvement. My aim is not to criticize, but to provide the requested feedback for the benefit of customers (rate paying resident property owners), and for Council staff in general. To highlight certain matters, questions will be asked to illustrate topics in need of review, and feedback will be unvarnished.

This submission is prefaced by emphasizing that no reference is made to any individual Northern Beaches Council (hereafter NBC) staff member. In my dealings and correspondence with NBC staff, I have found them to be generally professional, and in some cases should be commended for their conduct. However, I have sensed the workload they carry may be beyond what could be reasonably expected, which may be a contributing factor to the root cause of some of the issues raised in the Draft Compliance and Enforcement Policy (IE Item 6).

It is acknowledged that NBC staff are required to act as per training and policy guidelines. General impressions from a customer perspective is that NBC staff are often placed in the position of reluctantly being required and deliver on behalf of a flawed system, therefore any blame hereafter is directed at the policy guidelines and the planning system, not at the staff trying to administer the system/policy.

Any improvements to the Policy will have minimal effect without also changing/improving the NSW planning system to remove problem areas that increase workload on NBC staff and consumes NBC resources.

Example. One positive suggestion for improvement was made by the previous Mayor (Michael Regan) during public correspondence with me. When responding to my question ("What is your plan to protect residents against BICAs which regularize illegal building works? Planning system is being abused but goes unchecked"). The Mayor responded;

"Simple. Repeal the State legislation and refine it and give Local Govt back some more power to be at least an investigatory authority. It's stuffed right now as you clearly know". (Source available on request).

The suggestion by Mr Regan serves to indicate that if the NSW Planning system remains unchanged, Councils will remain in a position of administering a flawed system, and customers and NBC staff will continue to suffer when trying to resolve problems created under a flawed system, regardless of any proposed adjustments to Policy.

In the absence of changes to the planning system, for which State Government may be to blame, the private sector (Developers, Development Consultants, Private Certifiers etc) has a broad scope to stretch the spirit of the law and planning and development regulations on behalf of their clients, to the detriment of NBC customers and staff.

Draft Compliance and Enforcement Policy - Feedback.

Feedback: From a customer perspective, the goal of the Policy should be to create a culture of compliance in the community and among stakeholders, but the current Policy/system enables a

culture of circumvention and manipulation (use of loopholes) by professionals to achieve results on behalf of their clients which enable outcomes unintended under the Act (* Environmental Planning and Assessment Act 1979 and Regulations). Lack of powers of inspection, enforcement and penalties enable stakeholders to operate in a fearless manner, rather than a compliant manner. EG quoting Waverly Mayor from an SMH article dated November 27, 2022

'For many developers, a \$6000 fine is a small amount and is factored in as the cost of doing business'.

Meanwhile Private Certifiers and consultants seem to act with impunity because they operate under no threat of penalty. Information from professionals I've engaged indicates that these abuses did not exist in the past (prior to Private Certification) when Councils had authority to inspect and approve property development, because all stakeholders (developers, builders, property owners) were subject to scrutiny and penalty when Councils were empowered (not impotent) to inspect and enforce compliance.

Policy Suggestion. Prioritize deterrence. Resources must provide for sufficient NBC Inspectors to conduct periodic and random spot checks on Private Certifiers and professionals providing supporting documentation (Development Consultants, structural engineers, geotechnical engineers, arborists, hydraulic engineers etc) in applications and approvals (Occupation Certificates, BICAs etc). Mandatory fines, penalties of temporary suspension from operations (Sin Bin), and loss of accreditation must be in place as meaningful deterrence (complaints to Fair Trading are impotent deterrents).

Suggestion using an Example. For importers, the Customs and Border Patrol authorities would operate a system of enforcement checks. For a new importer, every shipment will be subject to checks until a track record is established (the first twenty import shipments are subject to mandatory inspection). After this, inspection frequency is reduced to (perhaps every second or every third shipment is subject to mandatory inspection), and is gradually reduced to one in twenty shipments being inspected. To maintain compliance, random spot checks are never eliminated.

If the same were applied to Private Certifiers (audits of their approvals and periodic on-site presence of a Council Inspector), increased compliance would result because deterrence would be ever present (if sufficient penalties for any breach were mandated and enforced). Policy Suggestion 2. Under the same Import system, if Customs Dept received a complaint/customer concern, an inspector would conduct a spot check. If NBC Policy empowered inspectors to respond (conduct spot checks) in response to complaints/customer concerns about works involving Private Certifiers, increased compliance and reduced customer complaints would result.

Example 2. Development Consultants/Applicants when submitting a Pre-BIC form must fill in the declaration stating, "I declare that all the information in the application and accompanying documents is true and correct **to the best of my knowledge**". This is inadequate and does not place sufficient onus and responsibility on the applicant/consultant to verify the truth and correctness of all information and supporting (third party) documents.

Suggestion. The declaration should (instead of *to the best of my knowledge*), state – "and I have made all reasonable efforts to verify and for which I assume full responsibility". I have two examples of supporting documents which contain errors (which can be supplied and discussed confidentially with Council upon request). NBC can and does reasonably accept supporting documents assuming they are correct, but if they contain errors, omissions or a bias (in favour of commercial clients) to

certain facts, customers have no recourse. This is because NBC policy does not entertain further correspondence being entered into (during determination), therefore a customer's right to recourse or to bring errors to NBC attention is blocked. Changing the declaration (as suggested) in the pre-BIC and other application form declarations would better protect the customer by placing greater responsibility on the applicant/consultant to act truthfully and correctly.

What does the Policy aim to achieve vs What the Policy actually delivers.

In this context, does the Policy exist to serve the customer, or does the customer exist to serve the Policy (processes within NBC)? In my customer experience and interaction with certain areas of the system/Policy, it does not exist to serve the customer, and has proven to be cumbersome, expensive, and frustrating to engage with. Moreover, it has allowed a small problem to become a big/expensive problem (consuming more resources that should have been necessary).

Example. In an attempt to do exactly what the Policy claims (*we receive enquiries from the community in relation to allegations of illegal use, unauthorized or non-compliant works*), I encountered a culture of deflection, avoidance, and discouragement to engage with NBC (being fobbed off whenever possible), resulting in customer frustration and cost. I don't blame staff for this; I blame a flawed system/Policy and insufficient resources to effectively administer the Act.

When engaging consultants, lawyers, town planners etc to assist me to demonstrate to NBC that Council did have jurisdiction, I was advised more than once that "Council will bend over backwards to avoid becoming involved".

Feedback. I have found this to be the case, and it is most unfortunate that NBC has gained such a reputation among stakeholders. My sense is this encourages a certain fearlessness among stakeholders to engage in unwelcome conduct.

If this culture and workload did not exist, customer complaints about staff would be reduced and Item 6 (Dissatisfaction – conduct of staff) might become redundant (I don't blame the NBC staff; I blame a flawed system and insufficient resources).

This submission's main point of emphasis is that the *cost of avoidance (cost of deflecting and fobbing off customers)* is higher than the cost of NBC engaging proactively with customers to forestall, eliminate, and minimize problems before they escalate.

Example (my experience). When I witnessed works impacting our property that I considered to be illegal, I contacted NBC to ask for an inspector to come and take a look before the works could continue (to see if a Stop Work Order was appropriate). I was fobbed off more than once, weeks/months were wasted, which allowed works to continue, escalating the financial scale of the problem (hence making the problem bigger and more difficult to resolve).

If NBC had not made efforts to deflect my initial enquiry (IE did not attempt to fob me off), the whole problem and subsequent cost to NBC in dealing with the matter would have been avoided.

Policy Defect.

Because of a defect in the Policy, I was incorrectly referred by NBC to the PCA for remedy/action (this is a flaw in the Policy).

According to Item 4) Priority/Risk, Unauthorized Development, in progress, **is rated as High** priority.

Why was I fobbed off (referred to a PCA for remedy instead of an NBC inspector) when I was reporting a matter rated as High Priority in the Draft Compliance and Enforcement Policy?

Instead of receiving the service of an NBC Inspector, I was fobbed off, referred to the PCA, referred to the Community Justice Centre, advised that this was a civil matter, and generally treated with deflection (as a nuisance). As a layman with minimal experience prior to encountering the problem, I was compelled to follow the directions of NBC staff, however after paying a high price to gain experience (spending approx.\$8000 on consultants and 140 hours of my own time), it is apparent that NBC staff incorrectly referred me to the PCA because the Policy seems to have no provision for investigating reported (alleged) unauthorized works being conducted after an O.C is issued.

Why did NBC refer me/customer to a PCA when the NSW State Government clearly states that the PCA has no role in investigation after an O.C is issued? (source – Tenure of the Principal Certifying Authority - see reference document BPB practice advice 11-005 November 2011).

In hindsight it is evident that this particular flaw in the Policy led NBC staff to not differentiate between unauthorized works being conducted before an O.C is issued vs after an O.C is issued (likely because a culture of deflection and prioritizing expedience was present). This must be addressed under the policy review, and guidelines for NBC staff must be provided for dealing with (proactively providing service to) customers impacted by unauthorized works being conducted after an O.C has been issued.

Policy Suggestion – Firstly, NBC must ensure a Council Inspection is conducted in cases where unauthorized work is being conducted, especially after the O.C has been issued (and issue a Stop Work order, where appropriate). Secondly, a culture of staff ownership of a customer enquiry must replace the existing culture of deflection/expedience (fob off culture).

Feedback: Why the PCA issued the O.C before all the works on the DA plans were completed is a contributing issue, but because PCAs can act with impunity (no fear of penalty), shortcuts can be taken to improve commercial interests.

What is the process to investigate and penalize a PCA if they issue an O.C without verifying that all the works on DA plans are completed? I have checked with PCAs, two law firms, various professional town planners; all confirm that it is impossible to issue a final O.C if all the works on the D.A plans aren't completed. Where is the recourse and penalty process on a PCA if their errors or omissions enable a problem which becomes a cost to the customer and the NBC to resolve?

Draft Compliance and Enforcement Policy – Feedback/Comments regarding Improvement.

1. Introduction.

Council as a regulatory authority takes a risk-based approach. As a regulatory authority, Councils should also be taking a *Justice based approach* to uphold customers/residents' rights under Act/law because Councils are the closest layer of Government to customers/residents. Risk should be subordinate to Justice if the Policy exists to serve and protect the rights of the customer under the regulations NBC has authority to administer.

4. Managing enquiries relating to compliance and enforcement.

Feedback. It is very difficult (almost impossible) to reach stage 1) Preliminary Assessment.

Example 1. As a layman, I mentioned the word "fence" during my phone enquiry to NBC. The immediate response from NBC staff was that any matters regarding a fence are not handled by NBC but must be taken to the Community Justice Centre. No effort was made to take into consideration that my enquiry related to a fence on a DA issued by NBC. Instead, the mention of the word "fence" justified NBC being absolved (deny jurisdiction) of any need to assist the customer.

Suggestion for Policy improvement. Policy must differentiate between mundane matters regarding fences (material choice, colour choice, cost etc), vs development works involving new fences that don't meet the parameters specified in the DA. Explained in a different way, NBC cannot absolve itself of jurisdiction in every matter involving fences because fences are an integral part of environmental amenity, are subject to regulations and planning controls, and not every matter regarding fences is mundane and easily solved without Council involvement. No other body has regulatory authority to ensure fences on a DA are erected according to the specifications within the DA, so NBC cannot be absolved of jurisdiction if the word fence is mentioned by a customer.

Example 2. As a layman, during a different attempt to explain and report the unauthorized works, I used the word "encroaching". The immediate response from NBC staff was that any encroachment was a civil matter and not the responsibility of NBC. My laymen's use of the word "encroaching" was incorrect, but I didn't know the right terminology to apply. I tried to further explain the nature of the unauthorized works, but because I'd accidentally used that key word "encroaching" and didn't have the right terminology, my attempts to explain were met with refusal of assistance (to absolve NBC of jurisdiction).

Suggestion for Policy Improvement Item 4.1 (Treating Council's staff with courtesy and respect).

To customers who may be novice, Northern Beaches Council is the first point of contact to engage with government regarding matters involving property, planning, development and environmental impacts. Many or most customers are not experts in the field of environmental planning and development, and may lack the terminology, lack knowledge of the planning system processes, and lack knowledge of the internal mechanics of how NBC functions. This is as equally frustrating for the customer as it likely is for the NBC staff, but it does not justify or excuse treating a customer with lack of courtesy and respect (fob off/deflect culture is unacceptable when courtesy and respect is demanded from customers by NBC).

Policy review should train NBC staff to take into account that if NBC staff displayed a sensitivity and empathy with the customer as the novice party in a conversation, NBC staff might be treated with more respect if they extended the same respect to customers that they require from customers (Item 4.1 Treating Council's staff with courtesy and respect).

4.2 Preliminary Assessment.

Policy Suggestion - Example. When dealing with a different Government Department (Federal), a Case Manager system was used to ensure sufficient customer service and assessment of the case. This system placed the responsibility of navigating all aspects of the process to the case manager (the expert) instead of the customer (the novice). My feedback is that dealing with NBC is opaque, confusing, and frustrating (mechanisms of the process and responsibilities within NBC are unknown to the novice – the customer is on their own to work it out for themselves). In comparison, dealing with a different Government Department which uses a Case Manager system, the customer has the assistance of an expert case manager who is empowered to take ownership and responsibility for the customer's case and to achieve an outcome.

If NBC staff were empowered as case managers, their work life would be more fulfilling (sense of achievement), less NBC time and resources would be wasted answering random dealings with novices (cases would be structured by the case manager), and customers would benefit (be relieved of frustration trying to engage with a system when they are novice).

4.2.1. Determining Jurisdiction.

Feedback. This is an area in need of extensive Policy Improvement (to promote a different culture); Managing Customer Concerns.

As a customer's first point of Government contact, civic duty of NBC must play a role in adopting customer cases rather than finding any excuse to deny jurisdiction. I have experienced this with NBC and had no other alternative than to engage consultants and other professionals to demonstrate to NBC that Council did have jurisdiction in my case. This should not be necessary if civic duty (proactive adoption rather than proactive denial of jurisdiction) was a factor in managing customer concerns.

Example. I had an experience where NBC referred me to the Community Justices Centre, which then referred me to Fair Trading, which then referred me to back to Northern Beaches Council.

4.2.3 Role of Private Certifiers.

A blind spot in NBC's role with Private Certifiers has been raised – PCAs have no role after an O.C has been issued. Regardless, NBC referred me back to the PCA, who denied responsibility (and provided supporting documentation from the NSW State Government). Alleged non-compliance under a DA or a CDC being referred to the PCA is akin to sending the abused back to the abuser for justice. These cases (alleged non-compliance) should be handled by Councils.

Private Certifiers being regulated by NSW Fair Trading is impotent because almost no complaints result in penalties. Quoting from SMH article November 27 2002

Labor's Better Regulation spokeswoman Courtney Houssos said the NSW government was not properly monitoring the performance of registered building certifiers "leaving residents and owners to repair shonky building work".

Only one certifier had been added this year to Fair Trading's disciplinary register, Houssos said.

She also said there were 370 complaints made against building certifiers in 2021-22, but none were cautioned or reprimanded.

Policy Suggestion. Councils must address this with NSW State Government, to enact the suggestion made by Mr Regan (quoted above). Policy must also stop the abuse of BICAs being used to prevent Councils from taking enforcement action to relieve the suffering of victims of non-compliance.

Building Information Certificates are being abused to circumvent these problems and to camouflage errors, omissions and shortcomings with Private Certification (alleged non-compliance).

4.4 h)

BICAs are being abused (note comments from Mr Regan above), most likely because they are a cheap regulatory tool for stakeholders to circumvent regulations (succeed with non-compliance), and their use seems to be a foregone conclusion to prevent Councils from taking enforcement actions in cases of alleged non-compliance. In support of this suggestion, I have compiled the following table of basic statistics. Sources were NBC documents obtained under GIPA, statistics provided by NBC staff, and manual tabulation.

From these basis statistics, it is evident that many are applied for, but not many are refused/rejected. If every BICA has an applicant on one side and a victim impacted by unauthorized on the other side; it indicates that the private certification and professional consultant industry is thrashing the novice customer (abusing the BICA process for commercial gain). I accept that BICAs are inflicted upon

Councils by the NSW State Government, leaving Council resources to carry the burden of administration, but if these basic statistics reflect the number of victims, the BICA system provides a loophole for abuse and gross injustice.

	BICAs Lodged Total	Refused Rejected
2016	141	22
2017	145	14
2018	231	21
2019	294	14
2020	254	14
2021	306	32
2022	343	12
2023	364 est*	2

note 2023 - many in process - pending

2023 *182 year to date x 2 = est to December

Policy Suggestion. NBC must demand reform of the BICA system and demand more resources from the NSW State Government to reform and improve the system to prevent abuse and deliberate victimization under the BICA system.

Suggestion: To reduce or eliminate BICAs being used for an unintended purpose (commercial gain via non-compliant development = and cost to victims), NBC must clamp down on this abuse of BICAs.

Example. NSW Government states that the purpose of BICA applies to parties buying or selling a property. (see below – extract from NSW Govt website).

It does not state that a person or company may erect illegal or unauthorized works and then retrospectively apply for a BICA to regularize the intentional unauthorized development. Why does NBC tolerate BICAs in cases not involving a property already in the process of being sold? Why is this first test of merit in application not applied? Why are professional Development Consultants and town planners lodging BICAs in cases where properties are not already in the hands of real estate agents (note first test of application – buying or selling) not being investigated and scrutinized? Why do Councils tolerate the BICA process being used for purposes other than stated by the NSW Govt (below)?

Introduction

If you're buying or selling a property and you suspect work may have been done without appropriate council or private certifier approvals, you can apply for a building information certificate (BIC).

This certificate ensures the whole or part of the building covered by the certificate won't be subject to any regulatory action by the local council for 7 years.

Number	Submission
	<p>https://www.service.nsw.gov.au/transaction/apply-online-building-information-certificate#:~:text=If%20you're%20buying%20or,building%20information%20certificate%20(BIC)</p> <p>5. Discretion.</p> <p>If the last item (observe the basic rules of natural justice and procedural fairness), is placed at the top of section 5, it implies that Councils do have a legal obligation to enforce discretionary powers.</p> <p>I invite NBC staff to meet with me to further discuss any matter raised herein, and I trust this feedback is useful in improving the Compliance and Enforcement Policy for the benefit of customers and NBS staff.</p> <p>Yours Faithfully</p> <p>██████████</p>
14	<p>Enforcement</p> <p>If it's illegal under the LGA our advice is council must enforce</p> <p>If you are not going to enforce the law, eg DA , why bother having DA?</p> <p>If you are not going to enforce the law under your obligations</p> <p>Please dissolve the council so we can elect a Council who is prepared To do the job you were elected to,do.</p>
15	<p>if the responsible council officers did their job there would be no need for the NB resident requesting the intervention from your council.</p> <p>For example :- right over the NB there are Noxious plants growing eg Bamboo, Lantana, Blackberry and many others.</p> <p>My house is also so t camouflage by the neighbors Bamboo, which I might add is irrigated illegally.</p> <p>Where have your officers been ?</p>
16	<p>Dear sir/madam,</p> <p>This email is to provide feedback on your draft Compliance and Enforcement Policy. The draft policy provides guidance as to how to respect the views and concerns of complainants but no protection for the rights of landowners and occupiers of land that is the subject of a complaint. As a community leader I am aware of many instances of bullying of landowners and occupiers by Council officers based on complaints. I have seen many occasions where Council officers have not carried out the correct process to arrange inspections and have been very threatening to landowners/occupiers. I have seen draft control Orders (issued under Section 9.34 of, and Part 6 to Schedule 5 to, the <i>Environmental Planning and Assessment Act 1979</i>) and Notices (issued and Protection of the Environment Operations Act 1997) issued by Council officers, only to be subsequently withdrawn by Council when they have been found to be unjustified or lacking from a legal perspective.</p> <p>In order to protect the rights of landowners/occupiers against bullying by Council staff the following needs to be addressed in your policy:</p> <ol style="list-style-type: none"> 1) If Council wishes to carry out an inspection of someone's property, then it must be done in accordance with a clear procedure which must be outlined in the Compliance and Enforcement Policy. 2) If enforcement action is taken (ie the issue of a draft Order, Order or Notice), then the enforcement action must be approved by Council's in house legal team.

Number	Submission
	<p>3) If an investigation is undertaken then the person or landowner being investigated must be kept informed at the same time that any complainant is informed of an update as to the status of the investigation.</p> <p>4) There needs to be a reasonable time limit for Council to carry out investigations. There should be no need for landowners/occupiers to have to rely on Environmental Planning and Assessment Act 1979, CI 9.57 which effectively provides a 2 year limitation for Council to take action.</p> <p>5) There needs to be a definitive outcome of all investigations that is communicated to both the complainant and any party being investigated. This needs to be provided within a defined timeframe.</p> <p>6) If either a draft Order, Order or Notice are issued by a Council Officer and it is subsequently withdrawn, then this matter is to be investigated by Council as to why this situation occurred. Justification should be established as to why the issuing Council Officer should continue to be allowed to issue Orders or Notices.</p> <p>Inspections: If an inspection is warranted of a property due to a complaint, then the inspection needs to fall into one of two categories:</p> <p>Category 1: Urgent These must trigger a process where the landowner and occupier of the land is contacted by phone to advise that an urgent inspection is to take place. It is either done with permission of the landowner/occupier or if it is to be done without permission, it must be approved by Council's legal team prior to the inspection.</p> <p>Category 2: Non – Urgent Non – Urgent inspections would require the Council officer to make contact with the landowner/occupier of the land in writing outlining the reason for the inspection and requesting permission to carry out the inspection. If permission is not explicitly granted to carry out the inspection, then Council's legal team must provide written approval to carry out the inspection.</p> <p>For any inspection, a letter must be provided to the landowner and occupier stating:</p> <ol style="list-style-type: none"> The date and time the inspection is going to be carry out by Council Officers The name and positions of the council officers The reasons the inspection is being carried out The proof that Council is relying on that there has been some breaking of the law which requires an inspection. The mechanism with which the inspection is being carried out (ie with or without permission) Advice that if the inspection is being carried out with permission, the landowner/occupier can withdraw that permission at any time. When the investigation will likely be concluded <p>Guidelines: The draft Compliance and Enforcement Policy needs to make reference to the following guidelines published by the Department of Environment:</p> <p>https://www.epa.nsw.gov.au/~media/EPA/Corporate%20Site/resources/legislation/guidenotices06173.ashx</p> <p>Taking of photos or video and the use of Drones There needs to be clear guidelines as to the procedures for taking photos, video or the use of Drones. I have had a situation where a Council Officer has flown a Drone into the flight path that I use to come and go to my property in a helicopter. The officer had made no attempt to contact me and did not make a radio broadcast as to his intentions. This dangerous action cannot be</p>

Number	Submission
	<p>allowed to occur. Your Compliance and Enforcement Policy must outline a clear procedure as to the safe use of Drones by Council Officers or on behalf of Council.</p>
17	<p>Submission on Northern Beaches Council Draft Compliance and Enforcement Policy</p> <p>General Points</p> <p>Shortage of compliance staff impacts policy I believe the major weakness in NBC's compliance system is not the policy but the shortage of compliance staff. We need sufficient staff to be able to respond to all serious compliance issues, as well as those that might not be urgent or life threatening but which are regarded by the community as important. Additionally, we need enough compliance staff to be able to carry out routine proactive compliance, such as building site checks, patrols for street encroachments and for dogs on most of our beaches.</p> <p>Risk based system could be excuse for inadequate compliance The danger of a risk based compliance system is that without adequate staff, we're simply creating a way of excusing a lack of compliance in areas rated under the scheme as of Medium or Low priority. This would include issues such as Trees (already removed), Animal control and nuisances, overgrown vegetation and noxious weeds, for which I receive numerous complaints.</p> <p>Unclear areas of responsibility On some compliance issues, areas of responsibility seem to be unclear, and I have been referred back and forth between council departments without being able to find anyone able to take responsibility or to address the issue. This has particularly been the case regarding tree removal. It would be useful if the policy delineated clear lines of responsibility.</p> <p>Points related to pages</p> <p>Page 137 - The general lack of respect for council compliance is due to the large number of issues residents tell me they report to staff but which appear to result in no action.</p> <p>Purpose and scope - The claim that the decision to pursue action is based on the risk posed to public safety and the environment appears out of step with community expectations. Eg The number of complaints I receive about dogs on beaches and the loss of trees in Pittwater.</p> <p>Page 140 - What Council expects. Complainants must be guaranteed absolute privacy. I have heard of residents who believe their details have been revealed to those they have complained about.</p> <p>How do we deal with issues where a complainant is too scared to reveal their identity? What protections are there for complainants?</p> <p>Page 141 - Preliminary assessments. Priority should also be given to matters involving irreversible environmental harm or matters involving repeated and numerous reports. Eg Illegal tree removal, dogs on beaches</p> <p>Page 142 - Role of private certifiers Council should be developing and proposing a pathway to end private certification, due to its inherent conflict of interest and the fact that the system generates so many complaints.</p> <p>Page 146 - Enforcement action Council should demonstrate transparency in reporting the number of compliance complaints it receives each year and number of resulting investigations and enforcement actions.</p> <p>Page 149 - Discretion I believe there is a mismatch between council officers' use of discretionary powers and residents' expectations that breaches of council rules will be investigated and</p>

Number	Submission
	<p>enforcement action taken. This, I suspect, goes back to the issue that we do not employ enough compliance officers, so that in fact “Discretion” could be used as an excuse for failing to take action.</p>
18	<p>Below are some comments to consider with the other submissions received from the community.</p> <ul style="list-style-type: none"> • I think I would like to see a stronger statement that our strategic goal with this policy is to establish and maintain a culture of compliance, where the norm in the community is that they are playing by the rules. From this guiding principle, decisions are then made from a rubric of whether, and what form, of action in a given scenario either would promote or weaken that culture of compliance. Perhaps even some comments about seeking to discourage a lax approach to compliance in the community or an attitude that penalties for being caught are just a cost of doing business. My feeling is that there are many out there (not just in NB LGA but in general) who see council compliance as a matter of it being better to seek forgiveness than ask permission. • I think I would also like to see some stronger commitments/guidance around Council seeking to take a proactive role in compliance. I understand that it does not proactively review CDCs, I mean more more like proactive monitoring, random inspections, etc where Council makes it known that it's not purely reactive. • Page 5- In low is “waste storage”. I think it should be clarified, I assume this relates to bin storage? As I wouldn't necessarily consider it to be a “low” priority issue if a waste storage facility was having breaches, or if a building site was having issues with how it was storing waste on site. I don't think this is what is meant, its just the wording is potentially unclear. • I think the policy needs to give some consideration to situations where there is another regulator who should be acting, but isn't. While there isn't much that can be done if the issue is one where Council has no power whatsoever (Eg enforcing environment protection licences), there are other issues like privately certified development where there is a degree of co-regulation, and issues where conduct may be a breach of both (say) pollution laws and planning laws. While the policy speaks to Council handing issues over to another appropriate regulatory authority, I'm not sure that's an entirely satisfactory answer that Council will contently do nothing if the other agency is being lax, and Council does have powers it could use. • Page 14 – add further point i) about considering the compliance history of the owner/builder/certifier, their attitude towards being regulated, and level of cooperation

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Notes	Community and stakeholder views contained in this report do not necessarily reflect the views of the Northern Beaches Council or indicate a commitment to a particular course of action.