This report seeks to reaffirm the Enforcement Policy, adopted on behalf of Council on 23 June 2009, and submit for Council’s consideration the draft Private Principal Certifying Authority Complaint Policy and the draft Self-Enforcing Infringement Notice Scheme (SEINS) Policy.

**Recommendation**

2. Council adopt the Private Principal Certifying Authority (PCA) Complaint Policy.
3. Council adopt the Self-Enforcing Infringement Notice Scheme (SEINS) Policy.

**Attachments**

1. Enforcement Policy
2. Private Principal Certifying Authority (PCA) Complaint Policy
3. Self-Enforcing Infringement Notice Scheme (SEINS) Policy

**Report Authorisations**

Report of: Jeannie Nicol, Manager Regulation & Enforcement
Authorised by: Andrew Carfield, Director Environment & Planning

**Background**

The Enforcement Policy and the Private Principal Certifying Authority (PCA) Complaint Policy have been developed to promote fairness, integrity and good public administration in the investigation of complaints relating to unlawful activity and to those of development sites where a Private Principal Certifying Authority has been appointed.

The Policies will facilitate prompt, transparent, consistent and effective responses to all allegations of unlawful activity, therefore meeting the objectives and guidelines held by the Independent Commission Against Corruption and the Ombudsman's Office.
The Self-Enforcing Infringement Notice Scheme (SEINS) Policy has been developed to provide a consistent enforcement framework for the issuing and reviewing of Penalty Notices.

The objective of the Enforcement Policy is to establish clear guidelines for the exercise of the discretion the Council and its officers must use in dealing with unlawful activity, taking into account all relevant information, including the available evidence, cost to the community, the circumstances of the individual case and public policy and precedent considerations. The Enforcement Policy will now set the umbrella framework under which the development of future specific compliance Policies will fall.

The Enforcement Policy:

- Provide a legal and administrative framework to assist Council and its officers in making decisions in its enforcement functions:
- Specifies the criteria which the Council and its officers will take into consideration when deciding:
  a) if enforcement action is necessary; and
  b) the most appropriate type of action.
- Provides information to the public about the Council’s role and Policy on enforcement; and
- Ensures that the enforcement process is conducted with maximum speed and minimal delay.

The Private Principal Certifying Authority (PCA) Compliance Policy:

has been developed in response to a recommendation by the NSW Ombudsman to explain how Councils will handle complaints about building and development work where a Private Principal Certifying Authority (PCA) has been appointed. The Policy explains:

- The respective roles and responsibilities of the Council, as the consent authority and regulatory body;
- The roles and responsibilities of accredited certifiers who have been appointed as PCA; and
- Identifies the circumstances where Council will act on complaints received in relation to development sites where a Private Principal Certifying Authority has been appointed.

The Self-Enforcing Infringement Notice Scheme (SEINS) Policy’s objectives are to:

- Clarify and make consistent the procedures undertaken by Council Officers when issuing and reviewing Penalty Notices.
Identify the rights of individuals in receipt of a Penalty Notice and the involvement of Council Officers, Councillors and Members of Parliament in ensuring an open and transparent approach is undertaken in all dealings.

Planning and Policy Impact

Training in the three (3) Policies will be provided to Council officers to ensure understanding in and commitment to the objective and principles of the Policies. Recognised in this process in the formulation of supporting procedures to ensure transparency and consistency.

Risk Assessment

The three (3) Policies help mitigate the risks of individuals acting independently which may lead to actions not consistent with the objectives and guidelines held by the Independent Commission against Corruption and the Ombudsman’s Office.

Financial Implications

Council’s adopted Policies influence legal costs and resource costs as applied to Council’s enforcement of Planning, development, Building, Environmental and Regulatory functions.

Conclusion

The Policies endeavour to promote fairness, integrity and good public administration in the investigation of complaints relating to unlawful activity and to those of development sites where a Private Principal Certifying Authority has been appointed, in addition to the issuing and reviewing of Penalty Notices.
ENFORCEMENT POLICY

COUNCIL POLICY

BACKGROUND

The purpose of this policy is to establish clear principles and guidelines for Council authorised officers to assist officers to act promptly, fairly, consistently and effectively in response to unlawful activity.

OBJECTIVE

The objective of this policy is to establish clear guidelines for the exercise of the discretion the Council must use in dealing with unlawful activity, taking into account all relevant information including the available evidence, cost to the community, the circumstances of the individual case and public policy and precedent considerations.

POLICY STATEMENT

Council is strongly opposed to unlawful activity at any time or under any circumstances. Council will initiate enforcement action where appropriate in accordance with this policy document.
# STATEMENT OF PROCEDURES

## TABLE OF CONTENTS

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>INTRODUCTION</td>
<td>Page</td>
</tr>
<tr>
<td>1.1</td>
<td>The Policy</td>
<td>3</td>
</tr>
<tr>
<td>1.2</td>
<td>Commencement</td>
<td>3</td>
</tr>
<tr>
<td>1.3</td>
<td>Policy Statement</td>
<td>3</td>
</tr>
<tr>
<td>1.4</td>
<td>Policy Purpose</td>
<td>3</td>
</tr>
<tr>
<td>1.5</td>
<td>Policy Objective</td>
<td>3</td>
</tr>
<tr>
<td>1.6</td>
<td>Policy Principles</td>
<td>3</td>
</tr>
<tr>
<td>1.7</td>
<td>Policy Application</td>
<td>4</td>
</tr>
<tr>
<td>1.8</td>
<td>Definitions</td>
<td>4</td>
</tr>
<tr>
<td>2</td>
<td>BACKGROUND</td>
<td>4</td>
</tr>
<tr>
<td>2.1</td>
<td>Submitting complaints or requests (section to refer to schedule 1)</td>
<td>5</td>
</tr>
<tr>
<td>3</td>
<td>RESPONDING TO COMPLAINTS, REQUESTS &amp; OTHER INFORMATION REGARDING UNAUTHORISED ACTIVITIES</td>
<td>5</td>
</tr>
<tr>
<td>3.1</td>
<td>PHASE 1: The Preliminary Investigation</td>
<td>5</td>
</tr>
<tr>
<td>3.2</td>
<td>PHASE 2: The Detailed Investigation</td>
<td>6</td>
</tr>
<tr>
<td>3.3</td>
<td>Deciding whether or not to take enforcement action?</td>
<td>6</td>
</tr>
<tr>
<td>a)</td>
<td>The nature and seriousness of the breach</td>
<td>6</td>
</tr>
<tr>
<td>b)</td>
<td>Balancing of public interest and cost to Council</td>
<td>7</td>
</tr>
<tr>
<td>3.4</td>
<td>PHASE 3: Deciding the most appropriate method of enforcement action</td>
<td>7</td>
</tr>
<tr>
<td>3.4.1</td>
<td>Group A Actions</td>
<td>7</td>
</tr>
<tr>
<td>3.4.2</td>
<td>Group B Actions</td>
<td>8</td>
</tr>
<tr>
<td>3.4.3</td>
<td>Verbal Advice and Warnings</td>
<td>8</td>
</tr>
<tr>
<td>3.4.4</td>
<td>Written warnings</td>
<td>8</td>
</tr>
<tr>
<td>3.4.5</td>
<td>Consents, Orders and Building Certificates</td>
<td>8</td>
</tr>
<tr>
<td>3.4.6</td>
<td>Group A Actions</td>
<td>9</td>
</tr>
<tr>
<td>3.4.7</td>
<td>Group B Actions</td>
<td>9</td>
</tr>
<tr>
<td>3.4.8</td>
<td>Orders &amp; Notices</td>
<td>9</td>
</tr>
<tr>
<td>3.4.9</td>
<td>Penalty Notices [PNs]</td>
<td>9</td>
</tr>
<tr>
<td>3.4.10</td>
<td>Commencing court proceedings</td>
<td>9</td>
</tr>
<tr>
<td>3.4.11</td>
<td>Choosing between criminal and civil court proceedings</td>
<td>9</td>
</tr>
<tr>
<td>3.4.12</td>
<td>Criminal Proceedings</td>
<td>9</td>
</tr>
<tr>
<td>3.4.13</td>
<td>Civil Proceedings</td>
<td>10</td>
</tr>
<tr>
<td>3.4.14</td>
<td>Choosing between the Local Court &amp; Land &amp; Environment Court</td>
<td>10</td>
</tr>
<tr>
<td>3.4.15</td>
<td>Land &amp; Environment Court Proceedings</td>
<td>11</td>
</tr>
<tr>
<td>3.4.16</td>
<td>Local Court Proceedings</td>
<td>11</td>
</tr>
<tr>
<td>4</td>
<td>Procedural fairness and natural justice</td>
<td>11</td>
</tr>
<tr>
<td>5</td>
<td>RECOVERY OF LEGAL COSTS</td>
<td>11</td>
</tr>
<tr>
<td>6</td>
<td>COMMUNITY AWARENESS</td>
<td>12</td>
</tr>
<tr>
<td>7</td>
<td>RELATED POLICIES</td>
<td>12</td>
</tr>
<tr>
<td>8</td>
<td>ACKNOWLEDGEMENTS</td>
<td>12</td>
</tr>
<tr>
<td>Schedule 1</td>
<td>VERBAL &amp; ANONYMOUS COMPLAINTS</td>
<td>13</td>
</tr>
</tbody>
</table>
1. INTRODUCTION

1.1 The Policy
This policy is called “Wollongong City Council’s Enforcement Policy”.

1.2 Commencement
This Policy was adopted on 23 June 2009.

1.3 Policy Statement
Council is strongly opposed to unlawful activity at any time or under any circumstances. Council will initiate enforcement action where appropriate in accordance with this policy document.

1.4 Policy Purpose
The purpose of this policy is to establish clear principles and guidelines for Council authorised officers to assist officers to act promptly, fairly, consistently and effectively in response to unlawful activity.

1.5 Policy Objective
The aim of this policy is to establish clear guidelines for the exercise of the discretion the Council must use in dealing with unlawful activity, taking into account all relevant information including the available evidence, cost to the community, the circumstances of the individual case and public policy and precedent considerations.

The policy:
• Provides a legal and administrative framework to assist Council in making decisions in its enforcement functions;
• Specifies the criteria which the Council will take into consideration when deciding:
  o if enforcement action is necessary; and
  o the most appropriate type of action.
• Provides information to the public and other Government Agencies about the Council’s role and policy on enforcement; and
• Ensures that the enforcement process is conducted with maximum speed and minimal delay.

1.6 Policy Principles
Council is committed to:
• Acting in the interest of protecting community health, safety and or the environment;
• Acting consistently, fairly, impartially and transparently;
• Preventing discrimination on the basis of race, religion, sex, national origin, political association or other personal reason/s;
• Ensuring the proposed enforcement action is in keeping with the relative severity of the offence/s;
• Ensuring enforcement action is taken against the right person for the correct offence;
• Ensuring that any actual or potential conflict of interest situations are managed in a fair, consistent and impartial manner;
• Disclosing all evidence relevant to the alleged offence/s;
• Assisting the Court by providing all necessary information whether or not that information is in favour of the Council case, in accordance with a prosecutor’s general duties.
1.7 Policy Application

This policy applies to the investigation and enforcement of unlawful activity or failure to comply with terms or conditions of approvals, licences and orders. This Policy is primarily directed at the regulation of development activity, pollution control, regulation of parking, animal control, public health and safety and food safety. This Policy will also apply to other compliance and regulatory areas for which Council has responsibility.

This Policy is also intended as an umbrella policy which will guide other service specific policies and procedures.

1.8 Definitions

The following defined terms are used in the policy:

CAN: means a court attendance notice issued and filed in accordance with the Criminal Procedure Act 1986. A CAN may be used to commence summary proceedings in the local court. A CAN specifies the offence and its essential particulars as well as the address of the court where the matter is to be heard. If a person does not attend court on the day specified in a CAN, a warrant may be issued for the arrest of the person or the matter may be dealt with in the absence of the person.

defendant: means the accused person against whom criminal proceedings are brought.


PN: means penalty notice. Sometimes referred to as an ‘on-the-spot’ fine. PNs (formally known as PINs) may only be issued for prescribed offences and the value of the fine is also prescribed by legislation.


respondent: means the party against whom civil proceedings are brought in Land & Environment Court proceedings.

unlawful activity: means any activity or work that has been or is being carried out;

• contrary to a legislative provision regulating a particular activity or work;
• contrary to an environmental planning instrument that regulates the activities or work that can be carried out on particular land;
• without a required consent, approval, permit or licence; and/or
• contrary to the terms or conditions of a consent, approval, permit or licence.

2. BACKGROUND

Council becomes aware of unlawful activities in a variety of ways, from the proactive actions of Council staff to the receipt of complaints or requests from members of the public.

Council staff will also identify breaches of consent and unauthorised building work and uses in the course of their daily duties. In our environmental protection and/or public health roles, we may discover pollution incidents and unhealthy premises that require enforcement action. Furthermore, Rangers and Parking Enforcement Officers issue PNs for parking, dog, pollution and building site offences.

Council officers who are not involved directly in enforcement matters will also commonly identify potential unlawful activities and report them for investigation and action pursuant to this policy.

Nevertheless, while Council is proactive in the detection of unlawful activities, not all offences are readily discernible and early detection can only be achieved with support and direct advice from our community.
2.1 Submitting complaints or requests

Complaints or requests alleging unlawful activity can be submitted to Council either in writing or verbally. In either case the allegation will be recorded in Council’s computerised customer request management system and will be allocated a unique reference number. The request will be referred to the relevant Council Officer to commence any necessary investigation.

The name, address and contact details of the person submitting the complaint will also be recorded. This information is critical as Council may need to rely on evidence from the complainant to prove any alleged offence and commence enforcement action. Council will advise any complainants of the action, if any, taken or the reasons why no action was taken in the circumstances.

As outlined in Council’s ‘Customer Service Policy’ [2008], Council will take all reasonable measures to protect the privacy of the person submitting the complaint and generally information on this person will not be released. However, Council may be required to disclose this information in a variety of circumstances including the following:

- When access to the information is permitted under legislation, including the Freedom of Information Act 1989 or section 12 of the LG Act;
- When access to the information is permitted under another Council policy;
- Legal proceedings are commenced and the information is disclosed in evidence served; and
- The nature of the allegation otherwise makes it a necessity; and,
- Supporting material provided by complainants but may not be able to be used as evidence.

Also, in some circumstances it may be possible to ascertain the identity of the person submitting the complaint by the nature of the allegation.

3. RESPONDING TO COMPLAINTS, REQUESTS & OTHER INFORMATION REGARDING UNAUTHORISED ACTIVITIES

Council’s response to information regarding alleged unlawful activities will broadly follow a process involving three phases:

PHASE 1: Preliminary Investigation to determine whether further investigation warranted;

PHASE 2: Detailed investigation to determine whether enforcement action should be taken; and

PHASE 3: Decision about which method of enforcement action should be taken?\(^1\)

At the conclusion of phases 1 and 2, Council will determine whether it is appropriate to progress the issue to the next phase.

3.1 PHASE 1: The Preliminary Investigation

All complaints and reports regarding unlawful activities will be reviewed to determine whether the matter requires further enquiry or investigation. Examples of actions by Council officers at this preliminary stage include but are not limited to:

- Speaking with the complainant to obtain more information;
- Searching Council’s records such as the development consent and complaint registers;
- Carrying out a site inspection.

No further action will be initiated where:

- The matter has already been investigated and resolved, or
- The Council has no jurisdiction (for example, NSW WorkCover issues on building sites or amusement devices or an internal matter within strata buildings or where the Department of Environment and Climate Change (DECC) is the Appropriate Regulatory Authority etc), or

\(^1\) Note: depending upon the enforcement method chosen in the circumstances, further investigation and evidence gathering may be required.
• The activity is determined to be lawful on the basis of the preliminary investigation, or
• The complaint is considered to be trivial, frivolous or vexatious as determined by the relevant Divisional Manager and/or General Manager in accordance with Council’s 'Customer Service Policy'.

The reasons for the decision to take no further action and any referrals made to other enforcement agencies will be recorded.

3.2. PHASE 2: The Detailed Investigation

If the findings of the preliminary investigation warrant further action to be taken, a more detailed investigation is required to determine whether or not enforcement action should be taken and if so, what type of enforcement action. Examples of actions by Council officers at this second stage may include:

• An investigation to determine whether the activity might be lawful under the existing or continuing use rights provisions of the EP&A Act;
• Interviewing the person carrying out the activity [after giving the appropriate warnings] and other witnesses and making detailed notes of those interviews;
• Taking measurements, samples and photographs;
• Engaging the assistance of another Council officer with particular expertise to inspect the site and gather or review the evidence;
• Undertaking a review of the relevant legislation and available evidence to assess whether all elements of the breach are present.

For detailed information about conducting enforcement investigations, please refer to [insert name of functional policy or operational policy].

3.3 Deciding whether or not to take enforcement action?

Council has discretion in deciding whether or not to take enforcement action on the basis of the available evidence and the circumstances of the individual case. Council will decide whether to take enforcement action after it has considered the following matters:

a) The nature and seriousness of the breach

Council will have regard to the impact the unlawful activity is having on the amenity of the local area and the environment. In assessing the nature and seriousness of the breach, Council will consider:

• Whether the unlawful activity has caused a breach which is technical in nature and does not cause harm to amenity or to the environment;
• Whether the unlawful activity is ongoing. If it has ceased, Council must consider the length of time that has expired;
• Whether the impact of the unlawful activity on the natural or built environment and on health, safety and amenity is significant;
• Whether development consent or other approval would have been granted by Council if the appropriate application had been submitted prior to the unlawful activity being undertaken;
• Whether the person(s) who committed the breach has shown contrition and, where possible, has remedied the unlawful activity;
• Whether the person(s) who committed the breach has made submissions to the Council that provide reasonable grounds for the Council to conclude that the person was under a genuine mistaken belief as to a relevant factual or legal matter;
• Whether the person(s) who committed the breach has shown deliberate or wilful conduct in their actions;
• Whether the person(s) who committed the breach is a repeat offender;
• Whether the person(s) who committed the breach should have been aware of their obligations because they have:
particular knowledge e.g.: a builder or company that regularly carries out work and is generally aware of the relevant Council or other requirements;  
- received a previous warning; or  
- been subject to previous formal legal action.

- Whether the unlawful activity was unavoidable; and  
- Such other matters that are considered to be relevant to the individual case.

b) Balancing of public interest and cost to Council

Council will weigh up the public interest or benefits that will be served against the cost to the Council, and the community, of taking enforcement action. In considering the ‘public interest’ Council will have regard to whether the unlawful activity:

- will impact on a significant number of people;
- will impact on disadvantaged or marginalised groups;
- is indicative of a systemic [procedural/process/policy or the like] flaw;
- is individual in nature but often occurs;
- has attracted sustained public attention and no alternative resolution is proposed or likely; and
- The need for general deterrence of this unlawful activity in the community based on its prevalence, the potential for undesirable cumulative impact and/or the degree of harm caused or likely to be caused by the activity.

The detailed investigation may result in a range of outcomes including but not limited to:

- Taking no further action;
- Reaching a negotiated and documented outcome with the alleged offender which may involve undertakings on their part to do or refrain from doing certain things;
- Educating the person investigated about their legal obligations;
- Issuing a formal warning letter;
- Commencing enforcement action [see Phase 3]; and,
- Advising the complainants and/or community of the outcome.

3.4. PHASE 3: Deciding the most appropriate method of enforcement action

Once the decision has been made to take enforcement action, the most appropriate method of enforcement action needs to be determined. Council will consider what is reasonable in the circumstances and ensure the enforcement action chosen is proportionate to the level of harm or damage arising from the breach.

From an operational perspective the Council has a range of enforcement options including but not limited to the following:

Group A Actions

- The issuing of a verbal warning;
- The issuing of a written warning;
- The issuing of a “letter of demand” letter;
- Reporting a breach to a professional association;
- Use of statutory powers such as:
  - granting consent to a relevant application;
  - issuing a building certificate under the EP&A Act.
Group B Actions

- Making an order or issuing a notice under the EP&A Act, LGA, POEO Act, Public Health Act or Food Act;
- Making a dangerous dog declaration pursuant to section 34(1) of the Companion Animals Act 1998.
- The issuing of a penalty notice/s (PN); and/or
- The recommendation to instigate court proceedings;

Each of the methods in Group A and Group B set out above is outlined in more detail below.

Group A Actions

3.4.1 Verbal Advice and Warnings

Authorised Officers will routinely give advice principally to explain the need to comply with the law and the benefits of compliance or the purpose of the law. Verbal warnings should normally only be given for extremely trivial offences, where the offence is only of a technical nature or where there is insufficient evidence to justify a warning letter. Verbal warnings will be subsequently recorded on Council’s record system.

Council also aims to provide information to raise awareness and educate the community about compliance, enforcement and regulatory requirements. Council recognises that advice, negotiation and mediation may achieve compliance or a reasonable solution for the parties without the need to take enforcement action in certain circumstances.

3.4.2 Written Warnings

Where there is evidence that minor breaches have occurred warning letters may be issued at the discretion of the Authorised Officer. Warning letters may be inappropriate where there are a number of offences on one occasion or a series of offences within a relatively short period of time. The totality of the offences should be considered in deciding the appropriate course of action. Where significant non-compliance is evident more significant enforcement is appropriate.

Warnings letters should detail the exact nature of the offence, any required remedial action, or change in behaviour, and the intention of the Council to enforce the legislation in the future. Such warning letters can be used by Council at a later time to illustrate that procedural fairness was afforded to the person carrying out the unlawful activity, should the need arise to instigate formal enforcement action in the future.

3.4.3 Consents, Orders and Building Certificates

Consideration will be given to whether a breach can be rectified by a consent or building certificate or whether enforcement can occur by way of an order under the EPAA, LGA, or notice under the POEO Act, direction under the Food Act or some similar means.

Enforcement action of this nature may occur in conjunction with criminal proceedings, where it is considered appropriate and necessary for punitive action to also be taken, having regard to the restrictions provided under Section 127(7) of the EPAA.

Group B Actions

Before commencing any of the ‘Group B’ enforcement methods, two threshold questions need to be answered in the affirmative:
- Has the appropriate and correct notice/order recipient or liable respondent or defendant been identified?;
- Is the available admissible evidence capable of establishing each element of the offence/s (either on the balance of probabilities (civil) or beyond reasonable doubt (criminal)

Sufficient evidence needs to have been collected at the detailed investigation stage to support the taking of Group B enforcement action (i.e. issuing a PN or an order or notice under the EP&A Act, POEO Act or LG Act, or Dangerous Dog Declaration under the Companion Animals Act 1997. This is because all of these forms of enforcement action are either appealable or may need to be the subject of further enforcement action (either criminal or civil) if the notice/order or declaration is not complied with.
3.4.4 Orders & Notices

The Orders provisions of the EPAA, LGA and POEO are described as “self-help” provisions that provide Council with a formal cost effective mechanism to direct land owners and occupiers to do or refrain from doing something. Where appropriate, these mechanisms should be used prior to the commencement of civil proceedings in the Land & Environment Court.

In accordance with the principles of procedural fairness, it is important that recipients of notices and orders are given a chance to be heard and/or remedy the breaches before the notice or order is issued, and that the notice or order is properly drafted to ensure enforceability.

3.4.5 Penalty Notices (PNs)

A PN is a form of criminal sanction. PNs for offences currently vary from $100 up to $2,000 under the EP&A Act and Environmental Planning and Assessment Regulation 2000 depending on whether the offender is an individual or a corporation and the nature of the unlawful activity. Under the POEO, a corporation could be fined up to $5,000 by a PN. The offender can either pay the fine stated on a PN or elect to have the matter heard before a court.

PNs will be issued for offences of a minor nature, where it is considered a small monetary penalty may uphold the relevant objectives of an Act or Regulation, and prevent a recurrence of the unlawful activity or stop the unlawful activity from continuing. The issuing of a PN will only occur where a decision has been made not to commence other criminal proceedings and if the Council has obtained, or could obtain sufficient evidence in admissible form to prove the offence beyond reasonable doubt in the event that the PN is challenged. A PN can only be issued where the authorised officer has been able to identify the person who committed the relevant offence.

PNs should be issued as soon as possible after the conclusion of an investigation.

PNs may be used in conjunction with other enforcement action, as permitted by the applicable legislation.

Representations against PNs are to be made directly to the State Debt Recovery Office. Council will only withdraw a PN directly if subsequent evidence identifies that the PN was issued unlawfully.

3.4.6 Commencing court proceedings

If formal court proceedings are considered to be the best option, two decisions need to be made:

a) Will the proceedings be civil or criminal?;

b) If criminal, will they be commenced in the Local Court or the Land and Environment Court?

3.4.7 Choosing between criminal and civil court proceedings

3.4.7.1 Criminal Proceedings

Criminal proceedings are punitive. The sentence which a court may impose if an offence is proven is usually a fine.

The amount of a fine imposed by a court will be based on the need for specific deterrence and the rehabilitation of the offender, the need for general deterrence of similar offences by other members of the community and any aggravating or mitigating circumstances.

Criminal proceedings may be commenced by:

- Issuing a PN (which is subject to appeal);
- Prosecuting the offence in the Local Court by issuing a CAN; and
- Prosecuting the offence in the Land & Environment Court in its summary jurisdiction (Class 5)

In criminal proceedings an offence must be proved ‘beyond a reasonable doubt’.

Where prosecution action is taken rather than the issuing of a PN, the maximum penalty is usually considerably higher. The maximum penalty will depend upon and be set by the Act under which the offence was created.

For further detail on the maximum penalties provided by the various Acts which Council operates under, please refer to the relevant Functional Area Policy.
Due to the legal principle of double jeopardy, criminal proceedings cannot be commenced for a set of circumstances giving rise to a breach if a PN has already been issued on the basis of those circumstances.

3.4.7.2 Civil Proceedings

- The objective of civil proceedings is to rectify the consequences of, or restrain an unlawful activity, by requiring the offender to do or refrain from doing something. Civil proceedings include the following;
- Notices and orders issued by Council pursuant to various legislation;
- Class 4 proceedings before the Land & Environment Court, seeking an order of the Court to remedy or restrain a breach of the EPAA (Section 123), the LGA (Section 673), the POEO (Sections 252 & 253), or any other Act, if the breach is causing or is likely to cause harm to the environment; and
- Interlocutory relief where circumstances give rise to the need for urgent court orders before the final hearing (e.g. where alleged unauthorised works are continuing and/or mitigation measures need to be implemented pending outcome of the litigation). In such proceedings it is likely the Council would be required to provide an undertaking as to damages.

For civil proceedings to be successful Council must prove the breach on the balance of probabilities. This is a less onerous burden of proof than is required in a criminal prosecution. However, even if the breach is established, the court has discretion not to make any order. Council must therefore be in a position to lead evidence that persuades the court that an order to remedy or restrain the breach should be made.

Civil proceedings can be held over to provide the person responsible for the unlawful activity with an opportunity to lodge any required application and have it determined or otherwise to cease or remedy the breach voluntarily. However where these options are available, Council will, subject to a consideration of the individual circumstances, provide these opportunities by way of a ‘letter of demand’ which has the advantage of potentially avoiding unnecessary court proceedings.

Deciding whether to commence criminal or civil proceedings depends on the outcome that is being sought. If Council were willing, retrospectively, to accept the results of the unlawful activity or if the unlawful activity can not be undone or is not ongoing and Council wishes to punish the offender, criminal proceedings may be preferred subject to the considerations detailed below.

Conversely, if Council is not willing to accept the unlawful activity (and particularly for alleged offences against the EPAA where the court may not have any jurisdiction to make an ancillary order requiring the consequences of the unlawful activity to be remedied), it is often more appropriate for Council to commence civil proceedings.

If Council decides not to commence proceedings under the EPAA, LGA, POEO or other Act, any other person may commence their own proceedings for an order to remedy or restrain a relevant breach (Section 123 of the EPAA; Section 674 of the LGA; Section 253 of the POEO).

3.4.7.3 Choosing between the Local Court & Land & Environment Court

The decision about which court to bring proceedings in will be informed by considerations such as the following:
- Whether the proceedings will be civil or criminal;
- The provisions of the Act under which the breach or offence was created relating to which Court proceedings are to be brought;
- The relative likely cost of proceedings;
- Prospects of recovery of those costs from the respondent or defendant;
- The level of complexity of the proceedings and the need for the Court to have specialist environmental or planning knowledge.
- The methods of enforcement/remedies available to the respective courts; and
- Circumstances of each case.
3.4.7.4 Land & Environment Court Proceedings

Council will give preference to civil proceedings in the Land & Environment Court where Council requires the offender to do or refrain from doing something, such as comply with a development consent or demolish unauthorised works. Generally civil proceedings in the Land & Environment Court will be preceded by formal notices and/or orders or a letter of demand, unless the circumstances warrant the immediate commencement of court proceedings.

3.4.7.5 Local Court Proceedings

The following matters will be considered in determining whether to commence criminal proceedings in the Local Court:

<table>
<thead>
<tr>
<th>L&amp;E Court</th>
<th>Local Court</th>
</tr>
</thead>
<tbody>
<tr>
<td>Offence is at the higher end of severity spectrum</td>
<td>Offence is at the lower end of severity spectrum.</td>
</tr>
<tr>
<td>Proceedings will involve expert evidence, and/or questions of law</td>
<td>A monetary penalty is all that is required</td>
</tr>
<tr>
<td>An order is required to remedy or restrain the breach/es,</td>
<td>Council has sufficient evidence to prove case beyond a reasonable doubt.</td>
</tr>
<tr>
<td>an interlocutory injunction is required because the unlawful activity is ongoing and/or is causing, or has the potential to cause, serious environmental harm;</td>
<td>Objective is to obtain a penalty/record of conviction.</td>
</tr>
</tbody>
</table>

4. PROCEDURAL FAIRNESS AND NATURAL JUSTICE

- There is an overriding duty on the Council to act fairly and ensure that the principles of procedural fairness and natural justice are adhered to when investigating and otherwise responding to alleged or suspected unlawful activities. The three step process outlined in this policy is designed to embody these principles. In addition, Council will:
  - Provide information on the substance of the complaint to the alleged offender. This may not occur until an appropriate stage in the investigation;
  - Provide an opportunity for the alleged offender to put their case. This will not be necessary if there is a serious risk to personal or public safety or risk of serious environmental harm;
  - Consider any submission put forward by the parties to the matter;
  - Make reasonable inquiries or investigations before making a decision;
  - Ensure no person decides a case in which they have an interest; and
  - Otherwise act fairly and without bias.

5. RECOVERY OF LEGAL COSTS

The Council’s policy for recovery of its costs in the Land and Environment Court is:

- That the Council will seek to recover its fair and reasonable costs in all matters where costs are recoverable, either by consent or by order of the court;
- The Council will seek to recover the penalty imposed by the court where such penalty is imposed; and
- The Council will adopt the recommendations of its solicitors to accept a lesser amount than the full legal costs incurred by the Council if, in the circumstances, the acceptance of such an offer will result in the Council not incurring further and unnecessary legal costs.

The Council’s policy for recovery of costs in the Local Court is:
• That the Council will seek to recover its fair and reasonable costs in all matters where costs are recoverable, either by consent or by order of the court; and
• The Council will seek to recover the penalty imposed by the court where such penalty is imposed.

6. COMMUNITY AWARENESS

The Council will carry out a community awareness campaign about enforcement by the publication of press releases, by the publication of a pamphlet, and by providing information on its website.

7. RELATED POLICIES

• Customer Service Policy 2008
• Customer Feedback Handling Policy 2008
• Private Principal Certifying Authority Complaint Policy [draft, 2008]

8. ACKNOWLEDGEMENTS

This policy is based on the ‘Model Policy’ developed by the NSW Ombudsman and the following documents were used in its preparation;

4. Blue Mountains City Council – Enforcement Policy [2006]
SCHEDULE 1 - VERBAL & ANONYMOUS COMPLAINTS

Verbal Requests
Verbal Requests will only be accepted where there is an immediate risk or disturbance and includes the following categories:

- Noise pollution in progress.
- Water pollution in progress.
- Air pollution in progress.
- Swimming pool safety.
- Fire safety of buildings.
- Food poisoning and food complaints.
- Savage dogs.
- Tree preservation of trees in danger of removal or damage.
- Matters of a serious threat to public health or safety that require urgent attention.
- Issues concerning the garbage service.
- Stray dogs or animals.
- Sewer overflows.
- Dangerous/unsafe buildings.
- Unauthorised earthworks or filling that is in progress.
- Where literacy skills or difficulties communicating in English prevent letters being written.

Anonymous Requests/Complaints
Anonymous Requests for investigations are frequently found to be unsubstantiated and result in resources being wasted. Contact names, addresses and phone numbers are important to confirm information or, if necessary, obtain additional information to allow investigations to be properly conducted.

Anonymous requests for disputes and grievances investigation have frequently been found to be as a result of a neighbourhood dispute or involve issues that Council should not be a party to.

Anonymous requests will only be accepted in the following categories:

- Serious pollution events.
- Swimming pool safety.
- Savage dogs.
- Matters of a serious threat to public health or safety.
- Sewer overflows.
- Dangerous/unsafe buildings with immediate threat to life.
<table>
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<tr>
<th>RESPONSIBLE DIVISION</th>
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<tr>
<td>MANAGEMENT PLAN FUNCTION</td>
<td>Decision-Making and Management</td>
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<td></td>
<td>Development Assessment and Compliance</td>
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<td></td>
<td>Environmental Assessment</td>
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<td>Environmental Education</td>
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<tr>
<td>DATE ADOPTED ON BEHALF OF COUNCIL</td>
<td>23 June 2009</td>
</tr>
<tr>
<td>DATE OF PREVIOUS ADOPTION(S)</td>
<td>Not Applicable</td>
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</table>
| DATE FOR REVIEW           | June 2012
COUNCIL POLICY

BACKGROUND

This Policy is called "Wollongong City Council’s Private Principal Certifying Authority (PCA) Complaint Policy."
This Policy has been developed in response to a general recommendation to Councils by the NSW Ombudsman. Its purpose is to explain how Wollongong City Council (Council) will handle complaints about building and development work where a private Principal Certifying Authority (PCA) has been appointed.

OBJECTIVE

The aim of this Policy is to establish clear guidelines for Council and its officers for the exercise of discretion in dealing with complaints relating to building sites where a Private PCA has been appointed. This Policy:

- Explains the respective roles and responsibilities of, on the one hand, Council, as the consent authority and regulatory body, and on the other, private accredited certifiers who have been appointed as PCA;
- Specifies the criteria which Council and its officers will take into consideration when deciding whether or not to act on complaints or refer them to the appointed PCA;

The most appropriate type of action:

- Outlines the process which Council will follow when it receives copies of ‘notices of intention’ issued by private PCAs in respect of non-compliant development;
- Provides information about the Council’s role and policy on building and development sites where a Private PCA has been appointed.

POLICY STATEMENT

Council is strongly committed to ensuring building work on all development sites within the Wollongong Local Government Area, whether or not Council or a Private PCA has been appointed, complies with the relevant approvals.

STATEMENT OF PROCEDURES
1 APPLICATION
This Policy applies to the management and investigation of complaints made to Council regarding unlawful/non-compliant building work on development sites where a Private PCA has been appointed.

RELEVANT LEGISLATION
This Policy concerns the operation of the Environmental Planning & Assessment Act 1979 (EP&A Act), particularly Parts 4A and 6 and the Environmental Planning & Assessment Regulation 2000 (Regulation).

DEFINITIONS
The following defined terms are used in the Policy:

Accredited Certifier:
Also referred to as either a ‘private certifier’ or a “Council certifier”, in relation to matters of a particular kind, means the holder of a certificate of accreditation as an accredited certifier under the Building Professionals Act 2005 in relation to those matters. Depending on the level of accreditation, an accredited certifier can act as a certifying authority and approve construction certificates (CC) and complying development certificates (CDC) or can be appointed the PCA for a development.

Building Professionals Board (BPB):
Means the board constituted under the Building Professionals Act 2005. The BPB is responsible for:
- accrediting all accredited certifiers,
- investigating complaints against them,
- conducting audits of Council and private accredited certifiers, and
- improving professional practice through education and training.

Construction Certificate:
As defined in the EP&A Act is a certificate to the effect that work completed in accordance with specified plans and specifications will comply with the requirements of the regulations referred to in section 81A (5) of the EP&A Act. A CC is required before the commencement of building work subject to a development consent (except where a CDC has been issued). A CC certifies that:
- The detailed construction plans and specifications will comply with the Building Code of Australia (BCA) including relevant associated structural standards and codes;
- The detailed construction plans and specifications are “not inconsistent” with the development consent; and
- All outstanding conditions of the development consent such as the payment of section 94 contributions, security deposits, bonds, and other conditions of consent have been complied with.

A CC may be issued by a Council certifier or by a private certifier.

Complying Development Certificate (CDC):
Means a certificate as defined in the EP&A Act. A CDC can only be issued for the category of minor works listed in State Environmental Planning Policy No 4—Development Without Consent and Miscellaneous Exempt and Complying Development and the State Environmental Planning Policy [Exempt and Complying Development...
Codes) 2008 which are subject to compliance with predetermined development standards.

A CDC is a Certificate:

- that states that particular proposed development is complying development and (if carried out as specified in the certificate), will comply with all development standards applicable to the development and with other requirements prescribed by the regulations concerning the issue of a CDC, and
- in the case of development involving the erection of a building, that identifies the classification of the building in accordance with the BCA.

A CDC may be issued by a Council certifier or by a private certifier.

**Certifying Authority:**

Means a person who:

- is authorised by or under section 85A of the EP&A Act to issue complying development certificates, or
- is authorised by or under section 109D of the EP&A Act to issue Part 4A certificates.

**Occupation Certificate (OC):**

Means a certificate as defined in the EP&A Act that authorises:

(i) the occupation and use of a new building, or
(ii) a change of building use for an existing building.

An OC can only be issued by the appointed Principal Certifying Authority (PCA).

In summary, in issuing an OC, the PCA must be satisfied that:

- a development consent or CDC is in force;
- the building is suitable to use or occupy under its BCA classification;
- any preconditions set by the development consent or the CDC to the issue of an OC have been met;
- if the building is erected pursuant to a development consent, that a CC has been issued with respect to the plans and specifications for the building;
- other matters required by the regulations to be complied with before the certificate is issued have also been met.

Conditions of a development consent (or CDC) could require certain matters, such as those relating to site safety and preventing adverse impacts on adjoining land uses or sites, to be met before the issue of an OC.

**Principal Certifying Authority (PCA):**

Means a certifying authority appointed under section 109E of EP&A Act. The PCA must be appointed before any building work commences and is responsible for inspecting building and subdivision work during the construction phase of development. This is to ensure that the work is consistent with the development consent and construction certificate and to enable the issuing of an occupation certificate when the work is complete.

Either a Council or a private certifier can be appointed the PCA.

Section 109E of the EP&A Act states the PCA must be satisfied:
a) that a construction certificate or complying development certificate has been issued for the building work before the work commences on the site, and
b) that the principal contractor for the work is the holder of the appropriate licence and is covered by the appropriate insurance, in each case if required by the Home Building Act 1989, before any residential building work commences on the site, unless the work is to be carried out by an owner-builder, and
c) that the owner-builder is the holder of any owner-builder permit required under the Home Building Act 1989, before an owner-builder commences on the site any residential building work, and
d) that building work on the site has been inspected by the PCA or another certifying authority as prescribed and as required by the PCA, before the PCA issues an occupation certificate for the building or work, and
e) that any preconditions required by a development consent or complying development certificate to be met for the work before the issue of an occupation certificate have been met, before the PCA issues the occupation certificate.

2 Background – Certification Steps

The main certification steps provided by the EP&A Act and Regulations for the construction/building phase are summarised below:

1 Before any work can commence:

   a) CC (where development consent has been issued) or a CDC must be issued. These certificates can be issued by either a Council certifier or a private certifier. Where issued by a private certifier, copies of the approved documentation must be submitted to Council within two (2) days of being issued; and
   b) A PCA must be appointed. The PCA can be either Council or a private certifier.
   c) The PCA must be notified who will carry out the building works. For residential development this must be either a licensed builder or the owner, under an Owner Builder’s permit issued by the Department of Fair Trading.
   d) For residential building work, the PCA must be satisfied that the required Home Warranty Insurance is in place or that the owner has obtained the required Owner Builder’s permit.
   e) The PCA, if private, must notify Council at least two (2) days prior to the commencement of any building work of his/her appointment.
   f) The PCA must notify the person appointing him/her, at least two (2) days prior to the commencement of any building work, of any critical stage inspections and other inspections that are required to be carried out in respect of the building work.
   g) Council must be notified at least two (2) days prior to the commencement of any building work of the intention to commence such work.
   h) The PCA must be satisfied that all preconditions of the development consent or CDC that were required to be complied with prior to the commencement of any building work have been satisfied.

2 Signage is to be erected and maintained at the front of the site providing details of the principal contractor (builder) and the PCA, including their names and contact telephone numbers.

3 The PCA or some other certifying authority (with the agreement of the PCA) must undertake all critical stage inspections. Only the PCA can carry out the final critical stage inspection.

4 The PCA must issue an OC prior to the occupation or use of all or part of the building.

5 The PCA must submit a copy of the OC to Council, with all associated documentation, within two (2) days of it being issued.
3 ROLE OF A PRIVATE PCA

The EP&A Act requires a PCA to be appointed before commencement of any work on a development site. The PCA is nominated and appointed by the person who has the benefit of the development consent or CDC and can be either a Council or a private certifier (who is authorised to act in the capacity of a PCA by the BPB). When a private certifier is appointed the PCA for building work, they assume responsibility for carrying out all the required inspections of the building work and issuing an OC.

The EP&A Act and Regulation identifies the functions, powers and responsibilities of private PCAs. For example, Section 109E(3) of the EP&A Act lists those items that the private PCA must be satisfied about in relation to a development.

Private PCAs also have limited enforcement powers under the EP&A Act which they can use to ensure compliance with the development consent. These powers enable them to issue a ‘notice of intention to issue an order’ under Section 109L setting out the proposed terms of an order and the proposed period of compliance (notice of intention).

However a private PCA cannot issue a formal order to require compliance. A copy of any ‘notice of intention’ issued by a private PCA on the builder, developer or landowner must also be provided to Council. It is then up to Council to decide whether or not to issue the order. In responding to each notice of intention issued pursuant to section 109L, Council will follow the process outlined in section 6 below.

Also, Clause 161 of the Regulation lists the matters that the private PCA may make a decision on, in lieu of the Council and these include:
- Earthwork
- Stormwater drainage work
- Landscaping work
- Erosion and sediment control work
- Excavation work
- Mechanical work
- Structural work
- Hydraulic work
- External finishes of a building.

4 ROLE OF COUNCIL

When a private PCA has been appointed, the Council generally becomes the “keeper of the records”, but is not routinely involved in the inspection of the development site.

The EP&A Act allows Councils to act in circumstances where there is, or is alleged to be, non-compliance with a development consent that was issued by the Council, even where the Council has not been appointed as the PCA for the development. Councils sometimes receive complaints about developments for which a private certifier has been appointed as the PCA. In these circumstances, a Council has discretion about whether or not to refer the complaint to the private PCA or investigate the complaint itself. Wollongong City Council’s framework for handling complaints received about development sites for which a private PCA has been appointed is set out in section 5 below.

Not being the appointed PCA means that Council does not have ready access to various professional reports that may be produced during the construction phase, including structural engineer’s certification and survey information. Such information and reports are not required to be submitted to Council until the final OC has been issued. This presents a significant impediment to Council’s ability to respond to general enquiries on a development site.

As the “keeper of the records” any person may apply for access to the Council’s development consent files and the CC documentation in accordance with the provisions of the Government Information (Public Access) Act 2009.
The Council is not the regulator of private certifiers and any complaints about the conduct and actions of a private PCA must be directed to the BPB. The BPB investigates complaints against council and private certifiers and audits Council and private certifiers in their certification role. More information on lodging a complaint about a Council of private certifier can be found on the BPB’s website (http://www.bpb.nsw.gov.au).

5 LODGING & RESPONDING TO COMPLAINTS ABOUT DEVELOPMENT SITES WHERE A PRIVATE PCA HAS BEEN APPOINTED.

5.1 Lodging a complaint

Any complaints in relation to a development site should be referred to the private PCA in the first instance, as this is likely to be the person with the most association and familiarity with events occurring on the site. In many cases, the private PCA may be able to effectively resolve the complaint without the need for enforcement action.

Contact details for the private PCA are required to be provided on a sign at the front of the development site. Alternatively they can be obtained from the BPB’s website (www.bpb.nsw.gov.au) or by contacting Council’s Customer Service Centre.

The information which should be included in a complaint to the private PCA about a development site includes:

- Street address of site;
- DA number;
- Nature of alleged breach and the date it commenced or occurred;
- Any evidence collected such as photographs

5.2 How Council will respond to complaints received

5.2.1 Initial complaint received by Council:

- Letters and emails received by Council in relation to development sites where a private PCA has been appointed will, in the first instance, generally be referred to the appropriate private PCA for consideration and investigation. Council will notify the writer of the letters/emails of this action and provide the contact details for the private PCA.

The possible exceptions to this general Policy include complaints about works or breaches which cause Council to form the view that:

a) immediate action is required, for example where:

- The work threatens life, safety or damage to property or the environment at the time of the complaint;
- The alleged departure from the development consent is substantial and there is a likely environmental impact;

b) The complaint relates to breaches of ‘housekeeping’ or environmental conditions of consent that are generally enforced by Council’s Regulation Officers, including hours of work, footpath and roadway obstructions, odours and fumes, noise, dust, sediment control and discharges; and/or

c) It is otherwise in the public interest.

5.2.2 Secondary complaint or referral from private PCA received by Council

The Council will undertake a preliminary investigation in response to secondary complaints or referrals received in relation to development sites where a private PCA has been appointed when:
The private PCA advises that a complaint relates to work that is outside the scope of a development consent and therefore is not considered to be the responsibility of the private PCA;

Where a complainant advises Council of a private PCA’s response which the complainant considers to be inadequate; or

Where a complainant advises Council of a private PCA’s response to a complaint and Council does not agree with the private PCA’s position;

It is otherwise determined by Council to be in the public interest.

It appears on the face of the complaint that a Penalty Infringement Notice or the commencement of prosecution proceedings may be an appropriate method of enforcement action;

The factors that Council will take into consideration to determine if a private PCA’s handling of a complaint is adequate includes the following:

- The timeliness of the investigation, having regard to the seriousness of the complaint;
- Whether the private PCA demonstrates a genuine commitment to address the issues;
- The appropriateness of the action taken, including whether a physical inspection has been undertaken and whether any professional reports have been relied on;
- Whether the private PCA keeps the customer informed; and
- Whether the customer is satisfied with the private PCA’s response.

All enforcement action taken by the Council, whether initiated by Council or a private PCA (See Section 6 below) will be in accordance with the Wollongong City Council Enforcement Policy, as endorsed.

6 PROCESS FOR RESPONDING TO NOTICES OF INTENTION ISSUED BY PRIVATE PCA’S UNDER SECTION 109I OF THE EP&A ACT

In deciding whether or not to issue an order under section 121B of the EP&A Act in response to a notice of intention issued by a private PCA, Council will broadly follow the three phase procedure outlined in its ‘Enforcement Policy’.

In the context of a Notice of Intention issued by a private PCA in respect of works which do not comply with a development consent, a Preliminary Investigation is likely to involve making contact with the private PCA and obtaining copies of their photographs, file notes and any relevant reports in relation to the proposed order. A detailed investigation will not be required in circumstances where the information provided by the private PCA satisfies Council that the requirements of Division 2A of the EP&A Act are or can be satisfied and that the power to issue an order is both available and appropriate to be exercised in the circumstances.

Council must also take into account any representations made by the private PCA and the person upon whom the order was issued in accordance with section 121J of the EP&A Act.

After reviewing all relevant information obtained from the private PCA and any further required investigations, and hearing representations, Council may determine:

- to give an order in accordance with the proposed order set out in the notice of intention issued by the PCA, or
- to give an order in accordance with modifications made to the proposed order, or
- not to give an order.

Council will notify both the private PCA and the notice recipient of its decision in writing, either in the form of a copy of the order itself or a letter advising why an order will not be issued.

7 ACKNOWLEDGEMENTS

The following documents and references were used in the preparation of this Policy:

Department of Planning Advisory Notes:
- Critical stage inspections
- Occupation Certificate

BPB Information Sheets:
- Building Professionals Board
- Accredited certifiers

Ryde City Council v Echt & Anor [2000] NSWCA 108

Woollahra Municipal Council
Hurstville City Council
<table>
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<tr>
<td>AUTHORISED BY</td>
<td>Divisional Manager (do not list name)</td>
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</table>
The purpose of this Policy is to provide a consistent enforcement framework for the issuing & reviewing of Penalty Notices.

RELATED POLICIES AND PROCEDURES

Wollongong City Council Enforcement Policy

BACKGROUND

The Self-Enforcing Infringement Notice Scheme (SEINS) provides for the issuing of Penalty Notices for particular offences.

Briefly, the Scheme allows certain law enforcement, including local government in New South Wales not to be automatically referred for determination by a court unless the individual so desires. It is an automated administrative process of enforcement and associated revenue collection.

SEINS is administered by the State Debt Recovery Office (SDRO) which has commercialised its services and undertakes, on behalf of government authorities, the processing of Penalty Notices on a commercial basis.

The scheme is continually audited by the SDRO, its parent organisation the Office of State Revenue (OSR) and in certain circumstances by the Ombudsman Office and the Independent Commission Against Corruption (ICAC).

There are a number of Divisions within Wollongong City Council that issue Penalty Notices; including Regulation & Enforcement, Environment and City Planning.

Penalty Notices are never issued unless an offence has been committed and, in all cases, contemporaneous notes are taken; in certain circumstances photographic evidence and or samples are also taken.

OBJECTIVE

The intention of this policy is to:

- Clarify and make consistent the procedures undertaken by Council Officers when issuing and reviewing Penalty Notices.
- Identify the rights of individuals in receipt of a Penalty Notice and the involvement of Council staff, Councillors and Members of Parliament in ensuring an open and transparent approach is undertaken in all dealings.
OFFENCES

The type of offences which incur a Penalty Notice are listed within the "Local Government – Fixed Penalty Handbook". The handbook identifies the short title description of the offence, the corresponding penalty amount, the codes the SDRO uses for processing, along with the relevant act and section the offence occurs under.

The assigning of penalties to an offence and specific penalty amounts are reviewed and amended by the Parliamentary Council which then refers changes to the Minister for "signing off". Once gazetted, the changes are enforced. Reviews are undertaken periodically.

Issuing Penalty Notices

No special dispensation is given when issuing Penalty Notices. Penalty Notices can be issued to members of the public, businesses and organisations [recognised legal entities], local or state government contractors, Councillors, Council staff and Members of Parliament.

Currently there are two types of Penalty Notices:

- **Electronic**: Electronic Penalty Notices can be issued for all offences and comprise of one document. The Penalty Notice can be served in the field or once the officer returns to the office. The data entered into the hand held device is electronically downloaded by Council staff to the SDRO website for processing.

- **Hand Written**: Penalty Notices can also be hand written and served in the field or once the officer returns to the office. They comprise three (3) parts. Part A is the original source document and is forwarded to the SDRO daily for loading on to the computer data base the lower section of part A is used for note taking. Additional notes are either kept on the reverse side Part B or recorded in the Officer’s note book.

  Part B is the duplicate and is retained in the infringement book for future reference and auditing. Council keeps an infringement book for 5 years.

  Part C is the triplicate and customer’s copy. This part is not entirely identical to that of Part A & B in that a copy of the contemporaneous note section is not provided. Part C is either handed to the offender, placed on an illegally parked vehicle, or mailed to the offender.

  It is a two-part notice. The top portion is the offender’s record of the infringement and also sets out the methods of disposal of the infringement available to the offender. The lower portion is the pay in slip or butt portion. It is designed to be detached and submitted with payment.

Payment or Appeal

Under the legislation, an individual has four options to deal with an infringement notice.

1) Pay the infringement notice penalty amount to the SDRO within the prescribed period (21 days from date of issue)

   **Payments are unable to be made at Council’s Customer Service Centre.**

2) Enact the owner –onus provision;
This refers to the transfer of responsibility. For example, in the case of a deposit litter from vehicle offence, the owner of the vehicle may nominate the person responsible for the vehicle at the time of the offence or the offender.

The transferring of responsibility requires the completion of a Statutory Declaration, nominating the full name and address of the person actually responsible for the offence.

3) Representation to the SDRO requesting the matter be reviewed and special consideration given due to exceptional circumstances.

For all pollution/environmental/building offences the matter will be referred to Council for comment. In these instances, a review officer will make a decision and advise the SDRO of the outcome.

4) Elect to have the matter heard in court (The individual must notify the SDRO should they wish to defend the matter before a Magistrate)

### Review Procedures

- Council cannot accept representations and offenders must be advised to direct their enquiries to the SDRO.
- Only written representations will be considered which have been supplied through the SDRO.

Upon receipt of written representations the following steps will be undertaken:

1) Reviewing Officer

The Reviewing Officer must either be the relevant Supervisor, Divisional Middle Manager or Divisional Manager depending on the staff member responsible for issuing the Penalty Notice.

The Reviewing Officer will carefully read and adjudicate all cases on their individual merits. Discretion, commonsense, fairness, consistency and adherence to Council’s policies & procedures will be used when making a decision. The review will always include reference to any contemporaneous notes, photographs and/or physical evidence.

Comments of the Issuing Officer will be sought whenever considered necessary for the clarification of either offence details or aspects raised within the representation.

Final adjudication will fall within one of the following categories:

i) Penalty to Stand - Where an offence is disclosed and no leniency is extended.
ii) Caution - Where an offence is disclosed and leniency is extended
iii) Withdrawn - Where no offence is disclosed.

The reviewing officer will complete a "Review of Penalty Notice Form" (Attachment 1). This form will form the basis for notification to the SDRO and for auditing purposes a copy will be kept on Council’s document management system.

2) Authority to withdraw Penalty Notice

Where it is determined that the Penalty Notice be withdrawn, only a relevant Assistant Manager or Divisional Manager can approve such action.

2) Conflict of Interest
It is unacceptable for a Reviewing Officer to handle representations in which they have a personal interest, or where it may be construed that they have a personal interest eg: representation by family, friends, etc. In such cases the relevant Director shall review the matter.

**SDRO Enforcement Process**

Council currently has what is referred to as a “premium level” contract with the SDRO. For each Penalty Notice that Council issues, no matter what the amount, the SDRO automatically deducts a set processing fee. This fee pays for various administrative services undertaken by the SDRO on Council’s behalf, including the issuing of warning letters, initial review of appeals and the collection and transfer of monies.

The SDRO currently applies the following process for enforcing Penalty Notices:

1. Processing of Penalty Notice issued
2. Penalty Notice reminder where correspondence has not been received (21 days)
3. Enforcement Order and administration fee issued where correspondence has not been received. (28 days)
4. Cancellation of driver license/vehicle registration
5. Garnish offenders wages and administration fee/ Sheriffs Office - Property Seizure Order
6. Option to undertake community service/imprisonment

**Enquiries from Councillors & Members of Parliament**

To reassure the community that Council has an open and transparent system in dealing with Penalty Notices, all enquiries from Councillors & Members of Parliament relating to the issuing of a Penalty Notice must be submitted in writing to the General Manager.

A written reply shall be provided to the subject Councillor or Member of Parliament within 72 hours and a copy of the reply will be stored on Council’s document management system.

Councillors and Members of Parliament are not able to direct the cancellation of any Penalty Notice nor are they able to contact Council Officers regarding the issuing of any Penalty Notice. Any Officer contacted directly by a Councillor on such matters has a duty to report the matter to their Director and/or, General Manager and/or Professional Conduct Coordinator.

**Acknowledgements**

Wollongong City Council acknowledges the Hurstville City Council Self Enforcing Infringement Notice System (SEINS) Policy in the creation of this document.
# REVIEW OF PENALTY INFRINGEMENT NOTICE

<table>
<thead>
<tr>
<th>Date</th>
<th></th>
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<tbody>
<tr>
<td>Penalty Notice Number</td>
<td></td>
</tr>
<tr>
<td>Short title of offence</td>
<td></td>
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<tr>
<td>Date of offence</td>
<td></td>
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<tr>
<td>Offender</td>
<td></td>
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<tr>
<td>Offenders Address</td>
<td></td>
</tr>
<tr>
<td>Penalty Amount</td>
<td></td>
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<tr>
<td>Location of offence</td>
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</tr>
</tbody>
</table>

Comments:

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

Recommendation:

- Penalty to Stand
- Caution
- Withdrawn

Reviewing Officer: ___________________ Date: ____________________________

I concur with above recommendation

Assistant/Divisional Manager: ____________ Date: __________________________
<table>
<thead>
<tr>
<th><strong>SUMMARY SHEET</strong></th>
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</thead>
<tbody>
<tr>
<td><strong>RESPONSIBLE DIVISION</strong></td>
</tr>
<tr>
<td><strong>MANAGEMENT PLAN FUNCTION</strong></td>
</tr>
<tr>
<td><strong>DATE ADOPTED ON BEHALF OF COUNCIL</strong></td>
</tr>
<tr>
<td><strong>DATE OF PREVIOUS ADOPTION(S)</strong></td>
</tr>
<tr>
<td><strong>DATE FOR REVIEW</strong></td>
</tr>
</tbody>
</table>