

## Weed Biosecurity Compliance and Enforcement Framework

### 1. Background

Rous County Council (**Council**) is the Local Control Authority responsible for administering relevant provisions of the *Biosecurity Act 2015* (NSW) (**Act**) and *Biosecurity Regulation 2017* (NSW) (**Regulation**) across the local government areas of Ballina, Byron, Lismore and Richmond Valley. Council also performs this role on behalf of Kyogle and Tweed shires under a fee for service arrangement. Council undertakes a wide range of activities to minimise the spread of weeds throughout the region, working with landholders and the community to address weed biosecurity matters.

### 2. Purpose

The purpose of this Framework is to provide structure for consistency and transparency in decision making, and to facilitate a proportional approach to Council's weed biosecurity regulatory functions. It is also intended to assist authorised officers in acting promptly, effectively and consistently in relation to compliance and enforcement activities.

### 3. Scope

This Framework provides information for all internal and external stakeholders and interested parties about Council's position on weed biosecurity compliance and enforcement.

### 4. Objectives

Council is committed to working with landholders and the community to achieve agreed weed management objectives and outcomes. The intent of Council's compliance and enforcement activities is to change behaviours and minimise harm to achieve beneficial outcomes in the interests of the community.

### 5. Compliance and enforcement principles

In exercising its regulatory functions Council adheres to the following principles:

Principle	Action
Accountable and transparent	<ul style="list-style-type: none"> <li>• acting in the best interests of the environment</li> <li>• ensuring accountability for decisions to take or not take action</li> <li>• acting fairly and impartially and without bias or unlawful discrimination</li> <li>• providing information about compliance and enforcement priorities and reasons for decisions to improve understanding and certainty and promote trust by the community</li> </ul>
Consistent	<ul style="list-style-type: none"> <li>• ensuring decisions about compliance and enforcement action are consistent</li> <li>• encouraging reports about possible weed biosecurity breaches by acting reasonably in response to the circumstances and facts of each matter</li> </ul>
Proportional	<ul style="list-style-type: none"> <li>• ensuring the level of enforcement action is proportionate to the level of risk and seriousness of the weed biosecurity breach</li> <li>• making cost-effective decisions about enforcement actions</li> <li>• taking action to address harm and deter future breaches</li> </ul>
Timely	<ul style="list-style-type: none"> <li>• ensuring timely response to reports alleging weed biosecurity breaches</li> </ul>

## 6. Risk-based approach

Council applies a risk-based approach to compliance and enforcement activities by targeting the region's highest weed biosecurity risks and allocating resources where the greatest impact to weed management across the region can be made.

This approach is applied to proactive compliance monitoring as well as responding to reports alleging weed biosecurity breaches. Council will undertake enforcement action where appropriate in accordance with this Framework.

## 7. Compliance and enforcement options

There are many regulatory options available to Council for achieving specified compliance outcomes depending on the particular circumstances. Council takes a graduated approach to enforcement action using a range of cooperative and enforced compliance tools as shown below in **Figure 1 Compliance and Enforcement Options**.

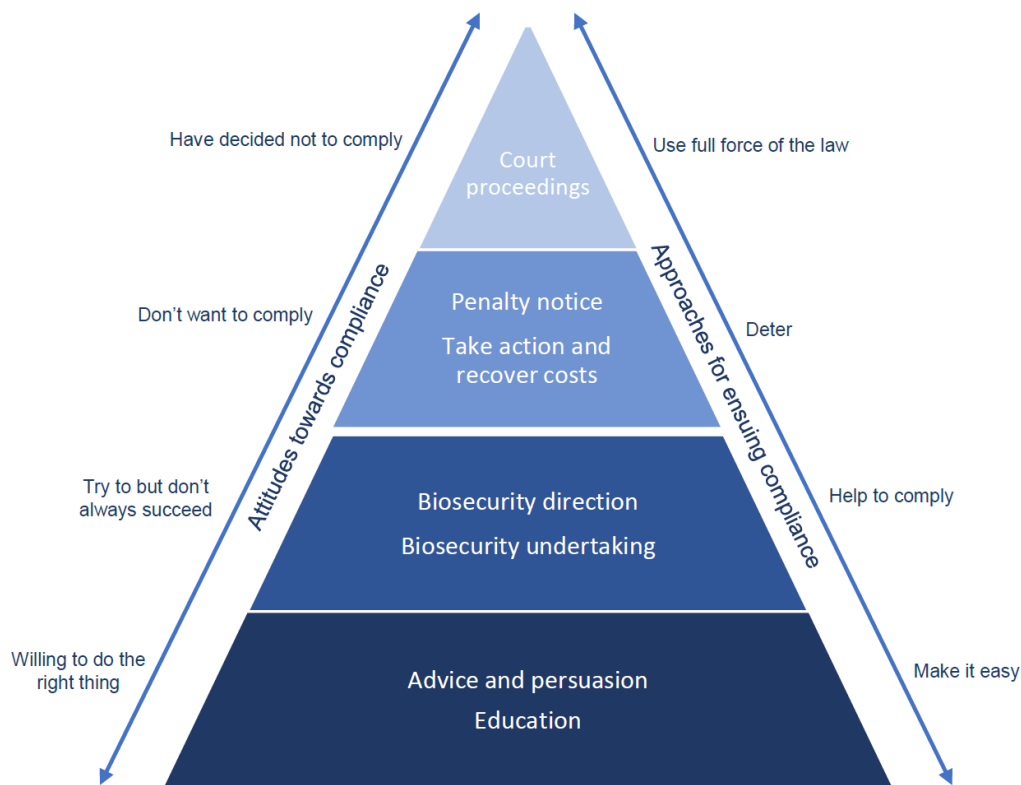


Figure 1. Compliance and enforcement options

Education and advice are proactive approaches to preventing weed biosecurity breaches and can be cost effective in achieving compliance.

Enforced compliance is reserved for serious, or persistent and deliberate, weed biosecurity breaches and is used when persuasion fails or advice about compliance is not taken.

Council will use discretion to determine the most appropriate response to confirmed weed biosecurity breaches and may take more than one approach.

At all times Council's enforcement response is designed to:

- influence behavioural change
- be responsive and consider what is appropriate for the particular offender and issue
- be proportionate to the nature of the offence and the level of harm caused
- rectify the harm where appropriate
- deter future non-compliance.

## 8. Taking enforcement action

When deciding whether to take enforcement action in relation to a confirmed weed biosecurity breach, Council will consider the full circumstances and facts of the matter and the public interest. Council may take into account the following considerations when determining the most appropriate response to taking enforcement action:

### Factors to consider when determining appropriate action

Considerations about the alleged offence and impact	<ul style="list-style-type: none"><li>• the nature, extent and severity of the breach, including whether the activity is continuing</li><li>• the harm or potential harm to the environment or public health, safety or amenity caused by the breach</li><li>• the seriousness of the breach</li><li>• the time period that has elapsed since the date of the breach</li></ul>
Considerations about the alleged offender	<ul style="list-style-type: none"><li>• any prior warnings, cautions, instructions, advice that was issued to the alleged offender or previous enforcement action taken against them</li><li>• whether the breach was committed with intent</li><li>• whether the alleged offender has been proactive in the resolution of the matter and assisted with any Council requirements and instructions</li><li>• any mitigating or aggravating circumstances demonstrated by the alleged offender</li><li>• any particular circumstances of hardship affecting the alleged offender</li><li>• experience and qualifications and therefore expected level of knowledge and awareness including proven attendance at relevant workshops and field days</li></ul>
Considerations about the impact of any enforcement action	<ul style="list-style-type: none"><li>• the need to deter any future breaches</li><li>• whether an educative approach would be more appropriate than a coercive approach in resolving the matter</li><li>• the prospect of success if the proposed enforcement action was challenged in Court</li><li>• the costs and benefits of taking formal enforcement action as opposed to taking informal or no action</li><li>• what action would be proportionate and reasonable in response to the breach</li><li>• whether Council is prevented from taking action based on earlier action or advice given by Council staff which has been relied on by the alleged offender (an estoppel issue)</li></ul>
Considerations about the potential for remedy	<ul style="list-style-type: none"><li>• whether the breach can be easily remedied</li></ul>

## 9. Compliance and enforcement investigations

Council receives information about alleged weed biosecurity breaches from members of the public, contact from other Government Agencies and information gathered by its officers during proactive inspections. Only Council staff with appropriate delegations from the General Manager can undertake investigations or compliance and enforcement action.

Council will conduct all investigations in an impartial and objective manner and will comply with confidentiality requirements as required. When conducting surveillance or any other methods of investigation, Council must comply with any legal requirements that may apply, including the privacy protection principles in the *Privacy and Personal Information Protection Act 1998* (NSW) and the requirements of the *Surveillance Devices Act 2007* (NSW).

In order to ensure procedural fairness Council staff are required to:

- treat all relevant parties with courtesy and respect
- 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
- make full and proper records in relation to the assessment and investigation of alleged weed biosecurity breaches, including reasons for any decisions
- inform all relevant parties of reasons for decisions
- provide as much information as possible to all relevant parties about the outcomes of investigations to show that adequate and appropriate action was taken and/or is proposed to be taken in response to a report of an alleged breach
- provide information to all relevant parties about any avenues to seek an internal or external review of a decision.

Council recognises the importance of keeping timely and accurate records of discussions, telephone calls, interviews and site inspections that take place during the course of an investigation. Any evidence relied on should be relevant, reliable and related to the facts of the case. Officers should also keep in mind the possibility that evidence may be used in court.

Council and delegated staff will be guided by legal advice in deciding whether to commence legal action and will consider the following:

- whether there is sufficient evidence to establish a case to the required standard of proof
- whether there is a reasonable prospect of success before a Court
- whether the public interest warrants legal action being pursued.

### **Further resources**

[Biosecurity Act 2015 \(NSW\)](#)

[Biosecurity Regulation 2017 \(NSW\)](#)

[NSW Ombudsman Enforcement guidelines for councils](#)

[North Coast Regional Strategic Weed Management Plan 2017 – 2022](#)

Rous County Council Local Priority Weed Management Strategy 2019 – 2025 (in Draft form – final still to be issued).

### **Contact officer**

Philip Courtney, Weed Biosecurity and Bush Regeneration Manager

(02) 6623 3800

[council@rous.nsw.gov.au](mailto:council@rous.nsw.gov.au)