

ITEM 9 POLICY REVIEW - REGULATORY FINE REVIEW POLICY

Council's Regulatory Fine Review Policy has been reviewed and updated to include minor terminology and process amendments. This report provides an overview of the review and the revised Policy for Council's consideration.

RECOMMENDATION

The amended Regulatory Fine Review Policy be adopted.

REPORT AUTHORISATIONS

Report of: Corey Stoneham, Manager Regulation + Enforcement
Authorised by: Linda Davis, Director Planning + Environment - Future City + Neighbourhoods

ATTACHMENTS

- 1 Regulatory Fine Review Policy

BACKGROUND

The Regulatory Fine Review Policy was previously adopted by Council in 2011, 2013 and 2019.

The *Fines Act 1996*, provides that all agencies that issue penalty notices have the power to internally review the decision to issue a penalty notice. The Internal Review Guidelines under the Fines Act sets out a standard to assist agencies to conduct internal reviews of penalty notices.

Wollongong City Council provides an on the spot, written notification to drivers when issuing parking fines. Under certain circumstances where the vehicle may have driven off or it is physically impossible to place the fine on the vehicle at the time of issue, Council will post out the fine.

The Regulatory Fine Review Policy is a Council Policy, prepared in accordance with the Internal Review Guidelines and Fines Act.

PROPOSAL

Some minor changes and modifications to the Policy are proposed with the key changes being detailed below:

- Language changes from the 'Penalty Notice' term to 'Fine', as per Revenue NSW advice
- Language changes to reflect change from 'NSW Office of State Revenue' to 'NSW Department of Customer Service'
- Reference that payment can be made online or at branches of Service NSW
- Clarification of some review procedure requirements, relating to reference to clause 2.3, when a Reviewing Officer elects to provide direct email response to a fine enquiry, and completing a 'Review of Fine Form'
- Introduction of Memorandum of Understanding for delivery of a premium level service with Revenue NSW.

CONSULTATION AND COMMUNICATION

The Regulatory Fine Review Policy has been reviewed by the Regulation and Enforcement, Development Assessment and Certification, Open Space and Environment Services, and Governance divisions and any feedback has been incorporated.

In cases where no or only minor changes are proposed to a policy, community consultation is not required. As this review proposes minor changes, the Policy has not been placed on exhibition for broad community consultation.

PLANNING AND POLICY IMPACT

This report contributes to the delivery of Our Wollongong 2032 Goal 5: “We are a healthy community in the liveable City”, specifically 5.11 ‘Local crime continues to be prevented and levels of crime reduced’.

FINANCIAL IMPLICATIONS

There are no financial implications with the endorsement of this Policy.

CONCLUSION

The Regulatory Fine Review Policy (attached) provides a framework for Council’s Regulation and Enforcement, Open Space and Environmental Services, and Development Assessment and Certification staff to issue fines and understand the process regarding payment or appeal, review procedures and enforcement processes.

The Policy has undergone a term review as required, and the revised Policy is recommended for Council adoption. As only minor changes are proposed to contemporise legislative references and improve clarity, public consultation is not required.



REGULATORY FINEPENALTY NOTICE REVIEW COUNCIL POLICY

ADOPTED BY COUNCIL: [TO BE COMPLETED BY GOVERNANCE]

PURPOSE

The Self-Enforcing Infringement Notice Scheme (SEINS) provides for the issuing of ~~fFinesPenalty Notices~~ for a range of statutory offences.

Briefly, the Scheme allows certain law enforcement agencies, 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 Revenue NSW which has commercialised its services and undertakes, on behalf of government authorities, the processing of ~~fFinesPenalty Notices~~. Council has entered into a "premium level" ~~sService~~ ~~Level~~ ~~a~~Agreement with Revenue NSW for this service to be provided to Council.

The scheme is continually audited by Revenue NSW, its parent organisation the ~~NSW Office of State Revenue (OSR)~~Department of Customer Service and in certain circumstances, can be reviewed by the NSW Ombudsman and the Independent Commission Against Corruption (ICAC).

There are a number of divisions within Wollongong City Council that issue ~~fFinesPenalty Notices~~; including Regulation and Enforcement, Open Space and Environmental Services and Development Assessment and Certification.

~~Fines Penalty Notices~~ are ~~never not~~ issued unless prima facie evidence of an offence exists, and, in all cases, ~~evidence~~ is gathered, including, but not limited to, contemporaneous notes, photographs, measurements and/or samples.

Related ~~p~~Policies and ~~P~~procedures

Wollongong City Council Compliance ~~& and~~ Enforcement Policy.

POLICY INTENT

The main objectives of this policy are to:

- 1 ~~c~~Clarify and make consistent the procedures undertaken by ~~c~~Council ~~o~~Officers when issuing and reviewing ~~fFinesPenalty Notices~~;
- 2 ~~i~~Identify the rights of individuals in receipt of a ~~FfinePenalty Notice~~ and the involvement of Council staff, Councillors and Members of Parliament in ensuring an open and transparent approach is undertaken in all dealings.

WOLLONGONG 2032 OBJECTIVES

This policy supports Goal 5 ~~—~~ 'We have a healthy community in a liveable city, of the Our Wollongong Our Future 2032 Community Strategic Plan'. Specifically, ~~5.11~~ Local crime continues to be prevented and levels of crime reduced.

POLICY

This policy aims to provide a consistent and transparent enforcement framework for the issuing and reviewing of ~~fFinesPenalty Notices~~

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STATEMENT OF PROCEDURES

OFFENCES

The types of offences which incur a ~~Fine~~ **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 that Revenue NSW 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 is reviewed and amended by the Parliamentary Council. Once gazetted, the changes are enforced. Reviews are undertaken periodically.

ISSUING ~~PENALTY NOTICES~~ **FINES**

All Council ~~o~~ **Officers** that issue ~~f~~ **Fines** ~~Penalty Notices will must~~ complete the SEINS Online training before commencing with issuing ~~Fines~~ **Penalty Notices** - this training will be refreshed as required.

When an ~~o~~ **Officer** is in the course of issuing a ~~F~~ **ine** ~~Penalty Notice~~ they must consider, as part of the issuing process, the Caution Guidelines under the *Fines Act 1996*. These Guidelines are to assist Officers in exercising discretion; they do not create a right or obligation to give a ~~c~~ **Caution** in place of a ~~Penalty Notice~~ **Fine**.

Special dispensation is not given when issuing ~~f~~ **Fines** ~~Penalty Notices~~. ~~Fines~~ **Penalty Notices** can be issued to members of the public, businesses and organisations (recognised legal entities), and Local or State Government contractors, Councillors, Council staff and Members of Parliament.

~~Wollongong City~~ Council only processes ~~f~~ **Fines** ~~Penalty Notices~~ electronically and issues them via a handheld computer system. Electronic ~~f~~ **Fines** ~~Penalty Notices~~ can be issued for all offences and comprise of one (1) document. The ~~F~~ **ine** ~~Penalty Notice~~ can be served in the field, or once the ~~o~~ **Officer** returns to the office. The data entered into the hand-held device is electronically ~~up~~ **down** loaded by Council staff to the Revenue NSW website for processing.

More serious offences are dealt with by way of Court Attendance Notices.

PAYMENT OR APPEAL

Under ~~the~~ **L**egislation, an individual has four (4) options to deal with an ~~Infringement Notice~~ **fine**:

- 1 Pay the ~~f~~ **ine** ~~Infringement Notice~~ penalty amount to Revenue NSW within the prescribed period (21 days from ~~the~~ date of issue) - ~~it~~ should be noted that payment is not an admission of guilt. ~~Payment can be made online or at branches of Service NSW.~~

Please nNote: 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 and must be submitted to Revenue NSW.

- 3 Make representation to Revenue NSW requesting the matter be reviewed (~~Request for Review~~) 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~~ **decide** and advise Revenue NSW of the outcome.

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For all other offences, Revenue NSW will also, at times, seek further clarification or information from Council with regards to the circumstances relating to the fine being issued before a determination is made.

- 4 Elect to have the matter heard in Court. ~~(The individual must notify Revenue NSW should if they wish to have the matter determined by a Magistrate).~~

REVIEW PROCEDURES

Council cannot accept representations other than in circumstances outlined above and recipients of ~~Penalty Notices~~ Fines must be advised to direct their enquiries to Revenue NSW.

Where a person makes a written representation to ~~the Council~~, this representation will be forwarded to Revenue NSW for ~~Revenue NSW to consider~~ consideration as if the representation was made directly to Revenue NSW (as required ~~by under~~ clause 2.36 Revenue NSW Service Level Agreement) ~~of the current Memorandum of Understanding between the Commissioner of Fines Administration and Wollongong City Council, for services provided under the Fines Act 1996~~. The person making this representation will be advised that this has occurred.

Only representations supplied through Revenue NSW will be considered.

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

1 Reviewing Officer

- The Reviewing Officer must ~~either be~~ either the relevant Supervisor/Coordinator, ~~Divisional Middle Manager~~ or Divisional Manager, depending on the ~~staff member~~ officer responsible for issuing the ~~Fine~~ Penalty Notice.
- The Reviewing Officer will ~~carefully read and adjudicate~~ consider and determine all cases on their individual merits. Discretion, common ~~_~~ sense, fairness, consistency and adherence to Council's policies and procedures will be used when making a decision. The review will always include reference to any previous warning, contemporaneous notes, photographs and/or physical evidence.

Comments from 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 (1) of the following categories -

- i ~~Fine~~ Penalty to Stand - where prima facie evidence of an offence is disclosed (ie issued lawfully) and no leniency is extended.
- ii Caution - where prima facie evidence of an offence is disclosed and leniency is extended under exceptional circumstances.

iii Withdrawn - where no offence is disclosed and includes an administration oversight.

Under advice from Revenue NSW the Reviewing Officer may elect to provide direct email response to a fine enquiry. The email response must be registered in Council's records management system and related to the request from Revenue NSW on file.

iii ~~—~~ Alternatively, the

~~The~~ Reviewing Officer ~~will~~ can complete a Council 'Review of ~~Penalty Notice~~ Fine Form' (Attachment 1). ~~The scanned, completed form must then be attached to an email and transmitted to Revenue NSW and the sent item registered in Council's records management system and related to the request from Revenue NSW on file. This form is the basis for notification to Revenue NSW of WCC recommendations—for auditing purposes a copy will be kept on Council's document management system.~~

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2 Authority to ~~Withdraw~~ ~~Penalty Notice~~ ~~Fine~~

Where it is determined that the ~~Penalty Notice~~ ~~Fine~~ be withdrawn, only a relevant ~~Supervisor/Coordinator, Middle Manager,~~ Manager or Divisional Manager can approve such action.

3 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 e.g. representation by family, friends, etc. In such cases the ~~Divisional~~ ~~Divisional~~ Manager ~~shall will~~ review the matter.

REVENUE NSW ENFORCEMENT PROCESS

Council currently has a ~~Memorandum of Understanding for delivery of a "premium level" Service Level Agreement~~ with Revenue NSW. For each ~~Penalty Notice~~ ~~Fine~~ that Council issues, no matter the amount, Revenue NSW automatically deducts a set processing fee. This fee pays for ~~various a range of~~ administrative services undertaken by Revenue NSW on Council's behalf, including the issuing of reminder letters, reviews of representations, processing of Court Attendance Notices and the collection and transfer of monies.

In accordance with the current ~~Service Level Agreement~~ ~~Memorandum of Understanding~~, Revenue NSW applies the following process for enforcing ~~Penalty Notices~~ ~~Fines~~ on behalf of Council:

- 1 Processing of ~~Fine~~ ~~Penalty Notice~~ issued;
- 2 ~~Fine~~ ~~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 licence/vehicle registration;
- 5 Garnish offenders' wages and administration fee/ Sheriff's Office - Property Seizure Order;
- 6 Option to undertake community service/imprisonment.

ENQUIRIES FROM COUNCILLORS AND MEMBERS OF PARLIAMENT

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

A written reply ~~shall will~~ be provided to the Councillor or Member of Parliament within ~~ten (10)~~ working days 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~~ ~~Fine~~, nor are they able to contact Council Officers regarding the issuing of any ~~Penalty Notice~~ ~~Fine~~. 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.

Council's Councillor Request system allows Councillors to enquire, on behalf of a community member, into a Regulation and Enforcement matter.

~~PENALTY NOTICE~~ REGULATORY FINE REVIEW


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~~Attachment 1. Review of Penalty Notice Form~~

PENALTY NOTICE REGULATORY FINE REVIEW

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Attachment 1: Review of Penalty Notice Form

FORM REVIEW OF PENALTY NOTICE		
<small>Privacy Notification (Privacy and Personal Information Protection Act 1998 – Section 10) - The personal information that Council is collecting from you on this application form is personal information for the purposes of the Privacy and Personal Information Protection Act 1998 (the Act). The intended recipients of the personal information are officers within the Council and any person wishing to inspect the application in accordance with the Local Government Act 1993 or the Government Information (Public Access) Act 2009. The supply of the information by you is not voluntary and if you cannot provide or do not wish to provide the information sought, the Council will be unable to process your application. You may make application for access or amendment to information held by Council. You may also make a request that Council suppress your personal information from a public register. Council will consider any such application in accordance with the legislation. Council is to be regarded as the agency that holds the information. Enquiries concerning this matter can be addressed to Council by telephoning 4227 7111.</small>		
CHOOSE FROM THIS DROP DOWN MENU		
Date		
Penalty Notice Number		
Short Title of Offence		
Date of Offence		
Recipient		
Recipient's Address		
Penalty Amount		
Location of Offence		
COMMENTS		
REVIEW RECOMMENDATIONS		
<input type="checkbox"/> Penalty to Stand	<input type="checkbox"/> Caution	<input type="checkbox"/> Withdrawn
ANNULMENT APPLICATION SCHEDULE RECOMMENDATION		
<input type="checkbox"/> Proceed to Court	<input type="checkbox"/> Caution	<input type="checkbox"/> No Action
REVIEWING OFFICER		
I ACKNOWLEDGE THE ABOVE RECOMMENDATION		
CHOOSE		

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LEGISLATIVE REQUIREMENTS

Fines Act 1996

REVIEW

Council is to have opportunity to review and adopt, at least once during its Term, each Council policy.

A resolution of Council is required to adopt any variations to this policy, with the exception of minor administrative changes, such as updates to legislative references, which may be endorsed by the Executive Management Committee (EMC). Endorsement of administrative changes made to this policy by EMC does not alter the requirement for it to be reviewed and adopted by each Term of Council.


~~RELATED STRATEGIES, POLICIES AND PROCEDURES~~

~~Wollongong City Council – Compliance and Enforcement Policy.~~

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Attachment 1

FORM REVIEW OF FINE		
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CHOOSE FROM THIS DROP DOWN MENU		
Date		
Fine Number		
Short Title of Offence		
Date of Offence		
Recipient		
Recipient's Address		
Penalty Amount		
Location of Offence		
COMMENTS		
REVIEW RECOMMENDATIONS		
<input type="checkbox"/> Penalty to Stand	<input type="checkbox"/> Caution	<input type="checkbox"/> Withdrawn
ANNULMENT APPLICATION SCHEDULE RECOMMENDATION		
<input type="checkbox"/> Proceed to Court	<input type="checkbox"/> Caution	<input type="checkbox"/> No Action
REVIEWING OFFICER		
I ACKNOWLEDGE THE ABOVE RECOMMENDATION		
CHOOSE		

~~PENALTY NOTICE~~ REGULATORY FINE REVIEW COUNCIL POLICY

APPROVAL AND REVIEW	
Responsible Division	<u>Regulation & Enforcement</u>
Date adopted by Council	[To be inserted by Corporate Governance]
Date/s of previous adoptions	<u>27/05/2019; 25/11/2013; 28/11/2011</u>
Date of next review	[Not more than two years from last adoption]