GUIDELINE

MANAGING REPORTS OF NON COMPLIANCE

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A project delivered by the Hunter and Central Coast Regional Environmental Management Strategy (HCCREMS): a program of the Environment Division of Hunter Councils Inc.

This project has been assisted by the NSW Government through its Environmental Trust.

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The development of this Guideline has been coordinated by the HCCREMS team at Hunter Councils Inc. It is designed to provide general information and guidance on managing reports of non-compliance. The content of this Guideline is current at the time of publication. While every effort has been made to ensure accuracy and completeness, no responsibility is taken, nor guarantee given, by Hunter Councils Inc. with respect to errors or omissions in the material contained in this guide. The contents do not constitute legal advice, are not intended to be a substitute for legal advice, and should not be relied upon as such. Hunter Councils Inc. does not accept any responsibility or liability in regard to your use of any information or advice given in this guideline.

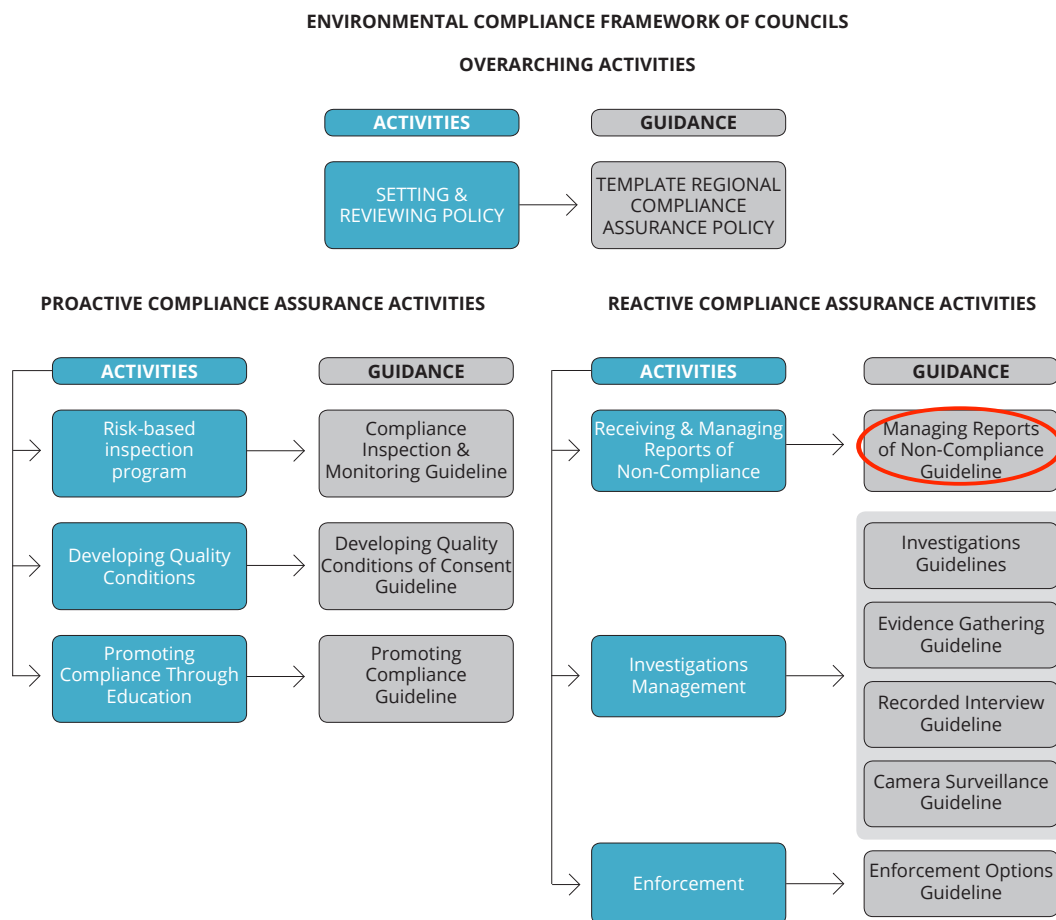You can find us at:
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FOREWORD

The Managing Reports of Non-Compliance Guideline is provided as supporting guidance to the HCCREMS model Compliance Assurance Policy and is designed to provide a consistent approach to the environmental regulatory framework implemented throughout the fourteen member councils of HCCREMS.

The model Compliance Assurance Policy provides councils with a position on the use of both proactive and reactive compliance assurance activities to manage compliance of the regulated community. *Figure 1* (below) displays the relationship of this guideline to the model Compliance Assurance Policy and other guidance documents.
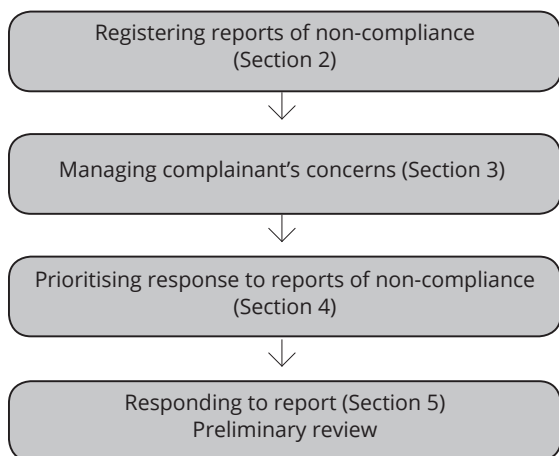
ENVIRONMENTAL COMPLIANCE FRAMEWORK OF COUNCILS

OVERARCHING ACTIVITIES

ACTIVITIES	GUIDANCE
SETTING & REVIEWING POLICY	TEMPLATE REGIONAL COMPLIANCE ASSURANCE POLICY

PROACTIVE COMPLIANCE ASSURANCE ACTIVITIES

ACTIVITIES	GUIDANCE
Risk-based inspection program	Compliance Inspection & Monitoring Guideline
Developing Quality Conditions	Developing Quality Conditions of Consent Guideline
Promoting Compliance Through Education	Promoting Compliance Guideline

REACTIVE COMPLIANCE ASSURANCE ACTIVITIES

ACTIVITIES	GUIDANCE
Receiving & Managing Reports of Non-Compliance	Managing Reports of Non-Compliance Guideline
Investigations Management	Investigations Guidelines
	Evidence Gathering Guideline
	Recorded Interview Guideline
	Camera Surveillance Guideline
Enforcement	Enforcement Options Guideline

Figure 1:
Regional Compliance Assurance Framework

1.
INTRODUCTION

2.
REGISTERING REPORTS OF NON-COMPLIANCE

The Managing Reports of Non-Compliance Guideline provides guidance on the management, tracking and record keeping associated with responding to reports of non-compliance. Reports of non-compliance are brought to the attention of council through a variety of sources, including:

• Complaints, incident reports and requests from the community;
• Inspections, monitoring and surveillance by council officers;
• Notifications from other organisations; and
• Analysis and research of compliant management systems, management plans etc.

Figure 2 provides a summary of the process involved in managing reports of non-compliance, referring to the relevant section and other guidelines as applicable.

Council has a procedure that details how reports of non-compliance should be received, registered and processed, including detail on:

• Where reports should be recorded (document management systems and customer action request systems);
• Responsibilities of those recording reports;
• How reports should be directed (i.e. responsible officers);
• Reasonable response time requirements or targets to inspect and address report of noncompliance;
• What information should be provided to the reporter/complainant; and
• How information shall be provided.

In addition to internal policy and procedures, councils have record keeping responsibilities under the State Records Act 1998 and are obliged to keep full and accurate records as evidence of business activities and transactions. In addition to meeting these legislative requirements, accurate record keeping will assist investigation officers to complete required activities in a timely manner. State Records NSW has a Government Record Keeping Manual with further information.

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│  Registering reports of non-compliance │
│           (Section 2)                │
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│ Managing complainant's concerns (Section 3) │
└─────────────────────────────────────┘
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┌─────────────────────────────────────┐
│ Prioritising response to reports of non-compliance │
│           (Section 4)                │
└─────────────────────────────────────┘
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┌─────────────────────────────────────┐
│   Responding to report (Section 5)   │
│         Preliminary review           │
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Figure 2:
Process for acceptance and processing of reports of non-compliance

CHARACTERISTICS OF RECORD KEEPING SYSTEMS FOR COMPLIANCE ACTIVITIES

To ensure the timely response to reports of non-compliance, record keeping systems should include the following key characteristics:

- Centralised electronic record keeping system operational in council (with a culture of utilising the system to register reports of non-compliance).
- Record keeping system providing appropriate ability to record all required information to understand the apparent non-compliance activity, location of event, responsible individual or company, and other relevant information to assist in the planning of compliance assurance inspections.
- Record keeping system easily accessed and interrogated to retrieve information on reports of non-compliance.
- Ability to add file notes to records to enable the system to keep full record of all activities related to the initial report of non-compliance, as well as any final actions or decision taken in relation to the initial report of non-compliance.
- Use of standard forms/checklists to facilitate the recording of all relevant information in a consistent manner.

All complaints, requests and incidents should be registered, preferably in a centralised system. Templates or checklists should be utilised to ensure complete and accurate information on the report of non-compliance is recorded in the first instance.

GENERATION OF REPORTS OF NON COMPLIANCE

Reports of non-compliance can be generated from a number of sources, these are typically:

- Outcome of a compliance assurance inspection.
- Noted by council officer as they are conducting their duties (e.g. drive by site and notice potential non-compliant activity related to different responsibility area of council).
- Notified of incident by another government agency.
- Resident or anonymous complainant.

Regardless of the source of the report, all reports should be registered into the approved record keeping system and distributed to the appropriate officer for response. At a minimum the following information should be recorded:

- The time and date the information was received.
- Details of the receiving officer.
- Details of the information provider, including name, contact details, relationship to alleged offender, reliability of information and any assurance of confidentiality given.
- Details of the alleged incident, including time, date and place, persons involved, species or commodities involved (where relevant), vehicles involved, and links to further information.

Where reports of non-compliance are received from the general public, council may need to manage the complainant and their expectations, as well as ensure the appropriate officer is deployed to investigate the alleged non-compliant activity.

3.
MANAGING COMPLAINTS

4.
PRIORITISING REPORTS OF NON-COMPLIANCE

The NSW Ombudsman provides the following tips for managing complainants:

- *Manage expectations* – explaining to complainants at the outset what council's objectives and capacity with regard to the compliant are.
- *Provide support* - address any concerns complainants have about harassment, confidentiality or other issues associated with their disclosure of information.
- *Provide ongoing feedback and reporting on outcomes* – this includes providing updates on progress, decisions made and reasons for those decisions.

The person receiving the report of non-compliance should be trained to advise complainants if the notification is clearly outside of council's jurisdiction (and provide appropriate referral information). If the notification is within council's jurisdiction and is relatively straightforward, complainants should be advised of the process council will follow in addressing the report of non-compliance.

Any advice or documentation provided to the complainant should be recorded in the record keeping system to ensure all officers responding to the file are aware of all aspects of the incident and report. In the situation where the incident may lead to a prosecution or challenge to the enforcement action of council, an accurate record of the incident and all actions taken by council (including the provision of information) will be required by the courts.

The prioritising of responses to reports of non-compliance will typically be driven by Council's risk-based management system, internal policy and resource levels. Typical risk factors employed to determine appropriate response times are:

- *Seriousness and consequences* – e.g. potential for permanent environmental damage, death or injury, risks to vulnerable sectors of the community or core sectors of local industry.
- *Extent* – scale, number affected, re-occurring risk or one off.
- *Immediacy of issue* – how recent and relevant is the notification/report.
- *Level of criminality* – serious breaches of legislation, repeat offenders.
- *Community priorities* – identified by local groups and in community planning documents as issue of importance.
- *Council priorities* – identified in plans and policies as issue of importance.
- *Capacity of council and available resources* – is there another body more able or appropriate to deal with issue.

Risk categories can be developed by considering the consequence of the report of non-compliance against the likelihood that the consequence will result. This is demonstrated in **Table 1** overleaf.

CONSEQUENCE				
LIKELIHOOD	*Minor* eg. Small, isolated, minor damage to health, property or environment	*Moderate* eg. Reoccuring, short-term, medium level damage to health, property or environment	*Major* eg. Long-term, reoccuring and serious damage to health, property or environment	*Severe* eg. Permanent and serious damage to health, property or environment
Very likely - almost certain, could happen any time	Medium	High	Critical	Critical
Likely - possible, could happen sometime	Medium	Medium	High	Critical
Unlikely - could happen but rarely	Low	Medium	Medium	High
Very unlikely - probably won't happen	Low	Low	Medium	Medium

Table 1:
Risk categories developed
from consideration of
consequences and likelihoods

CATEGORISING COMMON NON-COMPLIANCE INCIDENTS

By developing well defined categories for critical, high, medium and low priorities for action, Council can make initial prioritisation more straightforward and integrated into record keeping systems and customer service procedures, assisting with management of complainant expectations and council resources.

Initial prioritisation can be automatically determined by development of a matrix such as *Table 2* overleaf which is based on the risk categories in *Table 1.*

RISK CATEGORY			
CRITICAL	**HIGH**	**MEDIUM**	**LOW**
FEATURES OF CATEGORY	Permanent, long-term or reoccurring and serious damage to health, property or environment likely or very likely Large scale impacts Very serious offences Very high priority issue for council and community	Moderate, major or severe consequences likely, or very likely Medium-large scale impacts Serious offences Very high priority issue for council and community	Moderate consequences are likely, serious impacts are very unlikely Small- Medium scale impacts Moderate offence severity Very high priority issue for council and community	Consequences are minor or moderate and are unlikely or very unlikely to occur Small scale, isolated impacts Low level offence severity Very high priority issue for council and community
INDICATIVE TIMEFRAME OF INITIAL RESPONSE	Immediate and urgent response	Response within 24hrs	Response within 5 working days	Response within 10 working days
EXAMPLE REPORT TYPES/ ISSUES	Significant pollution incidents Large scale clearing of vegetation containing threatened species Food poisoning incidents Abandoned vehicles in an unsafe location Collapsed or unsafe building works in public areas Dog attacks	Roaming dogs Unsafe buildings and building works Rubbish dumped in unsafe location/ hazardous Pollution incidents Breaches of tree preservation order Dangerous/ restricted dog complaints Straying stock on roads	Abandoned vehicles Stormwater or drainage issues Dumped rubbish (not hazardous) Breach of consent conditions (e.g. waste management) Poor sediment control on building sites Noise complaints affecting several people	Noxious weeds Minor consent breaches (e.g. no signage) Unauthorised signage Unauthorised land use Overgrown land Aesthetic issues Neighbour disputes Nuisance complaints – e.g. domestic noise, barking dogs

Table 2:
Example risk categories allocated to potential reports of environmental non-compliance

5.
RESPONDING TO REPORTS OF NON-COMPLIANCE

Once the report of non-compliance has been received and allocated a risk category or priority rating (either automatically or by a trained customer service officer), the report should be directed to the appropriate officer. Tables or other systems may be used to assist with allocation of certain report types to the appropriate officer/section (see example provided in *Appendix 1*). It is preferable that council staff representatives from the range of sections involved in responding to reports (including customer-service staff) are thoroughly involved in the development of any allocation tables and procedures to ensure accuracy and uptake of the resulting tool.

It is recommended that the officer responsible for managing the report of non-compliance has an option of checking and adjusting the priority/risk rating of the report upon receiving it, as they are likely to be more knowledgeable of the report type than the person who received the report in the first instance.

An initial assessment of the potential breach report should be made by the relevant officer to determine whether investigation is required. Refer to the HCCREMS Investigations Guideline for further information.

6.
REFERENCES AND FURTHER INFORMATION

EPA Victoria, 2011, Compliance and Enforcement Policy, Available at: http://www.epa.vic.gov.au/compliance-enforcement/ce-policy.asp

NSW Ombudsman's Office, 2002, Enforcement Guidelines for Councils and Appendices, particularly Appendix C "Tips for managing complainants". Available at http://www.ombo.nsw.gov.au/publication/guidelines.asp

Port Stephens Council, 2007, Compliance Policy, Available at: http://www.portstephens.nsw.gov.au/council/1080/62729.html

Shoalhaven City Council, 2008, Compliance Policy, Available at: http://www3.shoalhaven.nsw.gov.au/applications/policyindexinternet/docs/1611089.pdf [Accessed Oct 2011].

State Records, Government Record Keeping Manual, Available at: http://www.records.nsw.gov.au/recordkeeping/government-recordkeeping-manual

APPENDIX 1.
PORT STEPHENS COUNCIL EXAMPLE OF ALLOCATION TABLE

Notes

X denotes primary compliance responsibility for this issue

X denotes joint / secondary compliance responsibility – as agreed on needs basis with coordinators

Last Revised Tuesday, 2 March 2010

Issue	Examples	Development Compliance Officer	Building Surveyor	Development Planners	Rangers	Environmental Health Officers	Tree Officer	Weeds & Pests Officers	F&S - Recreation	F&S - Engineering	BCA Fire Safety Officer
Unauthorised filling of land		x									
Unauthorised Development / Land Use (permissible use)		x		x							
Greg to add any unauthorised development – see BP											
Unauthorised Development – Foreshore	Sea walls, boat ramps etc								x		
Unauthorised Development – Public Reserve	Encroachment by gardens etc				x				x		
Illegal Development / Land Use (prohibited use)		x									
Illegal Shops, Motor showrooms, Industries		x									
Unauthorised / Illegal Depot or Transport Terminal		x									
Illegal occupation of buildings / sheds as dwellings		x	x			x					
Non-compliance with Conditions post Occupation Certificate		x	x	x		x					
Unauthorised restricted premises		x		x							
Non-compliance with conditions during construction (PCA)		x	x	x							
Waste, Dust & erosion during construction of approved DA			x								
Unsafe building structure - approved DA			x			x					
Parking issues	Illegal parking				x						
Animal issues	Stray Dogs, cats, cattle etc				x						
Abandoned vehicles – public or private land	Cars, trailers, boats				x						
Littering	Pedestrian and Vehicle				x	x					
Dumping of waste materials	Domestic, builders waste etc				x	x					
Heavy vehicle issues	Unauthorised parking/road use				x						
Illegal camping on Council reserves	Tents, caravans etc				x					x	
Unauthorised fire on Council reserve	Camping fires etc				x					x	
Unauthorised signs on Council / Crown reserves					x						
Burning off on residential property					x	x					
Roadside selling without authority					x					x	
Unauthorised fund raising eg footy club, recreational group etc					x					x	
Unsafe building structure - existing building			x			x					
Contaminated Land – existing use	Asbestos, heavy metals, oils		x			x					
Pollution eg water land and air						x					
Swimming Pools	Fencing, unhealthy, unsafe		x			x					
Overgrown land - private	Risk of vermin					x					
Unhealthy food premises		x				x					
Noise issues		x				x					
Odour issues		x				x					
Stormwater issues on existing premises						x					
Caravan & mobile home park issues						x					
Morgue issues						x					
Hairdressing / Beauty / Skin Penetration - fit out issues		x				x					
Cooling tower issue on commercial property						x					
On-site effluent disposal system issues	Overflowing, unhealthy system	x				x					
Illegal clearing of private land	Clearing of trees, understory	x					x				
Unauthorised removal – destruction of trees - private land	Clearing of trees, understory						x				
Unauthorised removal - destruction of trees - public land	Clearing of trees, understory						x			x	
Weed issues on private properties	Noxious weeds							x			
Non-compliant Fire Safety measures	Hose reels, signs										x