



Blue Mountains Conservation Society Inc

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Nature Conservation Saves for Tomorrow

Dr Rosemary Dillon
CEO
Blue Mountains City Council
Locked Bag 1005
Katoomba NSW 2780
By Email to: council@bmcc.nsw.gov.au

2 November 2022

Attention: Craig Martin, Manager Compliance and Specialist Services
cmartin@bmcc.nsw.gov.au

Dear Dr Dillon

Draft Compliance and Enforcement Policy 2022.

The Blue Mountains Conservation Society is a community-based volunteer organisation with over 850 members. The goal of the Society is to promote the conservation of the environment in the Greater Blue Mountains region.

Thank you for the opportunity to comment on Councils draft Compliance and Enforcement Policy 2022. The Society makes the following comments and suggested amendments

Natural Areas Encroachment Policy

We understand Council is preparing a Natural Areas Encroachment Policy which will be directly relevant to the operation of the Compliance and Enforcement Policy. It would be useful if the new Natural Areas Encroachment Policy was referenced at the end of the this policy in “other documentation”.

Scope of Compliance and Enforcement Policy

The Society recommends the following amendments to the ‘Scope’ to better acknowledge the importance of the natural environment in a LGA within a World Heritage Area (suggested inserted text in [blue](#)):

- ...
- *protection of native trees and vegetation, other aspects of the natural environment and preservation of environmental value generally including urban trees and*

- *vegetation;*
- *protection of watercourses (particularly those flowing into the Greater Blue Mountains World Heritage Area) from pollution;*
- *dumping of weeds, encroachment on Council managed and owned natural areas (including erection and placement of privately owned infrastructure) environmental health and pollution issues;*
- ...

Compliance and Enforcement Decisions

The Society recommends the following suggested amendments to ‘3. Compliance and Enforcement Decisions’ to better acknowledge the importance of the natural environment in a LGA within a World Heritage Area (suggested inserted text in blue and deleted text in ~~strike-through~~):

Reports of alleged unlawful activity will be assessed on their own merits however in making compliance and enforcement decisions, Authorised Officers will have regard to:

whether the alleged unlawful activity is:

- *posing a risk to public health and safety;*
- *having or has had a detrimental impact on the environment;*
- *posing a risk to public amenity;*
- *is presently underway or is ongoing;*

The Society believe that the above is the key set of issues to be considered and therefore should be number 1 on the list not number 10. If this recommendation is accepted then dot point 10 can be deleted]

Other amendments suggested for this section include the following:

- *whether the Council ~~is the appropriate regulatory authority or~~ has the legislative authority or jurisdiction to investigate the alleged unlawful activity or matter;*
- ~~*whether the Council has the legislative authority to investigate the alleged unlawful activity;*~~
- *whether another government regulatory authority is taking action and is the more appropriate regulatory authority in the circumstances;*
- ...

The Society suggests a new section 3A is inserted into the policy to provide more structure to Council staff decision making (this section is drawn from the Ku-ring-gai Council Compliance Policy (attached), with a few minor amendments (in red font) to focus on the natural environment).

3A. Investigating alleged unlawful activity

Not all reports alleging unlawful activity will warrant investigation. A preliminary assessment of all matters will be made to determine whether investigation or other action is required. Council will prioritise matters on the basis of risk to public safety, human health and environment.

RISK CATEGORY			
CRITICAL	HIGH	MEDIUM	LOW
Features of category			
<p><i>Permanent, long term or reoccurring and serious damage to health, property or environment likely or very likely</i></p> <p><i>Large scale impacts</i></p> <p><i>Very serious offences</i></p> <p><i>Very high priority issue for Council and the community</i></p>	<p><i>Moderate, major or severe consequences likely or very likely</i></p> <p><i>Medium-large scale impacts</i></p> <p><i>Serious offences</i></p> <p><i>Very high priority issue for Council and the community</i></p>	<p><i>Moderate consequences are likely, serious impacts very unlikely</i></p> <p><i>Small–medium scale impacts</i></p> <p><i>Moderate offence severity</i></p> <p><i>Very high priority issue for Council and the community</i></p>	<p><i>Consequences are minor or moderate and are unlikely or very unlikely to occur.</i></p> <p><i>Small scale, isolated impacts.</i></p> <p><i>Low level offence severity</i></p> <p><i>Very high priority issue for Council and the community</i></p>
Indicative timeframe of initial response			
<i>Immediate and urgent response</i>	<i>Response within 24 hours</i>	<i>Response within 10 working days</i>	<i>Response within 15 working days</i>
Example of issues			
<p><i>Significant pollution incidents</i></p> <p><i>Food poisoning incidents</i></p> <p><i>Abandoned or unlawfully parked vehicles in an unsafe location</i></p> <p><i>Collapsed or unsafe building works in public areas</i></p> <p><i>Significant clearing of natural vegetation underway</i></p> <p><i>Dog attacks</i></p>	<p><i>Unsafe buildings and building works</i></p> <p><i>Rubbish dumped in an unsafe location and/or where it may affect the World Heritage Area and other reserves</i></p> <p><i>Hazardous water pollution and other pollution incidents</i></p> <p><i>Breaches of tree preservation order</i></p> <p><i>Dangerous / restricted dog complaints</i></p>	<p><i>Nuisance dogs</i></p> <p><i>Abandoned vehicles</i></p> <p><i>Stormwater or drainage issues</i></p> <p><i>Dumped rubbish (not hazardous) and encroachment on natural area reserves</i></p> <p><i>Breach of consent conditions</i></p> <p><i>Poor sediment control on building sites</i></p> <p><i>Noise complaints affecting several people</i></p>	<p><i>Environmental or priority weeds</i></p> <p><i>Minor consent breaches</i></p> <p><i>Unauthorised signage</i></p> <p><i>Unauthorised land use</i></p> <p><i>Overgrown vegetation</i></p> <p><i>Aesthetic issues</i></p> <p><i>Neighbour disputes</i></p> <p><i>Nuisance complaints (eg domestic noise, barking dogs)</i></p>

Documentation and record keeping requirements as they relate to compliance and enforcement activities

The Society believes a new section should be added which addresses documentation and record keeping as they relate to compliance and enforcement activities and decisions of Council staff.

This includes requirements relating to allegations and reports of unlawful conduct and the results of investigations. Suggested wording could include the following

All reports alleging unlawful activity are to be entered into the Council's customer management system and actioned in a timely manner by the staff member/s having valid delegations from the General Manager to undertake the investigation or compliance & enforcement action in relation to this policy.

In addition the Society believe the Council should work towards a systematic system of recording the reasons for Council staff decisions with respect to compliance and enforcement matters, including how the decisions are consistent with section 3 and the proposed 3A of the policy. Suggested wording could include the following

Council staff are required to maintain records on decision making processes, including reasons in relation to any responses to reports alleging unlawful activity, including decision making and reasons for any resulting compliance and enforcement actions (or lack of actions), as well as records of interactions with relevant parties. Council staff will at all times adhere to Council's internal processes prior to the commencement of any compliance and enforcement action.

Purpose of the Policy

The Society recommends that a clear policy purpose is included in the first instance. We suggest that the first object of the policy is to state that compliance and enforcement is important because its purpose is to protect human life, the environment and other public purposes. For example:

The objectives of this policy are to:

- *help achieve the objectives of relevant legislation and management plans*
- *maximise compliance with legislation*
- *enhance the community's capacity to protect the environment and enhance biodiversity*

Thank you once again for the opportunity to make comment on this important policy document.

Yours sincerely



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