



City of Ryde

# **ENFORCEMENT POLICY**

**ADOPTED BY  
COUNCIL ON  
8 July 2008**

**(Effective 1 August 2008)**





## 1. INTRODUCTION

Local government enforces legislation to protect the individual and the community as a whole. The City of Ryde carries out a range of activities with the aim of achieving this and to achieve compliance with legislation by individuals and businesses. The purpose of this policy is to publicly summarise the City's enforcement policies adopted to seek such compliance. It is ultimately the responsibility of individuals and businesses to comply with the law.

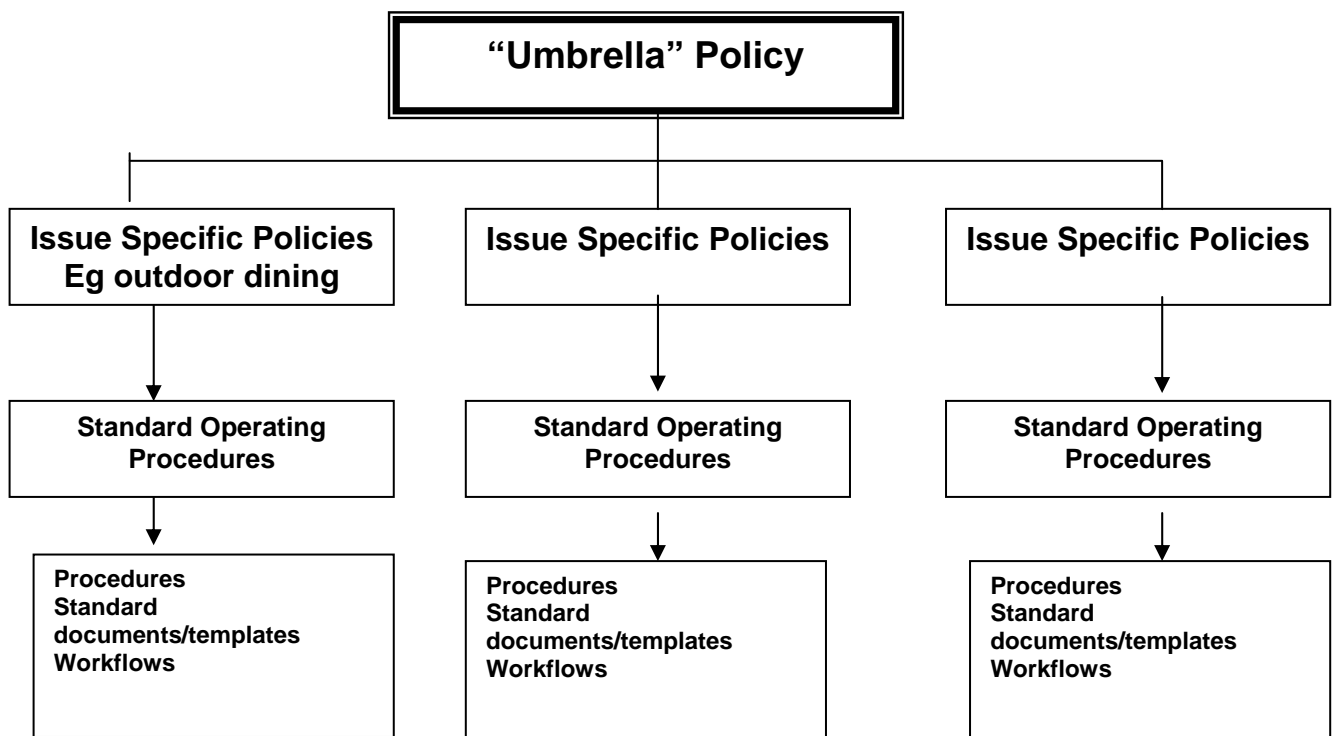
The policy is an "Umbrella" policy intended to apply to all service areas; though it should be noted that various additional service-specific requirements apply to specific enforcement activities in certain services, e.g. health & safety, food safety, building standards and parking control.

Detailed service-specific policies and procedures, where needed, are held, updated, audited and reviewed by the service departments. Information on these may be obtained from the Group Manager's office of the relevant department, the Customer Service Centre or on our website.

This Policy was adopted by the City of Ryde on 8 July 2008 and effective from 1 August 2008.

The following diagram outlines the framework of policies and documents which are used to create an appropriate enforcement action.

### Enforcement Policy Framework



A range of activities are used to ensure compliance with legislation. The City carries out inspections of premises on a routine, programmed basis and as a response to complaints and enquiries from the public about businesses and individuals. The City also carries out education programs and intelligence-based activities. Some enforcement services include officers patrolling streets and other public places.

Where non-compliance is discovered as a result of these activities, options available to the City to seek or promote compliance include:

- Explaining legal requirements and, where appropriate, the means to achieve compliance.
- Providing an opportunity to discuss points of issue where appropriate.
- Consideration of reasonable timescales to achieve compliance.
- Service of advisory letters, warnings, statutory notices or prohibitions detailing non-compliance.
- Facilitating mediation between affected parties.
- Enforcement actions including, but not limited to, seizure of goods or articles, closure of premises, caution, prosecution or injunction.

This policy is a key component to ensuring that the City of Ryde achieves its City Vision:

***Ryde will be an innovative city, a leader in environmental, economic and social sustainability.***

One of the key methods to achieve this vision is the establishment and maintenance of an efficient and effective regulatory environment.

In carrying out all its regulatory functions the City does so in a manner that reflects its values of:

- Pride
- Teamwork
- Professionalism
- Ethical
- Recognition

## **2. Guidelines for Good Enforcement**

Enforcement actions are taken within the context of both a legal and policy framework. The City's enforcement services will carry out their enforcement-related work with due regard to the principles of good enforcement. These principles are:

- Publishing clear standards, setting out the level of service and performance that the public and businesses can expect to receive.
- Dealing with the public and the business in an open and honest way.
- Providing a courteous, efficient and helpful service.
- Responding promptly and positively to complaints about the service.
- Ensuring that enforcement action is proportionate to the risks to the public.
- Carrying out duties in a fair, equitable and consistent manner.

Enforcement decisions and actions will be made with due regard to the provisions of:

- Equal rights and anti-discrimination legislation.
- Service specific legislation.
- All other relevant legislation applicable from time to time.

If it is in the public interest, matters concerning non-compliance may be shared, where appropriate, with other enforcement agencies, such as the Police or the Department of Conservation. Any such action will be undertaken in compliance with the Privacy Act.

## **3. AUTHORISATION OF OFFICERS**

Only officers who are competent by training, qualification and/or experience will be authorised to take enforcement action. Officers will also have sufficient training and understanding of this enforcement policy to ensure a consistent approach to their duties. Officers are required to show their authorisations on demand.

Enforcement services of the City are required to carry out their duties, including carrying out or escalating enforcement actions, in accordance with set procedures. These procedures vary depending on the service area involved in dealing with any non-compliance. Officers dealing with the public are required to identify which service area they represent and summaries of procedures applicable to service areas are available from the Group Manager's office of each service area.

#### **4. PURPOSE OF THE POLICY**

To provide consistency in enforcement action in matters of non-compliance and to ensure transparency, procedural fairness and natural justice principles are applied.

To create a framework for decisions about what enforcement action should be taken in different circumstances

#### **5. INVESTIGATING COMPLAINTS ABOUT UNLAWFUL ACTIVITIES**

It is the City's policy to investigate all complaints and alleged unlawful activities unless:

- In relation to development matters, a private Principal Certifying Authority (PCA) is appointed and is responsible for monitoring compliance with the conditions of development consent. The City will always attempt to liaise with the PCA in the first instance to remedy a complaint. In relation to sedimentation control, and footpath obstructions the City will always investigate and take required action prior to liaising with the PCA.
- The Council has no jurisdiction. (E.g. where there is no lawful provision for Council to take action, such as NSW Workcover issues on building sites or internal matters in private strata buildings.);
- The activity alleged to be unlawful is in fact determined to be lawful without an investigation required; or
- The complaint is frivolous, vexatious or trivial in nature.

If a decision is made not to investigate a complaint or matter, then the decision must be recorded with clear reasons as to why no investigation was undertaken. The complainant must then be advised of the decision in writing and the reasons no action was taken.

## **6. GOOD ENFORCEMENT PRINCIPLES AND PRACTICE**

The City of Ryde believes in firm but fair regulation guided by the following principles:

- Proportionality in applying the law and in making sure that people comply with it;
- A consistent approach;
- Sharing clear information with customers about how the City operates and what they can expect from the City; and
- Effective, targeted enforcement.

### **6.1 Proportionality**

The City's customers include both those on whom the law places a duty, and those whom the law protects. They have a right to expect action to achieve compliance to be proportionate to any risks and the seriousness of any breaches.

In general terms if there is a risk, the person responsible (the duty holder) must take measures to put things right, unless the cost involved is clearly excessive compared with the benefit.

Sometimes when regulations are broken, peoples' rights or enjoyment may be interfered with. Occasionally incidents or breaches cause or have the potential to cause serious harm. The City will try to keep down the cost to customers of complying with the rules and the City will ensure that any action required is in proportion to the seriousness of the breach.

### **6.2 Consistency**

The City will take a similar approach in similar cases to achieve similar ends. The advice provided by the City will be consistent, as will the response to breaches of the law and the decisions on whether to prosecute.

Consistency doesn't mean simple uniformity. Council officers need to take account of many variables:

- The seriousness of the offence.
- The attitude and actions of the management of the organisation involved towards compliance.
- The previous history of the person/organisation responsible.

Decisions on enforcement action are a matter of professional judgement and discretion. Arrangements to promote consistency, including liaison with other authorities, enforcement bodies and local businesses will continue to be developed.



### **6.3 Transparency**

In order to maintain public confidence in the City's ability to regulate, the City of Ryde must operate in a clear, open way. It means helping duty holders and others to clearly understand what is expected of them and what they should expect from us.

It also means making it clear why an officer is taking, or has taken, enforcement action.

Officers of the City of Ryde will ensure that whenever possible to work to the following standards:

- If remedial action is needed, the City will explain clearly (in writing if asked to do so) why the action is necessary and when it must be carried out. The City will point out what action is required and the timeframe for undertaking that action. Advice will be provided on the process for seeking a review of, or how to appeal against that decision.
- Complainants will be advised of what action has been taken and why that action has been taken.

## 7. RISK RESPONSE MODEL

The response to an alleged breach or non-compliance will be based upon a risk / response model; where the nature of the response will be proportional to the risk to the community, the environment or property due to the alleged unauthorised activity. This is explained in the following matrix.

How serious could it hurt someone Or Cause damage to property Or Cause damage to the environment	How likely is it to be that bad?			
	<b>++</b> <b>Very likely</b> could happen any time	<b>+</b> <b>Likely</b> could happen sometime	<b>-</b> <b>Unlikely</b> could happen but very rarely	<b>--</b> <b>Very unlikely</b> could happen but probably never will
<b>Kill or cause permanent disability or ill health, cause severe damage to property or the environment</b>	1	1	2	3
<b>Long term illness or serious injury to a persons, property or the environment</b>	1	2	3	4
<b>No immediate potential for physical harm to persons, property or the environment, potential for adverse amenity impacts</b>	2	3	4	5
<b>No physical harm to person, property or the environment, minor amenity impact on another person.</b>	3	4	5	6

**Rating 1** – Immediate and urgent response required (officers may be required to cease other work to attend to this matter). The nature of the enforcement action taken by the City will reflect the seriousness of the matter. Court action and fines are the likely action.

Examples:

- Unsafe buildings and unsafe building works,
- Collapsed buildings in public areas,
- Food poisoning incidents,
- Significant pollution incidents,
- Main road clearway breaches,
- Abandoned vehicles in an unsafe location,
- Dog attacks,

**Rating 2** – Urgent response required. The nature of the enforcement action taken by the City will reflect the seriousness of the matter. Court action and fines may be the action taken by the City.

Examples:

- Unsafe buildings and unsafe building works,
- Fire damaged buildings or fire safety breaches,
- Dumped rubbish
- Food poisoning incidents
- Roaming dogs
- Out of hours works and noise
- Footpath obstruction
- Pollution incidents (some)
- Breaches of the tree preservation order

**Rating 3** – Appropriate response required. Where appropriate notices, orders and fines will be taken.

Examples:

- Abandoned vehicles
- Stormwater or drainage issues
- Dumped rubbish
- Breach of conditions of consent
- Poor sedimentation control on building sites

**Rating 4** - Response within 10 working days of complaint being received by the City of Ryde Where appropriate notices, orders and fines will be taken, but education and warnings may also be appropriate.

Examples:

- Unauthorized advertising sign
- Unauthorized land use
- Overgrown land

**Rating 5 and 6** – Response within 10 working days of complaint being received by the City of Ryde. Letters of advice and education may be the appropriate response and action.

Examples:

- No PCA appointment sign on the site
- Noxious weeds

## **8. MANAGING COMPLAINTS**

### **8.1 How to Make a Complaint**

Complaints to Council can be lodged in person, over the phone, or by electronic/paper correspondence. Council's contact details are:

Telephone: 9952 8222

Facsimile: 9952 8070

E-mail: [ryde.nsw.gov.au](mailto:ryde.nsw.gov.au)

Postal address: Locked Bag No. 2069, North Ryde, 1670.

Complainants are encouraged to leave their name, address and phone number so that the investigating officer may contact the complainant to substantiate the complaint, gain additional information if required and to keep the complainant advised of the progress and outcome of the investigation.

All verbal complaints will be registered in Council's CRM system. All written complaints will be registered by Council's Records Department. An acknowledgement letter specifying the timeframe in which the matter will be investigated will be forwarded to all written complaints

Anonymous complaints will not be investigated unless there is a potential for a serious risk to health, safety or the environment.

All reports of investigation are strictly confidential. However, information will generally be made available about the outcome of investigations and the reasons for the decisions provided the information will not cause harm to an informant, witness, or alleged offender; or significantly prejudice the administration of justice.

### **8.2 Privacy**

Council must observe the Information Protection Principles set out in the Privacy and Personal Information Protection Act, 1998.

Personal information may be shared with other agencies for law enforcement purposes and Council will share such information where appropriate.

### **Review of the Policy**

It is proposed that this policy be reviewed within three (3) years of its adoption by the City of Ryde.