



PITTWATER COUNCIL

Agenda

Council Meeting

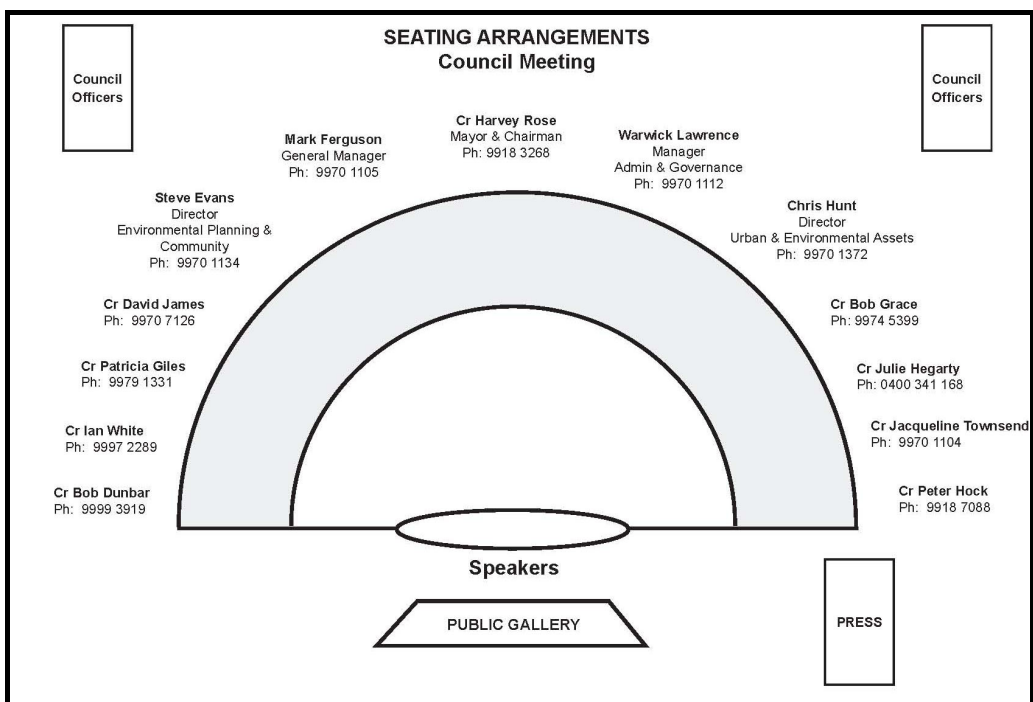
Notice is hereby given that a Council Meeting of Pittwater Council will be held at Mona Vale Memorial Hall on

4 July 2011

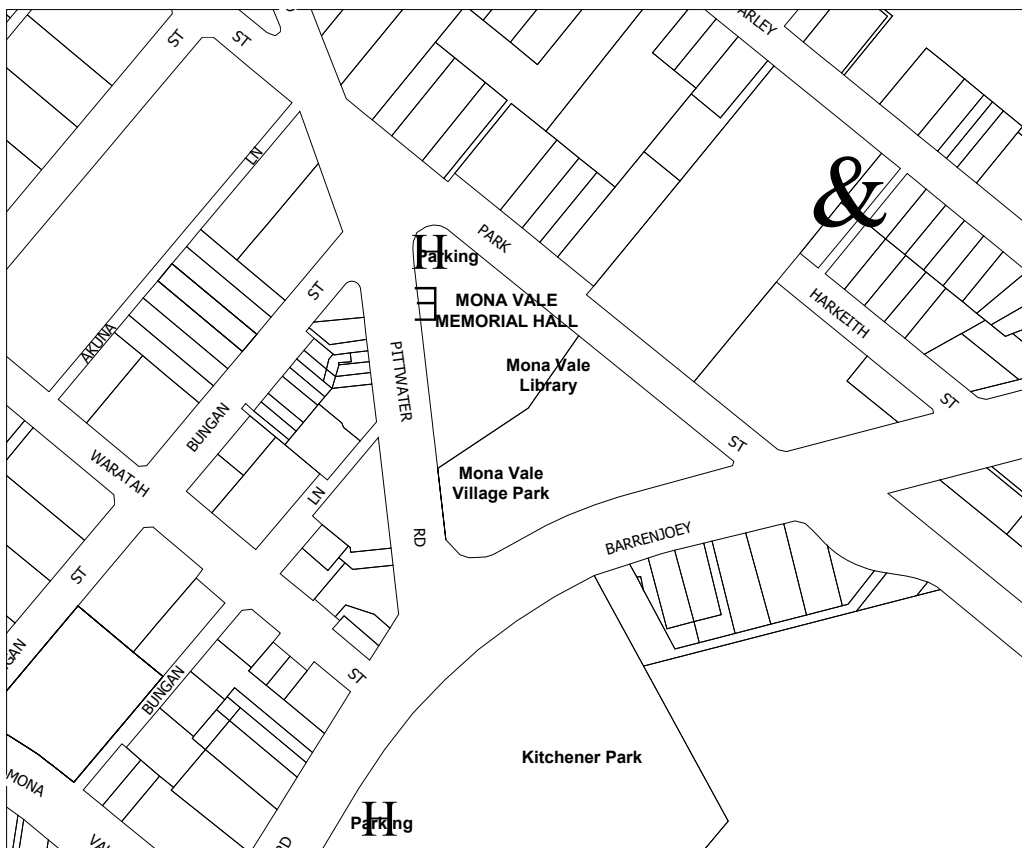
Commencing at 6.30pm for the purpose of considering the items included on the Agenda.

Mark Ferguson
GENERAL MANAGER

Seating Arrangements



Meeting Location



All Pittwater Council's Agenda and Minutes are available on the Pittwater website at www.pittwater.nsw.gov.au

Council Meeting

Acknowledgement of Country

Pittwater Council honours and respects the spirits of the Guringai people.
Council acknowledges their traditional custodianship of the Pittwater area

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**The Senior Management Team
has approved the inclusion of
all reports in this agenda.**

Council Meeting

1.0 Apologies

Apologies must be received and accepted from absent Members and leave of absence from the Council Meeting must be granted.

2.0 Declarations of Pecuniary and Conflict of Interest including any Political Donations and Gifts.

Councillors are advised of the following definitions of a "pecuniary" or "conflict" of interest for their assistance:

- * Section 442 of the Local Government Act, 1993 states that a "pecuniary" interest is as follows:
 - "(1) **[Pecuniary interest]** A Pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person or another person with whom the person is associated.
 - (2) **[Remoteness]** A person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the person might make in relation to the matter."

Councillors should reference the Local Government Act, 1993 for detailed provisions relating to pecuniary interests.

- * Council's Code of Conduct states that a "conflict of interest" exists when you could be influenced, or a reasonable person would perceive that you could be influenced by a personal interest when carrying out your public duty.

Councillors are also reminded of their responsibility to declare any Political donation or Gift in relation to the Local Government & Planning Legislation Amendment (Political Donations) Act 2008.

- * A reportable political donation is a donation of:
 - \$1,000 or more made to or for the benefit of the party, elected member, group or candidate; or

- \$1,000 or more made by a major political donor to or for the benefit of a party, elected member, group or candidate, or made to the major political donor; or
 - Less than \$1,000 if the aggregated total of the donations made by the entity or person to the same party, elected member, group, candidate or person within the same financial year (ending 30 June) is \$1,000 or more.
-

3.0 Confirmation of Minutes

“Councillors are advised that when the confirmation of minutes is being considered, the only question that can arise is whether they faithfully record the proceedings at the meeting referred to. A member of a council who votes for the confirmation of the minutes does not thereby make himself a party to the resolutions recorded: **Re Lands Allotment Co (1894) 1 Ch 616, 63 LJ Ch 291.**”

Minutes of the Council Meeting held on 20 June 2011.

4.0 Business by Exception (All items on the Agenda)

Items that are dealt with by exception are items where the recommendations contained in the reports in the Agenda are adopted without discussion.

Statement of Respect

Pittwater Council promotes and strives to achieve a climate of respect for all and endeavours to inspire in our community shared civic pride by valuing and protecting our unique environment, both natural and built, for current and future generations.

5.0 Public Addresses

The following guidelines apply to any person addressing a Council / Committee meeting in relation to an item on the Council / Committee meeting agenda:

1. *A member of the public may be granted leave to address a meeting of Council or a Committee, where such a request is received by the General Manager no later than 3.00pm on the day of the meeting. This is subject to:*
 - (a) *A maximum of up to four speakers may address on any one item, with a maximum of two speakers in support of the recommendation in the report, and two speakers in opposition.*
 - (b) *A limitation of three minutes is allowed for any one speaker, with no extensions.*
 - (c) *An objector/s to a development application is to speak first with the applicant always being given the right to reply.*

Exceptions to these requirements may apply where:

- (a) *The Meeting specifically requests that a person be interviewed at a meeting.*
 - (b) *The Meeting resolves that a person be heard at the meeting without having given prior notice to the General Manager*
2. *Once a public/resident speaker has completed their submission and responded to any Councillor questions, they are to return to their seat in the public gallery prior to the formal debate commencing.*
3. *No defamatory or slanderous comments will be permitted. Should a resident make such a comment, their address will be immediately terminated by the Chair of the meeting.*
4. *Council's general meeting procedures apply to Public Addresses, in particular, no insults or inferences of improper behaviour in relation to any other person is permitted.*
5. *Residents are not permitted to use Council's audio visual or computer equipment as part of their address. However, photographs, documents etc may be circulated to Councillors as part of their address.*

6.0 Mayoral Minutes

7.0 Council Meeting Business

C7.1	N0052/11 - 4 Boundary Street & 10 Jubilee Avenue, Warriewood - Construction of a new private road to access 120 Mona Vale Road
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Meeting: Council

Date: 4 July 2011

STRATEGY: LAND USE & DEVELOPMENT

ACTION: Provide an effective development assessment and determination process

PURPOSE OF REPORT

To inform the Committee of the Development Unit's recommendation following consideration of Development Application N0052/11 - 4 BOUNDARY STREET, WARRIEWOOD (Lot 2 DP 816070), 10 JUBILEE AVENUE, WARRIEWOOD (Lot 10 DP 5055) Construction of a new private road to access 120 Mona Vale Road.

1.0 BACKGROUND

- 1.1 This matter was considered at the Council Meeting held on Monday, 20 June, 2011, and Council resolved to defer consideration of this matter to this Council Meeting. Cr Grace had expressed interest in this matter but was unable to attend the Meeting. He had requested deferral until such time as he could be present to take part in discussions.
- 1.2 The Development Unit, at its meeting held on Thursday, 9 June 2011 considered the Development Officer's report (**Attachment 1**) for determination of Development Application N0052/11 for the Construction of a new private road to access 120 Mona Vale Road.

2.0 REASON FOR REFERRAL TO COUNCIL

- 2.1 This item was called by Cr Grace.

3.0 DEVELOPMENT UNIT DELIBERATIONS

- 3.1 The owners, the applicants and their consultants addressed the Development Unit on the application and suggested that the road and roundabout could be provided to conform with Council's engineering and traffic requirements. The owner also raised issues concerning past decisions of the Council and financial concerns and sought at least "In-principle" support of the proposed road.
- 3.2 Development Unit members advised those present that it was not in the Development Unit's Charter to provide an in-principle support of any proposal, but could only determine the application that was before it based on the planning and engineering merits of the proposal.
- 3.3 Development Unit members suggested that the application was premature given that there was no overall strategy for the land proposed to be serviced by this road and that there were significant engineering and environmental issues relating to the construction of the road.

3.4 The Development Unit also advised that it considered the proposed road was prohibited under the PLEP 1993 as it was an ancillary component of a prohibited use of the land to which it was to service.

3.5 The owner and applicant were suggested to consider their options in light of comments made at the meeting and in particular the option of withdrawing the application at this time.

4.0 ISSUES

- Transport and traffic issues
- Environmental issues
- Scenic protection
- Prohibited development

5.0 SUSTAINABILITY ASSESSMENT

5.1 The relevant Environmental, Social and Economic issues have been addressed within the attached report.

6.0 EXECUTIVE SUMMARY

6.1 The application was considered by the Development Unit at its meeting held on 9 June 2011 and after hearing from the owners, applicants and their consultants and noting that there were no objectors present, endorsed the Assessing Officer's recommendation for refusal for the reason contained in the draft determination.

RECOMMENDATION

That the recommendation in the Development Officers Report be endorsed and Application N0052/11 - 4 Boundary Street, Warriewood (Lot 2 DP816070), 10 Jubilee Avenue, Warriewood (Lot 10 DP5055) for the construction of a new private road to access 120 Mona Vale Road, Warriewood be refused subject to the reasons for refusal contained in the Draft Determination.

Report prepared by

Warwick Lawrence

**MANAGER ADMINISTRATION AND GOVERNANCE
and DEVELOPMENT UNIT CHAIRMAN**

**SUBJECT: N0052/11 - 4 BOUNDARY STREET, WARRIEWOOD (Lot 2 DP 816070),
10 JUBILEE AVENUE, WARRIEWOOD (Lot 10 DP 5055) Construction
of a new private road to access 120 Mona Vale Rd.**

**Determination
Level:**

Development Unit

Date: 9 June 2011

**SUMMARY OF RECOMMENDATION
REFUSAL**

REPORT PREPARED BY: Sophie Garland
APPLICATION SUBMITTED ON: 28/02/2011
APPLICATION SUBMITTED BY: OPERA PROPERTIES PTY LTD
7 GRAYLIND CLOSE
COLLARROY 2097
OWNER(S): PLANET WARRIEWOOD PTY LTD (Own)
UNITING CHURCH AUSTRALIA PROPERTY TRUST (Own)

1.0 DEVELOPMENT CONTROLS

The subject sites are zoned 1(b) Non-Urban pursuant to Pittwater Local Environmental Plan (PLEP) 1993. In terms of statutory permissibility, a private road can in various circumstances be considered a separate land use and therefore, not prohibited development under Clause 9 of PLEP 1993 within the 1(B) Non-Urban "B" zone.

In this instance, the primary purpose of the proposed private road is to support the future residential development of 120 Mona Vale Rd for urban land release purposes. Under the current zoning, this is neither permitted nor consistent with PLEP 1993.

In these circumstances, the road is considered to be a necessary and ancillary component of a prohibited use and is therefore prohibited under PLEP 1993.

2.0 NOTIFICATIONS

43 property owners notified

1 submission in support of the application

3.0 ISSUES

- B5.7 Stormwater Management - On-Site Stormwater Detention
- B5.9 Stormwater Management - Water Quality - Other than Dwelling House, Dual Occupancy and Secondary Dwellings
- B5.10 Stormwater Discharge into Public Drainage System
- B6.4 Internal Driveways - All Development other than Dwelling Houses, Secondary Dwelling and Dual Occupancy
- B6.10 Transport and Traffic Management - All Development other than Dwelling Houses, Secondary Dwelling and Dual Occupancy
- B4.18 Heathland/Woodland Vegetation
- B8.1 Construction and Demolition - Excavation and Landfill
- D16.12 Landscaping
- D14.1 Character as viewed from a public place
- D14.2 Scenic protection - General

4.0 COMPLIANCE TABLE

T - Can the proposal satisfy the technical requirements of the control?

O - Can the proposal achieve the control outcomes?

N - Is the control free from objection?

Control	Standard	Proposal	T	O	N
REF - Development Engineer					
B3.1 Landslip Hazard			Y	Y	Y
B3.22 Flood Hazard - Flood Category 3 - All Development			-	-	-
B5.4 Stormwater Harvesting			-	-	-
B5.5 Rainwater Tanks - Business, Light Industrial and Other Development			-	-	-
B5.6 Rainwater Tanks - Water Supply			-	-	-
B5.7 Stormwater Management - On-Site Stormwater Detention			N	N	Y
B5.9 Stormwater Management - Water Quality - Other than Dwelling House, Dual Occupancy and Secondary Dwellings			N	N	Y
B5.10 Stormwater Discharge into Public Drainage System			N	N	Y
B5.12 Stormwater Drainage Systems and Natural Watercourses			-	-	-
B5.14 Stormwater Drainage Easements (Public Stormwater Drainage System)			-	-	-
B6.2 Access Driveways and Works on the Public Road Reserve- All Development other than Dwelling Houses, Secondary Dwelling and Dual Occupancy			N	N	Y
B6.4 Internal Driveways - All Development other than Dwelling Houses, Secondary Dwelling and Dual Occupancy			N	N	Y
B6.6 Off-Street Vehicle Parking Requirements - All Development other than Dwelling Houses, Secondary Dwelling and Dual Occupancy			-	-	-
B6.9 On-Street Parking Facilities - All Development other than Dwelling Houses, Secondary Dwellings and Dual Occupancy			-	-	-
B6.10 Transport and Traffic Management - All Development other than Dwelling Houses, Secondary Dwelling and Dual Occupancy			N	N	Y
B8.1 Construction and Demolition - Excavation and Landfill		The amount of the excavation to accommodate the proposed road construction is considered to result in unacceptable environmental impacts.	N	N	Y
B8.2 Construction and Demolition - Erosion and Sediment Management			Y	Y	Y
B8.3 Construction and Demolition - Waste Minimisation			Y	Y	Y

Control	Standard	Proposal	T	O	N
B8.4 Construction and Demolition - Site Fencing and Security			Y	Y	Y
B8.5 Construction and Demolition - Works in the Public Domain			Y	Y	Y
C6.4 Flood - Warriewood Valley Land Release Area Residential Sectors			Y	Y	Y
C6.18 Utilities and services - Warriewood Valley Land Release Area			Y	Y	Y
REF - Bushfire					
B3.2 Bushfire Hazard		The application was not referred to the NSW RFS. It has been confirmed with the RFS that a referral is not required as no additional dwellings are proposed. It was noted that the proposed road would inevitably improve access to the sites in Boundary St and Mona Vale Rd.	Y	Y	Y
REF - Natural Resources					
B1.4 Aboriginal Heritage Significance			Y	Y	Y
B3.5 Acid Sulphate Soils			Y	Y	Y
B4.18 Heathland/Woodland Vegetation		Proposed road will result in the removal of significant canopy trees and native vegetation.	N	N	Y
D16.12 Landscaping			N	N	Y
REF - Planner					
EPA Act Section 147 Disclosure of political donations and gifts			Y	Y	Y
3.1 Submission of a Development Application and payment of appropriate fee		Owners consent has been provide from the owners of both 4 Boundary St and 10 Jubilee Ave.	Y	Y	Y
3.2 Submission of a Statement of Environmental Effects			Y	Y	Y
3.3 Submission of supporting documentation - Site Plan / Survey Plan / Development Drawings			Y	Y	Y
3.4 Notification		14 day notification	Y	Y	Y
3.5 Building Code of Australia			Y	Y	Y
3.7 Designated Development			-	-	-
4.1 Integrated Development: Water Supply, Water Management and Water Activity			-	-	-
4.4 Integrated Development: Bushfire			-	-	-
4.5 Integrated Development: Aboriginal Objects and Places			-	-	-
4.6 Integrated Development - Protection of the Environment			-	-	-
4.7 Integrated Development - Roads			-	-	-
5.1 Referral to the Roads and Traffic Authority under SEPP (Infrastructure) 2007			-	-	-
5.2 Referral to the NSW Police Service			-	-	-
5.3 Referral to NSW Department of Environment and Climate Change (DECC)			-	-	-

Control	Standard	Proposal	T	O	N
A1.7 Considerations before consent is granted		The proposal includes provision of access to future lots at 120 Mona Vale Rd currently zoned 1(A) Non-Urban 'A'. No formal application has been received by Council to rezone this land and the proposal to therefore, proposing to provide a road to service a development, which is currently prohibited under the zoning.	N	N	Y
B1.3 Heritage Conservation - General			-	-	-
B3.2 Bushfire Hazard		The application was not referred to the NSW RFS. It has been confirmed with the RFS that a referral is not required as no additional dwellings are proposed. It was noted that the proposed road would inevitably improve access to the sites in Boundary St and Mona Vale Rd.	Y	Y	Y
B3.6 Contaminated Land and Potentially Contaminated Land			Y	Y	Y
B5.1 Water Management Plan		Comments provided regarding water management. Urban Infrastructure has advised that there is lack of evidence provided that demonstrates adequate drainage of the road.	N	N	Y
B5.2 Wastewater Disposal			Y	Y	Y
B5.3 Greywater Reuse			-	-	-
B5.12 Stormwater Drainage Systems and Natural Watercourses			-	-	-
C1.14 Separately Accessible Structures			-	-	-
C2.14 Commercial Swimming Pools			-	-	-
C5.1 Landscaping			-	-	-
C5.2 Safety and Security			-	-	-
C5.4 View Sharing			-	-	-
C5.5 Accessibility			-	-	-
C5.7 Energy and Water Conservation			-	-	-
C5.8 Waste and Recycling Facilities			-	-	-
C5.9 Business Identification Signs			-	-	-
C5.10 Protection of Residential Amenity			-	-	-
C5.11 Advertisements			-	-	-
C5.14 Car/Vehicle/Boat Wash Bays			-	-	-
C5.15 Undergrounding of Utility Services			-	-	-
C5.16 Building Facades			-	-	-
C5.18 Public Road Reserve - Landscaping and Infrastructure			-	-	-
C5.19 Food Premises Design Standards			-	-	-
C5.20 Liquor Licensing Applications			-	-	-
C5.21 Plant, Equipment Boxes and Lift Over-Run			-	-	-
D14.1 Character as viewed from a public place		The proposal is expected to result in detrimental visual impact with the significant removal of existing trees and vegetation.	N	N	Y
D14.2 Scenic protection - General		The proposal will result in unacceptable visual impact to the Escarpment when viewed from the surrounding area due to the significant removal of native vegetation and canopy trees.	N	N	Y

Control	Standard	Proposal	T	O	N
D14.3 Building colours and materials			-	-	-
D14.4 Height - General			-	-	-
D14.7 Front building line			-	-	-
D14.8 Side and rear building line			-	-	-
D14.14 Site coverage - Non Urban					
D14.16 Fences - Flora and Fauna Conservation Areas			-	-	-
D14.17 Construction, Retaining walls, terracing and undercroft areas			Y	Y	Y
Other State Environmental Planning Policies (SEPPs)			Y	Y	Y

*Issues marked with an **x** are discussed later in the report.
Issues marked with a - are not applicable to this Application.

5.0 SITE DETAILS

The sites subject to the proposed application are known as 4 Boundary St, Warriewood (Lot 2 DP 816070) and 10 Jubilee Ave, Warriewood (Lot 10 DP 5055). The site at 10 Jubilee Ave is currently occupied by the Uniting Church and contains a number of buildings including the Church, a recreation complex and childcare as well as associated car parks. Access to this site is currently provided via a private access driveway from Jubilee Ave with a right of carriageway by the terms of a Section 88B Instrument benefiting Council in away that allow it to provide for access to existing properties in Boundary St. The site 4 Boundary St is a clear area with a horse exercise area as well as a dwelling house and ancillary structure located in the southeastern corner. The areas of the site proposed for the road construction contain significant vegetation and canopy trees with sections of the sites sloping steeply. The sites are identified as being bushfire prone and subject to land slip.

6.0 PROPOSAL IN DETAIL

The proposal seeks approval for the construction of a new private road to be created on two adjoining lots: 4 Boundary St and 10 Jubilee Rd. The proposed road will provide vehicular access from Jubilee Ave to Boundary St as well as access to the allotment at 120 Mona Vale Rd. The proposal will involve the construction of retaining walls to accommodate the road construction located within the fringe of the right of carriage way once created required. The proposed road is 227m in length with a gradient as steep as 20% for approximately 100 metres.

7.0 BACKGROUND

The application was lodged on 28th February 2011 and notified for 14 days in accordance with Council's Notification policy. During this time, one submission was received in support of the proposal. The application was referred to the Warriewood Valley Strategic Land Release Team who made comments regarding roads and traffic, drainage, natural resources as well as the strategic framework of the Warriewood Valley land release area.

8.0 STATE ENVIRONMENTAL PLANNING POLICY NO. 1 - DEVELOPMENT STANDARDS (SEPP No. 1)

The application of SEPP NO. 1 is not required.

9.0 EXISTING USE RIGHTS

Does the proposal rely on Existing Use Rights? No

10.0 DISCUSSION OF ISSUES

- **B5.7 Stormwater Management - On-Site Stormwater Detention, B5.9 Stormwater Management - Water Quality - Other than Dwelling House, Dual Occupancy and Secondary Dwellings & B5.10 Stormwater Discharge into Public Drainage System**

The following comments have been provided by Council's Urban Infrastructure Department:

The proposal has submitted does not address/satisfy the following matters as required by the Pittwater 21 DCP:

- 1. Demonstration of an adequate 20 year (Average Recurrence Interval) ARI road drainage system to control and drain the proposed road;*
 - 2. The lack of any proposed inter-allotment drainage systems to legally drain stormwater across neighbouring properties;*
 - 3. The lack of any proposed on-site detention systems to control flows off the proposed road to achieve pre-development discharges up to the 100 year ARI event;*
 - 4. The lack of any proposed water quality facilities to control and to clean up poor quality stormwater runoff from road generated runoff.*
- **B6.10 Transport and Traffic Management - All Development other than Dwelling Houses, Secondary Dwelling and Dual Occupancy & B6.4 Internal Driveways - All Development other than Dwelling Houses, Secondary Dwelling and Dual Occupancy**

The proposed road is intended to service a large number of new private properties to the west and as such it intended to fulfill the purpose of a public road. Therefore, it should be assessed under the criteria relating to a public road not the criteria relating to a private access way servicing a small number of properties. In the absence of the application including any meaningful information as to how the proposed private road would legally provide access to fulfill a range of functions otherwise provided by a public road as well as services (water, sewer and emergency access), the application should not be approved.

The following critique has been provided by Council's Urban Infrastructure Department:

- 1. The Traffic Impact Report is deficient in that it does not consider the future traffic volumes of Jubilee Avenue and Ponderosa Parade that will exist when all development in the Valley is complete;*
- 2. The width of the proposed road does not comply with the width of a local road as defined in the Warriewood Valley Roads Master Plan (WVRMP) and as such is not acceptable;*
- 3. The maximum longitudinal grade of proposed roads exceeds the 15% maximum specified in the Austroad Standard to roads having the function of a Local Road and as such is not acceptable;*
- 4. The proposed road does not achieve the minimum traffic sight distances on the crest as specified in the Austroad Standard for roads having the function of a Local Road and as such is not acceptable;*
- 5. The proposed intersection design of the proposed road and Boundary Street is not acceptable;*
- 6. The proposed intersection design of the proposed road and Jubilee Avenue is not acceptable and does not reflect the design in the WVRMP;*
- 7. There is no provision of Street Lighting to Standard required by WVRMP and as such is not acceptable;*
- 8. The proposed intersection of the proposed road with the existing ROW to the Uniting Church needs to be designed in accordance with Pittwater 21 DCP, B6.2.*

The list above highlights a number of deficiencies with the proposal compared to relevant standards. This would result in a less safe outcome for road users. The standards need to be adhered to to achieve the required road outcomes.

Adjusting the road design to meet the required standards will result in deeper and wider cuts and hence further hillside disturbance that will also exacerbate other concerns.

Given the above comments, the proposed construction of a private road does not provide for a satisfactory outcome in terms of safety and is deficient in information. Therefore, the application is recommended for refusal.

- **B1.4 Aboriginal Heritage Significance**

Council's Natural Resources officer provided the following comments:

A shelter has been recorded in the adjacent No. 3 Boundary Road, however this property is largely undisturbed with different topography and vegetation type. The subject site had no apparent signs of any heritage objects however, subsurface articles cannot be ruled out.

- **B4.18 Heathland/Woodland Vegetation & D16.12 Landscaping**

Council Natural Resource officer provided the following comments:

The properties contain areas of natural bushland and modified paddocks in a rural landscape.

The proposed works involve the construction of a new private road through properties known as 4 Boundary Street and 10 Jubilee Avenue. The proposed road is presumably to enable access to an area for which an application to subdivide and provide new dwellings will be lodged in the future. As the proposed road will be located in an area containing open forest and indigenous vegetation (mainly on 10 Jubilee Avenue), a Flora and Fauna Assessment (Footprint Green Pty Ltd 29th January 2011) has been provided. A total of 63 native and indigenous flora species were observed in the flora survey, as well as a number of exotic and weed species. 33 fauna species were observed, with a further 17 recorded within the DECCW Wildlife Atlas as being probable in the locality, some of which are listed as endangered or vulnerable under the Threatened Species Conservation Act 1995. Due to this, 7-part tests of significance were undertaken for two threatened flora species, eight threatened fauna species and one threatened fauna population.

Based upon the assessment criteria, it was considered that the proposed development would not have a significant impact on threatened species, subject to the adoption of several recommendations listed on Page 60 of the report. All discussion and recommendations within the report are supported. However, the report makes no mention of the potential impact of road kill caused by the expected increase in traffic on the proposed road which will bisect the forested area. The report has determined that 1670m² of Sydney Sandstone Gully Forest/Ridgetop Woodland will require removal as well as 2265m² of modified (exotic grass with scattered indigenous trees) habitat.

A separate Arboricultural Impact Assessment (Footprint Green Pty Ltd 21st January 2011) has also been provided. This report assessed a total of 114 trees that were deemed to be potentially impacted by the proposed roadway.

The majority of these trees are located on the subject sites of 2-4 Boundary Road and 10 Jubilee Avenue, however a small number of trees assessed (9) are located within the Boundary Road reserve. Trees were assessed on the basis of their significance in the landscape, as well as the impact of the proposed roadway and whether they could be retained or require removal. A total of 88 trees were determined to require removal to accommodate the proposed road. Of these, only three (3) are species exempt from Council's Tree Preservation Order. Of the trees requiring removal, 17 are considered to have significant landscape significance, and 19 to have High landscape significance, with the remainder having Moderate or Low landscape significance. However, six (6) trees in total are deemed unstable and therefore do not have any safe useful life expectancy (SULE). The remaining 26 trees assessed can be safely retained if tree protection measures are adopted as specified.

The assessment and determinations of the arborist report are supported, however there are a number of issues. The loss of 85 protected trees from the area is considered to be a significant impact, particularly with the high proportion of trees of either Significant or High landscape significance.

Seven (7) trees are recommended for removal from the Council road reserve on Boundary Street which are located south and west of the proposed new road where it meets the existing Boundary Street, and it is unclear as to why this is necessary. Discussions with Council's Road and Traffic Engineer have come to the same conclusion that this small section of road heading south from the intersection is unnecessary and unjustified at this point in time, therefore the removal of the seven trees in this area is unnecessary.

The Council engineers have also indicated the proposed road should be required to be designed to the local road specifications of the WVRMP and adjust the levels of the intersection. The cuts will therefore be around 5.5 m deep and overall width of area directly impacted by construction works (not including significant trees outside this area whose roots would be affected and maybe necessitate their removal , maybe another 6 m either side of the road) would be approximately 25 m . They would not be able to narrow down the WVRMP dimensions to stay within the 20m road reserve as currently proposed. Therefore the overall impact on canopy trees is unknown however is highly likely to be greater than that currently indicated by the arborist report which bases its assessment on the 20m road width.

In terms of visual impact, the proposal is considered to cause a highly detrimental visual impact with a long straight swathe of vegetation and tall canopy trees removed. This combined with the required cut to attain the necessary road gradient will leave a massive empty corridor with high steep embankments which cannot be effectively screened and this will be prominent from a landscape perspective particularly when viewed from Jubilee Avenue.

Due to the significant impact on canopy trees and 1670 square metres of open forest habitat, and potential disturbance to local wildlife, as well as detrimental visual impact for a proposed road that does not appear to be totally justified, the recommendation from a natural resource and landscape perspective is that the proposed works in the current form should be refused.

- **A1.7 Considerations before consent is granted**

The following comments have been provided by Council's Principal Planner- Land Release:

The subject DA is for the construction of a private road that traverses 10 Jubilee Avenue and 4 Boundary Street, Warriewood. The proposed road is for the purpose of providing '...adequate access to the site known as 120 Mona Vale Road, Warriewood.' (as stated in the submitted Statement of Environmental Effects prepared by Glendinning Minto & Associates Pty Ltd 2011 for this DA).

Neither of the properties that are the subject of the current DA are within the Warriewood Valley Urban Land Release area. Additionally, 120 Mona Vale Road, Warriewood (for which the proposed road intends to provide future access) is not formally within the Warriewood Valley Urban Land Release area (as identified in the NSW Government's Metropolitan Development Program).

Nonetheless, a number of Council decisions made in relation to 120 Mona Vale Road, Warriewood are currently outstanding and have not been rescinded. It is in this context that the following comments, limited to a land release/strategic perspective, are provided.

At its meeting of 7 April 2008, Council resolved inter alia:

- '3. That Council encourage the applicant, the Uniting Church, the RTA and owners of the sites fronting Boundary Street including 120 Mona Vale Road to further discuss possible alternate access from 120 Mona Vale Road to Daydream Street for the purposes of a potential future subdivision of 120 Mona Vale Road'*

The current DA is for the purpose of accommodating vehicular access to 120 Mona Vale Road, Warriewood.

That 2008 resolution reiterates Council's decision of 18 April 2006 where Council resolved:

- 'A. 1) That 120 Mona Vale Road, Warriewood, be included in the Warriewood Land Release for the purpose of residential development.*
- 2) That the applicant his advisors and Council staff consult as to the land capability, the potential yield and the securing of adequate access for the site.*
- 3) That following 2 above that the applicant be invited to submit a formal Masterplan application*
- B. That in accordance with Clause 16 of the Council's adopted Code of Meeting Practice the reasons for the deviation from the staff recommendation in relation to this application are as follows:-*

To facilitate a development scenario for the site given the present constraints of the property, including aspects of land capability.'

To date, no formal application for rezoning 120 Mona Vale Road, Warriewood has been lodged/considered by Council. No development consent has been issued by Council regarding the Council's resolutions for 120 Mona Vale Road, Warriewood.

The Traffic Management Report (however provides an indicative concept plan of the intended land use and future density for 120 Mona Vale Road, Warriewood, which has not been subject to any formal application to, or considered/determined by, Council.

The two subject properties are zoned 1(b) Non-urban "B" and the adjoining 120 Mona Vale Rd, Warriewood is zoned 1(a) Non-urban "A". Any intensification of development, including the road (the subject of this DA) would, on the basis of the concept plan, need to be assessed in terms of permissibility or otherwise against the zone.

The indicative future detail of the development proposed at 120 Mona Vale Rd, as discussed within the submitted Traffic Report (TAR Technologies February 2011) is an intensification of development on a site not described on the DA form. The road, as proposed, is contemplating to service a future development opportunity that is currently prohibited under the zone.

The proposal to construct a road to service a development, which at current only exists in concept and is prohibited under the zoning of 120 Mona Vale Rd, is unreasonable, especially given the significant environmental impacts. As discussed above, the site 120 Mona Vale Rd has not been included, as part of this development application and no formal rezoning application has been made to develop the land which the proposed road is intended to service.

Under Section 5 (ii) of the Environmental Planning and Assessment Act 1979, development is to facilitate an orderly planning process in the developing land which allows for a coordinated approach to development of land. The application is a departure from an orderly planning process which has been established in Warriewood Valley Land Release Area in that the construction of the road as it stands is to service a development which has not been applied for nor is it permissible under the current 1(a) Non- Urban "A" zoning of 120 Mona Vale Rd and is recommended for refusal.

- **D14.1 Character as viewed from a public place & D14.2 Scenic protection - General**
- The proposed construction of a private road is considered to result in an unacceptable visual impact when view from the lower areas of Warriewood Valley particularly Jubilee Avenue. Control D14.2 makes particular reference to minimizing visual impact on the natural environment when view from public areas such as road, waterways and public reserves. The proposed road will result in the removal of significant native vegetation and canopy trees, which currently line the escarpment and can be viewed as travelling along Mona Vale Rd. The proposed road construction is adjacent to a large area of bushland, will result in the character of the rural escarpment area being compromised by the road, and associated construction.

The site was included in the Ingleside and Warriewood Valley visual impact study, which classified the proposed area of development in the highest level of visual significance, being part of the Warriewood Escarpment. Under the study, the area is considered to be essential for retention to conserve or enhance the visual characteristics and landscape values of the area unless a further specific study indicates that retention and conservation is not warranted. The visual impact of the proposal would be entirely inconsistent with the classification and recommendations of this study.

The proposal is considered to be inconsistent with the character of the Locality and does not respond to the surrounding features of the natural environment. In particular, the tree canopy area around the escarpment is noted as being protected as an area of environmental significance to the Warriewood Locality and has not been protected under the proposed development. The application is deficient in providing a development which complements the natural bushland environment and is significantly out of character for the Locality. It is therefore recommended that the application be refused.

11.0 CONCLUSION

The Development Application has been assessed in accordance with the provisions of Section 79C of the Environmental Planning and Assessment Act 1979, Pittwater Local Environmental Plan 1993, draft Pittwater 21 LEP and Pittwater 21 DCP and other relevant Council policies.

The proposed construction of a private road is considered to be an unreasonable proposal which will have significant impacts on the surrounding natural environment. The proposal is intended to service a site, which has not been included within the subject application, and no formal application has been made to rezone the site at 120 Mona Vale Rd as required for such an intensification of development. Insufficient information has been provided as to the construction of the proposed road and compliance with relevant standards and traffic management. As detailed in the draft determination, the proposal is not supported and is recommended for refusal.

RECOMMENDATION OF DEVELOPMENT OFFICER / PLANNER

That Council as the consent authority pursuant to Section 80 of the Environmental Planning and Assessment Act 1979 refuse development application N0052/11 for the proposed construction of a private road at 4 Boundary Street and 10 Jubilee Avenue subject to the reasons outlined within the draft refusal.

Report prepared by

Sophie Garland
SENIOR PLANNER

DRAFT DETERMINATION

REFUSAL

ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979 (AS AMENDED) NOTICE TO APPLICANT OF DETERMINATION OF A DEVELOPMENT APPLICATION

Applicants Name and Address:
OPERA PROPERTIES PTY LTD
7 GRAYLIND CLOSE
COLLAROY 2097

Being the applicant in respect of Development Application No **N0052/11**

Pursuant to section 80(1) of the Act, notice is hereby given of the determination by Pittwater Council, as the consent authority, of the Development Application for:

Construction of a new private road

At: 4 BOUNDARY STREET, WARRIEWOOD (Lot 2 DP 816070), 10 JUBILEE AVENUE, WARRIEWOOD (Lot 10 DP 5055)

Decision:

The Development Application has been refused for the following reasons:

1. The proposed private road is prohibited under PLEP 1993 as it is a necessary and ancillary component of a prohibited use (being the future development of presently non-urban zoned land for urban purposes at 120 Mona Vale Rd)
2. The application is premature and not consistent with the objections of the Environmental Planning and Assessment Act 1979 for orderly development. The application is a departure from an orderly planning process which has been established in the Warriewood Valley Land Release Area in that the construction of the road is to service a development which has not been applied for nor is it permissible under the current 1(a) Non- Urban "A" zoning of 120 Mona Vale Rd.
3. Inadequate information as to how the proposed private road would legally provide access for the full range of functions otherwise provided by a public road (water, sewer and emergency services).
4. The design of this road results in a significant loss of open forest habitat and likely to adversely impact on local wildlife these impacts are unreasonable in circumstances of existing access arrangements and the premature nature of the application and the prohibited nature of the proposal.
5. The resultant adverse visual impact on the Escarpment due to the significant extent of cut required for the road combined with the significant amount of vegetation and tall canopy trees required to be removed in the present circumstance of availability of access and prohibited nature of the development.
6. The design and location of the road does not comply with the relevant Australian Standards WVRMP in the following area:
 - i. The maximum longitudinal grade of proposed roads exceeds the 15% maximum specified in the Austroad Standard to roads having the function of a Local Road and as such is not acceptable;

- ii. The proposed road does not achieve the minimum traffic sight distances on the crest as specified in the Austroad Standard for roads having the function of a Local Road and as such is not acceptable;
 - iii. The proposed intersection design of the proposed road and Boundary Street is not acceptable;
 - iv. The proposed intersection design of the proposed road and Jubilee Avenue is not acceptable and does not reflect the design in the WVRMP;
 - v. There is no provision of Street Lighting to Standard required by WVRMP and as such is not acceptable;
 - vi. The proposed intersection of the proposed road with the existing ROW to the Uniting Church needs to be designed in accordance with Pittwater 21 DCP, B6.2.
7. The information submitted is deficient to enable a proper assessment of likely impacts on:
- i. The future traffic volumes on Jubilee Avenue and Ponderosa Parade that will exist when the Warriewood Valley Urban Land Release project is complete; and
 - ii. How water will be managed to achieve pre-development discharges up to the 100-year ARI event, how impact on adjoining properties will be minimised, and how pollution will be minimised as a result of the proposed road.
8. The proposed Road and its intended provision of alternative access to existing development upon 120 Mona Vale Road, is not sufficiently justified given:
- the cost of development given the scope of works; and,
 - the resultant environmental impact; and,
 - the adequacy of the existing legal and physical access arrangements to both Jubilee Avenue and Mona Vale Road; and,
 - the proposed width of carriageway which is excessive

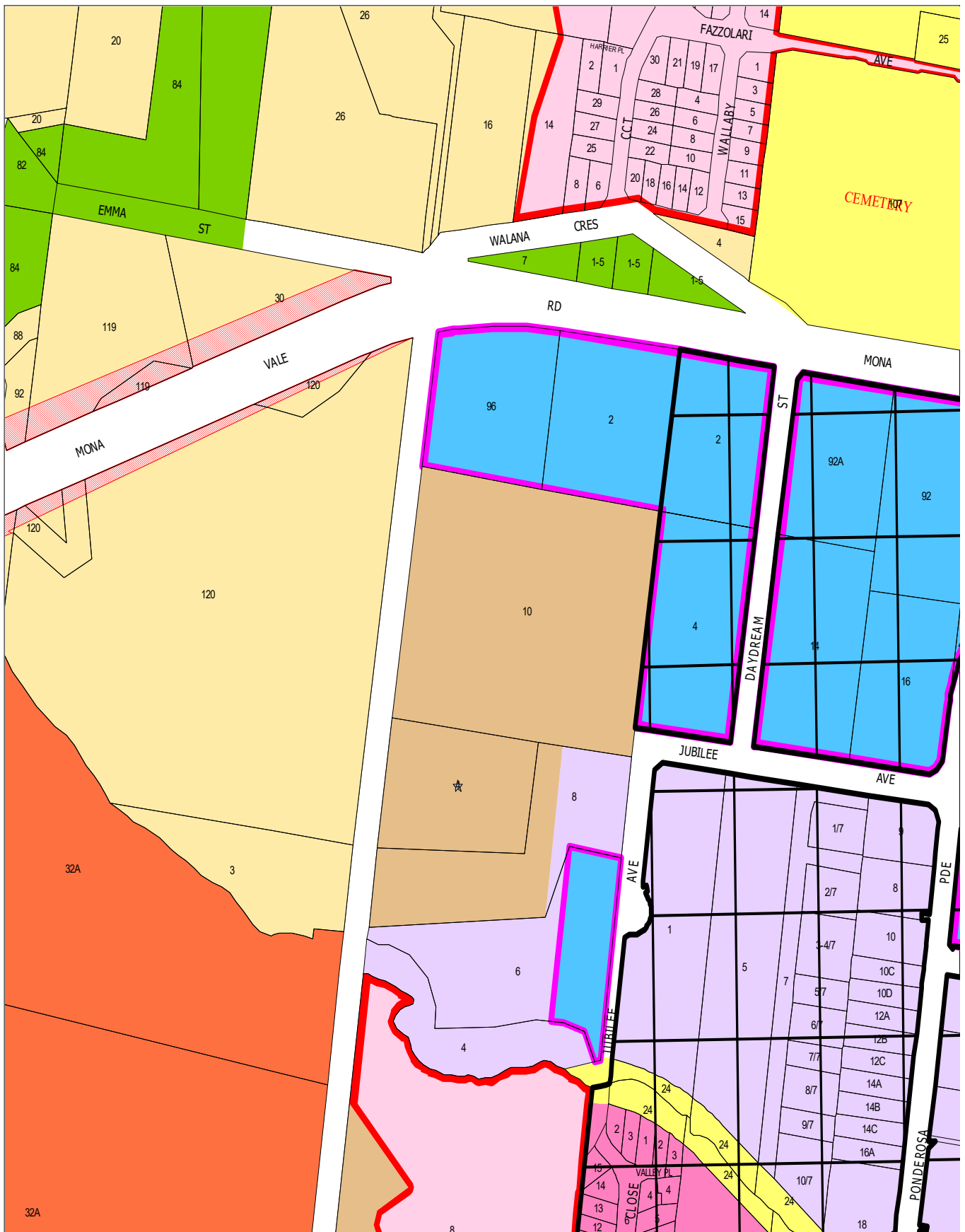
NOTES:

1. This determination was taken under delegated authority on behalf of the elected Council pursuant to Section 377 of the Local Government Act 1993.
2. An applicant may under Section 82A of the Act, apply to council to review this determination.
3. Section 97 of the Act confers on the applicant who is dissatisfied with the determination of a consent authority a right of appeal to the Land & Environment Court exercisable within 12 months after receipt of this notice.
4. Any person who contravenes this notice of determination of the abovementioned development application shall be guilty of a breach of the Environmental Planning & Assessment Act, 1979, and shall be liable to a monetary penalty and for a restraining order which may be imposed by the Land and Environment Court.

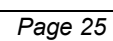
Mark Ferguson
GENERAL MANAGER

Per:
Date -

LOCALITY MAP



[illegible]



C7.2	Policy Review - Compliance Enforcement and Orders Policy
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Meeting: Council

Date: 4 July 2011

STRATEGY: Business Management

ACTION To effectively manage Council's Corporate Governance Responsibilities

PURPOSE OF REPORT

To review the Compliance Enforcement and Orders Policy (**Attachment 1**) currently adopted by Council for which the Environmental Planning & Community Division holds responsibility.

1.0 BACKGROUND

A comprehensive review of policies has been undertaken in response to a Department of Local Government Better Practice review.

Those current policies for which the Environmental Planning & Community Divisions have responsibility were considered by Council at the meeting of 15 May 2011, with the exception of the Compliance Enforcement and Orders Policy.

2.0 ISSUES

The Compliance Enforcement and Orders Policy was adopted by Council in May 2010 and conforms to the standard policy format.

The policy document has been reviewed to update recent legislative changes and to incorporate the former policy number 177 – Road Rule Education.

3.0 SUSTAINABILITY ASSESSMENT

3.1 Supporting & Connecting our Community (Social)

3.1.1 Provides clear information to the community

3.2 Valuing & Caring for our Natural Environment (Environmental)

3.2.1 Provides clear information on Council's policy direction including actions relating to the natural environment

3.3 Enhancing our Working & Learning (Economic)

3.3.1 Not Applicable.

3.4 **Leading an Effective & Collaborative Council (Governance)**

3.4.1 Facilitates accountability to the community for policy direction

3.5 **Integrating our Built Environment (Infrastructure)**

3.5.1 Provides clear information on Council's policy direction including actions relating to the built environment

4.0 **EXECUTIVE SUMMARY**

4.1 Council policies for which the Environmental Planning & Community Division is responsible have been reviewed and where appropriate recommended to be retained, amended or revoked.

The Compliance Enforcement and Orders Policy was not included due to the document size

The policy document has been updated to include recent legislative changes which are listed in the document history, following the index.

RECOMMENDATION

1. That the information provided in the report be noted.
2. That the attached, updated Compliance Enforcement and Orders Policy (**Attachment 1**) be adopted.

Report prepared by

Jeff Lofts
MANAGER, ENVIRONMENTAL COMPLIANCE

Council Policy – No 179 Version: 1	Adopted:	
	Amended	

TITLE: Compliance Enforcement and Orders Policy

STRATEGY: Community Engagement Education and Awareness

BUSINESS UNIT: Environmental Compliance

RELEVANT LEGISLATION:

- Local Government Act 1993 and Regulations
- Environmental Planning and Assessment Act 1979 and Regulation
- Food Act 2003, Regulations and NSW Food Safety Standards
- Protection of the Environment Operations Act 1997 and Regulations
- Waste Avoidance and Resource Recovery Act 2001 and Regulations
- Noxious Weeds Act 1993
- Public Health Act 1991 and Regulations
- Companion Animals Act 1998 and Regulations
- Roads Act 1993 and Regulations
- Road Transport (Safety and Traffic Management) Act 1999, Regulations and Road Rules 2008
- Impounding Act 1993 and Regulations
- Recreational Vehicles Act 1983
- Swimming Pools Act 1992 & Regulations
- Fisheries Management Act 1994 and Regulations
- Liquor Act 1982 and Regulations
- Building Code of Australia

RELATED POLICIES: Policy No. 28 – Horses on Private Premises

Objective

To provide an operating manual of relevant legislative powers for compliance officers and guidance in the application of those powers in regard to a balance between the reasonable exercise of authority and the statutory responsibility of the officer to act where a breach has been identified. The Policy aims to promote consistency, procedural fairness and transparency of process in enforcement activities by providing officers with a set of guidelines for the process from responding to complaints, the investigation and the determination of enforcement action.

Policy Statement

Council acknowledges that it has an obligation under section 8 of the Local Government Act 1993 to ensure that the exercise of its regulatory power is carried out consistently and without bias. Council acknowledges its obligations under the Occupational Health and Safety (OH&S) Act in relation to its officers.

The policy applies to all compliance and enforcement action where Council has regulatory responsibility under NSW legislation. It applies to Council staff and contractors who must carry out their duties lawfully.

Council's Values of Respect, Quality, Ethics and Communication apply to all actions taken under this Policy.

Pittwater Council

Compliance, Enforcement and Orders Policy

COMPLIANCE ORDERS AND ENFORCEMENT POLICY

Executive Summary

The Compliance Orders and Enforcement Policy (the Policy) provides an operating manual of relevant legislative powers for compliance officers and guidance in the application of those powers in regard to a balance between the reasonable exercise of authority and the statutory responsibility of the officer to act where a breach has been identified. The Policy refers to several Acts administered by Council however it should be noted that the extracts provided are to assist in the practical application of the respective Acts and for any other purpose full copies of the Act should be obtained to ensure that contextual interpretation is facilitated.

The Policy aims to promote consistency, procedural fairness and transparency of process in enforcement activities by providing officers with a set of guidelines for the process from responding to complaints, the investigation and the determination of enforcement action. The guidelines have been developed after reviewing advice from external sources relevant to the enforcement activities of Council including advice provided by Council's Solicitors, summaries of judgements, related documents and opinions.

Particular attention has been given to the process an officer must observe when considering enforcement action and a protocol in the form of a set of relevant questions has been developed to encourage a uniform approach to enforcement.

Where alternative enforcement options are available the document provides guidance on the outcomes that may be achieved to assist in the determination of action. However, where, due to the circumstances being urgent the decision to exercise authority under the legislative power of Council remains the responsibility of the individual officer.

The Policy content is intended to conform to the Enforcement Guidelines for NSW Councils (2002) issued by the NSW Ombudsman, as well as the Guidelines for Cautions under the Fines Act 1996 and the Internal Review Guidelines under the Fines Act 1996 both of which have been produced in draft form by the NSW Attorney General's Department. The latter documents are attached to the policy document as appendices for information.

The Policy has been developed to assist officers in the fair and consistent application of authority and to provide the community with information on the enforcement powers of Council. In developing the Policy it is intended that the information, which addresses a complex and varied function of Council will also assist to make the process transparent to the community and to explain the areas where Council may exercise authority and enforcement but provide some definition to the limit of that authority.

The content of the Policy has been developed based on information, case law and legislation as it exists at this time and it should be acknowledged that the sources, Council's responsibilities and interpretation of legislation are under constant review which may result in significant changes. It is therefore proposed that a complete review of content be conducted every 2 years to ensure that the accuracy is maintained.

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Document history

Version	Date	Reason For Amendment
	7/6/11	14.13.1 Birds other than pigeons - deleted
		14.13.5 Pigeons – General Requirements - deleted
		14.13.6 Horses – deleted and added 'Refer to Councils Policy No. 28 – Horses on Private Premises
		14.13.7 Dogs - deleted
		14.13.8 Cats – deleted – section added – Dogs and Cats – Dogs and Cats are managed under the provisions of the Companion Animals Act 1998 and Regulations
		14.13.9 Rabbits - deleted
		14.13.10 Bees - Deleted
		14.13.11 Ferrets - deleted
		16 Dictionary – deleted as definitions are contained in the 'Dictionary' of the Local Government Act, 1993.
		17.7 Compliance Cost Notices - inserted
		18.14 Order 13a deleted - repealed
		23.4.3 Places of Public Entertainment - deleted
		25.6 Smoky Vehicles – deleted – Officers not authorised or training by EPA
		29.4 Vehicle and article sales and advertising on public roads – deleted – Temporary advertising power under LEP
		29.4.2 Vehicles – deleted Temporary advertising power under LEP
		29.4.3 Articles – deleted – Temporary advertising power under LEP
		29.4.3 Vehicles used principally for advertising on Public Road – deleted – Temporary advertising power under LEP

1.0 Objectives

To provide workable guidelines and to assist officers to promote consistency in enforcement action and matters of non-compliance. To promote transparency, procedural fairness and natural justice principles.

The guidelines are intended to address the practical issues relevant to enforcement and where and when an officer may legally and correctly exercise a discretionary process in selecting the course action to follow.

2.0 Policy Statement

Council acknowledges that it has an obligation under section 8 of the Local Government Act 1993 to ensure that the exercise of its regulatory power is carried out consistently and without bias. Council acknowledges its obligations under the Occupational Health and Safety (OH&S) Act in relation to its officers.

The policy applies to all compliance and enforcement action where Council has regulatory responsibility under NSW legislation. It applies to Council staff and contractors who must carry out their duties lawfully.

Council's Values of Respect, Quality, Ethics and Communication apply to all actions taken under this Policy.

3.0 Principles Governing Enforcement Action

3.1 Responding to complaints of alleged unlawful activity

Compliance staff will respond to all complaints or notifications to Council relating to unlawful activities. In the first instance, Council will encourage the complainant to talk to their neighbour or person causing the problem, to resolve the issue amicable and civilly.

Where this has been ineffectual or where an Officer considers it inappropriate, a complaint should be recorded. Complaints and notifications will be recorded as Customer Action Requests and action will be taken as follows:-.

Priority 1: Urgent and life threatening matters are a priority and should be actioned on the day the complaint was received or the day immediately following. Such matters would include:

- unsafe buildings and unsafe building works or sites,
- collapsed buildings,
- fire damaged buildings or fire safety breaches,
- out of hours works and noise,
- food poisoning incidents,
- pollution incidents,
- main road clearway breaches,
- abandoned vehicles in an unsafe location,
- dog attacks,
- dangerous dog complaints,
- asbestos on public or private land, and
- serious incidents where the environment or public health and safety is at immediate risk,
- pollution incidents, and
- breaches of Council's Tree Preservation Order (TPO).

Priority 2: General compliance matters are usually investigated within 3 days. Examples would include:

- alleged unlawful uses,
- alleged unlawful works,
- works carried out not in accordance with development consent,
- general noise matters affecting several persons,
- standard complaints about food premises,
- abandoned vehicles,
- roaming dogs where a general nuisance may occur.

Priority 3: Nuisance matters are actioned and an initial response provided within 10 days. Examples may be:

- domestic noise,
- stormwater,
- minor alleged non-compliance such as overgrown land or
- matters where there are no immediate adverse environmental, health or safety impacts.

After assessing the complaint or customer action request, customers will be advised by acknowledgement letter as proposed action to be taken.

All requests will be acknowledged in writing by mail or email as appropriate.

ANONYMOUS COMPLAINTS

Council will accept anonymous complaints, however will not normally investigate an anonymous complaint unless it raises a serious matter where public health or safety is at risk and there is enough information in the complaint to make out a prima facie case and/or carry out an investigation. This is consistent with NSW Ombudsman Guidelines in relation to the investigation of an anonymous complaint.

3.2 Investigating of alleged unlawful activity

It is Council policy to investigate all complaints and alleged unlawful activities unless:

- In relation to development matters, a private Principal Certifying Authority (PCA) is appointed and is responsible for monitoring compliance with the conditions of development consent. To assist customers, Council will always refer them to the PCA in the first instance to remedy a complaint (see Section 3.6) but where complaints are received by Council they will be forwarded to the PCA for action. This is consistent with best practise guidelines issued by the Building Professionals Board.
- The Council has no jurisdiction. (E.g., where there is no lawful provision for Council to take action, such as NSW Workcover issues on building sites or internal matters in private strata buildings).
- The activity alleged to be unlawful is in fact determined to be lawful without an investigation required.
- The complaint is frivolous, vexatious or trivial in nature.
- The complaint is not related to the complainants local area does not impact on the complainant and is not a risk to public health or safety.
- The complaint is anonymous and there is insufficient information to support a risk to public health or safety, a prima facie case or an investigation.
- If a decision is made not to investigate a complaint or matter, then the decision must be recorded with clear reasons why. The complainant must then be advised of the decision and the reasons for no action.

3.3 Authorised officers, delegated authority and lawful powers of entry

Council will delegate authority and authorise certain staff under relevant legislation in order for them to carry out their investigative duties and take necessary action. Council views the power to enter private property very seriously and will ensure that the exercise of these functions will be strictly in accordance with the legislation.

All Council staff or contractors who carry out inspections on private land for regulatory purposes will:

- Have delegation to enter premises and carry out investigations as specified in Council's delegations manual; and
- Be Authorised by Council where this is required under specific legislation to permit inspections on private property; and
- Carry photographic identification demonstrating authorization to enter premises and private lands under each specific Act; and
- Carry out inspections in a manner respectful of property and persons; and
- Carry documentation or certificates of authority where required by the legislation being implemented. Lawful powers of entry for Authorised officers are specified in each Act. For example, the following Acts and sections are the most commonly used in Council's regulatory functions to implement powers of entry to land:

Entry onto Land

- *Local Government Act 1993*. Officers may be authorised to enter any premises in accordance with this Part and with section 191 and to carry out investigations and inspections in accordance with s192. The Authorised officer must be in possession of an Authority under section 199 for the power to be used.
- *Environmental Planning & Assessment Act 1979 –PART 6 Division 1A –Entry onto Land and other Powers*. Officers may be authorised, *in writing* by the Council, to enter land and premises to carry out inspections of buildings or structures being erected on the land, in accordance with this Division.
- *Protection of the Environment Operations Act 1997 – CHAPTERS 4 and 7*. Provides power of entry to land under section 111 in relation to Chapter 4 Functions, being Investigation and issuing of Environment Protection notices. Authorised Officers are appointed under section 187 subject to conditions, limitations of restrictions imposed on appointment documentation. For example, an Officer may have 15 years experience in investigations and have a broader authorization than a graduate or student under this Act.
- *Food Act 2003 – Division 3 of PART 9 and Division 4 of PART 1* Officers are appointed as Authorised Officers under section 114. Under section 37 they have a range of powers of entry to premises. This permits entry *inside* premises for the purposes of investigation under the Act. A Certificate of Authority is required to carry out these functions.
- *Public Health Act 1991 – Section 72 – Powers of Entry* Section 72 confers powers of entry to an Authorised Officer to enter premises for purposes of inspection and other required action. The power must only be exercised if the Authorised Officer is in possession of a Certificate of Authority which describes the nature of the powers.
- *Companion Animals Act 1998 - PART 5 Divisions 4 and 5* An Officer authorised by the Council may enter any land, *but not premises*, to seize a dog that has attacked (within 72 hours of the attack) if the dog cannot be contained on its own property and the notification requirements have been complied with. Section 18. A dangerous dog or restricted breed dog if the requirements of 51 and 56 (dangerous and restricted dogs) respectively are not reasonably capable of being complied with.

- *Search warrants to lawfully enter premises.* Council may co-operate with and attend premises accompanied by the NSW Police where there are threats against Council staff or situations where offenders will not co-operate to permit Council to lawfully enter the premises. Council may apply for search warrants under legislation in order to access premises for the reasonable purposes of carrying out our regulatory functions in those circumstances. However, it is Council's approach to first obtain the owner or occupants permission to enter a premises if required, before proceeding to obtain a search warrant as a last resort.

3.4 Non-Enforcement action, where there is evidence of unlawful activity

A number of options may be considered instead of enforcement. The following approaches may be appropriate

- *Mediation.* Council will refer parties to the Community Justice (CJC) for mediation in instances where it is determined that mediation would be more appropriate to resolve an issue than enforcement.
- *Negotiating* with the person who carried out the unlawful activity to obtain an undertaking from them to address issues of concern found during an investigation. For example, this might lead to submission of section 96 application or a building certificate application regarding minor changes on a development or an undertaking agreement to cease works or a land use pending formal enforcement action.
- *Taking no action* on the basis of no reliable evidence or other reasons, such as frivolous or vexatious complaints or where Council has no legal jurisdiction. Council has other Complaint Management policies which also specify when no action will be required. Those policies will be considered in this regard.
- *Counselling* the person who carried out an unlawful activity. The purpose would be to educate them on the relevant requirements. Pittwater Council recognises that educational initiatives may lead to compliance being achieved without enforcement action in some circumstances.
- *Formal written or verbal warnings* requiring works or an activity to be carried out or works to cease in lieu of formal action. Verbal warnings will be documented on Council records and may be used to determine the history of compliance in relation to the matter if there are reoccurrences in future.

The above actions may be all that is required in some minor breaches where there are no significant impacts to health, safety or the environment. The above approaches will be used with discretion; Council is obliged to uphold the law. This includes ensuring compliance with relevant administrative law principles such as acting fairly and equitably, and to act in the public interest. These approaches also do not preclude Council from taking enforcement action.

3.5 Enforcement Action

Where formal enforcement action is considered, Pittwater Council will take that action with a minimal tolerance approach. It is recognised that this approach is consistent with other local authorities with the same regulatory authority.

The following enforcement actions are standard across local government:

- Issuing of *Notices, Notices of Intention, Orders, Directions* and *Declarations* requiring compliance with legislative requirements or an environmental planning instrument.

- Issuing a *penalty infringement notice* (PIN) or alternatively commencement of *criminal proceedings* for an offence under legislation. For example, offences under the Food Act 2003 or Protection of the Environment Operations Act 1997.
- *Commencement of civil proceedings* in a Court to either remedy or restrain unlawful activity. Examples include Class 4 proceedings in the Land and Environment Court to enforce compliance with an Order under s121B of the Environmental Planning & Assessment Act 1979 or the seeking of interlocutory or injunctive proceedings to prevent an unlawful activity from occurring.
- In case of breaches of the Tree Preservation Order Council has the choice of commencing a prosecution in either the Local Court or Land and Environment Court or in the service of notice and consequent orders seeking to rectify damage through the replacement of lost protected tree species and in all cases a decision must be made in consultation with the appropriate specialist officers in regard to tree preservation matters.

Before enforcement action is taken the Authorised Officer, Management or Council must acknowledge the circumstances in each case and consider the following questions:

- Does Council have the power to consider alternative solution?
- Are the breaches technical or inconsequential in nature?
- Are there aggravating or mitigating circumstances surrounding the activity?
- Could the non-compliance be remedied by some action on the part of the person responsible?
- Is the unlawful activity having or likely to have a serious negative impact on any person?
- Has the unlawful activity created a health, safety or environmental hazard or is there potential for this to occur?
- Has the unlawful activity affected a significant number of people?
- How long has the unlawful activity been occurring and is enforcement statute barred?
- Have previous warnings been issued?
- Has the person responsible been educated about Council policy and unlawful activity (i.e. did they know what they were doing or did was unlawful)?
- Are the costs of enforcement likely to be prohibitive for the nature of the offence?
- Would enforcement action impact unreasonably on certain population groups, particularly disadvantaged or marginalised groups?
- Is the penalty commensurate with the nature of the offence?
- Is there any doubt over the evidence or the offence?
- What are the chances of a successful appeal against the proposed enforcement action?
- Would a conviction by a Court be necessary to prevent re-occurrence?
- How common is the offence and would action act as a deterrent?
- Does the person or corporation responsible exhibit contrition for the offence?
- Are there any circumstances of hardship affecting both the complainant and the person or corporation subject to the complaint?
- Has the person or corporation who carried out the unlawful activity had an opportunity to provide representations or submissions on the matter?
- Have Council staff acted appropriately in investigating the matter and were standard procedures followed?

3.6 Development - specific principles to consider;

- Does Council have the power to consider alternative solution?
- Could the unlawful activity be carried out lawfully if development consent was sought or an exemption from development consent applied?
- Are the unlawful activities or works carried out to a heritage item and did they adversely impact on the heritage significance?
- Is the condition of development consent not being complied with, unreasonable, ambiguous or plainly unenforceable?

- Would an adopted local environmental plan or amendment make the unlawful activity or work legal in future? Would any amendment to the LEP be countenanced?

If it is determined that enforcement action is required, then it will be taken in accordance with legislative and Council procedures. Council recognises that in taking enforcement action there are statutory processes which provide for representations and appeals and thereby natural justice principles will be observed.

Once an illegal activity has been detected Council has an obligation to take appropriate action under the various pieces of legislation which it is empowered to enforce. The authorised officer will take the following actions:

1. Obtain all relevant evidence.
2. Check council records for any approvals.
3. Issue notice of intention to issue order or notice to cease the illegal activity and if an illegal structure has been erected order the demolition of the illegal structure.
4. Issue PIN for the illegal activity.

Important: The decision to investigate and or commence civil or criminal proceedings in any Court will be made by Council or Management (with delegated authority to do so) in consultation with legal advice.

3.7 Issuing of Orders and Notices

Under the Local Government Act, 1993, Environmental Planning and Assessment Act, 1979, Swimming Pools Act 1992, Food Act 1993, Protection of the Environment Operations Act, 1997, Companion Animals Act, 1998, Roads Act, 1993, Food Safety Standards, orders or notices may be issued to rectify breaches of legislation.

Local Government Act, 1993 orders are issued under Section 124 in accordance with the table in that section. Public nuisance orders are issued under Section 125. The orders under this section generally relate to public places and health requirements including the operation of onsite sewerage systems.

Environmental Planning and Assessment Act, 1979 orders are issued under Section 121B in accordance with the table contained in that section and generally relate to building compliance, action under Council's Local Environment Plan (LEP) and action in respect of breaches of the Tree Preservation Order (TPO) which is made under the LEP.

Swimming Pools Act, 1992 relate to the non compliance with the swimming pool standards including fencing, signage and access to the pool.

Food Act 2003 notices relate to the healthy conditions of a premises and the method of preparation of food and maintenance of the food preparation areas.

Protection of the Environment Operations Act, 1997 notices relate to the cleaning up of pollution incidents, prevention of pollution incidents which includes noise, air and water and reimbursement for work carried out by Council to enable compliance with the notices.

Companion Animals Act, 1998 notices relate to Companion Animals (dogs and cats). Under the Companion Animals Act, 1998 the following notices may be issued by an authorised officer:

- Notice to register companion animal
- Declaration of a dog to be dangerous (after notice of intention has been served)
- Notice to declare dog to be restricted breed dog (after notice of intention has been made).
- Notice to declare a dog a nuisance dog (after notice of intention has been made)

- Notice to declare a cat to be a nuisance cat (after notice of intention has been made)
- Notice of Seizure of Companion Animal

3.8 Caution Guidelines under the Fines Act 1996

Guidelines are issued by the Attorney General under Section 19a (3) of the Fines Act 1996. Officers who issue penalty notices under the Fines Act 1996 must have regard to these guidelines in deciding whether to give a person a caution for a penalty notice offence.

A copy of the guidelines appears at the end of this document.

4.0 Issuing Notices

4.1 General advice on the process and requirements of Notices.

Council officers will ensure that all notices they issue:

- are clear and certain as to what needs to be done and by when it needs to be done
- require only what is reasonable, proper and within the power of the notice to require
- use plain English and consistent terminology, and explain any technical terms
- advise the recipient that non-compliance with the notice may lead to enforcement action being taken against them—specifically, in the case of a notice requiring information or records, that failure to comply is an offence
- warn the recipient that they can object to providing information on the ground that it might incriminate them (if the notice relates to providing information and is issued to an individual)
- are signed by a person with delegated legal authority to issue the notice
- are issued to the correct legal entity.

4.2 The correct legal entity

Notices may be enforced only if they are issued to a legal entity. The law recognises two legal entities: an individual and an incorporated body such as a company, statutory authority, incorporated association, cooperative or other body corporate, collectively termed ‘corporation’.

A corporation is usually identified by the abbreviation Inc, Ltd or Pty Ltd and always has an Australian Company Number (ACN). Corporations may operate under a business name or trading name that is different from the name of this corporation. Similarly, a business may be operated by something other than a corporation, that is, a partnership or sole trader, with a business name or trading name.

Business or trading names are not legal entities—they are just names under which legal entities do business. If a notice is issued to a registered business name or trading name, for example, to ‘XYZ Australia’ or ‘XYZ Traders’ rather than the corporation or individual that runs them, the notice will have no legal effect.

If the owner of a business or trading name is an individual, the legal entity to which the notice is issued should be written as ‘Mr Z. Smith trading as XYZ Australia’. If the owner of the business or trading name is a corporation, the legal entity should be written as ‘XYZ Pty Ltd trading as XYZ Australia’.

Basic details about business and company names and ACNs can be obtained free from the National Names Index maintained on the internet by the Australian Securities and Investments Commission (www.search.asic.gov.au).

In summary, notices may be issued to any of the following:

- an individual
- a company (for example, 'XYZ Pty Ltd' or 'XYZ Ltd')
- another type of incorporated body
- a public authority, for example, a government trading enterprise constituted by an Act as a corporate entity.

4.3 Varying and revoking Notices and multiple Notices

Notices may be varied or revoked by subsequent notice(s) may be issued from the same regulatory authority and more than one notice may be issued to the same person under the Local Government Act, 1993, Environmental Planning and Assessment Act, 1979, Protection of the Environment Operations Act, 1997 and Companion Animals Act, 1998.

4.4 Issuing Notices outside New South Wales

Under legislation enforced by Council the Council may serve notices on legal entities outside NSW if the offence occurs in the Pittwater Council Area or affects the environment in the Pittwater Council Area regardless of the source of a pollution incident.

4.5 Serving Notices

The serving of Notices and Orders under legislation which is enforced by Council may be by:

- delivering it personally
- leaving it with another person at the place of residence or business of the person
- receiving the notice
- sending it by post, fax or electronic transmission (including over the internet)
- leaving it addressed to the person at a document exchange or other place indicated by the person through which correspondence may be forwarded to them.

Important notices, especially when issued to corporations, should be sent by courier or express post where bar coding is used to trace the letter if not served personally to the company or person. Other appropriate documentary records such as file or diary notes, postal or fax receipts, should also be kept; if required, they can be used as evidence that the notice was served in accordance with the POEO Act, and the recipient received it.

4.6 Enforcing Notices

After a notice is issued dates for compliance must be reviewed. If the notice requirements have not been fully met, take prompt follow-up action to ensure Compliance. In some cases, a penalty notice or prosecution for failing to comply with a notice may be warranted and a new notice issued. Where necessary, seek further legal or technical advice.

It is an offence to provide any information required by a notice issued to provide information and records' knowing that it is false or misleading.

It is also an offence to knowingly make a false or misleading statement in a report required by an environment protection notice. The maximum penalty that may be imposed by a court for the offence is:

It is also an offence to wilfully delay or obstruct a person carrying out any action in compliance with an environment protection notice. The maximum penalty that may be imposed by a court for the offence is:

The court of jurisdiction may impose severe financial penalties for these offences.

5.0 Types of Action Available (Notices)

5.1 Notice under the Protection of the Environment Operations Act (POEO Act)

The principal notices that are relevant to Council that may be issued under the POEO Act are:

- clean-up notices
- prevention notices
- compliance cost notices
- smoke abatement notices
- noise control notices
- notices to provide information and records

All notices issued on behalf of Council will be issued by a person who has the delegated authority from Council to issue the notice. This person does not necessarily have to be an 'authorised officer' under the POEO Act, except in the case of issuing smoke abatement notices. Note that authorised officers may issue several other types of notice.

The POEO Act gives a person or authority the power to delegate their functions. Council has delegated these powers which are reflected in the Delegations Manual.

5.2 Clean-up Notices

WHEN MAY A CLEAN-UP NOTICE BE ISSUED?

The Council may issue a clean-up notice requiring a person to take specified clean-up action when they reasonably suspect that a pollution incident, as defined in the POEO Act, has occurred or is occurring.

Clean-up notices may **not** be used for any incidents, or circumstances involving noise or air.

A clean-up notice may be issued when a leak, spill or other escape or deposit of a substance that results in pollution is likely to occur, has occurred or is occurring, not just once it has occurred, as clean up action may include:

- *'action to prevent, minimise, remove, disperse, destroy or mitigate any pollution resulting or, likely to result from the [pollution] incident'.*

TO WHOM MAY A CLEAN-UP NOTICE BE ISSUED?

A clean-up notice may be issued to:

- an occupier of premises at or from which Council reasonably suspects that a pollution incident has occurred or is occurring.
- a person who is reasonably suspected of causing or of having caused the pollution incident (the polluter).

WHAT ACTION MAY BE REQUIRED BY A CLEAN-UP NOTICE?

A clean-up notice must specify the clean-up action that is required. This may include, if it is reasonable to do so in the circumstances, a requirement for immediate action. A clean-up notice may also require the recipient to provide reports to the Council on the progress of the clean-up action.

Examples of directions that may be given by a clean-up notice are:

- a direction to put out booms and absorbent matting immediately to prevent or minimise oil spreading from a spill.
- a direction to the builder or developer of a building site where sedimentation controls are not adequate to prevent a pollution incident to install and maintain adequate sedimentation control devices to prevent any pollutants from leaving the building site and causing a pollution incident.

HOW IS A CLEAN-UP NOTICE GIVEN?

Council may issue a clean-up direction in writing, or may give the direction orally via a person with delegated or other authority from the ARA. A written clean-up notice from the Council (or delegate) must confirm an oral clean-up direction within 72 hours, or it ceases to have effect.

There is no right of appeal against a clean-up notice although procedural fairness must be considered.

5.3 Procedural Fairness

The Land and Environment Court has confirmed that Council have a duty to afford procedural fairness when issuing clean up notices (*Liverpool City Council v L Cauchi and Ors* [2005] NSWLEC 676).

The extent of the obligations imposed by that duty will vary depending on the particular circumstances of the case. The duty to afford procedural fairness may require Council to consult with the proposed recipient of a notice for example, by providing them with a copy of the draft notice to give that recipient the right to be heard before the decision to issue the notice is made.

Note that the need for urgent action is likely to minimise rather than entirely exclude the need for procedural fairness. If the notice is directed to a person other than the polluter, consider whether consultation should take place with the polluter before the decision to issue the notice is made.

5.4 Enforcing Clean-Up Notices

It is an offence to fail to comply with a clean-up notice, without a reasonable excuse.

For more serious breaches are dealt with by a court and may incur severe financial penalties.

Council, or any other person, may also obtain an order from the Land and Environment Court directing the recipient of a clean-up notice to comply with the notice.

5.5 Recovery of Clean-Up Costs from Polluter

If the person directed to clean up did not cause the pollution, the costs of complying with the clean-up notice may be recovered by that person from the polluter as a debt in a court of competent jurisdiction.

5.6 Administrative Fee for Clean-Up Notices

A Council may recover the administrative costs of preparing and giving clean-up notices. The recipient of a clean-up notice must pay a fee as specified on the notice to the authority that issued the notice within 30 days of receiving it.

It is an offence not to pay the fee within the required time, and a fine may be imposed for the separate offence. The Council has the discretionary power to extend the time for payment, on the application of the recipient, or to waive all or part of the fee on the application of the recipient or on its own initiative. Examples of circumstances in which Council will consider waiving the fee are:

- demonstrated cases of hardship or bankruptcy,
- where the notice has been issued to a charitable organisation.

Note: a fee is not payable to vary an environment protection notice.

6.0 Prevention Notices

WHEN MAY A PREVENTION NOTICE BE ISSUED?

Council may issue a prevention notice when it reasonably suspects that an activity has been or is being carried out in an 'environmentally unsatisfactory manner' as defined in s 96 of the POEO Act.

A prevention notice would generally not be issued for an activity that is regulated by an environment protection licence if the problem can be resolved by placing appropriate conditions on the licence.

TO WHOM MAY A PREVENTION NOTICE BE ISSUED?

Depending on the circumstances, a prevention notice may be issued to:

- the occupier of the premises concerned
- the person who is carrying on the activity in an environmentally unsatisfactory manner.

When the notice is served on the occupier, but the occupier is not the person carrying out the activity, the occupier must take all available steps to cause the action specified in the notice to be taken.

WHAT ACTION MAY BE REQUIRED BY A PREVENTION NOTICE?

Prevention notices operate from the day they are given, unless another date is specified, so a Council may require action within the appeal period. However, the recipient may apply to the Land and Environment Court for a stay of the notice at the time of appeal.

A prevention notice must specify the action that must be taken to ensure that the activity is carried out in an environmentally satisfactory manner, and the period within which the action must be taken. Prevention notices may require the recipient to prepare reports on progress in carrying out the action required.

Examples of the directions that may be given by prevention notices are:

- a direction to install bunding within two months at a waste-oil collection area to prevent spills from the collection area.
- a direction to the occupier of a garden nursery to develop and submit within six months a management plan to control waste and odours from compost storage.

There are many other examples of situations in which a prevention notice may be issued. If you have any doubt as to whether issuing a prevention notice is appropriate, seek legal advice from your organisation's legal staff.

When preparing the prevention notice, the Council should consider whether the action specified in the notice will require the recipient to obtain development consent or any other approval.

The Council should draft the prevention notice to allow the recipient sufficient time to obtain the appropriate consent/approval, where this is the case.

6.1 Procedural Fairness

The Land and Environment Court has confirmed that Council have a duty to afford procedural fairness when issuing environment protection notices including prevention notices (*Liverpool City Council v L Cauchi and Ors* [2005] NSWLEC 676).

The extent of the obligations imposed by that duty will vary from case to case. The duty to afford procedural fairness may require a Council to consult with the proposed recipient of a notice, for example, by giving them a copy of the draft notice, to give that recipient a right to be heard before the decision to issue the notice is made. If the notice is directed to a person other than the person carrying out the activity, consider whether consultation should take place with the person carrying out the activity before the decision to issue the notice is made.

6.2 Preventative Action for Water Pollution

Section 96(3A) of the POEO Act provides that:

Council will, when determining the action to be specified in a prevention notice relating to an activity that causes, is likely to cause or has caused water pollution, will consider:

- a) the environmental values of water affected by the activity, and
- b) the practical measures that could be taken to restore or maintain those environmental values, and
- c) any guidelines issued by the EPA to the Council relating to the exercise of functions under this section.

6.3 How is a Prevention Notice given?

Council must give a prevention notice in writing.

6.4 Operation of Prevention Notices and Appeals

A prevention notice, or a variation of a prevention notice, operates from the day the notice is given unless a later date is specified, so Council may require action within the appeal period. A person given a prevention notice may appeal against it to the Land and Environment Court within 21 days of being served with it, unless otherwise specified in the Regulations.

If the recipient appeals against the notice or its variation, compliance with the notice is still required unless the Land and Environment Court directs that the notice is stayed. In this case the notice does not operate until the stay ceases, or the Land and Environment Court confirms the notice, or the appeal is withdrawn, whichever occurs first.

6.5 Enforcing Prevention Notices

It is an offence to fail to comply with a prevention notice—s 97. A penalty notice may be issued for failure to comply. Serious offences that are dealt with by a court, may incur severe financial penalties.

Council or any other person may also obtain an order from the Land and Environment Court directing the recipient of a prevention notice to comply with the notice.

6.6 Action taken by Council and Recovery of Costs

If a person does not comply with a prevention notice given to them, Council may take action, either itself or through its employees, agents or contractors, to have the notice complied with, separately from starting any criminal proceedings. Council may then require the person concerned to pay for all or any reasonable costs and expenses it incurred in doing so.

6.7 Administrative Fee for Prevention Notices

Council may also recover the administrative costs of preparing and giving prevention notices. The recipient of a prevention notice must pay the authority that issued it a fee as specified on the notice within 30 days of receiving the notice.

The fee is **not** payable during an appeal against the notice to the Land and Environment Court. If the court does not invalidate the prevention notice, the fee is then payable within 30 days of the court's decision. It is an offence not to pay the fee, and a fine may be imposed for the separate offence. However, Council has the discretionary power to extend the time for payment, on application of the recipient, or to waive the fee. Examples of circumstances in which Council might consider waiving the fee are:

- demonstrated cases of hardship or bankruptcy
- where the notice has been issued to a charitable organisation.

Note: a fee is not payable to vary an environment protection notice.

7.0 Prohibition Notices

Prohibition notices may only be issued by the Minister administering the POEO Act on the recommendation of the EPA.

7.1 Compliance Cost Notices

A compliance cost notice requires the person or occupier of the premises to pay all or any reasonable costs and expenses incurred by Council in connection with certain action it has taken under to clean up a pollution incident or to take action to prevent a pollution incident from occurring following the issuing of a Cleanup Notice or a prevention Notice and the recipient of the prevention Notice or Cleanup Notice have not complied with the requirements. A compliance cost notice can also be issued for noise control notices, requiring the recipient to pay the Council all the reasonable costs and expenses the Council incurred in connection with an action it has taken under in relation to a Prevention Notice or Cleanup Notice.

7.2 When May a Compliance Cost Notice be issued?

Council may issue a compliance cost notice to recover costs it has incurred in connection with:

- monitoring action required by, or ensuring compliance with, a clean-up or prevention notice or any other associated matters.
- taking action where a person failed to comply with a prevention or prohibition notice.
- monitoring action required by, or ensuring compliance with, a noise control notice or any other associated matters.

7.3 To Whom May a Compliance Cost Notice be issued?

Council will issue a compliance cost notice may be issued to the most appropriate party regarding the pollution incident cleanup, which may be either:

- the person who was originally issued with the clean-up, prevention, prohibition or noise control notice
- ☐ where a public authority has taken clean-up action under s 92, the occupier of the premises concerned or the person reasonably suspected of causing the pollution incident.

7.4 How is a Compliance Cost Notice Given?

Council must give a compliance cost notice in writing.

7.5 Maintaining Records for Cost Recovery

All claims for cost recovery using compliance cost notices must be justifiable. Unreasonable expense claims and over-servicing may be challenged in court. Regulatory authorities should keep detailed records, including receipts, of all relevant expenses incurred, and should develop a standard form for recording staff time spent in relation to clean-up, prevention, prohibition and noise control notices for which follow-up compliance cost notices may be issued.

7.6 Enforcing Compliance Cost Notices and Recovery of Compliance Costs

If a person fails to comply with a compliance cost notice, the Council or public authority may recover any unpaid amounts specified in the compliance cost notice as a debt in a court of competent jurisdiction. A person served with a compliance cost notice who was not the person who caused the pollution or noise must still pay the amount specified in the compliance cost notice, but may then recover that amount from the person who caused the pollution or noise.

Council may also obtain orders in the Land and Environment Court or a local court to recover costs and expenses and obtain compensation for offences proven under the POEO Act.

The administrative costs of issuing a compliance cost notice (for example, for drafting the notice) are not recoverable, and there is no right of appeal against a compliance cost notice.

7.7 Seeking Charges on Land

Important Note: the following applies to the recovery of costs for compliance cost notices issued under s 104 only (that is, it does not relate to notices issued under s 267B).

To increase its chances of recovering costs, Council may apply to the Registrar-General at the Land Titles Office to register its compliance cost notice for any land owned by the person to whom the notice was given. On registration of the notice, a charge on the land is created to secure payment of the amount specified in the notice to the authority concerned. This charge will cease to have effect:

- on payment to the Council or public authority of the amount concerned, or
- on the sale or other disposition of the property with the written consent of the authority, or
- on the sale of the land to a purchaser in good faith for value who, at the time of the sale, had no notice of the charge.

Council or a public authority lodging or registering a compliance cost notice may require the recipient of the notice to pay any of the reasonable costs and expenses the authority incurred in lodging or registering the notice and in registering any resulting charge, including the costs of administering the charge. This must be done by notice in writing. Unpaid amounts can be recovered as a debt.

8.0 Smoke Abatement Notices

8.1 When May a Smoke Abatement Notice be issued?

An authorised officer of Council may issue a smoke abatement notice if it appears to the authorised officer that excessive smoke is being, or has been, emitted from a chimney on or in residential premises. The notice must be issued within 7 days of the observation.

A smoke abatement notice cannot be issued for a chimney that is in or on an incinerator or is used only for smoke originating from outside a residence as these matters are regulated under the POEO (Control of Burning) Regulation 2000.

8.2 To Whom May a Smoke Abatement Notice be issued?

The smoke abatement notice may be issued to the person whom the authorised officer believes to be the occupier of the premises. This can include the tenant of a rental property.

8.3 What does a Smoke Abatement Notice do and for how long is it in Effect?

A smoke abatement notice directs a person to ensure that excessive smoke is not emitted from the chimney at any time after 21 days following the giving of the notice. This ensures that the householder has a reasonable period of time in which to have the necessary improvements, maintenance or repairs carried out. A smoke abatement notice only prevents excessive smoke emitting from the chimney, not all smoke.

A smoke abatement notice ceases to have effect 6 months after the day on which it is given or when it is revoked, whichever occurs first. This ensures that the smoke abatement notice applies only in one winter period.

8.4 How is a Smoke Abatement Notice given?

An authorised officer of Council which is a local authority must give a smoke abatement notice in writing.

8.5 Enforcing a Smoke Abatement Notice

It is an offence to fail, without reasonable excuse, to comply with a smoke abatement notice.

A penalty notice may be issued for failure to comply with a smoke abatement notice with more serious breaches being dealt with by a court.

8.6 Revocation of a Smoke Abatement Notice

Smoke abatement notices can be revoked by Council for which the person who gave the notice is an authorised officer.

9.0 Noise Control Notices

9.1 When May a Noise Control Notice be issued?

The Council may issue a noise control notice to prohibit carrying out any activity, including keeping an animal, or using any article that emits noise above a level specified in the notice. There is no requirement that the noise must be offensive before a noise control notice may be issued.

9.2 To Whom May a Noise Control Notice be issued?

A noise control notice may be issued to:

- the occupier of the premises, or
- the person who is carrying out, or proposing to carry out, the activity or who is using or operating, or proposing to use or operate, the article on the premises.

9.3 What does a Noise Control Notice do?

A noise control notice prohibits a person from causing, permitting or allowing the carrying out of a specified activity or the use of a specified article at particular premises, so noise emissions exceed a specified level. The notice may restrict the emission of noise for a particular length of time, for example at all times or on specified days or between specified times. If the noise control notice does not specify the hours during which the restriction applies, the notice operates at all times.

Noise control notices operate from the day the notice is given unless a later date is specified, so Council may require action within the appeal period. However, the recipient may apply to the Land and Environment Court for a stay of the notice at the time of appeal.

9.4 How is a Noise Control Notice given?

Council must give a noise control notice in writing.

9.5 Procedural Fairness

The Land and Environment Court has confirmed that Council has a duty to afford procedural fairness when issuing environment protection notices such as noise control notices (Liverpool City Council v L Cauchi and Ors [2005] NSWLEC 676).

The extent of the obligations imposed by that duty will vary from case to case. The duty to afford procedural fairness may require Council to consult with the proposed recipient of a notice, for example by providing them with a copy of the draft notice, to give that recipient a right to be heard before the decision to issue the notice is made. If the notice is directed to a person other than the person carrying out the activity, consider whether consultation should take place with the person carrying out the activity before the decision to issue the notice is made.

9.6 Operation of Noise Control Notices and Appeals

A noise control notice operates from the day it is given unless another date is specified, so a COUNCIL may require action within an appeal period. A person given a noise control notice may appeal to the Land and Environment Court against it within 21 days of being served with it unless otherwise specified in the Regulations.

If the recipient appeals against the notice, compliance is still required unless the Land and Environment Court directs that the notice is stayed. In this case the notice does not operate until the stay ceases, or the Land and Environment Court confirms the notice, or the appeal is withdrawn, whichever occurs first.

9.7 Enforcing Noise Control Notices

It is an offence to contravene a noise control notice only if it is established that the noise can be heard outside the premises without the aid of an instrument, machine, or device. Penalties for the breach of a notice may be imposed by a court.

9.8 Administrative Fee for Noise Control Notices

Council may also recover the administrative costs of preparing and giving noise control notices, except for a variation or revocation of a noise control notice. The recipient of a noise control notice must pay to the authority that issued it a fee as specified on the notice within 30 days of receiving the notice.

The fee is **not** payable during an appeal against the notice to the Land and Environment Court. If the court does not invalidate the prevention notice, the fee is then payable within 30 days of the court's decision. It is an offence not to pay the administrative fee within the required time.

- A penalty notice will be issued for failure to pay the administrative fee within the required time.

However, the Council has the discretionary power to extend the time for payment, on application of the recipient, or waive the fee. Examples of circumstances in which Council will consider waiving the fee are:

- demonstrated cases of hardship or bankruptcy
- where the notice has been issued to a charitable organisation.

Note: a fee is not payable on the variation or revocation of a noise control notice.

10.0 Noise Abatement Orders

Following investigation by an authorised officer of complaints relating to offensive noise, and, should the authorised officer determine that the noise, if any, is not offensive the complainant will be advised in writing the outcome of the investigation.

If the complainant is not satisfied with the findings of the officer the complainant will be advised in writing that should the complainant consider that offensive noise is being emitted, that the POEO Act gives individuals the power to seek noise abatement orders through the local court.

If a complaint about the noise is made to a justice of the peace at a local court in the district concerned, the justice may then summon the person allegedly making the offensive noise, or the occupier of the premises where the noise is coming from, to the local court.

If the local court is satisfied that offensive noise exists, or can recur, at the same premises, it may make a noise abatement order. The noise abatement order may direct the person against whom the complaint has been made to:

- abate (or lessen) the offensive noise within the time specified in the order, or
- prevent the offensive noise from recurring.

A noise abatement order operates from the day the notice is given unless a later date is specified in the order.

A person given a noise abatement order may appeal to the Land and Environment Court against the order within 21 days of being served with it, unless a different period is specified in the Regulations. If the recipient appeals against the order, compliance is still required unless the Land and Environment Court directs that the order is stayed. In this case the order does not operate until the stay ceases or the Land and Environment Court confirms the order or the appeal is withdrawn, whichever occurs first.

Note that a noise abatement order has no force if it is directed to:

- the state or a person acting on behalf of the state
- a public authority or person in their capacity as a member, officer, or employee of a public authority
- a person or body prescribed in the Regulations.

A noise abatement order also has no force if it can affect:

- any activity carried out by the state or a public authority
- any scheduled activity, or activity or work that is subject to an environment protection licence
- any activity prescribed in the Regulations.

It is an offence to contravene a noise abatement order.

11.0 Notices to Provide Information and Records

11.1 When May a Notice requiring information and records be issued?

Council may issue a notice requiring information and records to be provided for any matter relating to its responsibilities or functions under S192 of the POEO Act, including determining whether the Act has been contravened. Authorised officers may also issue these notices under S193

11.2 To Whom May Notice requiring information and records be issued?

A notice to provide information and records may be issued to anyone.

11.3 What Information and records may the Notice require?

A notice from Council, or from an authorised officer may require only information and records for matters relating to the Council's responsibilities or functions under the POEO Act.

11.4 What must the Notice Specify?

The notice must specify the information or records that must be provided, the manner in which they must be provided, and a reasonable time by which they must be provided.

Unless otherwise specified in the notice, any record in electronic, mechanical or other form must be provided in written form. The person or regulatory authority to which any record is provided may take copies of it. A notice to provide records may require a person to provide only existing records that are within their possession or power to obtain lawfully.

11.5 How is a Notice to provide information and records given?

A notice to provide information and records must be in writing.

11.6 Notices to provide information are subject to the privilege against self-incrimination

An individual, that is, a person rather than a corporate entity, may object to providing information, but **Not** records, under a notice on the grounds that the information might incriminate them or make them liable for a penalty.

Section 212 of the POEO Act says that if the person does object, the information they provide in response to the notice may not be used in legal proceedings against them, except in proceedings for an offence for knowingly providing false or misleading information. This is also the case if the individual was not warned before providing the information that they could object on the grounds of self-incrimination.

Note: that even when an individual does object, they are still required to provide the information and any records that have been requested. While the information provided may not be used against them, it may be used in proceedings against others, including corporations.

The privilege against self-incrimination in s 212 of the POEO Act is not available to a corporation.

11.7 Records are not subject to the privilege against self-incrimination

It is important to note that records provided by a person in response to a notice may be used against them in criminal proceedings, whether they are an individual or a corporate entity. Under the POEO Act, the privilege against self-incrimination applies only to answering questions or providing information.

11.8 Enforcing Notices requiring information and records

It is an offence to, without a lawful excuse, not comply with a notice to provide information and records, or provide any information required by a notice knowing that it is materially false or misleading. However, a person cannot be guilty of the offence of failing to comply with the notice if they were not warned beforehand that this failure was an offence.

A penalty notice may be issued for not complying with a notice to provide information and records. The administrative costs of issuing a notice requiring information and records (for example, for the drafting of the notice) are not recoverable.

12.0 Other types of Notices and Directions

The POEO Act allows designated officers of Council to issue other types of notices and directions. These are:

- noise abatement directions
- penalty notices.

A brief summary of these directions and notices is provided below.

12.1 Noise Abatement Directions

Authorised officers and police officers may issue noise abatement directions in situations where they believe that offensive noise is being, or has at any time within the past 7 days been, emitted from premises.

Noise abatement directions remain in force for up to 28 days, unless a shorter period is specified in the notice. A person who, without reasonable excuse, does not promptly stop emitting offensive noise, or who emits offensive noise during the period specified in the notice, is guilty of an offence. Note that a noise abatement direction does not mean that all noise from the premises must stop only offensive noise.

Noise abatement directions, other than a direction given by an authorised officer of the EPA, may not be given to the state or a person acting on its behalf, a public authority, people acting as employees or members of the authority, or a person prescribed by the Regulations.

They also have no force if they affect any activity carried out by the state or a public authority, or involve a scheduled activity, an activity that is subject to an environment protection licence, or an activity prescribed by the Regulations, unless the direction is given by an authorised officer of the EPA.

12.2 Penalty Notices

Penalty notices may be issued by designated enforcement officers when they believe that a person has committed a penalty notice offence, which is an offence committed under certain legislation including the POEO Act. Penalty notices are issued for minor breaches, and they allow the person served with the notice to pay a fine rather than have the alleged offence dealt with in court. Schedule 6 of the Protection of the Environment Operations (General) Regulation 2009 sets out all the offences for which a penalty notice may be issued under the POEO Act and Regulations made under that Act; the penalty amounts; and which class of officer may issue a penalty notice for which type of offence.

13.0 Orders

13.1 General aims for Council's Orders process

- To promote an integrated framework for dealing with Orders.
- To ensure consistency and fairness in the manner in which the Council deals with Orders.
- To make the Council's policies and requirements for Orders readily accessible and understandable to the public.
- To assist Council to fully pursue its charter under Section 8 of the Act.
- Apply common or consistent requirements and procedures to all types of Orders.
- Establishing a system of community participation which can effectively resolve disputes and conflicts as they arise.
- Using straight forward English and explanatory notes throughout the text of the policy.
- To apply the principles of natural justice in the consideration of representation made by affected persons.

13.2 Procedures for issuing Orders

In accordance with the Local Government Act, 1993, Councils are required to observe certain procedures before giving Orders. In particular Section 132 requires that the following be carried out prior to issuing an Order namely:

13.3 Giving Notice and Representations

- Before giving an order, Council must give notice to the person(s) to whom the Order is proposed to be given of its intention to give the Order, the terms of the proposed Order and the period proposed to be specified as the period within which the Order is to be complied with. (*s132(1) LGA 1993*)
- Council's notice must indicate that the person to whom the Order is proposed to be given may make representations to Council as to why the Order should not be given or as to the terms of or period for compliance with the Order. (*s132(2) LGA 1993*)
- The notice may indicate that the representations are to be made to the Council or a specified committee of the Council on a specified meeting date or to a specified Councillor or employee of the Council on or before a specified date being, in either case, a date that is reasonable in the circumstances of the case. (*s132(3) LGA 1993*)
- A person, to whom an Order is proposed to be given, when making representations may be represented by an Australian Legal Practitioner or Agent (*s133 LGA 1993*)
- The Council or a specified committee, or specified Councillor or employee of the Council is required to hear and to consider any representations made (*s134 LGA 1993*)

Representations are to be received, heard and considered by the immediate supervisor of the issuing officer. After hearing and considering any representations made concerning the proposed Order, the supervising officer concerned may determine:

- (a) to give an Order in accordance with the proposed order; or
- (b) to give an Order in accordance with modifications made to the proposed Order; or
- (c) not to give an Order (section 135 Local Government Act, 1993).

13.4 Criteria for Consideration

The types of orders that Council may be involved with, the circumstances under which they may be given and the criteria that must be considered if any are listed in the orders schedule. In areas where it is considered that the circumstances for the particular order are self explanatory no additional criteria has been provided.

Note:

The giving of an order is not mandatory and is at the discretion of the council authorised investigating officer whether or not the circumstances meet the applicable criteria for that order. The criteria shall only apply to a person if Council serves an Order under Section 124 of the Local Government Act, to that effect on that person.

Note:

Under Section 126 of the Act Council may not give an Order in respect of the following land, without the prior written consent of the Minister.

- Vacant Crown Land
- A reserve within the meaning of Part 5 of the Crown Lands Act 1989
- A Common

13.5 Content of Orders

The order is required to:

- Indicate the things the person must do or refrain from doing or instead specify the standard that the premises are required to meet or indicate the nature of the work that that would satisfy the standard. The order may also specify that the owner or occupier submit particulars of work required. (s139 LGA 1993).
- State the reasons for the order (s136 LGA 1993).
- Specify a reasonable period for compliance. If there is a serious risk or emergency, compliance can be required immediately (s137 LGA 1993).
- Clause 99 of the Local Government (General) Regulation 2005 requires the following information be included:
 - (a) any relevant provision of the Act, local orders policy or regulations made under the Act that is not being or has not been complied with,
 - (b) that it is an offence not to comply with an Order and the maximum penalty for the offence,
 - (c) that, if the Order is not complied with, the council may give effect to the Order and recover the costs of doing so from the person concerned.

13.6 Revocation and Modification of Orders

- Council may modify an order given to a person at any time (including period of compliance) providing the person agrees to the modification. (s152 LGA 1993)
- Council may revoke an order at any time. (s153 LGA 1993)

13.7 After an Order is given

There are a number of possible scenarios:

- Owner / occupier comply. If the occupiers or managers comply with the order they may deduct the cost (plus interest) from rent or recover such costs in the Court (s147 LGA 1993).
- Council can modify the Order if the person agrees to the modification (s152 LGA 1993).
- Council can revoke the Order (s153 LGA 1993).

- Person on whom the Order is served may appeal to the Land and Environment Court (see Sections 180, 181, 182 LGA, 1993).
- Person fails to comply with the Order.

It is an offence not to comply with an order. The act specifies penalties for such offences and provides mechanisms for enforcement, including Court action for non compliance (s628 LGA 1993). - see applicable penalties

Council may do all such things as are necessary or convenient to give effect to the Order, including the carrying out of any work requested by the Order (s678 LGA 1993). Costs incurred in giving effect to the terms of the Order may be recovered in Court as a debt due to Council by the person concerned.

13.8 Penalties for Non-Compliance

Penalties for non-compliance with the terms of orders issued by Council are prescribed under section 628 of the Local Government Act, 1993.

- The maximum penalty for Orders 1, 3, 5 and 7 - 12 is 50 penalty units in the case of an individual and 100 in the case of a Corporation.
- The maximum penalty for Orders 15, 16 or 17 is 100 penalty units in the case of an individual and 200 in the case of a Corporation.
- The maximum penalty for Orders 18 – 25 or 27 - 29 is 20 penalty units.

Note: One penalty unit as at June 2011 equals \$110.

14.0 Orders Schedule

The following schedule lists the orders available under the relevant sections of The Local government Act and the Environmental Planning and Assessment Act.

14.1 Local Government Act

Section 124 And 125 Orders

The following Orders under Sections 124 and 125 of the Local Government Act are set out to indicate:

- (a) To do what (action required to be taken).
- (b) in what circumstances (restricts the particular circumstances in which an Order may be given).
- (c) To whom (the person the Order must be given to).

14.2 Order 1 (d)

To do what?

To demolish or remove a building

In what circumstances?

Building is erected in a catchment district and causes or is likely to cause pollution of the water supply

To whom?

Owner of building

Order 3 (c)

To do what?

To repair or make structural alterations to a building

In what Circumstances?

Building is erected in a catchment district and causes or is likely to cause pollution of the water supply

To Whom?

Owner of building

14.3 ORDER No. 5(a), (b), (d), (e), (f) and (h)

To do What?

To take such action as is necessary to bring into compliance with relevant standards, or requirements set or made or under this Act:

- (a) A camping ground, caravan park or manufactured home estate.
- (b) A moveable dwelling or manufactured home.
- (c) Deleted
- (d) A place of shared accommodation.
- (e) A hairdressers shop or beauty salon.
- (f) A Mortuary.
- (g) A water meter, water supply or sewerage system on premises.

In What Circumstances?

Failure to comply with relevant standards or requirements set or made by or under this Act or under the Local Government Act 1919.

To Whom?

Owner, occupier or manager or, in the case of a water meter, water supply or sewerage system in respect of which a defect occurs in work due to faulty workmanship of, or defective material supplied by, a licensed contractor (being the holder of a licence) in force under the Home Building Act 1989 authorising the holder to contract to do the work) within 12 months after the work is carried out or the material is supplied, the licensed contractor.

Criteria:

When determining whether a Notice of Proposed Order or Order is to be given the following criteria are to be taken into consideration.

Non-compliance with Order 5:

- (a) Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005
- (b) Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005.
- (c) Deleted
- (d) Schedule 2, Part 1-“Standards for Place of Shared Accommodation” –
- (e) Schedule 2, Part 2-“Standards for Hairdresser Shops” and Part 3 – “Standards for Beauty Salons”.
- (f) Schedule 2, Part 4 “Standard for Mortuaries”.
- (h) Schedule 1, Part 2 “Standards for water supply, sewerage and stormwater drainage work”.

14.4 ORDER No.7

To Do What?

To fence land.

In What Circumstances?

Public health, safety or convenience renders it necessary or expedient to do so and there is no adequate fence between the land and public place.

To Whom?

Owner or occupier of land.

Criteria:

When determining whether a Notice of Proposed Order or Order is to be given the following criteria are to be taken into consideration.

1. The condition, location or use of the land poses a threat to the health, safety and/or convenience of the public.

14.5 ORDER No. 8

To Do What?

To identify premises with such numbers or other identification in such a manner as is specified in the Order.

In What Circumstances?

Premises have a frontage to or entrance from a road and there are no markings that can readily be seen and understood from the road.

To Whom?

Owner or occupier of land

Criteria:

When determining whether a Notice of Proposed Order or Order is to be given the following criteria are to be taken into consideration.

1. Such an order would be served if there is unauthorised use of or duplication of numbers, numbers not in accordance with the street patterns, confusion in identification of premises and the owner/occupier had not complied with Council's request for rectification.

14.6 ORDER No. 9

To Do What?

To fence, empty, fill in or cover up a hole or waterhole in a manner specified in the Order.

In What Circumstances?

Hole or waterhole is or may become dangerous to life.

To Whom?

Owner or occupier of land

Criteria

When determining whether a Notice of Proposed Order or Order is to be given the following criteria are to be taken into consideration.

1. The hole or waterhole is directly accessible from a public place or another private property and/or;
2. The hole or waterhole is not adequately covered or fenced to prevent direct access to it from a public place or any other private property and;
3. The nature, location and depth of the hole or waterhole is considered to be dangerous to life and;

Criteria does not Include:

1. Any hole or water hole that falls under the definition of a swimming pool as defined in the Swimming Pools Act 1992.

14.7 ORDER No. 10

To Do What?

To remove or stack articles or matter, to cover articles or matter, to erect fences or screens or to plant trees.

In What Circumstances?

Land is in the immediate vicinity of a public place and is used for the storage of articles or matter so as to create or be likely to create unsightly conditions.

To Whom?

Owner or occupier of land

Criteria

When determining whether a Notice of Proposed Order or Order is to be given the following criteria are to be taken into consideration.

1. Definition of "Article" or "matter" includes but is not limited to:-
 - (a) Disused motor vehicles, caravans, trailers or boats;
 - (b) Disused motor vehicle, caravan, trailers or boat parts;
 - (c) Disused machinery, equipment and appliances;
 - (d) Old, used or second hand materials (including building materials);
 - (e) Demolition material;
 - (f) Sand, soil, rock, blue metal and any other material derived from any extraction or dredging process;
 - (g) Any organic or vegetative material;
 - (h) Any industrial or commercial waste products;
 - (i) Any household rubbish or waste;
 - (j) Any recycled or composted material;
 - (k) Furniture.
2. Definition of "Land in the immediate vicinity of a public place" is any land that immediately adjoins a public place.
3. The article(s) must be visible from the public place.

14.8 ORDER No. 11

To Do What?

To do or to refrain from doing such things as are specified in the order to prevent environmental damage, to repair environmental damage or to prevent further environmental damage.

In What Circumstances?

Work carried out on land has caused or is likely to cause environmental damage, being damage to the physical environment that is caused by:

- (a) drainage; or
- (b) drainage works; or
- (c) obstructing a natural watercourse other than by work constructed or used under a water management work approval granted under the Water Act 2000, not being environmental damage arising from premises, works or equipment the subject of a management licence issued under the Protection of the Environment Operations Act 1997 or the subject of a notice or direction issued by the regulatory authority under that Act.

To Whom?

Owner or occupier of land

Criteria:

When determining whether a Notice of Proposed Order or Order is to be given the following criteria are to be taken into consideration.

Physical environmental damage must be as a result of the flow of water over any land, discharged from the following sources:

1. Drainage, being a drain or system of drains, whether artificial or natural, which are designed for the carrying of water other than sewerage and which includes a natural water course or
2. Drainage works, being any part of the on-site process involved in the construction of a drain or drainage system and which includes, but not limited to site excavation, materials, compiling and any associated buildings works or
3. Obstruction of a natural water course, being the carrying out of building works or the deposition of any material in such a position as to block or restrict the flow of water within or to redirect the flow of water away from a natural water course.

14.9 ORDER No.12**To Do What?**

To do such things as are necessary to control the flow of surface water across land.

In What Circumstances?

Other land or a building on the land or other land is being damaged or is likely to be damaged.

To Whom?

Owner or occupier of land

Definition:

“Surface Water” means all water which runs across the surface of the land and which may originate from any source including non-polluted water, water from defective guttering, downpipes or drainage, roof water, water from paved areas, discharges or overflows from swimming pools and water from blocked stormwater drains or pipes but shall not include seepage or water percolating to the surface arising from excavation within the land that is suffering damage or likely to suffer damage.

Criteria:

When determining whether a Notice of Proposed Order or Order is to be given the following criteria are to be taken into consideration.

1. Erosion of land is occurring from the flow of surface water.
2. Physical damage to a building is or has occurred or there is sufficient evidence to suggest that it is likely to occur.
3. Surface water flows across the land boundary onto other land.
4. Situations where this Order may apply include but are not limited to:
 - (a) Water from defective guttering, down pipes or drainage (including underground drainage pipes).
 - (b) Water from roofs not fitted with guttering.
 - (c) Emptying or backwashing swimming pools.
 - (d) Surface water that has been purposely redirected away from its natural direction of flow towards other land.

Criteria Does Not Include:

- (a) Stormwater runoff which is NOT redirected in any manner (i.e. natural surface flow) and follows existing natural land contours.
- (b) Surface water runoff occurring in periods of exceptional heavy rain.
- (c) Surface water flowing down existing hard surface areas such as driveways, tennis courts, concrete slab or paved areas.
- (d) Discharges from defective or blocked private stormwater easements.
- (e) Overflows from absorption pits where contours of land and lack of access prevent direct connection of a building's stormwater drainage system to Council's Stormwater Drainage System.
- (f) Runoff from any building or development work that is the subject of a Development Consent and has been constructed in accordance with that consent.
- (g) Any circumstance in which the flow of surface water across land is capable of being regulated by the Environmental Protection Authority constitutes a circumstance where an order No 12 cannot be made.

14.10 ORDER No.15**To Do What?**

Not to conduct, or to cease conducting, an activity on premises (whether or not the activity is approved under this Act).

In What Circumstances?

The activity constitutes or is likely to constitute:

- (a) a life threatening hazard; **or**
- (b) a threat to public health or public safety and is not regulated or controlled under any other Act by a public authority.

To Whom?

Any persons apparently engaged in promoting, conducting or carrying out the activity.

Criteria:

When determining whether a Notice of Proposed Order or Order is to be given the following criteria are to be taken into consideration.

1. The activity being carried out is causing or is likely to cause a life threatening hazard or a threat to public health or public safety to any person whether on private or public land.

2. Situations where this Order may apply include but are not limited to:

- (a) Use of a defective septic tank or a septic closet on premises after the date specified (in an Order No 24 served on the owner or occupier of the premises) being the date by which the premises were required to be connected with a sewerage system.
- (b) Construction work on a septic tank or a septic closet on premises after the date specified (in an Order No 24 served on the owner or occupier of the premises) being the date by which the premises were required to be connected with a sewerage system.

Criteria Does Not Include:

- 1. Any activity that is covered by any other Act or Regulation.
- 2. Any activity that is controlled by another authority.

14.11 ORDER No.16

To Do What?

To cease the use of premises or to evacuate premises.

In What Circumstances?

A person to whom Order No. 15 is given has failed to comply with the Order.

To Whom?

The person to whom Order No. 15 is given.

Criteria:

When determining whether a Notice of Proposed Order or Order is to be given the following criteria are to be taken into consideration.

No additional criteria.

14.12 ORDER No.17

To Do What?

To leave premises or not to enter premises.

In What Circumstances?

A person to whom Order No. 15 is given has failed to comply with the Order.

To Whom?

Any person

Criteria:

When determining whether a Notice of Proposed Order or Order is to be given the following criteria are to be taken into consideration.

- No additional criteria.

14.13 ORDER No.18

To Do What?

Not to keep birds or animals on premises, other than of such kinds, in such numbers or in such manner as specified in the order.

In What Circumstances?

Birds or animals kept on premises are:

- (a) in the case of any premises (whether or not in a catchment district) of an inappropriate kind or number or are kept inappropriately; or
- (b) in the case of any premises in a catchment district – birds or animals (being birds or animals that are suffering from a disease which is communicable to man or to other birds or animals) or pigs.

To Whom?

Occupier of Premises.

Criteria:

When determining whether a Notice of Proposed Order or Order is to be given the following criteria are to be taken into consideration.

NOTE: The standards below apply only where a legitimate problem has been identified relating to the numbers and/or types of birds or animals kept upon a particular premises and which is having a detrimental impact on the health, amenity and safety of others and where an order under the provisions of 124 of the Local Government Act is required to rectify the problem.

Where it is considered by the investigating officer that the type or number of the bird(s) or animal(s) is inappropriate for the premise due to the impact occurring, restrictions on numbers and/or types kept as prescribed in the Orders Schedule may be applied. The numbers specified for particular species in the standard are based on what is considered a manageable and generally acceptable number.

These numbers may however, be varied by the investigating officer depending on the circumstances. (See Schedule 2, Part 5: “Standards for Keeping Birds and Animals” Local Government (General) Regulation 2005.

General Criteria

1. Criteria for issuing an order may include (but not limited to):

- (a) Offensive noise at inappropriate times
- (b) Odour problem from proximity to enclosures or poor cleaning
- (c) Vermin infestation through poor cleaning
- (d) Physical safety

14.13.1 Specific Criteria Relating to Animals

14.13.2 Poultry

1. Fowl

Definition – For the purpose of this Policy, fowl shall include birds of the species Gallus Gallus, domestic fowl or guinea fowl and does not include ducks, geese or turkeys.)

- (a) No roosters are permitted to be kept;
- (b) The number of fowl shall be limited to twenty (20) per premise.
- (c) Must not be kept within 4.5 metres of a dwelling, public hall, school or premises used for the manufacture, preparation, sale or storage of food.

2. Poultry (other than fowls)

- (a) Must not be kept within 30 metres of a dwelling, public hall, school or premises used for the manufacture, preparation, sale or storage of food.

General Requirements:

1. The floors of the poultry houses must be paved with concrete or mineral asphalt underneath the roosts or perches. Poultry houses more than 15.2 metres from a dwelling, public hall, schools or premises used for the manufacture, preparation, sale or storage of food and located on clean sand need not comply with this requirement.
2. Poultry must not be kept under such conditions as to create a nuisance or to be dangerous or injurious to health.
3. Poultry yards must at all times be kept clean and free from offensive odours.
4. Poultry yards must be enclosed to prevent the escape of poultry.

14.13.3 Swine, Goats, Sheep

Swine, goats or sheep must not be kept (and animal waste products must not be deposited) within 60 metres of a dwelling, shop, office, factory, church, or other place of public worship, school or public place.

14.13.4 Horses

Refer to Council Policy No. 28 titled "Horses on Private Premises".

14.13.5 Dogs and Cats

Dogs and Cats are managed under the provisions of the Companion Animals Act 1998 and regulations.

14.13.6 Miscellaneous

1. The maximum number of bird(s) or animal(s) permitted to be kept, for those listed above where it the number has not been specifically noted is at the discretion of the investigating Council officer given the number and type of bird(s) or animal(s) being kept, the conditions under which they are kept and the impact they are causing.
2. Such animals would be required to be kept under such conditions as to prevent the creation of a nuisance or not to be dangerous or injurious to health.
3. The area proposed for the keeping of such animals must at all times be kept clean and free from offensive odours.
4. Where the keeping of birds or animals on premise is capable of being regulated by the Environment Protection Authority, Council is excluded from making an Order No. 18.

Criteria does not include:

1. The feeding of wild or native birds and/or animals;
2. Damage caused by wild or native birds or animals;
3. The trapping of any wild or native birds or animals;
4. The control of or treatment of termites on private or public land;

14.14 ORDER No. 19

To Do What?

To use or not to use a tennis court as specified.

In What Circumstances?

Actual or likely annoyance or threat to the safety of neighbours or users of a public place.

To Whom?

Occupier of land

Criteria:

When determining whether a Notice of Proposed Order or Order is to be given the following criteria are to be taken into consideration.

- (a) Tennis courts are not to be used after sundown unless otherwise approved by Development Consent.
- (b) Tennis courts on private property shall not be used for commercial purposes without Development Consent being issued, i.e. for hire to non residents of the property.

14.15 ORDER No. 20

To Do What?

To do such things as are specified in the Order to put premises, vehicles or articles used for the manufacture, preparation, storage, sale, transportation or other handling or use of or in relation to food into a clean or sanitary condition.

In What Circumstances?

The premises, vehicle or article, is not in a clean or sanitary condition.

To Whom?

Owner or occupier of premises or owner or operator of vehicle or article.

Criteria:

When determining whether a Notice of Proposed Order or Order is to be given the following criteria are to be taken into consideration.

1. The premises including any fixtures, fittings, utensils and equipment has not been adequately cleaned and there is accumulations of dirt, dust, grease, oil, food matter or any other matter that could contaminate or likely contaminate any food stuffs present on the premises
2. The food handling procedures and hygiene standards of operators create such unsanitary conditions that will cause contamination or is likely to cause contamination of any foodstuffs present on the premises
3. There is non compliance with the Food Standards Code that cause the premises to be in an unclean or unsanitary condition as described above. This section does not effect the power of Council to give an Improvement Notice or Prohibition Order under the Food Act 2003.

14.16 ORDER No. 21

To Do What?

To do or refrain from doing such things as are specified in the Order to ensure that land is, or premises are, placed or kept in a safe or healthy condition.

In What Circumstances?

The land or premises are not in a safe or healthy condition.

To Whom?

Owner or occupier of land or premises.

Criteria:

When determining whether a Notice of Proposed Order or Order is to be given the following criteria are to be taken into consideration.

Land or premises would be considered not to be in a safe and or healthy condition if the safety or the health of the owner or occupier of the land or premises, or the community, is detrimentally affected, create or are likely to create a health and/or safety risk to any person. Action that can be required includes, but is not limited to, the following:

1. The abatement of dampness in walls and ceilings in any property;
2. The repair of leaky roofs and renewal or repair of defective guttering and down piping [*where it causes health & safety issues and not damage – See Order 12*];
3. Provision of adequate wholesome water supply;
4. The renewal of broken window glass and sash cords to render windows capable of being opened top and bottom;
5. The removal of defective floor timbers and stair treads and replacement with sound material;
6. The renewal or repair of waste pipes; and sanitary fittings and flush pipe to water closet pans;
7. Renewal or repair of defective sewerage service pipes;
8. Clearing of choked sewerage service pipes;
9. Repair of defective septic tanks, pipes and absorption pits;
10. The removal of the following accumulations which are likely to afford harbourage for vermin or otherwise pose a threat to health and safety to any person:
 - (a) disused and/or second hand building materials or household fixtures and fittings;
 - (b) dilapidated and/or abandoned motor vehicle or ancillary parts and accessories or machinery;
 - (c) dilapidated and/or abandoned boats, watercraft, trailers or caravans;
 - (d) disused and/or second hand containers, bottles, scrap metal, waste paper, rags, rubbish or other scrap materials; and
 - (e) tree trunks, tree stumps, organic material, vegetation or firewood;
11. Provision of suitable facilities for toilet, kitchen sink, bathing and for washing of clothes hot and cold water provided.

12. Provision of suitable cooking facilities;
13. The control of animal enclosures in so far as their operational aspects in relation to environmental health is concerned.
14. Trees or branches of trees that are deemed unsafe by Council's *s Tree Preservation Policy*.
15. The treatment of an untreated swimming pools or excavation where the condition of the water within is or is likely to be breeding mosquitoes.
16. The boarding up or fencing off of a dilapidated building to prevent unauthorised access where there is a safety issue from injury or fire.
17. Cleaning of garbage containers.
18. Potential for collapse of a structure, or part thereof, such as a wall, fence or other building.
19. Disconnection of an electric fence from its energiser or otherwise render it inoperable.

Criteria Does Not Include:

1. Defective retaining walls, buildings or structures that are dilapidated or appear defective if they:
 - (a) are located on private property and
 - (b) would not impact upon any adjoining public land if they were to collapse and
 - (c) would not pose a threat to health and safety of persons on the adjoining public land in any way.
2. Where the condition of land or premises in respect of health or safety is capable of being regulated by the Environment Protection Authority, Council is excluded from making an Order No. 21.

14.17 ORDER No. 22

To Do What?

To store, treat, process, collect, remove, dispose of or destroy waste which is on land or premises in the manner specified in the order provided that it is not inconstant with the regulations made under the Protection of the Environment Operations Act 1997

In What Circumstances?

Waste is present or generated on the land or premises and is not dealt with satisfactorily and is not regulated or controlled by, or subject to, a licence issued under the Protection of the Environment Operations Act 1997.

To Whom?

Owner or occupier of land or premises, owner of or person responsible for the waste or for any receptacle or container in which the waste is contained.

Criteria

When determining whether a Notice of Proposed Order or Order is to be given the following criteria are to be taken into consideration.

1. Waste is being placed on the roadway for collection by Council not in the approved impervious receptacles with close-fitting lids that are provided by Council.

2. Where waste is present on land or premises and is not being properly stored, collected or removed satisfactorily from those premises.
3. Defective site absorption septic tank system.
4. Disposal of human waste on site without an approved method of waste disposal.

14.18 ORDER No. 22A

To Do What?

To remove or dispose of waste that is on any residential premises or to refrain from keeping waste on those premises.

Under What Circumstances?

The waste is, in the opinion of an environmental health officer (within the meaning of the (Public Health Act, 1991), causing or is likely to cause a threat to public health or the health of any individual.

To Whom?

Owner or occupier of the premises

Criteria:

14.19 ORDER No. 24

To Do What?

To connect premises with a sewerage system by a specified date.

In What Circumstances?

The premises are situated within 75 metres of a sewer of the Council.

To Whom?

Owner or occupier of premises.

Criteria:

When determining whether a Notice of Proposed Order or Order is to be given the following criteria are to be taken into consideration.

Access to Sewer

1. The distance from the premises to the connection point of the sewer must be not further than 75 metres and:
 - (a) be located within the subject premises, or
 - (b) have legal access using an easement for sewerage services over any adjoining premises to the sewer connection point, or
 - (c) has access to the sewer located within an adjoining Council road reserve and
 - (d) connection to the sewer can only be made to a gazetted junction point, and the approval of Sydney Water Corporation must be obtained prior to the premises being connected.
2. The existing sewage management facility is so defective to be a threat to public health and/or is or likely to have a detrimental impact on the environment.

Note: Sewer of Council

Under the provisions of Cl 40(1) of the Local Government (Water Sewerage and Drainage) Regulation, 1993, the sewerage system of Sydney Water is to be considered in the same category as a Sewer of Council for the purpose of Order No. 24.

14.20 ORDER No. 25

To Do What?

Not to use or permit the use of a human waste storage facility on premises after a specified date.

In What Circumstances?

It is necessary for the purpose of protecting public health.

To Whom?

Owner or occupier of premises

Criteria:

When determining whether a Notice of Proposed Order or Order is to be given the following criteria are to be taken into consideration.

1. The human waste storage facility is so defective or poorly designed so as to permit human waste to discharge or overflow from the storage facility onto the adjacent ground or floor area and in such a manner to be a danger to the health of the public.

Criteria Does Not Include:

1. Where the use of human waste storage facilities is capable of being regulated by the Environment Protection Authority, Council is excluded from making an Order No. 25.

14.21 ORDER No. 27

To Do What?

To remove an object or matter from a public place or prevent any object or matter being deposited there.

In What Circumstances?

The object or matter:

- (a) Is causing or is likely to cause an obstruction or encroachment of or on the public place and the obstruction or encroachment is not authorised by or under any Act, or
- (b) Is causing or is likely to cause danger, annoyance, or inconvenience to the public.

To Whom?

Person causing obstruction or encroachment or owner or occupier of land from which the object or matter is likely to emanate.

Criteria:

When determining whether a Notice of Proposed Order or Order is to be given the following criteria are to be taken into consideration.

1. Definition of Encroachment:

2. Definition of Obstruction:
3. Definition of object or matter:

Any article, item or thing which is visible and tangible and includes but is not limited to:

- (a) Advertising sign, advertisement generally;
- (b) Motor vehicles or motor vehicles parts;
- (c) Caravans or caravan parts;
- (d) Trailers/boats or trailer/boat parts;
- (e) Machinery, equipment and appliances;
- (f) Second hand materials including building materials;
- (g) Demolition materials;
- (h) Scrap materials;
- (i) Sand, soil rock, blue metal and any other material derived from any construction or dredging process;
- (j) Any organic or vegetative material;
- (k) Any industrial or commercial waste product;
- (l) Any household fixtures, rubbish or waste;
- (m) Second hand containers, bottles, scrap metal, waste paper, rags, or rubbish;
- (n) Any recycled or composted material;

Criteria Does Not Include:

1. This criteria does not include the placing of articles on a public place during a designated period of a Council clean up provided these articles do not breach conditions (a) and (b) above.

14.22 ORDER No. 28

To Do What?

To take whatever steps are necessary to prevent damage to a public place and repair damage to a public place.

In What Circumstances?

There is actual or likely damage:

- (a) By excavation or removal of material from or adjacent to the public place; or
- (b) By a work or structure; or
- (c) By surface drainage or irrigation spray.

To Whom?

- (a) Person responsible for the excavation or the removal of the material.
- (b) Owner or person entitled to the benefit of the work or structure.
- (c) Owner or occupier of land from which the surface drainage flows or from which spray emanates.

Criteria

When determining whether a Notice of Proposed Order or Order is to be given the following criteria are to be taken into consideration.

- (a) There is no approval issued by Council.
- (b) The work is not in accordance with any approval granted by Council.

14.23 ORDER No. 29

To Do What?

To alter or repair a work or structure on, over or under a public place.

In What Circumstances?

It is in the public interest to do so.

To Whom?

Owner of the work or structure.

Criteria:

When determining whether a Notice of Proposed Order or Order is to be given the following criteria are to be taken into consideration.

- To alter or repair structures on, over, or under the public way not in accordance with approvals or considered unsafe or dangerous.
- Repairs required to private services within a public place such as, but not limited to, sewer services and roof water / storm water pipes not covered by lease agreements.
- Driveway crossings which are not being maintained in a safe condition.
- Shop awnings which are not being maintained in a safe or sightly condition.
- Maintenance of underground pipes within a public place.

14.24 ORDER No.30

To Do What?

To comply with an approval.

In What Circumstances?

The approval is not being complied with.

To Whom?

Person entitled to act on the approval or person acting otherwise than in compliance with the approval.

Criteria:

When determining whether a Notice of Proposed Order or Order is to be given the following criteria are to be taken into consideration.

- (a) An approval granted by Council has not been complied with, or
- (b) Conditions of an approval granted by Council have not been complied with.

15.0 Order under Section 125 of the Local Government Act, 1993

To Do What?

To abate a public nuisance or order a person responsible for a public nuisance to abate it.

In What Circumstances?

Where a nuisance consists of interference with the enjoyment of public rights. A nuisance is "public" if it materially affects the reasonable comfort and convenience of a sufficient class of people to constitute the public or a section of the public.

To Whom?

The person(s) responsible for causing a public nuisance.

Criteria

When determining whether a Notice of Proposed Order or Order is to be given the following criteria are to be taken into consideration.

The source of the nuisance need not be located on or in;

- (a) A public place.
- (b) The impact of the nuisance must affect the general public and not a localised group.

Example 1 - Lighting from a private premises impacting upon motor vehicle drivers on a public road.

Example 2 - Any wrongful or negligent act or omission in a public road that interferes with the full, safe and convenient use by the public of their right of passage is a public nuisance.

16.0 Dictionary

Definitions are contained in the “Dictionary” of the Local Government Act, 1993.

17.0 Environmental Planning and Assessment Act, 1979 – Orders

Procedures for the issuing of Orders

In accordance with the Environmental Planning & Assessment Act, 1979, Councils are required to observe certain procedures before giving Orders. In particular Section 121D requires that the following be carried out prior to issuing an Order to ensure the rules of natural justice are observed namely:

17.1 Giving Notice and Representations

- Before giving an order, Council must give notice to the person(s) to whom the Order is proposed to be given of its intention to give the Order, the terms of the proposed Order and the period proposed to be specified as the period within which the Order is to be complied with. (s121H(i))
- Council’s notice must indicate that the person to whom the Order is proposed to be given may make representations to Council as to why the Order should not be given or as to the terms of or period for compliance with the Order. (s121H(ii))
- The notice may indicate that the representations are to be made to the Council or a specified committee of the Council on a specified meeting date or to a specified Councillor or employee of the Council on or before a specified date being, in either case, a date that is reasonable in the circumstances of the case. (s121H(iii))
- A person, to whom an Order is proposed to be given, when making representations may be represented by a barrister, solicitor or agent (s121I)
- Where a proposed order is to be given in relation to a development consent, notice must also be given to the consent authority and principal certifying authority in the case where one or both are not the Council itself (s121H(4)(5))
- The Council or a specified committee, or specified Councillor or employee of the Council is required to hear and to consider any representations made (s121J)

Representations are to be received, heard and considered by the issuing officer. After hearing and considering any representations made concerning the proposed Order, the officer concerned may determine in accordance with s121K:

- (a) to give an Order in accordance with the proposed order; or
- (b) to give an Order in accordance with modifications made to the proposed Order without any further notice; or
- (c) not to give an Order.

Note:

After consideration of resources expended in a matter, Council may issue a Compliance Cost Notice to another person in accordance with s121CA.

17.2 Criteria for consideration

The types of orders that Council may be involved with, the circumstances under which they may be given and the criteria that must be considered if any are listed in the orders schedule. In areas where it is considered that the circumstances for the particular order are self explanatory no additional criteria has been provided.

Note:

The giving of an order is not mandatory and is at the discretion of the council authorised investigating officer whether or not the circumstances meet the applicable criteria for that order.

Note:

Where an order would make or is likely to make residents homeless, s121G is to be taken into consideration.

Note:

Under Section 121C of the Act Council may not give an Order in respect of the following land, without the prior written consent of the Minister.

- Vacant Crown Land
- A reserve within the meaning of Part 5 of the Crown Lands Act 1989
- A Common within the meaning of the Commons Management Act 1989

17.3 Content of Orders

The order is required to:

- Indicate the things the person must do or refrain from doing or instead specify the standard that the premises are required to meet or indicate the nature of the work that that would satisfy the standard. The order may also specify that the owner or occupier submit particulars of work required.
- State the reasons for the order.
- Specify a reasonable period for compliance. If there is a serious risk or emergency, compliance can be required immediately.
- Rights of appeal to the Land & Environment Court and period for same.

17.4 Revocation and Modification of Orders

- Council may modify an order given to a person at any time (including period of compliance) providing the person agrees to the modification. (s121ZF)
- Council may revoke an order at any time. (s121ZG)

17.5 After an Order is given

There are a number of possible scenarios:

- Owner / occupier comply.
- Council can modify the Order if the person agrees to the modification.
- Council can revoke the Order.
- Person on whom the Order is served may appeal to the Land and Environment Court (s121ZK).
- Person fails to comply with the Order.

It is an offence not to comply with an order. The act specifies penalties for such offences and provides mechanisms for enforcement, including Court action for non compliance.

17.6 Penalties for Non-Compliance

Failure to comply with the terms of orders issued by Council may result in Council instigating legal action under the provisions of the Act or the servicing of penalty infringement notice, refer s126 and Schedule 5 of the Environmental Planning & Assessment Regulation 2000.

17.7 Compliance Cost Notices under S121C

A Council who gives an order may, by notice in writing served on the other person, require the other person to pay all or any reasonable costs and expenses incurred by the relevant authority in connection with:

- monitoring action under the order, and
- ensuring that the order is complied with, and
- any other associated matters.

Under R281C Compliance cost notices must not require the payment of the following:

- any costs or expenses relating to an investigation that lead to the giving of an order to which the notice relates,
- any costs or expenses relating to the preparation or serving of the notice.

S121CA A **compliance cost notice** is to specify the amount required to be paid and a reasonable period within which the amount is to be paid or, if the regulations prescribe the period to be allowed for payment, that period.

The relevant authority may recover any unpaid amounts specified in a compliance cost notice as a debt in a court of competent jurisdiction.

If the person given a compliance cost notice complies with the notice but was not the person who was responsible for the situation giving rise to the issue of the notice, the cost of complying with the notice may be recovered by the person who complied with the notice as a debt in a court of competent jurisdiction from the person who was responsible.

18.0 Orders Schedule under the Environmental Planning & Assessment Act, 1979

18.1 ORDER 1

To cease using premises for a purpose specified in the Order

To do what?

To cease using premises for a purpose specified in the order

In what circumstances?

- (a) Premises are being used for a purpose that is prohibited
- (b) Premises are being used for a purpose for which development consent is required but has not been obtained
- (c) Premises are being used in contravention of the conditions of a development consent.

To whom?

Owner of premises, or person by whom premises are being used for the purpose specified in the order

18.2 ORDER 2**To demolish or remove a building****To do what?**

To demolish or remove a building

In what circumstances?

- (a) Building is erected without prior development consent of consent authority in a case where prior development consent is required or is erected without prior development consent of a consent authority and a prior construction certificate in a case where both prior development consent and a prior construction certificate are required
- (b) Building is or is likely to become a danger to the public
- (c) Building is so dilapidated as to be prejudicial to its occupants or to persons or property in the neighbourhood
- (d) Building is erected without prior approval of council, in a case where prior approval was required under the Local Government Act 1919 or the Local Government Act 1993 when the erection of the building commenced

To whom?

Owner of building

18.3 ORDER 3**Not to demolish, or to cease demolishing a building****To do what?**

Not to demolish, or to cease demolishing a building

In what circumstances?

- (a) Building is likely to be demolished without prior development consent of consent authority in a case where prior development consent is required
- (b) Building is being demolished without prior development consent of consent authority or otherwise than in accordance with prior development consent of consent authority in a case where prior development consent is required

To whom?

Owner of building, person likely to demolish or person engaged in demolition

18.4 ORDER 4

To repair or make structural alterations to a building

To do what?

To repair or make structural alterations to a building

In what circumstances?

- (a) Building is or is likely to become a danger to the public
- (b) Building is so dilapidated as to be prejudicial to its occupants or to persons or property in the neighbourhood

To whom?

Owner of building

18.5 ORDER 5

To alter, obliterate, demolish or remove an advertisement and any associated advertising structure

To do what?

To alter, obliterate, demolish or remove an advertisement and any associated advertising structure

In what circumstances?

- (a) The advertisement is unsightly, objectionable or injurious to the amenity of any natural landscape, foreshore, public reserve or public place at or near where the advertisement is displayed
- (b) The advertisement is displayed contrary to a provision made by or under this Act
- (c) The advertising structure is erected contrary to a provision made by or under this Act

To whom?

The person who caused the advertisement to be displayed or advertising structure to be erected or the owner or occupier of the premises on which the advertisement is displayed or the advertising structure is erected

18.6 ORDER 6

To do or refrain from doing such things as are specified in the order so as to ensure or promote adequate fire safety or fire safety awareness

To do what?

To do or refrain from doing such things as are specified in the order so as to ensure or promote adequate fire safety or fire safety awareness

In what circumstances?

- (a) Provisions for fire safety or fire safety awareness are not adequate to prevent fire, suppress fire or prevent the spread of fire or ensure or promote the safety of persons in the event of fire
- (b) Maintenance or use of the premises constitutes a significant fire hazard.

To whom?

Owner of premises or, in the case of a place of shared accommodation, the owner or manager

18.7 ORDER 7

To erect or install on or around a building such structures or appliances as are necessary to protect persons or property on or in a public place

To do what?

To erect or install on or around a building such structures or appliances as are necessary to protect persons or property on or in a public place

In what circumstances?

- (a) Building is about to be erected
- (b) Building is situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
- (c) Building is about to be demolished
- (d) Work is about to be carried out
- (e) Work is about to be demolished

To whom?

Owner or occupier of land

18.8 ORDER 8

Not to conduct, or to cease conducting, an activity on premises

To do what?

Not to conduct, or to cease conducting, an activity on premises (being an activity that is, or is capable of being, the subject of a development consent, whether or not the activity is the subject of a development consent)

In what circumstances?

The activity constitutes or is likely to constitute:

- (a) a life threatening hazard, or
- (b) a threat to public health or public safety, and is not regulated or controlled under any other Act by a public authority.

To whom?

Any person apparently engaged in promoting, conducting or carrying out the activity

18.9 ORDER 9

To cease the use of a building

To do what?

To cease the use of a building

In what circumstances?

The use of the building:

- (a) is not consistent with its classification under this Act or the Local Government Act 1993, and
- (b) constitutes or is likely to constitute a life threatening hazard or a threat to public health or public safety, and
- (c) is not regulated or controlled under any other Act by a public authority.

To whom?

The owner or occupier of the building

18.10 ORDER 10

To cease the use of premises or to evacuate premises

To do what?

To cease the use of premises or to evacuate premises

In what circumstances?

A person to whom order No 6 or 8 is given has failed to comply with the order

To whom?

The person to whom order No 6 or 8 is given

18.11 ORDER 11

To leave premises or not to enter premises

To do what?

To leave premises or not to enter premises

In what circumstances?

A person to whom order No 6 or 8 is given has failed to comply with the order

To whom?

Any person

18.12 ORDER 12

To do such things as are specified in the order to restore premises to the condition in which they were before building was unlawfully erected or before work was unlawfully carried out

To do what?

To do such things as are specified in the order to restore premises to the condition in which they were before building was unlawfully erected or before work was unlawfully carried out

In what circumstances?

- (a) Building has been unlawfully erected, and an order No 2 has been given requiring the building to be demolished or removed.
- (b) Work has been unlawfully carried out.

To whom?

The owner of the premises, any person entitled to act on a development consent or complying development certificate or any person acting otherwise than in compliance with a development consent or complying development certificate

18.13 ORDER 13

To do such things as are necessary to bring into compliance with relevant development standards

To do what?

To do such things as are necessary to bring into compliance with relevant development standards any building or part of a building that has been unlawfully erected

In what circumstances?

Building has been unlawfully erected and does not comply with relevant development standards

To whom?

The owner of the premises

18.14 ORDER 13A (Repealed)**18.15 ORDER 14****To repair or remove a building****To do what?**

To repair or remove a building

In what circumstances?

The building is situated wholly or partly in a public place

To whom?

Owner or occupier of building

18.16 ORDER 15**To comply with a development consent****To do what?**

To comply with a development consent

In what circumstances?

The development consent is not being complied with

To whom?

Person entitled to act on the development consent or person acting otherwise than in compliance with the development consent.

18.17 ORDER 16**To complete development that is subject to a development consent****To do what?**

To complete development that is subject to a development consent within such time (not being less than 12 months from the date of service of the order) as the consent authority considers reasonable, having regard to all relevant circumstances, including the nature of the development, and including, if the development is the subject of:

- (a) a proposed strata development contract referred to in the Strata Schemes (Freehold Development) Act 1973 or the Strata Schemes (Leasehold Development) Act 1986, or
- (b) a development contract registered with a community plan or precinct plan under the Community Land Development Act 1989,
the proposals relating to the stages in which the development is to be effected

In what circumstances?

The development has been commenced within the period specified in section 95 (1) but has not been completed within that period

To whom?

The owner of the land to which the development consent applies

18.18 ORDER 17

To carry out works associated with a subdivision

To do what?

To carry out works associated with a subdivision

In what circumstances?

There has been a failure to carry out the works in accordance with a development consent or an agreement made with the applicant for development consent

To whom?

The person required to carry out the works

18.19 ORDER 18

To do or refrain from doing any act to remedy or restrain a breach of Part 3A or of an approval under that Part

To do what?

To do or refrain from doing any act to remedy or restrain a breach of Part 3A or of an approval under that Part

In what circumstances?

The breach has occurred, is occurring or is likely to occur

To whom?

The person who caused, is causing or is likely to cause the breach, or the person entitled to act on the approval

Criteria

An order under item 18 of the Table to subsection (1) may only be given by the Minister or the Director-General.

18.20 ORDER 19

To cease carrying out specified building work or subdivision work

To do what?

To cease carrying out specified building work or subdivision work

In what circumstances?

- (a) Building work or subdivision work is being carried out in contravention of this Act.
- (b) Building work or subdivision work is being carried out that affects the support of adjoining premises.

To whom?

Owner of land or any person apparently engaged in carrying out the building work or subdivision work

19.0 Failure to Comply With, Notices and/Or Orders

Most legislative provisions which permit Notices and Orders to be issued also have offence provisions for failure to comply. Where Council has issued Notices and or Orders and follow up investigations reveal non-compliance, and where there has been no appeal against the Notice or Order, Council will continue to apply the same principles outlined specifically in 3.4.

This will result in a further penalty infringement notice being issued or alternatively commencement of criminal proceedings for the offence of failing to comply with the notice or order and a further order will be issued recommencing the order process.

The recommencement of the order process will require additional follow-up inspections and should the order not be complied with after the second occasion, legal action will be commenced in the appropriate Court to have the order complied with.

If there is partial compliance with the order then an infringement notice will be issued for non compliance with the order and the order process will recommence for the part of the order that has not been complied with.

20.0 Failure to Obtain a Consent or Approval Where Such Consent or Approval Was Required

It is an offence under the Environmental Planning & Assessment Act 1979, Local Government Act 1993 and certain Roads legislation, to carry out an activity without a consent or approval where a consent or approval was required. Again, the principles outline in section 3.4 will apply in terms of compliance action to be considered.

21.0 Making of Representations to Notices of Intention

Under the provisions of the Local Government Act, 1993 and the Environmental Planning and Assessment Act, 1979 a person is afforded the right to make representations to a Notice of Intention to serve an order; Council requires those representations to be made in writing. Representations may be made in person where Council Management considers it to be appropriate. This ensures representation documents are recorded and filed in Council's electronic records system. After written representations are considered by the Council, the decision to serve the order/ amend the order or not to serve the order is sent to the person in writing.

22.0 Importance of Follow up Action

Council's investigating officers will follow up matters reasonably required to be followed up to determine or ensure compliance. It is considered *critical* to successful compliance or enforcement action that officers are accountable and follow up matters. This also demonstrates Council's commitment to quality customer service.

Follow up action includes:

- a) Follow up inspections or re-inspections where matters were outstanding from a previous inspection or to determine compliance with a Notice, Order or Declaration.
- b) Resubmitting relevant documents and files in the corporate information and records systems (ECM) on expiry of compliance periods for warnings, notices, orders and declarations.
- c) Recording all notes on the relevant customer action request or document to ensure actions can be chronologically tracked or followed.
- d) Contacting all relevant parties to a complaint including the complainant and the alleged offender to advise what action is or will be taken.

23.0 Special Provisions – Development and Building Compliance

23.1 Position on principal certifying authority (pca) and private certifiers

Council will only investigate matters where a Private Certifier is nominated as PCA in relation to development where:

- the PCA fails, or is not able, to appropriately action a matter;
- the PCA has taken all the action available under the legislation but the offence continues or re-occurs despite that action; or
- it is in the public interest to do so.

It is Council policy to inform the nominated PCA in writing of complaints Council may receive regarding their sites.

Council recognises that the PCA is the authority responsible for ensuring compliance with the conditions of development consent. Persons making complaints regarding a site where the PCA is private must be advised to contact the PCA in the first instance. This step is in accordance with best practice promoted by the Building Professionals Board (BPB). This will give the PCA an opportunity to address the issues and take the appropriate action.

Where a complaint is received in writing regarding a site under the responsibility of a Private certifier, the Council will forward this to the PCA with a request to investigate and respond.

Should the PCA not address the issues raised by the complainant within a reasonable time, Council will act to investigate the complaint. Complainants must understand that Council does not have legal control over Private certifiers and the time they may take to investigate a complaint.

Council encourages complainants to be reasonable about their complaints and adjust their expectations of both Council and private certifiers to recognise that response times will vary.

Council will only become involved as a last resort as priority must always be given to sites where Council is the appointed PCA. Council simply does not have the legal obligation or staff resources to 'take over' sites where a private PCA is appointed.

Council will only make complaints to the Accreditation Body (BPB) if we believe a Private Certifier has not acted in accordance with their obligations under legislation or has not acted in the Public Interest. Only Managerial staff with delegation will be authorised to make such complaint. Complaints of this nature will be made in accordance with case law and guidelines issued by the NSW Department of Planning. Complainants who are not satisfied with the performance of a private certifier will be advised to contact the accreditation body (BPB). Further details may be obtained from www.bpb.nsw.gov.au. Again, the complainant should consider whether their complaint is reasonable and discuss it with the PCA and the accreditation body before lodging.

Where Council is the nominated PCA, this policy and Compliance Services Procedures will form the basis for investigation and action. In this regard, Council will carry out inspections and follow up on development sites where Council is PCA and take action where there are breaches.

Under law, Private Certifiers are required to submit copies of certificates and other documentation to the Council. Council is not legally required and does not audit or review certificates issued by private certifiers. They are received by administrative staff only for the purposes of filing for records purposes.

23.2 Case Law and Building Compliance

Council acknowledges the contribution of case law in the area of private certification. Recent precedents have significantly impacted on our role and have affected what action can be taken. The following cases are relevant in the context of this policy:

- (a) *Warringah Council v Moy* [2005] NSWLEC 416 (29 July 2005) Council commenced Class 5 proceeding in the Land & Environment Court against a private certifier. The private certifier issued a construction certificate which Council contended was not in accordance with the development consent.

Justice Bignold held that the Private Certifier acted within the law because he was subjectively satisfied that despite differences, the construction certificate was “not inconsistent” with and was “generally in accordance” with the development consent. Essentially it was not up to the Council to be satisfied in the matter, it was solely the Private certifier who had to be satisfied.

Accordingly, Council recognizes that as in so far as the Private Certifier is satisfied that certificates and construction itself is “generally in accordance” with and “not inconsistent” with the development consent, then Council action cannot be taken.

“Generally in accordance” does not mean “exactly” in accordance. This is not an excuse for Council not to take action – it is a legal precedent which must be observed by Council and accepted by the Community. This view will be communicated to all complainants in such matters.

Where evidence is found that works are not generally in accordance with the development consent, the principles outlined in this Policy will be applied in any action taken.

- (b) Amendments to Part 4A of the Environmental Planning & Assessment Act 1979 – prohibition on retrospective Construction Certificates following a decision by Justice Talbot in the Land and Environment Court in *Marvan Properties Pty Limited and Another v Randwick City Council* [2005] NSWLEC 9 (11 January 2005), the NSW Government has amended the legislative provisions to prevent construction certificates being issued for works already carried out.
- (c) Unauthorised works and applications to modify development consent under section 96 of the Environmental Planning & Assessment Act 1979 versus the use of Orders issued under section 121B.

Where unauthorised works have been carried out outside the terms of an ‘in force’ development consent, (and by implication outside the terms of a valid construction certificate). It may be prudent to advise or encourage the land owner to apply for a section 96 application to modify the development consent.

This is consistent with the decision of Justice Talbot of the Land and Environment Court in *Windy Dropdown v Warringah Council* [2000] NSWLEC 240 (17 November 2000). This approach does not preclude Council from taking enforcement action accordance with the principles outlines in section 3.4 Enforcement.

Where unlawful works have been carried out without an ‘in force’ development consent, Council’s approach will be to commence a compliance process in accordance with Section 3.4 of this Policy.

Any course of action is determined under discretionary authority conferred by legislation and this Policy.

23.3 Building Certificate Applications under Section 149d of the Environmental Planning & Assessment Act 1979

Council does not support or encourage the submission of Building Certificate Applications under section 149D of the Act to justify or rectify unlawful works. Council supports the lawful processes intended to ensure that consent is obtained from Council or a consent Authority where development consent is required and that such consent is obtained *before works are carried out*.

However, it is recognised that persons who may have carried out unlawful works may apply for a Building Certificate to regularise or formalise those unlawful works. Council is legally obliged to process an application once it is made to Council, however, applications submitted as a result of unlawful works will receive secondary priority to those applications received in good faith, where there are no unlawful works.

The test for whether a building certificate should be issued is to ask whether development consent would have been granted had it been applied for initially. On some occasions, however, it is prudent and appropriate for Council to encourage the submission of a building certificate application to regularise a breach of the Environmental Planning and Assessment Act 1979. Authority for this approach is to be found in the decision of Justice Bignold of the Land and Environment Court in *Ireland v Cessnock City Council* [1999] NSWLEC 153.

Council does not tolerate unreasonable pressure from applicants generally and this particularly applies to applicants who carried out unlawful works.

Council may still take punitive action against a person who carried out unlawful works, irrespective of whether a Building Certificate was applied for. Such punitive action would include the issue of penalty infringement notices or prosecution in the Courts.

23.4 Fire Safety

Council will be proactive in terms of fire safety and follow up complaints about non compliance;

Will co-operate with the NSW Fire & Rescue and NSW Rural Fire Service in carrying out fire safety inspections where required; and

Will implement a fire safety program through a dedicated Fire Safety Officer to ensure systems are developed to track and ensure compliance in terms of annual fire safety statements and general fire safety matters

It is intended these programs will be carried out to ensure buildings and building owners comply with the relevant legislation and to detail provisions for enforcement.

23.4.1 Investigation of Fire Safety matters, including complaints

Council will respond to all complaints and action requests regarding fire safety as a matter of urgency.

In accordance with 3.1, urgent matters are investigated the day they are received or immediately the following working day.

An investigating officer will firstly, check whether a life threatening circumstance exists and if so to determine an immediate course of action. In the event the matter is not considered immediately life threatening, the matter will be prioritized accordingly by the investigating officer.

Standard investigation procedures must be followed by staff in these matters. The rules of evidence collection apply and are critical in the event that an immediate threat to life safety is present and/or if enforcement action is required to rectify a breach.

For example:

- Notes, photos and conversations must be accurately recorded and filed onto Council electronic management systems.
- Where there are breaches, a standard 'caution' must be issued to a person once it becomes evident that that person has committed an offence under legislation.

- Evidence is assessed by the investigating officer and Team Leader and a determination on a course of action is made.
- Action is always taken in a timely manner.
- Follow-up inspection will always be conducted where there are matters outstanding.

The Environmental Planning & Assessment Act 1979 has very specific provisions in terms of fire safety compliance. Specifically for taking action after investigations, the Notices, Orders, Penalty Infringement Notices and Offences provisions under section 121B are applicable.

In particular, where it is identified there are outstanding fire safety matters an Order No 6, preceded by a Notice of Intention may be served requiring compliance. In an immediate fire safety threat, an Emergency Order will be issued without a preceding Notice of Intention. In those circumstances the Order will specify the reasons it is considered an emergency and that a Notice of Intention was not required.

Council will view fire safety offences as serious and issue Notices, Orders and penalty infringements as standard procedure. Prosecution will also be considered after consulting legal advice. A minimal tolerance approach is considered appropriate and is consistent with other enforcement policies.

23.4.2 Co-operation with Fire & Rescue NSW and NSW Rural Fire Service

Under the Environmental Planning & Assessment Act 1979, Council is required to carry out a fire safety inspection if notified of a breach by the Fire & Rescue NSW.

Council will, on receipt of notification act, as a matter of urgency, to carry out those requested inspections. Where necessary, Council authorised staff will carry out joint inspections with officers of Fire & Rescue NSW.

Council supports the Fire & Rescue NSW and Rural Fire Services in their roles by carrying out our legal and moral obligations in relation to fire safety inspections. Again, standard inspection procedures are followed and the principles outlined in section 3.1 are applied.

23.4.2 Fire Safety Program

Council has a large and diverse stock of buildings constructed in a wide variety of areas. Under the Environmental Planning & Assessment Act 1979, proprietors of class 2 to 9 building (as classified under the Building Code of Australia (BCA)) are required to provide an annual fire safety statement to Council and the Fire brigade and are required to display the statement in an appropriate position in the public space within the building.

In addition there are four (4) triggers for the annual statements to be issued:

1. Development consent –e.g. change of use from a house to an office or building work
2. Construction certificate - DA with building work
3. Complying development certificate – issued by Council or an accredited certifier
4. Fire Safety Orders,

Council will develop and maintain a fire safety program as follows:

Staff Resources

Ensuring employment of suitably qualified staff to oversee the program and ensure Council complies with its legal and ethical obligations.

Administrative support is considered integral to the continuing efficacy of the program. Support will be provided by Environmental Compliance Administration.

Program Components

A register of annual fire safety statements linked to Council's electronic corporate information systems will be created and maintained.

An administrative system will be implemented to prompt submission of fire safety statements by class 2 to 9 building owners when any of the four triggers are present.

- A letter will be sent by Council to acknowledge submitted statements within 14 days of their receipt.
- Submitted statements will be reviewed for compliance and technical detail by the specialist fire safety staff.
- Statements that comply are filed and details are entered onto the register indicating compliance. No further action will be required for a further 12 months until Council sends the next prompt letter or a fire safety incident occurs.
- Submitted statements, which do not comply, will be brought to the building owner's attention and a letter sent to rectify the deficiencies will be sent.
- Non-compliance with Council's Fire Safety Program will result in compliance and enforcement action being taken in accordance with 3.5.
- Failure to submit the statements within the required timeframes is an offence under the Environmental Planning and Assessment Act 1979. However, given Council has not had any reliable follow up or program in place prior to this policy and associated program, the following compliance and enforcement elements are considered reasonable given the importance of the matter and will be applicable:

Initially a breach will be brought to the attention of the owner in writing with a strict time frame for rectification. It is considered 7 days is an adequate timeframe to comply with specific certificate requirements – noting that these 7 days will be provided in addition to the statutory compliance period.

Failure to comply will result in penalty infringements being issued in accordance with the requirements of the EPA Act 1979. This may result in a series of infringements in relation to one premises where an owner continually fails to comply. Noting it is the express intention of the Act to provide for escalating penalties in these circumstances.

In the event the same owner fails to comply 12 months later or in any subsequent matters in the interim period between annual fire safety statement being submitted, Council will consider more serious legal action.

Building owners who submit non-complying fire safety statements will be afforded more time to provide updated information or certificates than building owners who have not submitted any statement at all. The exception would be in the event that a serious fire safety incident or non-compliance was identified which warranted immediate action.

24.0 Special Provisions – Environmental Health and Protection Compliance

24.1 Food Safety Compliance

Council supports pro-active and routine inspections of food businesses to prevent food borne illness and ensure compliance with the Food Act 2003 ('The Act') and Food Standards Code. It is considered this preventative approach has contributed to a high standard of hygiene in food businesses and to a low incidence of food borne illness in Pittwater.

Under the Act, Council has delegated authority to act as an Enforcement Agency. Council's Authorised Environmental Health Officers will continue to carry out food safety inspections in all food premises at least once annually. This is to ensure we fulfil the requirements of a Category B Enforcement Agency under the Food Regulation partnership with the NSW Food Authority and under Food legislation. Inspections may occur more frequently depending on the risk classification of the food business. For example, a high volume club with bars and food service areas will be inspected more often than a corner shop where only pies are sold.

Inspection fees are charged to assist in recovery of costs to provide this service. Fees are based on a range set by the Food Authority. This is in keeping with other local governments in NSW. Council has also introduced an annual administration charge within the range set under the Food Regulation 2010.

The new legislation has provided for a range of compliance and enforcement options where breaches are found. Council will implement the new legislative provisions fairly and consistently in accordance with the minimal tolerance approach outline in this policy. Standard procedures outline the circumstances where the following actions are appropriate:

- Warnings
- Penalty Infringement Notices
- Improvement Notices
- Prohibition Orders
- Criminal or Civil Proceedings

The legislation affords statutory process to permit natural justice for offenders and Council will support and implement those provisions.

24.2 Food Poisoning Incidents

Council will investigate complaints about food poisoning in the retail and food service sector according to responsibilities under the NSW Food Authority "Food Complaint Referral and Feedback Protocol" and the "Single-case food borne illness complaint protocol."

Action taken will be in accordance with principles outlined in this Policy and in consultation with the NSW Food Authority as required.

24.3 Food Safety Educational Initiatives

Council recognises that education may often achieve the behavioural changes needed to comply in certain instances.

Council will continue to use a broad range of innovative and targeted food safety educational initiatives to assist Food Businesses to achieve compliance, in addition to or in conjunction with any enforcement action.

A decision not to implement educational initiatives is appropriate in repeated instances of non-compliance, where educational initiatives have been used previously or where there is a serious offence where public health is at risk.

24.4 Compliance with Construction requirements

Council will require food premises to be constructed in accordance with the Food Standards Code 3.2.3. In addition, Council will also require compliance with the relevant provisions of Australian Standards AS 4674 -2004 *Design, Construction and Fit-out of Food Premises*.

Conditions will be placed on development consents for new food premises reflecting this requirement. Failure to comply will be an offence under the Environmental Planning & Assessment Act 1979 (breach of development consent) and also against the NSW Food Safety Standards. Compliance action will be carried out in accordance with sections 3.4 and 3.7 of this policy.

24.5 Legionella Public Health Compliance Policy – Prevention of Legionnaire’s Disease

Council will co-operate fully with the Northern Sydney Public Health Unit of NSW Health and **immediately** investigate any outbreak of Legionnaire’s Disease occurring within Pittwater.

In an effort to prevent outbreaks of Legionnaire’s Disease, Council strictly implements the legislative provision of the Public Health Act 1991 and Public Health (Microbial Control) Regulation 2000, in an effort to ensure owners of regulated systems fully comply. Under Clause 15 of the Regulation, Council is required to maintain a register of water-cooling systems and warm water systems.

Council will:

- Maintain a register of regulated systems; and
- ensure that regulated systems are registered with Council by the system owners; and
- legislation, codes of practice and Australian Standards in terms of maintenance and operation requirements; and
- charge inspection and registration fees where inspection is required to cover costs of regulation; and
- take prompt action where there are non-compliances with the legislation.

Non compliance with the legislative requirements is considered a serious public health risk and will result in prompt compliance action being taken in accordance with this Policy. It is noted that currently the offences can only be dealt with by way of prosecution. The Public Health Act 1991 is under review by the NSW Government with a view to providing offences which can be dealt with by penalty infringement notices.

24.6 Skin Penetration - Public Health Compliance Policy

Council acknowledges that certain practices carried out in hairdressers, beauty salons, tattoo studios and the like have the potential to spread infection to consumers. Certain practices where the skin of customers is pierced or penetrated, and where sterile procedures are not followed, increases the risk of infection with serious blood borne diseases including Human Immuno-deficiency Virus (HIV), Hepatitis B and Hepatitis C. additional, other skin diseases can be transmitted through poor hygienic practices in these premises.

Premises where skin penetration is carried out will be inspected by Council’s Authorised Officers under the Public Health Act 1991 (the Act) to ensure the legislation, Skin penetration Guidelines and Code of Practice is observed. Council will also maintain a register of skin penetration premises and inspection fees will be charged to cover costs of regulation and maintaining the register.

A link to the copy of the NSW Health Skin Penetration Guidelines and NSW Health Skin Penetration Code of Practice will be disseminated to every premises to educate them on the requirements.

Operators of these premises must comply with the Code of Practice and legislation. Failing to comply is an offence under the Act.

Given the Act has no penalty infringement notice (PIN) provisions, offences can only be dealt with by way of prosecution or other strategy outlined in section 3.4 of this Policy. The Act is currently under review by the NSW Government and in the event PIN provisions are introduced, Council will implement those provisions in accordance with this Policy.

24.7 On-site Sewage Management Systems

Council acknowledges that certain lands within Pittwater do not have access to the Sydney Water Corporate Sewerage System and are therefore reliant on providing on-site sewage management systems to treat and dispose of sewage.

Council is committed to managing the local environment and protecting public health from the risks associated with the operation of on-site sewage management systems.

Environmental Health Officers are Authorised under the Local Government Act 1993 (the Act) to assess applications for approval under section 68 of the Act.

There are two separate types of approvals:

- Approval to install; and
- Approval to operate.

It is Council's approach that in issuing approvals, we are then obliged to follow up to ensure compliance with that approval. This involves Authorised staff carrying out inspections and taking action where non-compliance is identified.

Failure to comply with an approval is an offence under section 627 of the Act. Failure to obtain the approval in the first instance is an offence under section 626 of the Act.

Although approvals under Section 68 of the Act are separate to Development Consents under the Environmental Planning and Assessment Act 1979, Council may require that section 68 approvals are required as a condition of development consent under the Environmental Planning and Assessment Act 1979.

Domestic grey water treatment systems are considered to be on-site sewage management systems, and generally require the same approvals and monitoring processes as other onsite sewage management systems.

Council will maintain an inspection program of on-site sewage management systems in the area. Inspections and renewal of 'Approvals to Operate' will be based on a risk assessment methodology.

The framework for managing approvals and inspections of the on-site sewage management systems will be outlined within Pittwater Council's On-site Sewage Management Strategy.

The relevant legislation, standards and guidelines used by Council in assessing approvals are outlined in that strategy.

The general principles in terms of enforcement and compliance action outlined in section 3.4 *Enforcement* of this policy apply where offences are committed.

The following tools may be used by authorised officers where systems are failing, or operating without approvals:

- Warning letters;
- Orders no. 15, 21, 25 & 30 under the Local Government Act 1993 (which are usually preceded by Notices of Intention to Issue an Order);
- Clean Up Notices and Prevention Notices under the Protection of the Environment Operations Act 1997;
- Penalty Infringement Notices (PIN) under Local Government Act 1993 for 'Operate sewage management system without approval', 'Operate sewage management system otherwise than as approved', & 'Not comply order – human waste storage facility';
- PINs under the Protection of the Environment Operations Act 1997 e.g. 'Pollute waters', 'Fail to comply with clean-up/prevention notice', 'Fail to pay cleanup/prevention notice fee';
- Prosecution under the Local Government Act 1993 and under the Protection of the Environment Operations Act 1997.

Council acknowledges that the On-site Sewage Management Strategy was adopted in February 2007 and as such educational and advisory strategies will also be used for non-compliance or where systems are failing to meet standards.

24.8 Brothels

It is apparent that certain practices carried out at these premises can increase the risk of sexually transmitted diseases, particularly where safe practices and industry codes of practice are not followed.

Council will conduct inspections as needs to monitor compliance with development consents and planning guidelines including "Sex Services Premises Planning Guidelines 2004. Council will also alert operators to health standards including the "Health and Safety Guidelines for Brothels in NSW" published by WorkCover NSW.

The Environmental Planning and Assessment Act 1979 enables Council to order the closure of illegal brothels within 48 hours, and also give Councils the power to enforce the order and prevent persons from entering the premises in the event the Order is not being complied with, in certain circumstances.

However, it will remain difficult for Councils to obtain proof that some illegal brothels are conducting sex services.

Council will involve other agencies of Government where necessary to investigate and close illegal brothels. The principles of enforcement outlined in this Policy will still apply to action taken.

24.9 Residential Swimming Pool Fencing

Council acknowledges the immediate safety risk that unfenced or inadequately fenced swimming pools pose to children and other persons.

Council's authorised officers will carry out inspections on complaint or where incidents of non-compliance are brought to Council's attention through proactive inspection programs or development consents being issued for pools.

Given the risk to life safety posed by unfenced or inadequately fenced pools, a strict policy of inspection and compliance action is required to be taken in instances of non-compliance. The Swimming Pools Act 1992 provides procedural fairness provisions and this will be implemented by Council in the processes followed to ensure compliance.

Council will generally issue a Notice of Intention to serve a direction under the Swimming Pools Act for defective pool barriers. Where no pool barrier is provided, Council will proceed to issue a direction without prior notice, in accordance with section 23 (6).

24.10 Asbestos and its removal

Council frequently investigates matters involving alleged unlawful asbestos removal. The removal of Asbestos is of concern in the community due to perceive immediate threats to health. There are several different types of asbestos and Council will educate complaints on process and types to help ease concerns where such an approach is required.

However, the Occupational Health and Safety Act 2001 regulates the safe removal of asbestos. WorkCover NSW enforces this Act. WorkCover Guidelines outlines when an asbestos removal licence is required and the required steps which must be followed to ensure safe removal.

However, Council will still investigate all complaints received in relation to asbestos removal in accordance with a precautionary principle approach. If a Council investigation reveals a licence is required due to the nature, type or volume of asbestos to be removed, we will immediately notify WorkCover as licensed removal is regulated by that agency.

Where a licence is not required for removal, Council will take the required actions to ensure safe removal according to codes of practice and safe work practices. The Local Government Act 1993 Orders provisions can permit Council to issue orders to ensure premises are placed or kept in a health and safe condition. These provisions will be used where needed in accordance with this Policy.

25.0 Special provisions - Pollution incidents

Council is an “appropriate regulatory authority” for the purposes of the Protection of the Environment Operations Act 1997 (POEO Act)

Council will respond to all reports of air, noise or water pollution in accordance with the priorities outlined in Council standard procedures and section 3.1 of this Policy- Responding to complaints of alleged unlawful activity.

Council will implement the provisions of the POEO Act where there are offences identified. Provisions to consider where there are offences include:

- Clean-up Notices under section 91. Where a pollution incident has occurred or is likely to occur. They may be given verbally but will have no effect after 72 hours if not followed up with a written Clean-up Notice;
- Prevention Notice under section 96. This applies where an activity is being carried out in an environmentally unsatisfactory manner.
- Compliance Cost Notice under section 104. This may be issued where Council has cleaned up a pollution incident or where a Clean-up Notice was issued under section 91 and Council has incurred costs monitoring compliance with that Notice.
- Issuing PINs or alternatively commencing proceedings for an offence.

All actions will be carried out in consideration of the principles outlined in section 3.4 of this Policy.

Additionally, Council recognizes certain administrative law principles in terms of issuing Notices generally and affording representations prior to issuing those Notices and enforcing those Notices once issued. It is noted that some of these provisions are over-ridden by the POEO Act and will only be considered where necessary and in accordance with legal advice.

For example, a written warning of Council's impending action may be advisable in the circumstances where the Act has not provided such an avenue, to permit representations to be submitted by an alleged polluter.

25.1 Water Pollution generally

Water pollution is the most common pollution incident reported to Council. Council recognizes that pollution can severely impact on marine and aquatic ecosystems and action to prevent it should be taken as a priority.

Authorised Officers will respond as soon as practicable to reports of water pollution in accordance with section 3.1 of this Policy. It is acknowledged that the quicker an officer gets to the scene, the more likelihood there is of tracing the pollution, identifying an offender and arranging mitigating measures to prevent the instance continuing or recurring.

Council will consider the NSW Office of Environment and Heritage Guidelines; "Considering Environmental Values of Water when Issuing Prevention Notices", prior to taking any required action.

25.2 Erosion and Sediment Control and Water Pollution on Building Sites

Council will proactively audit construction sites to ensure compliance with erosion and sediment control requirements.

Under the Environmental Planning & Assessment Act 1979, a notice of commencement must be submitted to Council prior to commencement of construction. Council will conduct audits of sites following submission of the notice of commencement.

There are two (2) potential courses of enforcement action where sediment controls are not maintained and/or there is water pollution coming from a building site:

It is an offence under the Protection of the Environment Operations Act 1997 and Council may issue PINs, or Environment Protection notices requiring works to be carried out or clean up to occur; and it is also an offence under the Environmental Planning & Assessment Act 1979 to fail to comply with a condition of development consent. Every development consent issued must have a standard condition requiring sediment controls to be maintained to prevent pollution. A PIN may be issued and Notices and Orders may be issued requiring compliance with the development consent

The course of compliance action will be determined in accordance with the principles outlined in section 3.4 of this Policy.

25.3 Air Pollution

Air pollution may include discharges of dust, smoke, soot, fumes or odours from a range of sources. Sources might include, backyard burning, smoky vehicles, emissions from commercial and industrial premises, domestic solid fuel heaters and open fireplaces.

Council will investigate complaints and incidents and implement the provisions of the POEO Act to remedy any breaches. It is accepted however, that the air pollution provisions of the legislation are convoluted and difficult to enforce. Distinct from the water pollution provisions, there is no specific offence. The type of air pollution is important and determines the legislative options available to regulate it. Authorised Officers must have appropriate evidence of the air pollution, which includes visiting the site affected and smelling or seeing the pollution first hand.

25.4 Backyard burning

Backyard burning is prohibited in the Pittwater Council area under the Protection of the Environment Operations (Clean Air) Regulation 2010. Burning material in the open in Schedule 8 Part 1 Local Government area is prohibited without approval.

Council will respond to complaints and Authorised Officers will issue Penalty Infringement Notices for offences. Repeat offences may result in further legal action.

25.5 Domestic solid fuel heaters and open fireplaces

Council does not require development consent for domestic solid fuel heaters but does discourage their use and installation for environmental and health reasons. The smoke emissions from this style of heating contribute to the poor winter-time air quality in the Sydney basin and are associated with increased respiratory complaints in residents.

In the interests of environmental and health protection, Council will:

- Follow up complaints about air pollution caused by this type of heating;
- Check to ensure the NSW Office of Environment & Heritages' Guidelines relating to installation and operation of Domestic Solid Fuel Home Heaters and any relevant Australian Standards are being complied with;
- Provide educational materials and guidelines to enable the resident an opportunity to address the problem without regulatory involvement;
- Follow the principles outlined in section 3.4 of this policy where the air pollution is serious or where educational initiatives have failed. This will include the issuing of Prevention Notices under the Act and penalty infringement notices and/or Court enforcement orders where there is non-compliance

Where compliance is achieved with the requirements of a Prevention Notice, Council will not take further action and the matter will be considered finalised.

25.6 Commercial and industrial premises

Council will investigate complaints of air pollution from commercial and industrial premises. Common complaints relate to vehicle spray booths and commercial kitchen exhausts.

Council will endeavour to impose restriction on discharge points and to ensure compliance will refer to appropriate Australian Standards for operation and Maintenance. In commercial kitchens, for example AS 1668 should be complied with in construction and operation to prevent adverse amenity impact. These matters are also addressed once a premises is operating by Environmental Health Officer routine food safety inspections.

The standard principles outlined in this policy will be followed in terms of investigation and compliance action.

25.7 Depositing litter and dumped rubbish

Council will issue penalty infringement notices where littering and dumping offences are committed under section 145 of the POEO Act. For more serious dumping offences prosecution will be considered in accordance with the legislation and this Policy.

Litter blitzes will be conducted from time to time to increase public awareness of littering and to prevent it from occurring. During a public place litter blitz, Council's Authorised Officers will offer educational advice in the first instance. If a person who has littered does not co-operate, the Authorised Officers should obtain the name and address of the offender and issue a litter infringement.

Authorised Officers will issue PINs to persons littering from vehicles. The registration details will be recorded along with particulars of the incident including a description of the driver or passenger committing the offence, vehicle description, time of offence and type of litter. A check of the RTA DRIVES Database will be carried out to determine the registered owner of the vehicle and a PIN will be posted to the registered owner with a driver declaration in the event the registered owner was not the person who committed the offence.

Dumped rubbish will also be investigated by Council's Authorised Officers following Occupational Health & Safety procedures and wearing appropriate personal protective equipment. The rubbish will be screened for personal identification and where personal identification is found, that person will be given a 'show cause' letter as to why a PIN should not be issued for dumping rubbish. Where no response is received and evidence indicates the offence was committed a PIN should be issued. Authorised Officers will also interview and take statements from any witnesses to the offence in the event a PIN is appealed and the matter is heard in Court.

The principles outlined in this Policy and Compliance Services Standard procedures will be followed in investigations and enforcement action.

26.0 Noise Special Provisions

Council will investigate noise complaints where Council is considered to be the appropriate regulatory authority under the POEO Act.

Common noise sources where Council has jurisdiction to act include:

- Air conditioners
- Swimming pool and spa pumps
- Commercial and Industrial equipment and air ventilation systems

Council supports the time restrictions contained within the Protection of the Environment Operations (Noise Control) Regulation 2008 and applies these restrictions in issuing Noise Control Notices and also in conditions of development consents where such equipment is proposed.

Council will apply the *Industrial Noise Policy* published by the NSW Office of Environment and Heritage in relation to noise from Commercial and Industrial premises.

Noise should be measured at the boundary of properties, in the nearest affected habitable room or other measuring location deemed appropriate by the officer conducting the measurement.

Under the POEO Act, there are additional regulatory provisions to control noise from premises. These include;

- Noise abatement directions under section 276 - Council will issue these where offensive noise has been emitted within the last 7 days. It is essentially a warning. If the noise reoccurs within 28 days of the direction being given an offence has occurred. Council will use these to control local noise sources such as amplified music and issue Penalty Infringements for offences.
- Noise Control Notices under section 264. These are more technical and allow Council to restrict the use or times of use of a noise source. Council will use these where work is required to control or prevent noise or where there is no co-operation by the owner or operator of a noise source. Non compliance will be addressed in accordance with the provisions of section 3.4 of this Policy.

Council will also consider issuing a Prevention Notice under section 96 of the POEO Act if there are specific noise issues which would be better resolved by the issuing of that type of Notice.

This includes consideration of the technical nature of the noise, the amount of time to monitor compliance and the resulting cost to Council.

26.1 Difficulty resolving noise issues

Council recognizes that in some cases, it will not be able to resolve a noise issue to the satisfaction of an affected party. This is a common occurrence and situations where this may occur include:

- an inability to find or isolate a noise source; and/or
- where Authorised Officers are unable to hear the noise; and/or
- where Council has taken all action to ensure compliance but noise is still emitted within levels considered acceptable under the legislation or guidelines; and/or
- further enforcement may result in Council incurring unreasonable costs commensurate with the number of persons allegedly affected.

In those circumstances, Council will clearly advise the affected party as to why further action will not be taken.

26.2 Civil remedies – Noise Abatement Orders

Where it is identified that Council has no jurisdiction or is not able to action a noise issue as outlined in section 3.9.1, there are civil remedies available under the POEO Act and common law.

Where Council is unable to take further action, the affected party may be advised of their right under section 268 of the POEO Act to obtain a Noise Abatement Order from the local court. Council may also advise those persons to seek their own legal advice in relation to pursuing a Noise Abatement Order or other remedies which may be available under common law.

26.3 Noise from licensed premises

Council often receives complaints in relation to the noise from a licensed premises. The NSW Department of Planning and Infrastructure recommends that such complaints be referred to the Police and/or the Police / Office of Liquor, Gaming & Racing (OLGR) for investigation.

Council recognises the conditions of a liquor licence issued under the Liquor Act 2007 are very strict, and that OLGR has an effective tool to ensure the licensed premises complies. Noise conditions on liquor licences are more comprehensive and more restrictive than Council imposed conditions of consent.

In the interests of assisting those parties affected, noise from licensed premises as defined under the Liquor Act 2007 will be referred to the Police / OLGR as a general rule. However, where there is a condition of a development consent relating to noise that is being breached, Council may take compliance action itself in addition to referring the matter to the Police / OLGR, subject to resources being available. Often these complaints relate to times when Council does not have staff on duty.

Council will also assist the Police / OLGR and the police where requested subject to available technical knowledge and resources.

26.4 Aircraft noise

Council has no jurisdiction in relation to aircraft noise or flight paths. Complaints of this nature will be referred to the relevant federal government body for action. Advising affected residents of this promptly is considered the most effective way to assist them.

Although in some existing instances, a condition of development consent may impose noise conditions in relation to helicopters or the like, Council recognises that any action it might take would not take precedence over federal aviation regulations and would be unlikely to succeed. It is acknowledged that development consent conditions of this nature may be considered “ultra vires”.

27.0 Special Provisions – Adjudication of Penalty Infringement Notice Appeals (All Offences)

An Adjudication Panel will examine Client Representation Schedules from the NSW State Debt Recovery Office. The Client Representation Schedules contain representations from persons who have received a penalty infringement notice for an offence.

Adjudication will be carried out in accordance with the Adjudication Panel Charter (see attached) and Compliance Services standard procedures.

The Panel consists of the Director, Environmental Planning and Community, Manager, Environmental Compliance and an officer not associated with the process of issuing the infringements under review, or a suitable nominee.

In considering infringement appeals, the Panel will:

- Refer to and abide by any NSW SDRO Guidelines.
- Refer to and abide by the principles outlined in this and other Council policies.

The process by which the Panel considers appeals is in itself an avenue for an infringement to be cancelled, *in addition* to the statutory right to have the matter determined in a Court.

Council acknowledges that once the Panel has decided on a matter that no further consideration will be given unless new supporting evidence is received. Adjudication is a process required of Council under a Deed of Agreement with the NSW State Debt Recovery Office. Appeals must be forwarded by offenders directly to the SDRO where they are recorded and sent to Council for adjudication. Offenders who wish to have infringements cancelled as part of this process must be advised to make representations to the SDRO directly to enable Council to comply with the Deed. In this way all representations are collected by the SDRO and Council considers them in a consistent and standard format.

28.0 Special provisions – policy on dogs, dog attacks, dangerous dogs, restricted breeds and restricted dogs

28.1 Dog Attacks

Council Rangers will take *immediate* action on receipt of notifications regarding dog attacks or incidents involving a dangerous dog. The Companion Animal Register requires all Councils to report dog attacks within 72 hours of receiving the information. An investigation will take place in accordance with standard investigation processes.

Refer to Council’s Dog Attack Procedure AP – No. 1 required in the public document as people will look for the procedure..

28.2 Declared dangerous dogs, restricted dogs and restricted breeds

Council believes the dangerous dog and restricted breed provisions under the legislation are designed to prevent attacks or threatening behaviour towards other animals or people.

An authorised officer of Council and authorised under the Companion Animals Act, 1998 is authorised under the Companion Animals Act 1998 to declare a dog dangerous or take action in relation to that dog, if evidence supports such action and the legislative criteria is present.

An authorised officer of Council and authorised under the Companion Animals Act, 1998 is also authorised under the Companion Animals Act, 1998 to declare a dog believed by an authorised officer to be a restricted breed or cross of a restricted breed to be a restricted dog. The Act provided for the owner to have a breed assessment and under certain circumstances a temperament assessment of the dog to undertaken by an authorised breed assessor and an authorised temperament assessor (if applicable).

The statutory process under the Companion Animals Act provides avenues for representations to a Notice of Intention to declare a dog dangerous and appeal against a Declaration of a dog declared dangerous once they are issued. An authorised officer will consider representations to a Notice of Intention of a dog to be dangerous whereas the Court considers an appeal against an actual Declaration of a dog to be dangerous. Council respects the statutory process and recognises that it provides natural justice for offenders.

Council may consider further representations made in response to a Declaration of a dog to be dangerous but only after the expiration of 12 months after the dog was declared dangerous. A declaration may only be revoked after the 12 month period if Council is satisfied the dog is not considered to be dangerous. Council will consider any supporting evidence provided by a dangerous dog owner in making a decision to revoke or not to revoke a declaration.

Council will follow standard process in issuing dangerous dog declarations and in particular will carry out follow up inspections routinely to ensure declarations are strictly complied with. For example this will entail Authorised officers visiting premises to:

- ensure the dangerous dog is kept in an enclosure that complies with the requirements of clause 24 of the Companion Animals Regulation 2008;
- check that dangerous dog signage complies;
- ask the dog owner to view the cord or leash and muzzle; and
- to ask questions on whether the specific requirements of section 51 of the Companion Animals Act are being met, including whether the dangerous dog is always under the care and control of a person over 18 years of age and that the cord/leash and muzzle are always used when the dangerous dog is off the property.

Council may take legal action or issue a Penalty Infringement Notice if a Dangerous Dog Declaration is not complied with. (See sections 3.8.4 and 3.8.6 respectively). Council may also declare a dog to be a restricted breed within our local area under section 58C of the Companion Animals Act 1998. Council will also carry out inspections to ensure restricted breed requirements are being complied with. Non-compliance will follow the same processes outlined above.

28.3 Seizure, impounding and destruction

Standard investigation procedures will be strictly followed, in accordance with the procedures contained within the Rangers Procedures Manual. Council will comply with the legislation and make all reasonable attempts to contact owners where companion animals have been found away from home. Reasonable contact will include:

- telephoning the contact numbers listed on the NSW Companion Animals Database.
- Telephoning the contact number obtained from the companion animals name tag.

If no contact is made, the companion animal will be taken to the animal Shelter. The Animal Shelter will continue the endeavour to make contact with the owners in an effort to re-unite the animal with the owners. If the owners have not been contacted by the end of the day of seizure, a notice of seizure will be sent to the owner at the last known address obtained from the Companion Animal Register, advising that the dog is at the Animal Shelter and if not claimed within 14 days the dog may be rehoused.

Any dogs that become the property of Council after the statutory period (7 days if not identified and 14 days if identified) shall be transferred to the Animal Welfare League at Ingleside for rehousing. The rehousing of dogs will be carried out in a responsible manner where unsociable dogs (dogs that have attacked, habitual barking, etc) will not be available for rehousing and destroyed as Council practices the responsible rehousing of dog due to possible vicarious liability claims.

Council will not unlawfully enter any land or premises to seize an animal. However, lawful entry and seizure may be carried out under the legislation, for example, where an inspection reveals there is a non-compliance with a Dangerous Dog Declaration. Council will work with the NSW Police Service if needed in such cases. If a dog has attacked it may be seized from the owner's property but not residential premises within 72 hours of the attack unless it can be secured on the owner's property. If an officer does seize a dog under these circumstances a note will be left in a conspicuous place (e.g. letter box and front door) advising where the dog has been taken to and the circumstances under which the dog was seized.

Dogs will be destroyed after the provisions of the Companion Animals Act have been complied with, with the exception of a dog which is sick or seriously injured where the dog's condition will be assessed by a veterinary surgeon and the owner contacted where the veterinary surgeon will make the final decision regarding the animal's welfare under the provisions of the Prevention of Cruelty to Animals Act.

If the provisions of the Companion Animals Act have been complied with relating to dangerous and restricted dogs attacking or failure to comply with certain control requirements as outlined in S58G of the Companion Animals Act, 1998.

After Council has destroyed an animal under the Act, the owner should be permitted to have the body of the deceased animal for burial or cremation. Council will offer this as standard procedure on compassionate grounds.

28.4 Legal Action

Council will investigate and commence legal action under the Companion Animals Act 1998 against dog owners where their dog has attacked a person or animal without provocation.

Legal action will be commenced in accordance with the provisions of the Companion Animals Act, 1998. Council will seek Orders from the Court where required in order to disqualify dog owners from owning a dog where that dog has attacked and the owner has been convicted of an offence. Council will seek Destruction Orders and seek ancillary Court orders to implement such Destruction Orders where the circumstances are considered to warrant. Such circumstances include – where:

- There are multiple attacks or multiple breaches of dangerous dog declarations.
- The decision to prosecute will be made by the Manager or Director with the delegated authority.

28.5 Nuisance dogs

A nuisance dog under section 21 of the Companion Animals Act, 1998:

- Is habitually at large, or
- Makes a noise, by barking or otherwise, that persistently occurs or continues to such a degree or extent that it unreasonably interferes with the peace, comfort or convenience of any person in any other premises, or
- Repeatedly defecates on property (other than a public place) outside the property on which it is ordinarily kept, or

- Repeatedly runs at or chases any person, animal (other than vermin and, in relation to an animal, otherwise than in the course or driving, tending working or protecting stock) or vehicle, or
- Endangers the health of any person or animal (other than vermin and, in relation to an animal, otherwise than in the course of driving, tending, working or protecting stock), or
- Repeatedly causes substantial damage to anything outside the property on which it is ordinarily kept

Council will implement the provisions of the Act where there is evidence the dog is causing a nuisance as defined under section 21 the Act.

It is Council policy to recognize educational initiatives may often achieve compliance. In this regard, where Council knows a nuisance dog complaint or nuisance dog, the Authorised Officer will contact the owner of the dog in writing advising of the allegations that their dog is causing a nuisance through barking, in the letter information regarding barking dogs will be supplied for their reference and action.

A letter will be sent to the customer complaining about the barking requesting the complainant keep a log for 2 weeks outlining the date, time, length of barking and circumstance prevailing at the time (this may include storms, building works being carried out etc). The complainant will have to sign the record as being true and correct and that they are willing to attend court as a witness should the matter be referred to the Court.

Where further complaints are substantiated, standard procedures outline how Authorised Officers will consider the evidence and any representations from the dog owner or parties affected by the alleged nuisance behaviour. Generally this involves several visits to the area immediately surrounding the premises where the alleged nuisance dog resides, and recording that behaviour.

For example in relation to a barking dog, this includes for each visit:

- making official notes as to the length of time or offensive nature of the barking. This includes whether the barking is found to be continuous, intermittent, loud or not able to be heard. *Note:* The Act prescribes that a persistently occurring noise or bark that continues to an extent or degree that interferes unreasonably with the peace comfort or convenience of any person outside the premises, may constitute nuisance behaviour
- Discussing the problem with the registered owner again as well as other affected parties where a pattern of nuisance behaviour is established, The Authorised Officer may then consider issuing a Notice of Intention to issue a Nuisance Order. Any representations received will be considered prior to a Nuisance Order being issued.

Should the nuisance barking complaint not be substantiated, then a letter will be sent to the complainant advising that the complaint has not been substantiated by the authorised officer and they may take civil action regarding the matter.

Compliance monitoring will be carried out and failing to comply will result in enforcement action as outlined in sections 3.4 and 3.11.7 of this Policy.

28.6 Issuing Penalty Infringement Notices for dog offences

Penalty infringement notices will be issued for all dog offences detected by an Authorised Officer. This includes any dog seized and taken to Councils Animal Shelter or returned home to the dog's owner.

Penalty infringement notices (PIN) will be issued for non-compliance with a dangerous dog declaration or restricted breed declaration. If the first instance of non-compliance is of such significance or if further re-inspections reveal ongoing non-compliance with a Declaration, then immediate action will be taken in accordance with the provisions of the Companion Animals Act, 1998 which may include the seizing of the animal and destroying the dog in accordance with the legislation and legal action may be commenced.

Council will issue PINs for multiple offences. For example if a dog has escaped from its home and also does not have a collar or tag for whatever reason, the authorised officer may issue two fines under the legislation. If a dog is not registered, whether or not in addition to another offence, the owner will be issued an infringement notice for the unregistered dog. A notice to register the dog will be served on the owner giving 28 days to register the dog, should the dog remain unregistered an infringement notice will be issued after the 28 day period has elapsed. If the unregistered dog is away from its property, further infringements will be issued in accordance with the provisions of the Companion Animals Act.

If a dog owner repeatedly fails to comply or if the offences relate to a declared dangerous dog or restricted breed under the legislation, then multiple infringements will be issued if there are multiple offences. Prosecution should also be considered, in lieu of issuing a PIN, for repeat offenders where the matters are considered serious to warrant such action.

Council will take these actions irrespective of whether impounding fees have been charged.

29.0 Special Provisions – position on roads, traffic, vehicle and abandoned articles

29.1 Abandoned vehicles

Council enforces the Impounding Act 1993 (“the Act”) in relation to abandoned vehicles. It is Council’s view that vehicles which are abandoned for any reason are all subject to the same consistent compliance processes outlined in the Ranger Procedures.

The Act specifies an abandoned vehicle may be impounded by Council within 72 hours of notifying the last registered owner in writing. However, Council recognises that under the Interpretations Act there is a postage period of 4 days allowed also, there may be difficulties faced by owners in such tight timeframes and will allow up to 10 days for the last registered owner to remove an abandoned vehicle before it is impounded.

If the owner fails to remove the vehicle within that time frame, the vehicle is impounded and a penalty infringement notice is issued. Impounded vehicles are stored at Pickles Auctions, Milperra or Council’s specified impounding facility for the statutory time frame, being a minimum of 28 days. If impounded vehicles are not claimed within that timeframe, under the Act the vehicle will be auctioned and Council will retain the proceeds. The last registered owner may claim any monies held by Council minus the cost of storage and sale.

Council will only authorise the destruction of the vehicle provisions under the Act after all statutory investigations and checks have been made and the vehicle is a “shell”. Councils scrap metal contractor will in all circumstances assist Rangers in determining the value of the vehicle if not scrapped is in excess of the statutory amount (currently \$500).

Prior to the scrapping or towing of the vehicle digital photographs will be taken and held by Council in its Electronic Record System showing all aspects of the vehicle both inside and out for future reference.

In cases where an abandoned vehicle is in an unsafe location it may be impounded immediately by Council under the Act, however, the same timeframes will be applied for the last registered owner to pick up the vehicle before fines are issued or the vehicle is auctioned.

Compliance Services standard procedures outlines the process followed.

29.2 Clearways and Parking Offences

Roads and regulated car parks in Pittwater are patrolled routinely to ensure compliance with parking restrictions. Offences are considered strict liability, meaning Council will issue Penalty Infringement Notices for all breaches.

- School safety zones will be monitored by Council Rangers and Parking Patrol Officers for breaches of parking restrictions.
- Council will co-operate with the NSW Police in enforcement of parking on roads, in school safety zones and in clearways.
- Rangers and Parking Officers will in addition to issuing Infringement Notices for Clearways contact the RTA and have the vehicle causing the obstruction on the Clearway removed by the RTA contractor.
- Wherever possible an infringement notice will be affixed to the vehicle concerned however, in circumstances that prevent the notice being affixed it may be posted to the registered owner with a letter advising details of the offence, location and reason why the infringement is posted. All posted infringements must be issued within 3 working days of the date of offence.
- Special circumstances may include locations where it is unsafe for the officer to approach the vehicle or where the vehicle, when approached, drives off.

29.3 Heavy vehicles and load limited road patrols

Council will enforce the provisions of the Roads Transport (General) Act 2005 and regulations in relation to heavy vehicles unlawfully using load limited roads.

Penalty infringement notices will be issued to all heavy vehicle owners who do not comply with sign posted local load limits. Additionally, Authorised Officers (Rangers) with delegated authority will set up patrolling stations to routinely pull over heavy vehicle drivers who are not complying with load limits.

Additionally, Rangers may also conduct surveillance of vehicles breaching the load limits without setting up patrol stations. This will entail recording evidence of the breach and the issue of infringements accordingly.

Heavy vehicles cause traffic problems for other road users and road damage to local roads. The structure of these local roads was never built to accommodate heavy vehicles and the cost of repairs over time to the community is significant. Licensed heavy vehicle drivers carry specially modified street directories indicating which roads are load limited. Council will not accept non-local residency as an excuse for non-compliance.

29.5 Abandoned Shopping Trolleys and other articles

29.5.1 Shopping Trolleys

Council will carry out our legal responsibility to enforce and impound abandoned shopping trolleys. Council will co-operate and consult with stakeholders in an effort to ensure trolleys and other articles are not abandoned on our streets. Rangers will follow standard procedures when investigating and actioning these matters as well as disseminate educational material to trolley users. Council Officers will patrol the areas at all times.

29.5.2 Articles

Articles used for advertising in public places may include banners, a-frame signs or other structures. Under the Impounding Act 1993, Council has authority to impound these structures if they are considered abandoned in a public place. The definition of 'abandoned' under the legislation means the article is left unattended.

Council will take compliance action under the specific procedures outlined in the Impounding Act 1993 where advertising signs or other articles are abandoned. This may include immediate impounding, but in most circumstances will involve warning the owner of the article, if the owner can be established, to remove the article within 24 hours. Failure to remove will result in the issue of PINs and impounding of the article. Impounding fees will apply for the article to be released to the owner in accordance with Council's fees and charges.

30.0 Enforcement of Outdoor Eating Areas on Footways

Council issues approvals under section 125 of the Roads Act 1993 for the use of footways for restaurant purposes.

Rangers will enforce the conditions of approvals and penalty infringement notices will be issued under the Roads Act and regulations for breaches.

In circumstances where the footway is being used without Council's consent or not in accordance with an approval issued, a direction may be issued by the land owner (i.e. Council's Property Department) under the Act for the use to cease.

Failure to comply may result in impounding dining furniture which obstructs the public footway or where there is inconvenience to pedestrians.

31.0 Enforcement of other Permits and Approvals on Public Roads and footways

Council may also issue permits and approvals for various uses of the roadway and footway.

Such uses may include crane permits, hoardings, scaffolding, street stalls and goods on footpaths.

Rangers will work with the land owner and assist enforcement where there is non-compliance. Penalty infringements, notices and orders may be issued to require compliance in accordance with the general principles outlined in this policy.

32.0 Special provisions – Policy on Encroachments identified on Council or Community Land

Council has established Plans of Management for Community Land in accordance with the Local Government Act 1993 (the Act). The development of a Plan of Management is a detailed process involving consultation with relevant stakeholders including community groups, land owners and the like. Part of the establishment process also involves the identification of unlawful encroachments by private land holders onto Council's Community Land.

Encroachments onto Community Land are not permitted as they may not be in accordance with the objective for the use of that land as specified in the Act. Council will systematically investigate and enforce the removal of those identified encroachments in accordance with the provisions of this policy.

However, it must be recognized that there are also other considerations and circumstances in regards to encroachments of this nature. The Act does permit the reclassification of land from Community Land to Operational Land. This then allows different uses of the land and in particular, encroachments may then be permissible subject to a lease arrangement with Council as landowner.

As a matter of principle, Council does not permit, support or encourage any person or organization to carry out works, which might result in an unlawful encroachment onto Community Land.

Additionally, Council does not support the reclassification of Community Land to Operational Land as a means by private landowners to justify their unlawful works or unlawful encroachments onto Community Land.

Where there are encroachments on other land, such as road reserves, the Council's Policy on Road Reserves Encroachments may be applied in cooperation with Council's Urban Infrastructure branch and based on their direction as to the required outcome of enforcement action.

33.0 Occupational Health and Safety - Council's Authorised Officers

Council is required to provide for the health, safety and welfare of its Authorised Officers. In this regard, Council's Authorised Officers will observe safe work practices and comply with safe work method statements when carrying out their duties.

Investigations may place staff in circumstances that may put them at risk of injury or may affect their health or welfare. Some of the more common circumstances include:

- The nature of equipment, chemicals and substances which are present in commercial kitchens where Environmental Health Officers inspect;
- Construction sites where equipment and materials and excavations may be in an unsafe condition;
- Investigating sites where there are hazardous materials such as asbestos;
- Parking or traffic matters where staff are on local and arterial roads and are at risk of being hit by vehicles or involved in collisions;
- Investigation of pollution incidents where there may be risk of harm to human health;
- Circumstances where Authorised Officers are verbally abused, intimidated, obstructed from carrying out their duties or are threatened or assaulted.

33.1 Intimidation, obstruction or assault on Authorised Officers

Council views intimidation, obstruction, threatening behaviour and assault against staff *very seriously* and *will not tolerate* such behaviour. Council will investigate and commence legal action, where evidence and legislation permit, against any person who assaults, intimidates or obstructs an Authorised Officer lawfully carrying out their duties. Each specific law has its own specific provisions that will be examined and pursued in those instances. Such action will be carried out by Council in accordance with the principles of this Policy and legal advice.

34.0 Special provisions – use of discretion by Authorised Officers in Enforcement

The use of discretionary power is a controversial aspect of a regulatory authority's role as well as the role of its Authorised Officers.

The NSW Ombudsman defines discretionary powers as:

“powers granted either under statute or delegation which do not impose a duty on the decision maker to exercise them or to exercise them in a particular way.”

One of the main purposes of the Compliance and Enforcement Policy is to provide guidance to Council and the Community on how we will exercise our powers of discretion in matters of compliance and enforcement. Sections 3.3 and 3.4 in particular are designed and adapted from the NSW Ombudsman Guidelines to demonstrate the considerations Pittwater Council will use to carry out enforcement and compliance actions consistently and fairly.

In this regard, it is Council policy to support the administrative law principles which require public officials to:

- Use discretionary power in good faith and for a proper purpose. That is; to use the powers honestly and only within the scope of the purpose for which the power was given;

- Base decisions on logically probative material. This means decisions are based on logical reasons, information that proves the issues in question as well as reliable and relevant evidence;
- Consider only relevant considerations and not consider irrelevant considerations; Give weight to matters of greater importance and not give weight to matters of lesser importance;
- Exercise discretion independently and not under the dictation or at the behest of any third party;
- Give proper, genuine and realistic consideration to the merits of each particular case and not apply policy inflexibly; and
- Observe the rules of procedural fairness and natural justice.

It is considered that the principles, positions and special provisions of this policy are in themselves a demonstration of the proper use of discretionary powers.

35.0 Amendments

This policy supersedes the following policies: **NIL**

36.0 Authorisation

This Policy was authorised by Council

This Policy will be reviewed in – **2013**

Amending legislation relevant to the policy and the performance of the activities described herein will be incorporated as notified to Council.

37.0 Who is responsible for implementing this Policy?

Primary responsibility rests with the Manager Environmental Compliance and Authorised Compliance Services staff including;

- Team Leaders,
- Environmental Health Officers,
- Development Compliance Officers.
- Rangers and Parking Patrol Officers.
- Consultants and contractors authorised to carry out functions on behalf of Council must also comply with this policy.

Others who have responsibility include;

- General Manager;
- Director Environmental Planning and Community; and
- Manager Human Resources and Training Officers in terms of training Council Compliance staff.

Any member of staff, management or contractors and consultants who act without authority or delegation may compromise investigative process, bring Council into disrepute and may be subject to disciplinary action.

38.0 Legislation and References

This policy assists in the compliance and enforcement implementation of the following legislation:

- Local Government Act 1993 and Regulations
- Environmental Planning and Assessment Act 1979 and Regulation
- Food Act 2003, Regulations and NSW Food Safety Standards
- Protection of the Environment Operations Act 1997 and Regulations
- Waste Avoidance and Resource Recovery Act 2001 and Regulations
- Noxious Weeds Act 1993
- Public Health Act 1991 and Regulations

- Companion Animals Act 1998 and Regulations
- Roads Act 1993 and Regulations
- Road Transport (Safety and Traffic Management) Act 1999, Regulations and Road Rules 2008
- Impounding Act 1993 and Regulations
- Recreational Vehicles Act 1983
- Swimming Pools Act 1992 & Regulations
- Fisheries Management Act 1994 and Regulations
- Liquor Act 1982 and Regulations
- Building Code of Australia

Internal Review Guidelines under the *Fines Act 1996*

The *Fines Act 1996* (NSW) provides that all agencies which issue penalty notices have the power to internally review the decision to issue a penalty notice, and sets out the basic requirements for such reviews.

These Guidelines are issued by the Attorney General, as a standard to assist agencies to conduct internal reviews of penalty notices fairly, impartially, and consistently across Government, and in accordance with the law.

In the event of any inconsistency between these Guidelines and the *Fines Act 1996*, the *Fines Act 1996* prevails.

Essential Summary

There are two ways to challenge a penalty notice: applying for internal review of the decision to issue the penalty notice, and electing to have the alleged offence heard in court.

The *Fines Act 1996* states that an application for review of a penalty notice may be made at any time up to the due date for payment specified in the penalty reminder notice.¹

On review, the penalty notice must be withdrawn if the reviewing agency finds that:

- The penalty notice was issued contrary to law,
- The issue of the penalty notice involved a mistake of identity,
- The penalty notice should not have been issued, having regard to exceptional circumstances relating to the offence,
- A caution should have been given instead of a penalty notice, having regard to the relevant caution guidelines.
- The person to whom the penalty notice was issued is unable, because the person has an intellectual disability, a mental illness, a cognitive impairment or is homeless:
 - To understand that their conduct constituted an offence, or
 - To control such conduct.²

Note that the fact that a person has an intellectual disability, mental illness, cognitive impairment or is homeless is not in itself sufficient grounds to require withdrawal of a penalty notice.

A reviewing agency is to notify the applicant in writing of the outcome of the review within 42 days of receipt of the application (or 56 days if additional information has been requested).

¹ *Fines Act 1996*, s24A(3).

² *Fines Act 1996*, s24E (2).

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1 Scope of Guidelines

- 1.1 These Guidelines do not apply if the agency has issued its own internal review guidelines, or has adopted the Guidelines issued by the SDRO. An agency's internal review guidelines must not be inconsistent with the Attorney General's Guidelines.
- 1.2 These Guidelines apply to requests for internal review which are received before the due date on the penalty reminder notice. If the penalty notice is not paid on the due date, and no time-to-pay arrangements have been made, the penalty will be enforced and an additional enforcement cost will be added to the original fine.
- 1.3 There is a different process for appealing a penalty notice which has already proceeded to enforcement. In these cases, a person must submit an application for annulment of the penalty notice enforcement order to the SDRO, under sections 48 and 49 of the *Fines Act 1996*.

2 Definitions

Unless otherwise specified, the terms used in these guidelines have the same meaning as in the *Fines Act 1996*.

Offence means an offence under a NSW law for which a penalty notice may be issued.

Issuing agency means the agency that has employed or engaged the officer who issued the penalty notice or the caution.

SDRO means State Debt Recovery Office.

Fines Act means the *Fines Act 1996* (NSW), as amended from time to time.

3 Applications for internal review

- 3.1 Applications for review should be made to the SDRO, which will either conduct the review or refer the application to the issuing agency.
- 3.2 Applications may be made by any person to whom a penalty notice has been issued. Applications may also be made on behalf of another person, for example, by their carer, guardian, parent or advocate.
- 3.3 Applications for review must be in writing, and must include
 - the mailing address of the applicant,

- the grounds on which review is sought, and
 - appropriate supporting evidence.
- 3.4 Applications may be made even if the penalty notice amount has been fully paid, or paid in part.³

4 Requirements for internal review under the Fines Act

When must an internal review under the *Fines Act* be conducted?

- 4.1 Any issuing agency may review a decision to issue a penalty notice, or withdraw a penalty notice, on its own motion.
- 4.2 However, a review must be conducted in accordance with the Fines Act if an application for review is received, and that application complies with the Act's requirements, as set out in Part 4 above.⁴

Purpose and scope of internal review

- 4.3 The purpose of internal review is to determine, on the available information, whether a penalty notice was correctly issued, and whether any circumstances warrant withdrawal of the penalty notice.
- 4.4 Internal review cannot result in any variation of the amount to be paid under the penalty notice, nor any variation in options for payment.
- 4.5 If an application for internal review raises allegations of poor performance or misconduct by law enforcement officers, this may require a separate investigation, independent of any review of the decision to issue penalty notice.

Person who may conduct the review

- 4.6 The internal review must be conducted by a person who was not involved in making the decision to issue the penalty notice.⁵
- 4.7 The person or people who made the decision to issue the penalty notice must not be the manager or superior of the person conducting the review.
- 4.8 A person must not review penalty notices if they have any actual, potential or perceived conflict of interest or personal interest in the outcome of the decision relating to that penalty notice, including:

³ *Fines Act 1996*, s24A.

⁴ In certain circumstances, internal reviews may be carried out using an alternative process (see paragraph 5.16 of these Guidelines).

⁵ *Fines Act 1996*, s24C(2).

- (a) Where the penalty notice was issued to a relative, family member, business partner or friend of the person, or
- (b) where the person's relative, family member, business partner or friend issued the penalty notice.

Matters to be taken into account on review

- 4.9 Review officers conducting internal agency reviews must ensure that their discretionary powers are exercised in good faith and in a way that is consistent with Division 2A of the Fines Act, these Guidelines (or agency Guidelines which are not inconsistent with these Guidelines).
- 4.10 To help ensure the integrity of the review process, applications must be determined with reference to the written application and wherever possible, to any statement or other information provided by the applicant, such as medical, psychological or case worker reports.
- 4.11 The review must also take into account the grounds upon which the application for review has been made and whether, given the person's application, prosecution of the offence would be likely to be successful and/or, whether it is appropriate to continue the enforcement process.
- 4.12 The reviewing agency may request additional information from the applicant, in writing. The review can be conducted without the additional information if this is not provided within 14 days of the request. ⁶
- 4.13 Where an application for review contains information that significantly conflicts with the evidence presented by the issuing officer or any relevant camera, machine or other device, and this information is considered material to the offence/s indicated; a report should generally be requested from the issuing officer, or regarding that device, for consideration as part of the internal review. Such reports should be retained and filed with the application.
- 4.14 A report need not be requested if all the matters on which the application conflicts with the issuing officer's evidence are the subject of express notes made by the issuing officer at or around the time the penalty notice was issued.

Extension of deadline for enforcement

- 4.15 While a review is under way, the deadline for the enforcement of that penalty notice is extended. However, the deadline for enforcement cannot be extended beyond the applicable statutory limitation period for that offence.

Alternative processes for review

- 4.16 Internal review can be conducted according to a process other than the one set out in the Fines Act only if:
 - (a) Regulations under the *Fines Act* specify an alternative procedure for that type of penalty notice,
 - (b) the procedure under section 24B of the *Fines Act* is followed, or

⁶ *Fines Act 1996*, s24D.

- (c) an internal review in accordance with the *Fines Act* has already been conducted with respect to that penalty notice. In these cases, the agency may either decline to further review the decision to issue that penalty notice, or it may, at its discretion, conduct another internal review using an alternative procedure.

5 Grounds for review

- 5.1 An issuing agency has the discretion to withdraw a penalty notice on its own motion,⁷ and on any grounds it sees fit.⁸
- 5.2 However, the *Fines Act* stipulates mandatory grounds on which a penalty notice must be withdrawn. On review, a penalty notice must be withdrawn if the issuing agency finds that:
- The penalty notice was issued contrary to law,
 - The issue of the penalty notice involved a mistake of identity,
 - The penalty notice should not have been issued, having regard to exceptional circumstances relating to the offence,
 - The person to whom the penalty notice was issued is unable, because the person has an intellectual disability, a mental illness, a cognitive impairment or is homeless:
 - To understand that their conduct constituted an offence, or
 - To control such conduct.

Note that the obligation to withdraw the penalty notice only arises if the person is unable to understand that their conduct is an offence, or is unable to control the conduct constituting the offence, as a result of their condition.

- A caution should have been given instead of a penalty notice, having regard to the relevant caution guidelines,
 - Any other ground prescribed by the regulations.⁹
- 5.3 Each of these grounds is discussed in more detail below.

The penalty notice was issued contrary to law.

- 5.4 A penalty notice is only issued according to law if every element of the offence appears to be present and there is sufficient evidence to prove every element of the offence.
- 5.5 For example, when an officer issues a penalty notice for travelling on a train without a valid ticket, the penalty notice is issued contrary to law unless officer is satisfied, and there is sufficient evidence to prove, all of the following:
- a) that the person traveled on a train,
 - b) without possessing a valid ticket (either personally or with someone else on their behalf), and
 - c) none of the legal defenses or exceptions are applicable in this case.

⁷ *Fines Act 1996*, s24H (1).

⁸ *Fines Act 1996*, s24E (3).

⁹ *Fines Act 1996*, s24E (2).

- 5.6 A penalty notice is issued contrary to law, and must be withdrawn if an error has been made regarding the existence of any of the elements of the offence. For example, a penalty notice must be withdrawn on this ground if a person is issued with a penalty notice for not paying a toll, but the toll was in fact paid within time.
- 5.7 A person cannot lawfully be issued with more than one penalty notice for a single offence. This does not mean that a person who repeats an offence, or a vehicle detected for repeat offences, cannot be given a penalty notice for each separate offence committed.

The issue of the penalty notice involved a mistake of identity.

- 5.8 A penalty notice must be withdrawn if it has been issued to the wrong person. For example:
- A penalty notice issued by a camera for a driving offence is issued to the registered owner of a vehicle. However, the vehicle had been stolen or sold at the time the offence was committed, or the penalty notice was issued to the wrong vehicle due to an error in recording the registration number.
 - A law enforcement officer gives a penalty notice for an offence, but the offender has provided another person's identification documents.

The penalty notice should not have been issued, having regard to exceptional circumstances relating to the offence.

- 5.9 In some cases, a penalty notice should not have been issued due to exceptional circumstances relating to the offence.
- 5.10 Some examples of exceptional circumstances which may mean that a penalty notice should not have been issued are set out below. However, this does not mean that a penalty notice must be withdrawn in every case where there are exceptional circumstances. Regard must be had to what is reasonable in all the circumstances of each case, including the nature and severity of the offence.

	Example
Emergency services	An offence is committed by emergency or essential services personnel while engaged in emergency work.
Police direction	A person parks longer than they are entitled to. They could not return to their car because they were taken into Police custody, or were assisting Police with their enquiries
Medical emergency	A person parks longer than they were entitled to because: they experienced unexpected trauma during a medical appointment they were visiting someone in hospital and their condition worsened or death was imminent, and it was not reasonable to leave at that time.

Faulty vehicle or machinery	<p>A person travels without a ticket because the vending machine was broken down and there was no other way to purchase a ticket.</p> <p>A person parks longer than they are entitled to because their vehicle was broken down at the time.</p>
Circumstances beyond the person's control	<p>A person travels on public transport without a ticket to escape violence or the threat of violence (for example, a family needing to travel suddenly to a domestic violence refuge).</p> <p>A person gets a penalty notice for consuming alcohol in a park, but they are at a festival which has Council approval to serve alcohol.</p> <p>A person drives an unregistered vehicle, but the fact that the registration was not valid at the time was due to an error by the registration authority.</p>

- 5.11 This is not an exhaustive list of exceptional circumstances (or of categories of exceptional circumstances) which may mean that a penalty notice should not have been issued.

Intellectual disability, mental illness, cognitive impairment or homelessness.

- 5.12 The fact that a person has an intellectual disability, mental illness, cognitive impairment or is homeless is not in itself sufficient grounds to require withdrawal of a penalty notice.
- 5.13 The obligation to withdraw the penalty notice only arises if as a result of the person's condition, the person is unable to understand that their conduct constitutes an offence, or is unable to control the conduct constituting the offence. For example:
- A person with an intellectual disability does not understand that they have to purchase a platform ticket, even if they have no intention of travelling on a train,
 - A person with a mental illness is swearing or behaving offensively during a severe episode,
 - A person with a cognitive impairment gives a police officer an incorrect name or address because their impairment affects their social and interpersonal skills,
 - For a homeless person, everyday domestic activities such as sleeping, having implements to prepare food (such as a knife) or drinking alcohol can become illegal activities because they are undertaken in public.
- 5.14 If the offence for which the penalty notice was issued is a driving or traffic related offence, and review is sought on this ground, the information and evidence provided may be referred to the Roads and Traffic Authority licence review unit, in the interests of public safety.
- 5.15 For the avoidance of doubt, the terms used above are defined as follows.

- 5.16 Intellectual disability: A person has an intellectual disability where that disability:
- (a) is attributable to an intellectual impairment, and
 - (b) is permanent or likely to be permanent, and
 - (c) results in a significantly reduced capacity in one or more major life activities, such as communication, learning, mobility, decision-making or self-care.¹⁰
- 5.17 Cognitive impairment incorporates a wider range of disabilities than intellectual disability and includes a disability which:
- (a) is attributable to impaired brain functioning that can be associated with many diagnoses that are present at birth or acquired throughout a person's life span, and
 - (b) is permanent or likely to be permanent, and
 - (c) results in a significantly reduced capacity in one or more major life activities, such as communication, learning, mobility, decision-making or self-care.
- Examples of cognitive impairment include a developmental disorder (including an autistic spectrum disorder and cerebral palsy), neurological disorder, dementia, brain injury (including from trauma or as a result of substance abuse), or Alzheimer's disease.¹¹
- 5.18 Mental illness means a condition that seriously impairs, either temporarily or permanently, the mental functioning of a person and is characterised by the presence in the person of any one or more of the following symptoms:
- (a) delusions,
 - (b) hallucinations,
 - (c) serious disorder of thought form,
 - (d) a severe disturbance of mood,
 - (e) sustained or repeated irrational behaviour indicating the presence of any one or more of the symptoms referred to in points (a)-(d).¹²
- Some common types of mental illness include schizophrenia, psychosis, bipolar disorder and serious depression or anxiety.
- 5.19 Personality disorder: for the purposes of internal review of penalty notices, personality disorder may be considered a form of mental illness.
- 5.20 Personality disorder means an extreme and maladaptive pattern of thinking and behaviour which causes disruption to a person's life.
- 5.21 Examples of personality disorders include, antisocial personality disorder, and borderline personality disorder.
- 5.22 Homelessness: A person is considered homeless if they are:
- Without conventional accommodation – for instance, sleeping in parks or on the street, squatting, living in cars or in improvised dwellings; or

¹⁰ This definition is adapted from the definition of the intellectual disability target group in section 5 of the *Disability Services Act 1993* (NSW).

¹¹ This list of examples is adapted from the definition of cognitive impairment in s61H(1A) of the *Crimes Amendment (Cognitive Impairment – Sexual Offences) Act 2008* (NSW).

¹² This definition is taken from s4 of the *Mental Health Act 2007* (NSW)

- (a) Moving from one form of temporary accommodation to another – for example, refuges, emergency hostel accommodation, or temporary space in the homes of family and friends, or
- (b) Living in temporary accommodation due to domestic violence or unsafe living conditions, or
- (c) Living in a caravan park due to their inability to access other accommodation, or
- (d) Living in boarding houses on a medium to long-term basis.¹³

A caution should have been given instead of a penalty notice, having regard to the relevant caution guidelines

5.23 The Attorney General has published standard guidelines in relation to cautions. They may be found at: <http://lawlink.nsw.gov.au/lpd> (under the “Publications” section). The Attorney General’s Caution Guidelines do not apply to NSW Police, or where an agency has issued its own caution guidelines for the use of issuing officers. Agency caution guidelines must be consistent with the Attorney General’s Caution Guidelines.

Any other ground prescribed by the regulations.

5.24 The Regulations do not currently prescribe any additional grounds on which a penalty notice must be withdrawn.

6 Outcome of review

6.1 After conducting a review to issue a penalty notice, a reviewing agency may confirm the decision to issue a penalty notice or may withdraw the penalty notice.

6.2 A reviewing agency is to notify the applicant in writing of the outcome of the review within 42 days of receipt of the application (or 56 days if additional information has been requested).¹⁴

If the penalty notice is withdrawn

6.3 If after a review, the penalty notice is withdrawn, then:

- any action to record demerit points recorded against that person by the Roads and Traffic Authority is to be reversed, and
- any amount paid under the notice is to be refunded, and
- any penalty reminder notice is also deemed to have been withdrawn,¹⁵ and
- the issuing agency may, if it considers it appropriate to do so, give an official caution to the person in accordance with Division 1A of the Fines Act, as if it were an appropriate officer.

¹³ This is based on the Chamberlain and McKenzie definition of homelessness, which is the most commonly used definition in Australia.

¹⁴ *Fines Act 1996*, s24E(4)

¹⁵ *Fines Act 1996*, s24G(2)

- 6.4 If a reviewing agency withdraws a penalty notice on its own motion after the amount under the penalty notice (or a penalty reminder notice in respect of the offence to which the penalty notice relates) has been paid, no person is liable to any further proceedings for the alleged offence.¹⁶

If the penalty notice is confirmed

- 6.5 A penalty reminder notice is automatically issued for all penalty notices, even if they are being internally reviewed. If after review the penalty notice is confirmed, the person must be advised of the new due date for payment of the penalty. This advice replaces any previous penalty reminder notice for that offence (and it is not necessary for a second reminder notice to be issued).

7 Termination of review

- 7.1 If a person elects to have a matter dealt with by a court under this Part while a review under this Division is in progress, the review is terminated when the person makes that election.¹⁷

8 Delegation of internal review

- 8.1 A reviewing agency may enter into arrangements with another person or body under which the functions of the agency under this Division are exercised by that person or body on behalf of the agency.

(End)

¹⁶ *Fines Act 1996, s24H(2)*

¹⁷ *Fines Act 1996, s24I.*

- **Document history**

Version	Date	Reason For Amendment

- **Approval by Attorney General**

(John Hatzistergos)

Caution Guidelines under the *Fines Act 1996*

These Guidelines are issued by the Attorney General under section 19A(3) of the Fines Act 1996. Officers who issue penalty notices under the Fines Act 1996 must have regard to these Guidelines in deciding whether to give a person a caution for a penalty notice offence.

The Guidelines are to assist officers in exercising their discretion. They do not create any right or obligation to give a caution. These Guidelines do not apply if the officer is a police officer, or the officer is employed or engaged by an agency that has issued its own guidelines for the use of cautions.

In the event of any inconsistency between these guidelines and the Fines Act 1996, the Fines Act 1996 prevails.

Essential Summary

Officers who issue penalty notices may give cautions instead.¹⁸ The *Fines Act 1996* states that a caution may be given if the officer believes:

- on reasonable grounds that a person has committed an offence under a statutory provision for which a penalty notice may be issued; and
- it is appropriate to give a caution in the circumstances.

The matters that should be taken into account when deciding whether it is appropriate to give a person a caution instead of a penalty notice include:

The offending behaviour did not involve risks to public safety, damage to property or financial loss, or have a significant impact on other members of the public;

The person is homeless;

The person has a mental illness or intellectual disability;

The person is a child (under 18);

The person has a special infirmity or is in very poor physical health;

The offending behaviour is at the lower end of the seriousness scale for that offence;

The person did not knowingly or deliberately commit the offence;

The person is cooperative and/or complies with a request to stop the offending conduct;

It is otherwise reasonable, in all the circumstances of the case, to give the person a caution.

¹⁸ Section 19A, *Fines Act 1996*

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1 Scope

- 1.1 Officers who issue penalty notices (other than police officers) must have regard to applicable guidelines in deciding whether to give a person a caution instead of a penalty notice. The applicable guidelines will be these Guidelines, unless the officer is employed by, or acts on behalf of, an agency that has issued its own guidelines.
- 1.2 Agencies may make their own caution guidelines with additional detail to suit their operational environment. However, to ensure minimum standards and consistency across Government, agency guidelines must not be inconsistent with these Guidelines.¹⁹
- 1.3 These Guidelines relate to the giving of cautions. Officers are expected to comply with their agency's policies and procedures in relation to the issue of penalty notices.
- 1.4 Nothing in these Guidelines limits officers' existing discretion to deal with minor breaches, in accordance with the policy and practice of the issuing agency.

2 Purpose

- 2.1 The purpose of these Guidelines is to ensure that officers exercise good judgment and take into account relevant considerations when deciding whether to give a caution for a penalty notice offence.

3 Definitions

Offence means an offence under a NSW law for which a penalty notice may be issued.

Issuing officer means a person (other than a police officer) authorised to issue a penalty notice for an Offence.

Issuing agency means the agency that has employed or engaged the officer who issued the penalty notice or the caution.

¹⁹ See 19A(3)(b) of the *Fines Act 1996* (NSW)

4. When may a caution be given instead of a penalty notice?

Overview

4.1 A caution may be given if:

The offence is one for which a penalty notice may be issued;

The issuing officer has reasonable grounds to believe that an offence has been committed; and

The issuing officer believes it is appropriate to give a caution in the circumstances.

4.2 In deciding whether to give a person a caution, the officer must exercise his or her discretion based on the facts of each individual case, and having regard to these Guidelines or other applicable agency guidelines.

The offence is one for which a penalty notice may be issued

4.3 Schedule 1 of the Fines Act 1996 and the Fines Regulation 2005 identify most of the laws under which penalty notices may be issued.

There are reasonable grounds to believe that an offence has been committed

4.4 An issuing officer or agency must only give a caution if there are reasonable grounds to believe that an offence has been committed. This is the same test used when deciding whether or not to issue a penalty notice.

4.5 Every element of the offence must appear to be present and there must be sufficient evidence to prove the offence. For example, when an officer intends to issue a caution for travelling on a train without a valid ticket, the officer must be satisfied that there is sufficient evidence to prove all of the following in the same manner as if he or she were intending to issue a penalty notice:

(a) that the person travelled on a train,

(b) without possessing a valid ticket (either personally or with someone else on their behalf), and

(c) the person did not have a lawful excuse.

It is appropriate to give a caution in the circumstances

4.6 The decision to give a caution, rather than issue a penalty notice, requires the exercise of good judgement, involving an assessment of all the circumstances.

4.7 Without limiting the discretion to give a caution, the matters that should be taken into account when deciding whether it is appropriate to give a person a caution instead of a penalty notice include:

The offending behaviour did not involve risks to public safety, damage to property or financial loss, or have a significant impact on other members of the public;

The officer has reasonable grounds to believe that the person has a mental illness or intellectual disability;

The officer has reasonable grounds to believe that the person is homeless;

The officer has reasonable grounds to believe that the person is under 18;

The officer has reasonable grounds to believe that the person has a special infirmity or is in very poor physical health;

The offending behaviour is at the lower end of the scale of seriousness for that offence or is minor in nature. For example, where there are signs prohibiting eating and drinking in a train carriage, and a person is observed eating a meal in a sensible and tidy manner.

The person claims on reasonable grounds that they did not knowingly or deliberately commit the offence;

The person admits the offending behaviour and shows remorse; The person is cooperative and/or complies with a request to stop the offending conduct. For example, a person stops in a no parking zone for longer than the required time but does not leave the vehicle unattended and agrees to move the vehicle when directed.

There are other reasonable grounds for giving a caution in all the circumstances of the case. For example, the offence was committed because of a medical or other serious emergency, or the person is a visitor from interstate or overseas and was not aware that their conduct constituted an offence.

- 4.8 The fact that one or more of these factors is present does not mean that the officer is obliged to issue a caution. All the circumstances of the case should be taken into account to determine whether a caution is an appropriate and reasonable response to the offence.
- 4.9 In considering whether there are reasonable grounds to believe that a person has a mental illness, intellectual disability, special infirmity, is in very poor physical health or is homeless, officers should form their own judgment having regard to all the circumstances, including the appearance, speech and behavior of the person. Any documentary evidence produced by the person may also be taken into account.
- 4.10 In deciding whether to issue a caution, it may be relevant to consider whether the person has been issued with a caution for the same or similar offence before. However, the fact that someone has been issued with a caution previously does not mean that they cannot be given another caution.

5 When a caution must not be given

- 5.1 An issuing officer must not give a person a caution if they are not able to issue the person with a penalty notice for the same behaviour.
- 5.2 For example, an issuing officer must not give a caution if:
- he or she does not have reasonable grounds to believe that an offence has been committed, or
 - each element of the offence is not present, or
 - there is insufficient evidence to prove the offence, or
 - the person has a lawful excuse. For example, under section 4 of the Rail Safety (Offences) Regulation 2008, a lawful excuse for travelling on a train without a valid ticket is where a person does not have a ticket because the ticket machine was broken and no alternative facilities were available at their station to enable them to purchase one before getting on the train.
- 5.3 An officer must not give a person a caution if the offence has been identified in the issuing agency's own caution guidelines as one for which cautions may not be given (e.g. offences which involve risks to public safety).
- 5.4 There are very few and exceptional circumstances in which a person under the age of 14 may be issued with a penalty notice or a caution (e.g. offences under the Fisheries Management Act 1994 and regulations). In cases where more guidance is required, please consult the relevant agency's guidelines.

6 Do cautions have to be recorded?

Where practical, the fact that a caution has been given to a person should be recorded.

- 6.2 The method of record keeping will vary from agency to agency, and may include notebook or computer entries.
- 6.3 Where a record is made, it should include, if practical:
- The date of the caution;
 - The name of the officer who gave the caution;
 - The offence for which the caution was given;
 - The name and address of the person given the caution; and
 - The date, place and approximate time that the offence was alleged to have been committed.

7 What if a caution is given by mistake?

- 7.1 The Fines Act 1996 makes it clear that giving a caution in relation to an offence does not affect the power of the issuing agency to take other action it would otherwise be allowed to take in respect of an offence.
- 7.2 This provision is intended to be a safeguard so that alternative action can be taken by the issuing agency instead of a caution if it later becomes apparent, having regard to applicable guidelines, that a caution was not the most appropriate response.
- 7.3 For example, if the issuing agency later discovers that a person's conduct was, in fact, so serious that a caution was not the most appropriate response, it could issue a penalty notice or commence court proceedings instead of the caution. Any other action must take place within the applicable statutory limitation period (e.g. further action would have to be taken within 6 months of the date of the alleged offence for summary offences, or 12 months for traffic-related offences).
- 7.4 Similarly, if an issuing agency discovers that a person's conduct was lawful and that a caution should not have been given, it must update any record of the caution accordingly.
- 7.5 An agency should have good reasons for taking alternative action after an issuing officer has already cautioned a person for an offence.
- 7.6 It is not intended that a person should receive both a caution and a penalty notice for the same offence. Officers should decide which is the most appropriate response in all the circumstances of the case.

8 Agency roles and responsibilities

- 8.1 Agencies should ensure that all Issuing officers
- have a good understanding of the actual offences for which they are authorised to issue penalty notices and cautions.
 - are aware of these Guidelines, and
 - receive regular and appropriate training to assist in the interpretation and use of these Guidelines, tailored to meet their particular needs and areas of responsibility.

(End)

9 Document history

Version	Date	Reason for Amendment

10 Approval by Attorney General

(John Hatzistergos)

Community, Recreation and Economic Development Committee

**8.0 Community, Recreation and Economic Development
Committee Business**

C8.1 Review Council's Social Plan

Meeting: Community, Recreation and
 Economic Development Committee

Date: 4 July 2011

STRATEGY: **Building Communities**

ACTION: Review Council's Social Plan

PURPOSE OF REPORT

To report on the review of Council's previous Social Plan 2005 – 2009 and provide a framework for the development of a new Social Plan 2012 – 2016

1.0 BACKGROUND

- 1.1 Within next year's Delivery Program and Budget there is an action to review and develop council's Social Plan. This report outlines the framework to be used to review and develop a new Social Plan for 2012 to 2016.

A social plan describes the local community at a particular point in time, whilst summarising key social needs and priority areas. A social plan seeks to identify opportunities for action, collaboration and partnerships to meet the needs of the community. It aims to follow trends, monitor the social environment and understand the community to better allocate resources where most needed.

Social planning and community development processes follow the interrelated social justice principals of; equity, access, participation and rights.

2.0 ISSUES

2.1 Review of the Previous Social Plan 2005 – 2009

As part of the development of a new Social Plan, a full review of the previous plan has been undertaken by council staff (see **attachment 1**). This review has collated and documented all relevant activities over the life of the previous Social Plan. The purpose of the review was to address the individual actions identified, and report on the work carried out through council's projects and programs. Reporting on social planning actions is conducted both quarterly and annually through council's reporting mechanisms. This review has collated all relevant information from previous reports, plus information provided by key council staff.

It is important to note that social planning and community development work is on-going, council staff continue to monitor and work with the community in a number of areas which is beyond the scope of the previous social plan. The review has also aimed to capture this broader work and identify key initiatives, projects or programs which council has been involved in.

2.2 Social Plan within the Integrated Planning and Reporting Framework

Separate Social Plans are no longer required under the Local Government Act with the introduction of the Integrated Planning and Reporting Framework, however, it is still an expectation that social planning will inform the community strategic planning process as well as guide and assist council to achieve the delivery of appropriate projects and programs. The timing of this project has been designed to inform the Community Strategic Plan, with the first review due 2012/13.

The Social Plan will not be a stand alone planning document. It will be a living document designed to be integrated within council's reporting and planning processes, with actions identified through the Delivery Plan and Budget annually.

2.3 A New Social Plan for 2012-2016

The new Social Plan will use the theme; '*Live, Connect, Participate*'. The social planning process will aim to enhance the liveability, strengthen connections and facilitate participation across the Pittwater community.

The intent of a Social Plan is to describe the local community at a particular point in time, whilst summarising key social needs and priority areas. This Social Plan will seek to identify opportunities for action, collaboration and partnerships to meet the needs of the community. It aims to follow trends, monitor the social environment and understand the community to better allocate resources where most needed.

A Social Plan provides the community with a important resource, often used to strengthen funding applications by local community providers to State or Federal Governments. It is also often utilised by Government Departments when allocating local and regional resources.

In addition the Social Plan will provide a key planning document designed to inform the planning framework with the first review of the Strategic Plan in 2012.

The Social Plan will consist of the following elements:-

- Community demographic analysis.
- Priority areas identified by the community.
- A suite of discussion papers.
- Actions identified through the Delivery Program and Budget.
- Annual reporting.
- Emerging issues papers.

It is envisaged this document will be predominantly available and easily accessible on-line.

2.4 Community Consultation

The community engagement strategy for this project has been determined having a high level of impact on the Pittwater LGA therefore is designed to ensure all identified stakeholders have the opportunity to provide input into the social planning process as well as providing opportunities for the broad Pittwater community to make comment and input into the process. The overall engagement strategy will use a mixed method model from a qualitative paradigm.

In developing this social plan the key objectives of consultation are to:-

- Develop an understanding of the needs of the Pittwater community.
- Explore social changes and trends occurring in Pittwater and beyond.
- Develop an understanding of assets (soft and hard) within Pittwater and the Region.
- Establish priority areas for discussion papers.
- Identification of the services, facilities and processes required to address the priority areas and meet the needs of the community.

The Social Planning and Community Development Team have existing relationships with a broad range of the community as part of on-going program / project delivery. The team participates and represents council on a variety of working parties, interagency, on-going targeted consultation strategies and general community contact.

These existing relationships and modes of contact will be utilised to engage with the community for this project.

Details on the social planning process to inform the broader community will be included in reports to rate payers, local publications and on Council's web page. The web will provide a useful tool to both inform the community of the process and the progress of the plan. The web will be a main point of entry for community feedback and input. The Social Planning and Community Development Team will endeavour to provide a range of consultation opportunities aiming to capture the diverse range of community perspective.

Methods of consultation will include:-

- Targeted interviews with service providers and target groups.
- Informal consultation carried out via general work practices of the Social Planning Team.
- Focus groups with target groups.
- On-line surveys.
- Youth Forum.
- Youth consultations at schools.
- Workshops.
- Council's website.

2.5 Where to from Here

The key milestones for the development of the new Social Plan are as follows:-

- Consultation will commence with the community from **August to September 2011** with opportunity for input available on Council's web page from **mid July 2011**.
- Data analysis – themes identified from **October to November 2011**.
- Discussion papers developed from **November to February 2012**.
- Discussion papers made available for further consultation and feedback from **February to March 2012**.
- Draft Social Plan to Council - **May 2012**.
- Public exhibition of Draft Social Plan from **May to June 2012**.
- Social Plan to Council for adoption - **July 2012**.

3.0 SUSTAINABILITY ASSESSMENT

3.1 Supporting & Connecting our Community (Social)

- 3.1.1 The Social Plan provides an integral process for identification of key social priorities to enhance community connectedness and wellbeing.

3.2 Valuing & Caring for our Natural Environment (Environmental)

- 3.2.1 There are no direct impacts on the Natural Environment other than identification of assets and places of value to the Pittwater community.

3.3 Enhancing our Working & Learning (Economic)

- 3.3.1 The Social Plan has the potential to identify community priorities for working and learning opportunities, however this will be further explored in an economic development planning process.

3.4 **Leading an Effective & Collaborative Council (Governance)**

- 3.4.1 The social plan and social planning process will seek to identify opportunities for action, collaboration and partnerships across the community.

3.5 **Integrating our Built Environment (Infrastructure)**

- 3.5.1 There are no direct impacts on our Built environment other than identification of assets and places of value to the Pittwater community.

4.0 **EXECUTIVE SUMMARY**

- 4.1 Within next years Delivery Program and Budget there is an action to review and develop council's Social Plan. A review has been undertaken of council's previous Social Plan 2005 – 2009.
- 4.2 The new Social Plan will seek to identify opportunities for action, collaboration and partnerships to meet the needs of the community. It aims to follow trends, monitor the social environment and understand the community to better allocate resources where most needed.

RECOMMENDATION

- 1 That Council note the development of a new Social Plan 2012- 2016.
- 2 That Council support the framework and process outlined within this report.
- 3 That Council note the review of the previous Social Plan 2005 – 2009.

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A Review of: Building Communities Pittwater Social Plan 2005 – 2009

Building Communities

Priority – Older people engaging with the community

- 1.1 *Organise a forum with relevant service providers to identify strategies to prevent social isolation amongst older people.*

Social isolation amongst older people was identified in the 1999 Social Plan and again in the 2005 Social Plan.

In 2006 a presentation was made to members of the Manly Warringah Pittwater Home and Community Care (HACC) Sub-Regional Forum to discuss the issue of social isolation and prevention strategies. A working party was then established with representatives from the three Northern Beaches Councils and local service providers.

The Manly Warringah Pittwater Social Isolation Strategy has seen the implementation of a number of initiatives aimed at identifying and reducing the incidence of social isolation amongst older people living on the Northern Beaches. A key initiative was the development of a Social Isolation Checklist, encouraging older residents and their carers to look for risk factors that may identify them as isolated, as well as providing contact details for appropriate referral services. The checklist was distributed widely to GPs, medical centres, community centres and libraries and was a key awareness raising initiative.

A Neighbourhood Flyer was another strategy implemented. This encouraged community members to connect with elderly neighbours through simple things such as having a chat, taking out the rubbish or collecting the mail. It also offers suggestions on how you can assist neighbours, giving them information about services that may be available to them in their own home.

More recently in response to the growing amount of research identifying men as key target group at risk of social isolation, a publication *Time on Your Hands* was aimed specifically at men over the age of 65 years on the Northern Beaches. It encourages them to get involved in activities in the local community by providing information and contact details for key groups.

Accessible information provision is fundamental to addressing social isolation in the community. Council continues to produce a number of additional free resources for older people including the *Seniors and Care Guide*, *Retirement Housing Guide*, *Shopping made Easy brochure*, *Easy Walks in Pittwater Guide* and the annual Seniors Week Program of events.

Priority – Day activities for people with a disability

- 1.2 *Meet with disability organisations to identify issues concerning the provision of work experience placements for people with a disability.*

This particular action has not been directly achieved due to resource issues and other Council driven priorities. However there have been other developments within the area of disability.

Council maintains and distributes disability information through the Council website, in the form of flyers through Customer Service and Community Centres, as well as responding to community inquiries and issues as they arise over the phone and in Council reports.

In 2009 Mona Vale Library arranged for a work experience placement through the University of Western Sydney Graduate Program for a person with a disability. Mona Vale Library also relies on volunteers and has had a long-standing commitment supporting volunteers with a disability.

- 1.3 *Investigate strategies to help form partnerships between disability organisations and local businesses, which will provide work opportunities for people with disabilities.*

Although formal strategies have not been developed to help provide work opportunities for people with disabilities, work with disability service providers continues through relevant forums and network meetings. Support is provided to organisations such as Northern Beaches Creative Leisure and Learning in order to deliver services to people with a disability and their carers. Council's Nelson Heather Community Centre also provides suitable accommodation for a local disability service, Northern Beaches Interchange, to deliver services to the local community.

Maintaining the relationship with the Regional Disability Information Officer based at Warringah Council is another key way that disability information and issues have been addressed. This position provides information and referral to help people with a disability, their families, carers and service provider's access local and other resources.

Priority – Young people having fun

1.4 *Include a five year works program for skateboard/ bike facilities in future Council management plans.*

In the 2007-2012 Management Plan the budget was allocated to upgrade numerous skateboard and bike facilities. A full refurbishment of Avalon skate park was complete in 2009 and Council's Capital Works Program continues to identify bike paths for upgrade. Detailed plans have been also developed for a major regional skate facility at Kitchener Park and a number of federal government grants have been applied for unsuccessfully. Efforts continue to identify funding options to deliver this project.

1.5 *Involve young people in planning modifications and upgrades of youth recreational facilities.*

An Advisory Group was convened to provide input on the development of skate/bike facilities at Kitchener Park, which included the representation of 4 local young people. Extensive consultation also continues with young people in Pittwater around the upgrade of Avalon Skate Park and Mona Vale Skate Park.

In addition young people were involved in the Xhibit Project during 2008. This project was developed by the Northern Beaches Graffiti Working Party, made up of members from the Northern Beaches Local Area Command and Warringah and Pittwater Council staff. It involved selected young people from Narrabeen High School participating in a three-hour workshop with a professional artist, then working with that artist to spray a mural over an identified graffiti hot spot at Boondah Reserve. It provided young people with the opportunity to contribute positively to their local community while having fun at the same time. Council continues to consult and work with young people on a range of initiatives; this is later discussed in 1.8.

1.6 *Develop low cost recreational activities for young people in community centres.*

The facilitation of low cost hiring of community centres for any youth related recreational activities is one of the ways that Council supports affordable recreational activities for young people in community centres. Some of the youth activities currently being offered at Council's community centres include dance and salsa, drawing and painting, African drumming, yoga, martial arts, and the St Mark's Avalon Youth Program.

Mona Vale Library also runs a number of free or low cost activities for young people, including school holiday programs and competitions, creative writing workshops and HSC workshops.

Work with other youth organisations such as Youth Reach, will continue in order to develop programs for young people. In 2010 Pittwater Council supported Youth Reach to deliver the first Midnight Basketball program. This relationship will continue in order to deliver the program in 2011 and 2012.

1.7 *Work with young people to stage an annual youth arts/entertainment event.*

The 24/7 Youth Film Festival event is held annually in collaboration with Manly, Warringah and Mosman Council's. The festival is built around a competition, encouraging young people to produce a film of up to seven minutes in 24 hours. In the lead up to the competition, the festival includes a range of workshops to build the skills and knowledge of young people in relation to acting, directing, editing and cinematography.

Priority – Young people being heard

1.8 *Consult with young people through an annual youth forum.*

Youth Forums have continued to be organised and implemented as a means to consult with young people about current and changing needs and issues. On 18 February 2008 Council resolved that the Pittwater Youth Forum be held biennially due to the extensive resources required to run an annual forum and to allow staff sufficient time to report back on completed outcomes.

The aim of the Pittwater Youth Forum is to provide the following:

- Encourage young people to become involved in their community and initiate change.
- Provide an opportunity for young people to come together from different schools in Pittwater.
- To consult with young people living in Pittwater about issues that affect them and the community.
- Identify issues important to young people and make this information available to relevant services in the area.
- To determine the role Council can play in addressing these issues and supporting other services.

Young people are also given various opportunities throughout the year to provide feedback to Council. All consultation is guided by Pittwater's Youth Participation and Consultation Strategy, which is based on the notion that young people have the right to participate as active members in the community and should be given opportunities to express their views, implement ideas and effect decision making.

The theme for the 2009 Forum was "Good for You, Good for the Environment", and approximately 160 young people attended from the four different high schools in Pittwater. The forum focused on educating young people on healthy lifestyle choices through avoiding drug and alcohol use, and motivating young people to incorporate sustainable environmental practices into their daily lives. A number of key issues were addressed by the young people including their attitudes to adolescent drinking, knowledge of youth services in the area, entertainment options, and community participation and the environment.

Council staff continue to consult with young people at least once a term in one of the four local high schools.

Priority – Women engaging in the community

1.9 *Run two Pittwater Women's Forums a year, with a greater focus on attracting younger women.*

Pittwater Women's Forums continue to be held annually in order to allow women to stay connected to their community and to interact with other local women. The forums are delivered through a range of different mechanisms, including events and activities. For example, *Learn to Surf Lessons* and courses at Mona Vale Library aimed specifically for women such as *Technology Skills for Women* through the Northern Beaches Institute of TAFE and a *Looking After your Finances* session run by a local financial planner. International Women's Day Breakfasts are also supported in conjunction with the Zonta Club of NSW.

Priority – Diverse cultures valued and accepted

1.10 *Participate in an annual event to celebrate harmony day.*

Harmony Day is a national initiative that is held annually in March. Council has run and promoted various events to promote diversity and social cohesion. Most recently the Coastal Environment Centre hosted members of the Guringai Local Aboriginal Education Consultative Group and Fisher Road School to paint three memorial poles. The poles signify the Aboriginal cultural contribution made by an Aboriginal man who had strong ties with the Pittwater area for over 15 years. Mona Vale Library staff typically celebrate harmony day by wearing and selling promotional products, including ribbons and tattoos.

1.11 *Provide training for staff once every two years about how to engage with people who have difficulty communicating.*

To date Council staff have not received specific training on how to engage with people who have difficulty communicating. This is due to a lack of any significant issues arising as a result of interactions with people from Culturally and Linguistically Diverse (CALD) communities. This is not to say that access to regular training in this area would not be beneficial to the community and Council staff.

It would be recommended that this issue can be explored further as part of the community consultation process for the new social plan.

1.12 Promote the availability of multicultural resources in Mona Vale Library.

Mona Vale Library purchases a variety of multicultural resources for the community, for example, a number of key magazines in different languages, as well as the bulk borrowing of books from the State Library aimed specifically at CALD communities. The magazines and books are promoted widely on Council's Website and through resources as produced by the State Library, including Posters and Bookmarks.

As part of Mental Health Week (held annually in October) in 2011 Mona Vale Library ran a talk in Serbian on *Depression in Older People*. It targeted Serbian and Croatian communities and was run by a local Clinical Psychologist. Various multicultural services were also represented at the talk, including Manly Warringah Pittwater Community Aid and Community Care Northern Beaches. This initiative was promoted through local media, as well as by having the Flyers translated and available in 3 different languages.

Relationships are maintained with local multicultural services in order to ensure that information on services and activities aimed at the multicultural community is readily available.

Priority – A sense of belonging

1.13 Review established events in Pittwater to identify opportunities for enhancing the sense of belonging in Pittwater.

A review of the numerous volunteer recognition programs with the aim to create a single integrated program that overcame some of the duplication, inconsistencies and timing difficulties that characterised the previous award programs. The Pittwater Volunteers Awards aim to recognise the contribution of Pittwater's community members to local services and organisations. The program continues to be a celebration of community spirit that brings together people from many and varied areas.

There is a broad range of other community events that exist within Pittwater that are put on by a range of community groups as well as Council. These include (but not limited to); The Big Swim, Carols by Candlelight, Market Days, Australia Day celebrations, Citizenship Ceremonies, Anzac Day Memorials, Sail Past, Pittwater Regatta, Pittwater to Coffs (27 December), Dog Day by the Bay, School Events – fetes, market days, Sorry Day, Artfest, Pub to Pub, Putt Putt Race, Wooden Boat Show - RMYC Race, Guringai Festival, RMYC Car Show, Marine Art Show, Food & Wine Festival, Earth Hour and New Years Eve celebrations. These events are publicised widely through local media, Internet and various other forums.

The success of these events can be directly reflected in Council's 2010 Customer Satisfaction Survey results with 96% of residents feeling a sense of belonging in Pittwater.

Supporting Neighbourhoods

Priority – Older people living independently

2.1 Provide assistance to the Northern Beaches Volunteer Service to secure permanent accommodation for an outreach service in Avalon.

Northside Community Connect is a non-profit organisation that assists older people living independently in the community. Information, Support and Advocacy has been provided on an ongoing basis to specific areas of the service, including the Northern Beaches Volunteer Service, the Carers Network, and Easy Care Gardening.

Agreement was reached between Council and Northside Community Connect management regarding securing accommodation to assist the service to operate in Mona Vale. Mona Vale Library continues to provide physical space for the Northern Beaches Volunteer Service to run free information Sessions on volunteering opportunities in the local community.

2.2 Provide assistance to the Carers Network Northern Beaches to establish a carers support group in Pittwater.

Assistance with publicity and promotion has been provided to the Carers Support Network in establishing a support group specifically for carers living in Pittwater. The group started meeting at Pittwater RSL, and has since eventuated into a dementia-specific carers support group operating out of Chesalon Services at Mona Vale.

- 2.3 *Provide assistance to the Easy Care Gardening Service to run a seminar each year in Pittwater on planning and preparing an easy to manage garden.*

Council has assisted Easy Care Gardening to hold information seminars (run in November 2006, June 2007) on planning and preparing an easy to manage garden.

Priority – Caring for Children

- 2.4 *Work with SHOROC Child Care Project to increase child care places for children aged 0-2 years on the northern beaches.*

SHOROC Councils have cooperated in promoting and supporting Family Day Care as a key provider of childcare to the 0 – 2 age group. All Council's continue to provide information on supply and demand to new operators and encourage the provision of 0 – 2 places as an area of need which is still not fully met within the SHOROC region.

- 2.5 *Identify ways that Council can facilitate child care operators expanding or setting up new services.*

Over the last five years a number of new private childcare centres have opened in Pittwater. This has been in response to demand and also influenced by the Commonwealth Government's increased support, by raising the Childcare Rebate to 50%.

- 2.6 *Advocate to the Commonwealth Government to increase the rate of child care benefit for children aged two years and under.*

This issue has continually been raised at regional and state forums. Although still not addressed by the Commonwealth Government, the overall rate of the Childcare Rebate has been increased from 30% to 50% over the last five years.

- 2.7 *Advocate to the State Government to increase funding under the Children's Services Program to ensure that all children have access to affordable preschool programs.*

Some improvements have been made to preschool funding over the last five years. The State Government still needs to provide further assistance to improve the affordability of and ensure equitable access to all families.

Priority – An informed Community

- 2.8 *Provide additional information to the community about local services and programs, including through the Internet, community noticeboards, libraries and local media.*

Specific community information on services and programs are promoted through a range of forums, including community noticeboards, Media Releases, Council Newspaper, and Council's website. This includes information on Council run initiatives, as well as activities and events organised by community organisations and groups.

Council staff also respond to community inquiries via phone and email contact on a daily basis. Ongoing staff attendance and representation on relevant working parties and committees, as well as links with local community information services such as Warringah Disability Information Service and the Dementia and Community Advisor at Community Care Northern Beaches ensures that additional information can be passed on to the community as required.

The Community Directory is also maintained by library staff with up to date information on services in the area for community members.

- 2.9 *Promote information and services to assist people with disabilities through the Internet, community noticeboards, libraries and local media.*

Information and services to assist people with disabilities are similarly promoted through the Internet, community noticeboards, libraries and local media. The Social Planning and Community Development team maintains the Disability section of the Council website to ensure that information and services to assist people with disabilities and their families is up to date and accurate.

A brochure on Accessible Facilities in Pittwater continues to be updated & distributed to disability organisations & individuals. The design and layout of Mona Vale library for example, was planned with user-friendly access for people with disabilities.

2.10 *Assist Migrant Network Services with information about Council to include in the "Welcome to NSW" kit for newly arrived migrants.*

Information Booklets for newly arrived migrants with contact details and an explanation of Pittwater Council and each Business Unit were previously produced into 4 languages (Serbian, Italian, German and Croatian) and distributed to libraries, customer service, community centres, migrant network services and community members.

In partnership with Northern Beaches Multicultural Network local schools were involved in developing a multi-media resource kit to enable students to explore diversity and share the kit with the community. Also in partnership with the Network a Northern Beaches conference on 'Leadership in Diversity' was held, with over 50 community members and workers attending the conference.

More recently, Council staff utilise the expertise of the newly created Regional Migrant Settlement Worker position based at Manly Community Centre and other local positions within the community sector specifically engaged with the CALD community.

Healthy and Safe People

Priority – Healthy and Safe Older People

3.1 *Increase awareness of the range of activities available for frail older people.*

A key role for Council's Social Planning and Community Development team is to work with older people, local services and community groups to ensure that information and service provision in the area is accessible and appropriate for community members. Various publications and resources are developed annually in collaboration with Manly and Warringah Council, as well as local services, including the Seniors & Care Guide, Retirement Housing Guide, Leisure Guide, Shopping Made Easy Brochure and the Easy Walks in Pittwater guide. A Seniors Week Program is also developed and distributed annually in order to increase awareness of the range of activities available for frail older people.

Ongoing support and collaboration with community organisations that provide information and services to older people including Community Care Northern Beaches, Manly Warringah Pittwater Community Transport, Manly Warringah Pittwater Community Aid, Northern Beaches Food Services and Northside Community Connect is also fundamental to maintaining information around healthy and active people.

3.2 *Help establish a social group for active older people at Avalon.*

Council was instrumental in the establishment of Avalon Active Seniors Group in 2005. The group is a social and recreational group for older people living in Pittwater, offering a variety of activities from art classes to ballroom dancing. Due to the success of the group and to ensure its ongoing sustainability, they incorporated in 2009 and continue to grow.

Lifeball is another recreational group aimed at keeping older people healthy and active. With the help of Council it was established at Warriewood in 2006, auspiced by Northern Beaches Creative Leisure & Learning. Council continues to support both these groups through publicity and promotion.

Priority – Healthy Young People

3.3 *Assist the Pittwater Community Drug Action team to implement harm reduction strategies addressing drug and alcohol use by young people.*

The Pittwater Community Drug Action Team (CDAT) identifies issues affecting our community and works together to develop strategies to reduce the harms associated with drug and alcohol use. It is made up of representatives from local drug and alcohol services, Pittwater Council, Police, Northern Beaches Health Promotion, Community Health, community representatives and non-government organisations. Funding is applied for annually through NSW Health for the Pittwater Community Drug Action Plan to be implemented.

Some of the strategies that have been addressed through the plan include the supply of alcohol to minors through the *Supply Means Supply* campaign, information and referral advice in Drug Action Week through a Drug and Alcohol education display at Mona Vale Library, and the *Save a Mate* course that provided first aid and resuscitation training for young people at risk. The CDAT is currently on hold, pending the resolution of some funding and administrative issues at the State level.

Peninsula Youth Services Inc (PYS Inc.) is an incorporated interagency of youth related services operating on the northern beaches (incorporating Manly, Warringah and Pittwater local government areas). Council's involvement in this group provides a forum for information exchange, investigation, lobbying, advice and linking services. One of the projects of Peninsula Youth Services is the production of the Youth Services Guide. The guide provides information on a range of services specifically for young people including health and drug services and accommodation services.

IMPAKT (Intervention Minimisation Parents and Kids Together) sessions, now known as the *Your Choice* program; also continue to be held in conjunction with Northern Beaches Local Area Command, Warringah Council and Manly Drug Education and Counseling Centre (MDECC). These sessions provide the option for young people to enter a community education program instead of paying a fine for underage drinking. They provide important information about the legal, social and health consequences of underage drinking. It also provides young people and their parents / guardians with strategies to avoid risks and keep safe by developing better attitudes and behaviours around alcohol.

3.4 Include opportunities for youth health education at youth events in Pittwater.

Youth health messages are incorporated into any planning and organisation of youth events in Pittwater. In 2006 60 young people attended a Youth Trivia Night held during Drug Action Week to deliver health safety messages on drug and alcohol use. Skate events have also been held in the past to promote messages of road safety and sexual health.

Mona Vale Library run a number of activities throughout the year aimed at young people and emotional health, for example mediation sessions for HSC students and Tai Chi sessions. These activities have typically been offered during Mental Health Week.

Priority – Safe Women

3.5 Assist the Regional Violence Prevention Specialist to run a community education project in Pittwater about domestic violence.

A Domestic Violence and Sexual Assault Seminar was held with the Regional Violence Prevention Specialist. This accompanied a community education campaign with media wide coverage, including a 'Keeping Pittwater Safe' banner and articles in the Manly Daily & Pittwater Life, as well as a mail out to local schools and organisations.

3.6 Help the Jacaranda project to establish support groups for sexual assault victims in Pittwater.

The Jacaranda Project was a group work program for adult survivors of childhood sexual abuse, running at the Northern Sydney Sexual Assault Service. While they were actively encouraged to apply for Community Services Grants, a support group for sexual assault victims in Pittwater has not been established, nor has funding been secured for the Jacaranda project to continue on the Northern Beaches.

In 2007 A Men's Breakfast was held on White Ribbon Day. The Keynote speakers focused on mentoring young men concerning non-violence. 2007 also saw the Reaccreditation of Council as a World Health Organisation (WHO) Safe Community.

Priority – Accessing Facilities and Services

4.1 *Continue implementing a works program to maintain existing footpaths and build new footpaths.*

A footpath/kerb program has been implemented on ongoing basis and the budget was allocated to kerb ramps/disabled access in 2007-2012 Management Plan.

The Special Rate Variation (SRV) program has also included significant expenditure over the next 10 years on footpath and multipurpose access networks.

4.2 *Provide more seating in scenic and commercial areas.*

Seating in scenic and commercial areas is addressed as part of an ongoing program. Seats in both commercial areas and reserves are reviewed in response to specific requests from the community. As part of Councils Capital Works Program upgrades to any reserves always include an evaluation of seating and installation as required.

4.3 *Update information on accessible facilities once a year.*

Council's brochure on *Accessible Facilities in Pittwater* is updated and distributed to disability organisations and individuals annually.

Priority – Housing Older People

4.5 *Research the housing needs and preferences of older residents.*

Detailed research by Council staff into the housing needs and preferences of older residents has been limited due to time and resource constraints. A review of SEPP living and analysis of supply/demand issues was completed in 2004.

The development and distribution of the *Retirement Housing Guide* in collaboration with Manly and Warringah Council's outlines the housing options for older residents on the Northern Beaches.

Priority – Affordable Housing

4.6 *Continue to work with the Northern Beaches Affordable Housing Steering Committee to identify the social and economic implications of increasing housing costs on the northern beaches and investigate strategies to address identified issues.*

Council staff maintained representation on the Northern Beaches Affordable Housing Steering Committee. A community forum was held in 2007 looking into affordable housing on the Northern Beaches, the aim of this forum was to gain an understanding of the housing crisis affecting the northern beaches, including; key workers, youth, older people, lower income earners, single parents and people with disabilities.

Pittwater Council held a workshop in 2008 investigating further ways in which affordability may be addressed.

4.6 *Monitor affordable housing initiatives in other local government areas that could be applicable to Pittwater.*

In 2005 a report was taken to Council outlining information on 'housing stress' and the current issues of the time surrounding Affordable Housing. Council resolved on 6 June 2005 to pursue accessory dwellings in the short to medium term as a key strategy to address housing affordability in Pittwater.

Secondary Dwellings were introduced in the Pittwater LEP in November 2008 as a key initiative to address housing affordability in Pittwater.

Emerging Issues

Over the course of the Social Plan there has been a number of issues that have been responded to that were not necessarily identified as actions for implementation during the period 2005 – 2009.

The Social Planning and Community Development team has done a significant amount of work broadly in the area of community safety, with some of the key initiatives including:

- A review of Alcohol Free Zones (AFZs) and Alcohol Prohibited Areas (APAs) in Pittwater. This review highlighted that when AFZs and APAs are established in appropriate areas and operated with the required level of resources to promote and enforce the zones, they are an effective tool to assist Councils and Police reduce anti-social behaviour.
- Council endorsement and financial support to assist with the rollout of the Good Sports Program in Pittwater. A key aim of the program is to model and promote the responsible use of alcohol through reducing unlicensed alcohol sales, drink driving and alcohol related anti-social behaviour on and off the sporting field.
- The development of a policy and process to respond to new Liquor Licence Applications (as a result of legislation changes).
- The trial and ongoing implementation of a 'clean sweep' program to assist with the rapid removal of graffiti on Council property.
- The coordination of the Pittwater Villages Safety Working Party (previously known as the Mona Vale CBD Safety Working Party) to identify issues leading to anti-social behaviour and work with key stakeholders to devise strategies to address the identified issues.
- Significant pedestrian lighting improvements have been made in and around Village Park Mona Vale. In addition, Councils CCTV network has also been enhanced with significantly improved abilities to provide information and footage to the Police regarding anti-social behaviour.
- Various community education campaigns have been developed over the years in attempt to provide information to the community about issues of graffiti and vandalism. For example, the *Safe Summer* initiative that provides some general safety tips for the community for around the home, when visiting the beach and when having parties. It also encourages people to report crime and explains when people should ring 000, their local Police station, the Police Assistance Line or Crime Stoppers.

The 2010 Pittwater Community Survey results reported that 92% felt safe in their community so there are no doubt that these initiatives have had a positive impact on the notion of safety for community members.

Some of the other work the Social Planning and Community Development team has undertaken during this time includes:

- The development and implementation of the Midnight Basketball Program at Northern Beaches Indoor Sports Centre.
- Ongoing work with local Youth Services.
- Pittwater Parent Forums.
- Youth Week Events, in 2011 a "Recycled Clothes Exchange".
- Supporting a range of cultural initiatives and programs such as Artfest, ArtZpace and Pittwater Community Arts.
- A number of programs and community activities delivered through Mona Vale Library.

C8.2	Minutes of the Community, Recreation & Economic Development Reference Group Meeting held on 4 May 2011
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Meeting: Community, Recreation and Economic Development Committee

Date: 4 July 2011

STRATEGY: Business Management

ACTION: Maintain and Service Council's Range of Committees

PURPOSE OF REPORT

To present to Council for consideration, the Community, Recreation & Economic Development Reference Group Minutes of 4 May 2011 (**Refer Attachment 1**).

1.0 BACKGROUND

1.1 The Community, Recreation & Economic Development Reference Group was established by Council to consider matters involving goals and initiatives contained in the key directions of Council's Strategic Plan – Supporting and Connecting our Community and Enhancing our Working and Learning. Reference Points and outcomes from the Reference Group will inform the Delivery Plan process.

1.2 The strategic objectives within the associated key directions are:

- Building Communities
- Recreational Management
- Community Learning
- Economic Development

1.3 To fulfil its role the Community, Recreation & Economic Development Reference Group provides:

- a link between Council and the community which enhances communication about the strategic direction of Council initiatives
- input from Council and the community (historical, social and environmental) when considering possible solutions
- consideration of implications from strategic initiatives and their likely impact on the local community, and
- feedback to Council on behalf of the community

2.0 ISSUES

2.1 **First meeting of the new Committee.**

2.1.1 This was the first meeting of the newly formed CRED Reference Group. A broad range of updates and topics were covered including a detailed discussion on Economic Development.

- 2.1.2 The new Group has a diverse representation from various community organisations across Pittwater. This diversity has and will continue to provide excellent input into many of the Key Directions within Council's Community Strategic Plan.

2.2 Topics for Next Meeting

- 2.2.1 The Reference Group requested that the following items be included in the August Agenda:

- Council staff to provide an overview and update to the reference group on the consultation process for the Social Plan and Economic Development.
- Agenda topics listed in Attachment 1 of the May Agenda on Page 69 titled "Discussions topics for the Community Recreation and Economic Development Reference Group" to be discussed and prioritized.
- Discussions surrounding Economic Development to be continued.

3.0 SUSTAINABILITY ASSESSMENT

This report does not require a sustainability assessment.

4.0 EXECUTIVE SUMMARY

To present to Council the Minutes of the Community, Recreation and Economic Development Reference Group contained in the minutes of the meeting of 4 May 2011 for Council's consideration.

RECOMMENDATION

That the Minutes of the Community, Recreation and Economic Development Reference Group Meeting of 4 May 2011 (**refer Attachment 1**) be noted.

Report prepared by

Steve Evans

DIRECTOR, ENVIRONMENTAL PLANNING & COMMUNITY

Minutes

Community, Recreation & Economic Development Reference Group

**held in the Training Room at the Coastal Environment Centre,
Lake Park Road, Narrabeen on**

4 May 2011

Commencing at 4.00pm

Attendance:

Cr Ian White, Chairperson

Members

Barrenjoey High School P&C – Mrs Sandra Skelly
Pittwater Community Arts – Ms Lorrie Morgan
Newport Residents Association – Dr Ruth A Fink Latukefu
Clareville & Bilgola Plateau Residents Association – Ms Jennie MacKenzie
Surf Life Saving Northern Beaches – Mr Steve McInnes
West Pittwater Community Association – Mr Paul Purvis/Ms Penny Gleen
Pittwater Community Arts – Ms Bronwyn Hammond
Pittwater Community Gardens Association Incorporated – Mr Heath Blanshard
Sustainability Pittwater – Mr Anthony Robinson
Newport Residents Association – Mr Hans Hui.
Resident – Ms Mischa Moraza
Resident – Mr Alan Porter
Resident – Mr Les Wingham

Council Advisors

Mr Lindsay Godfrey, Manager Community, Library & Economic Development
Ms Jane Mulroney, Community Engagement Officer – Corporate Strategy
Ms Sherryn McPherson, Administration Officer/Minute Secretary

Community, Recreation & Economic Development Reference Group Meeting

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1.0 Apologies

Notes:

1. Apologies were received from Mrs Fiona Winter (Community Care (Northern Beaches) Inc.), and leave of absence was granted from the Community Recreation & Economic Development Reference Group Meeting held on 4 May 2011.
2. The Reference Group members accepted the apologies.

2.0 Declarations of Pecuniary Interest - Nil

3.0 Confirmation of Minutes

REFERENCE GROUP RECOMMENDATION

That the Minutes of the Community Recreation & Economic Development Reference Group Meeting held on 2 February 2011, be confirmed as a true and accurate record of that meeting.

(Cr White / Mr Paul Purvis)

4.0 Discussion Topics

CRED 4.1 Overview of operations of Reference Groups

Proceedings in Brief

1. Cr White opened the meeting, welcomed the members and gave a brief outline of how the meeting would proceed.

Cr White explained that the group is not a decision making group but utilised as a “Think Tank” with ideas and discussions taken on notice and used to enhance future actions and put forward to Council.

2. Mr Lindsay Godfrey, Manager, Community, Library & Economic Development gave an overview of the Community Recreation & Economic Development Reference Group Meeting procedures and items.
3. Mrs Jane Mulroney, Community Engagement Officer (Corporate Strategy) welcomed the new and ongoing members of the Community Recreation & Economic Development Reference Group. The Reference Group received a brief induction on the operational procedures for the meetings and supporting documents for policies and procedures where distributed to the group, which included;
 - Code of Conduct
 - Terms of Reference
 - 2020 Strategic Plan

REFERENCE POINT

A copy of the Community Recreation & Economic Development Reference Group contact list is to be distributed to members with the Minutes.

CRED 4.2 Update on Actions Arising from Reference Groups to be incorporated into the Delivery Program and Budget for 2011-2015

Proceedings in Brief

Mrs Jane Mulroney, Community Engagement Officer (Corporate Strategy) addressed the meeting on this item.

The Reference Group Members where provided with an overview of the linkage between the work of the reference groups and the opportunity to prioritise initiatives that will be implemented in the future.

It was advised that the draft Delivery Program and Budget is currently on public exhibition and a report will be provided to Council in June 2011. A tabled document was supplied to the group titled Key Direction 1 and 3 which provides a summary of the proposed actions by the reference group and where they have been incorporated into the Delivery Program.

MATTERS ARISING FROM THE DISCUSSION:

Ideas discussed from the Reference Group are filtered into actions and then taken to Council for further consideration.

The Strategic Initiative “Develop a program of outdoor performances” was discussed and has been deferred temporarily as issues have been raised regarding noise complaints in the Plan of Management for Dunbar Park. Council is participating in additional discussions to reach a mutually agreed outcome with the Community for future events which ameliorate noise levels and create minimal impact to residents without strict restrictions for events.

The Strategic Initiative “Develop a program to increase the level of volunteering, including support, training and integrated information – Encourage and support local volunteer groups through education days and recruitment” was discussed and the group was informed that a Volunteer Expo is to be held every two (2) years with the first Volunteer Expo to be held in May 2012.

CRED 4.3 Economic Development

Proceedings in Brief

Mr Lindsay Godfrey, Manager, Community, Library & Economic Development) addressed the meeting on this item.

A brief overview was provided regarding attachments included in the Agenda titled SHOROC Regional Plan and Employment Lands Study Addendum and the Pittwater Local Planning Strategy with a focus on Economy and Employment. Additional discussion points regarding Economic Development and Employment Self Containment papers were distributed to the group.

MATTERS ARISING FROM ECONOMIC DEVELOPMENT DISCUSSION QUESTIONS:

1. *Do you believe that more retail floor space will be required in Pittwater over the next 25 years? Is there a need for a large retail offer in Pittwater?*

Positive feedback was received from the data provided to the group.

Expansion of retail is going to prove difficult in the future with the limited space, prices of fuel and Pittwater's Location.

Q: Council will need to review infrastructure needs and transport facilities for commuters due to the expanding growth of the area. It has been stated that each year goes by and more cars are on the road but no new roads, more people are in the market for purchasing new homes but no new homes are available. Which raises the question, what is Pittwater's current capacity/saturation point?

A: The exact figures of Pittwater's capacity/saturation point will need to be reviewed in order to provide an accurate response however there is the opportunity to rezone areas from residential to commercial to accommodate needs.

The Council is receiving pressure from State Government regarding the increase of employment and housing targets. This in turn impacts on the services that are available.

2. How important is maintaining small village centres such as Newport, Avalon and Mona Vale help to build a strong local economy for business, as well as supporting the longer term sustainability goals such as encouraging people to live, work and shop in local areas?

Warringah Mall supplies a larger range of retail stores and has a large car parking facility which attracts a large amount of regional residents. We do not necessarily want a Carbon Copy of the mall for Warriewood Square.

Q: Warriewood Square has been praised for its locality, retail stores, accessibility and parking but lacking in variety of stores (e.g Rebel Sport) which encourage people to go to Warringah Mall. Can Council explore the opportunity to utilise the large carpark and expand to address retail needs or additional levels could be built to keep the convenience of parking for local residents.

A: Concerns are then raised are by expanding retail and not increasing infrastructure and reducing the amount of parking available will cause a grid lock situation like other regional areas closer to Sydney City. By reducing parking makes it more difficult for people to shop conveniently and causes people to explore the convenience of shopping online.

Pittwater tried to reinvent “High-Street” so that residents will be attracted to local villages such as Mona Vale and Avalon to reduce travel and for the shopping experience to be more attractive and focus on the community maintaining retail stores close to home. Unfortunately looking into the future, cars and parking are always going to be an ongoing issue.

It is thought that while cars are still so cheap and readily available, parking is always going to be an issue. Pittwater can be seen as a catch 22, Council can continue to build parking facilities or add additional tiers to the existing however the more there are the quicker they fill which again creates the ongoing need for more parking facilities.

The Chamber’s of Commerce are continuously requesting spaces for shop keepers but the spaces they have been allocated staff are utilising for parking and then this leaves no where for the community to park reducing the retail income.

It is noted that large shopping malls do largely impact on small shopping villages with the concept “If you build it they will come”. To save our smaller villages we need to look at reinventing “Quality Services” as the market determines product and services.

Warriewood Square in the future will need to be assessed for retail needs however perhaps an additional village could be developed at Ingleside.

3 *Is there an opportunity for bulky goods retail shopping in Pittwater which could reduce the need for local residents to travel to Belrose or Manly Vale areas for these goods?*

Bulky goods stores are established by researching locations and servicing popular demands in various areas. These stores are not for needs required on a daily basis.

If bulky goods stores were increased this would deprive the established stores of business. People are happy to travel to these stores to purchase specialty goods.

MATTERS ARISING FROM WHERE DO RESIDENTS WORK PAPER:

The proposed **Frenchs Forest Specialised Centre** is anticipated to accommodate in the order of 12,000 – 17,000 additional jobs (including 5,000 hospital jobs). The North-East subregion has a current target of 23,000 additional jobs by 2036, as set by the new Metropolitan Plan for Sydney 2036. This target represents a revised long term job capacity for the North East subregion of 112,000 jobs.

The Technology Park at Frenchs Forest has been highly successful and was the employment of choice elected for that area.

The proposed specialized centre will increase commercial and retail area by 2036.

Concerns are raised that the area will need to accommodate for low cost housing, new infrastructure, public transport and the possibility of flooding and increase of accidents.

The Wakehurst Parkway will need to be reviewed with the overpass being required to service the additional needs.

1. *What additional facilities can we implement to Pittwater's immediate vicinity?*

University / Institute / TAFE College Facility

Students need to travel long distances to attend TAFE in order to increase skills. It would be good to build or utilise schools after hours as a facility to assist our youth and the broader community preventing travel to North Sydney to seek a higher education. We could utilise the established schools in the area which finish at 3.30pm and are vacant till the following day and contain the necessary facilities.

There is currently an opportunity for a TAFE partnership which is currently being investigated by Pittwater Business Ltd whom would like to establish a campus on the Northern Beaches.

The TAFE recently offered a Child Care Certificate Course at the Community Centre at Newport which was a success.

By introducing TAFE colleges into the area will also generate provide additional employment opportunities.

2. *How important is that the Northern Beaches maintain its currently high levels of job containment.*

51.2 % of Pittwater residents work outside the area.

According to the Metropolitan Plan 2036 the long term employment capacity target for Dee Why – Brookvale is 17,000 which is a required additional 5,000 jobs.

Lack of Transport Infrastructure and links leading into the area proves difficult to encourage people to work in the area. This may become a leading issue in attracting people to the area as travel time, car and fuel expenses rise.

Residents working from home is encouraged and also a result of transport constraints in the area.

Pittwater Council is working on getting connected to the Broadband network as soon as possible to help people who do work from home connect to office networks.

It may be beneficial to reintroduce dedicated office centres which are set up as an office in which people can hire to use to run private businesses which do not have the necessary facilities to do this from home. Dee Why Co Worker Scheme worth looking into.

Council needs to develop and create a detailed plan for Pittwater now and set futuristic goals to accommodate the need for employment in the area and design retail, industrial hubs for example to reduce pressures on transport systems. If we neglect to reduce pressure on transport infrastructure the area will begin to incorporate grid locked areas during peak times just like the city.

Pittwater needs to introduce loop buses which continuously run to meet the needs of the community to popular work and retail areas.

In regards to Frenchs Forest specialized centre, this will be great in increasing containment in the area however people are lacking the specialized skills required to work in the centre which will attract people from outside the area.

A member for Business in Pittwater / Warringah provided the Reference Group with an overview of the current State Government Schemes working in area. These include successful programs for;

- Young Entrepreneurships – Mentor lectures targeting young graduates
- Over 45 Entrepreneurships – Home based / telecommute
- Women in Business – Mentor program have 30 Graduates for July in It, Landscape, Event Management and export
- Manufacturers Seminar – 35 Manufacturing Companies attending
- Micro Business Week – Includes Solo Business (Financing), Green marketing and online social media marketing
- Pittwater Ltd – on their 5th Birthday received a \$5000 grant from the State Government to enhance their website.

The community is really working together and showing lots of interest on how we can get our businesses to grow locally and creating networking opportunities.

Cr White addressed the group and encouraged feedback from members as Council will need to make serious planning decisions in the future which will have significant impact on the community. The Reference Group strategic discussions are important and relevant.

Due to the lengthy discussions, it is a concern that not every member is getting an opportunity to express ideas. It is suggested Council utilise Survey Monkey and send out discussion questions prior to Community Recreation and Economic Development meetings so everyone will get an opportunity to convey their opinion and ideas. This could be beneficial pre and post meeting to collate everyone's comments.

CRED 4.4 Update on Major Projects May Reference Group meetings

Proceedings in Brief

Mrs Jane Mulroney, Community Engagement Officer (Corporate Strategy) addressed the meeting on this item.

Jane provided an overview of the Key Direction Plan 1 and 3 for the Community Recreation and Economic Development Reference group.

Comments for documents currently on exhibition are to be sent to Jane Mulroney and feedback will be provided in the August meeting. Reference groups were advised if they would like to make any comments or seek further information they can attend the Public Meeting being held on the 1 June 2011.

CRED 4.5 Reference group topics for prioritisation

Proceedings in Brief

Mr Lindsay Godfrey, Manager Community, Library & Economic Development addressed the meeting on this item.

REFERENCE POINT

The Reference Group requested that the following items be included in the August Agenda:

- 1 Council staff to provide an overview and update to the reference group on the consultation process for the Social Plan and Economic Development.
2. Agenda topics listed in Attachment 1 of the May Agenda on Page 69 titled "Discussions topics for the Community Recreation and Economic Development Reference Group" to be discussed and prioritized.
3. Discussions surrounding Economic Development to be continued.

5.0 Emerging Business - Nil

6.0 Next Meeting

That the next meeting of the Community Recreation & Economic Development will be held on 3 August 2011 at the Coastal Environment Centre commencing at 4.00pm.

**THERE BEING NO FURTHER BUSINESS
THE MEETING CONCLUDED AT 6.10pm
ON WEDNESDAY, 4 MAY 2011.**

Natural Environment Committee

9.0 Natural Environment Committee Business

C9.1	Update on Implementation of NSW Coastal Planning Reforms
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Meeting: Natural Environment Committee

Date: 4 July 2011

STRATEGY: Sustainability & Climate Change Co-ordination
Land Use and Development
Risk Management Co-ordination

ACTION: Develop plans to mitigate/control wherever possible, risks associated with natural hazards

Implement and periodically review plans to mitigate/control wherever possible, risks associated with natural hazards

Provide planning, design, investigation and management of beaches, coastline and estuaries

Ensure that potential climate change and sea level rise impacts are incorporated in the Estuary and Coastal Management Strategies and Plans of Management

Consider the impacts of climate change and sea level rise in Council's policies, strategies and plans

To respond to reforms in planning process and advocate on behalf of Council

Ongoing compliance with Council's statutory obligations and to properly discharge Council's common law duty of care to the community when managing risks.

PURPOSE OF REPORT

To provide an update on the implementation of NSW Coastal Planning Reforms for the consideration of Council.

1.0 BACKGROUND

- 1.1 At the Council meetings held on 16 August 2010, 5 October 2010 and 1 November 2010, reports dealing with Sea Level Rise Planning Benchmarks, the *Coastal Protection and Other Legislation Amendment Bill 2010* (the Bill) and the NSW Government's Coastal Erosion Reform Package were considered by Pittwater Council. Council endorsed the preparation and submission of comments to the NSW Government in regard to the Bill and the reform package in co-operation with the Local Government & Shires Association (LGSA) and Sydney Coastal Councils Group (SCCG).
- 1.2 Despite Parliament passing the Bill, the LGSA, the SCCG and many of their member coastal councils remained concerned by a number of aspects of the reform package, in particular the burden of planning and management responsibilities that was being transferred to local government.
- 1.3 The *Coastal Protection and Other Legislation Amendment Act 2010* (the Act) made changes to the *Coastal Protection Act 1979*, the *Local Government Act 1993* and the *Environmental Planning and Assessment Act 1979* as well as three regulations (the Conveyancing (Sale of Land) Regulation, the Environmental Planning and Assessment Regulation and the Local Government (General) Regulation).

Most of the changes to these acts and regulations came into force on 1 January 2011. The Coastal Protection Regulation, a new regulation which commenced on 3 March 2011, also supports the Act.

- 1.4 Changes to the Infrastructure SEPP complement the new legislation to allow landowners to apply for approval to construct works to protect their property from coastal hazards for the long term, provided that they maintain the works and manage any erosion impacts over the life of the works. All these changes have been designed to ensure that public authorities give greater consideration to coastal matters in the assessment of development proposals and activities in the coastal zone.
- 1.5 Legislative amendments also provide for emergency temporary coastal protection works, formation of a NSW Coastal Panel, the delegation of authorised officers, increased penalties for breaches and non-compliance, levying of a coastal protection service charge for landowner funded permanent protection works, improved order powers and more extensive exemptions from liability for local government.

2.0 ISSUES

2.1 Consideration of climate change and sea level rise

The previous NSW Government released its Sea Level Rise Policy Statement in November 2009 as a prelude to the Coastal Erosion Reform Package. The Policy Statement defined sea level rise planning benchmarks to be utilised by local government for planning and assessment purposes based on planning horizons up to the years 2050 and 2100.

Based on the best national and international projections of sea level rise along the NSW coast, the planning benchmarks are for a rise relative to 1990 mean sea levels of 40cm by 2050 and 90cm by 2100.

In support of the Act and utilising the sea level rise planning benchmarks, the former DECCW (now OEH) released supporting technical guidelines to assist affected councils to manage the risks associated with coastal processes and to adequately plan for coastal hazards that may be exacerbated by climate change impacts, particularly sea level rise.

To give guidance to public authorities, the development industry and consultants as to how sea level rise should be considered in land use planning and under Part 4 and Part 5 of the EP&A Act for development in the NSW coastal zone, the then DoP (now DoPI) introduced the NSW Coastal Planning Guideline: Adapting to Sea Level Rise (2010).

Regular updates in regard to the planning reforms, legislative amendments and statutory guidelines have been provided to local government through Planning Circulars released by DoPI since early 2009.

2.2 How does the amended coastal planning framework affect coastal councils?

Changes to the *Coastal Protection Act 1979* (CP Act) give coastal landowners an opportunity to install temporary emergency coastal protection works to protect their homes in the short term under certain circumstances.

Clause 129(A) of the Infrastructure SEPP permits development of permanent coastal protection works (within the meaning of the *Coastal Protection Act 1979*) to be carried out by any person, with consent, on the open coast or entrance to a coastal lake.

The clause provides that if a certified coastal zone management plan does not apply to the land, the NSW Coastal Panel has the function of determining the development application.

The OEH has interpreted this function as applying to applications for coastal protection works in isolation. Where coastal protection works are proposed as a component of a development proposal for a site, the existing consent authority provisions apply.

Furthermore, before determining a development application, the consent authority must take the following matters into consideration:

- the provisions of any coastal zone management plan applying to the land;
- matters set out in clause 8 of SEPP No 71 – Coastal Protection;
- any guidelines for assessing and managing the impacts of coastal protection works that are issued by the Director-General for the purposes of this clause and published in the Gazette; and
- the provisions of section 55M of the *Coastal Protection Act 1979*.

The changes to the CP Act are intended to safeguard beach amenity, environmental values and public access by setting strict controls on the types of coastal erosion protection works permitted, including where and when works may be placed. Long-term coastal protection works will only be permitted if the landowners who propose the works pay to maintain them and manage any erosion impacts.

Certain state government agencies and coastal councils may delegate an employee/s as an authorised officer to investigate potential breaches of the CP Act and to issue orders under that Act.

Councils, as a result of the legislative changes, now:

- are able (through authorised officers) to issue certificates to allow landowners to place emergency coastal protection works at authorised locations and issue orders to modify or remove these works if they are causing erosion, limiting beach access or presenting a risk to public safety;
- have increased powers to order the removal of illegal material dumped on beaches;
- will be able to levy landowners for the council's costs related to maintaining an approved seawall voluntarily built by landowners and managing any erosion caused by the seawall to the beach or adjacent lands (from 1 January 2011 only, unless with the landowners agreement);
- need to ensure that their coastal zone management plans appropriately address risks in relation to coastal hazards and estuarine health and consider the potential impacts of climate change on these risks; and
- must ensure that their planning instrument and DCP address the potential impacts of climate change and incorporate planning and development controls to appropriately manage the risks from coastal hazards that may be exacerbated by climate change.

The former Minister for Climate Change and the Environment issued directions to councils with authorised locations (coastal erosion 'hot spot' areas) to prepare coastal erosion emergency action sub-plans by 31 July 2011 and coastal zone management plans within 1 to 2 years (as negotiated) for each authorised location.

A Code of Practice under the CP Act provides technical details of emergency coastal protection works, including allowable materials, construction and safety considerations as well as details of when, where and how emergency works can be placed. As a statutory guideline, the Code also schedules the authorised locations where emergency coastal protection works may be undertaken.

2.3 What do the coastal planning reforms mean for Pittwater Council?

- Authorised Locations

In the Pittwater local government area, Bilgola Beach and Mona Vale Basin Beach have been scheduled as authorised locations. Owners of beachfront properties at these locations may undertake emergency coastal protection works in accordance with the CP Act and the Code of Practice under that Act. At both these beaches, however, existing coastal protection structures already provide varying degrees of protection for most of the beachfront properties.

Whilst the property owners are eligible to apply to undertake emergency coastal protection works, it is unlikely that a coastal authority would issue a certificate for this purpose unless the applicant provided the necessary supporting evidence from a coastal engineer that the emergency works together with the existing structure would provide greater protection than the existing structure alone.

- Authorised Officers

Pittwater Council currently does not have a trained and delegated authorised officer, nor is it mandatory for Council to nominate one. Nevertheless Council would be reliant upon state government agencies to provide that support, should the services of an authorised officer be required in the Pittwater area.

OEH has recommended that an appropriately qualified and suitably experienced coastal engineer may need to be engaged by Council to assist authorised officers in determining appropriate conditions for certificates authorising emergency protection work and for locating and monitoring the performance of the work.

- Coastal Protection Service Charge

Council has neither agreed to provide coastal protection services nor to levy a Coastal Protection Service Charge to assist with the maintenance of permanent coastal protection works or to manage any off-site erosion impacts that may result from such works. The NSW Government insists that a seawall and its effects on the beach, public access and adjoining properties are properly managed for the life of the structure with the costs of ongoing maintenance and management paid by landowners either jointly or individually.

- Maintaining Coastal Protection Works and Managing Off-site Impacts

As Council has not resolved to levy a Coastal Protection Service Charge in the Pittwater LGA, applicants will need to make arrangements to fund the building of proposed permanent coastal protection works and satisfy the consent authority that appropriate arrangements are in place for the ongoing maintenance of the structures as well as the management of any off-site impacts.

OEH staff recommend that this may be best achieved by requiring the proponent/s for a seawall development to prepare a Seawall Management Plan as a condition of development consent with the landowner/s obliged to fulfil the maintenance and management requirements of that plan (for the lifespan of the seawall) by way of a section 88B instrument on title. This is currently the most viable option available to Pittwater Council, under s 55M of the CP Act, if Council is the consent authority for proposed coastal protection works.

- Ministerial Directions

Under ministerial directions issued in January and February 2011 Council is required to prepare, for its 'hot spot' beaches, emergency action plans by 31 July 2011 and coastal zone management plans by 30 June 2012. DECCW provided a grant of \$5,000 for each hot spot beach to assist with the preparation of emergency action plans and Council has made application under the 2011/12 NSW Coastal Management Program for financial assistance to undertake the preparation of coastal zone management plans for these beaches.

- Emergency Action Sub-plans

Worley Parsons has been commissioned by Council to prepare a coastal hazard definition and vulnerability study for all Pittwater ocean beaches and Great Mackerel Beach. Even though the study has been hampered by the legislative changes and lengthy delays in the release of technical guidelines by the former DECCW, the hazard definition data and mapping has been completed for the 'hot spot' locations. Preparation of emergency action plans for these beaches has still been delayed however, due to the delay in releasing the emergency action sub-plan guide note (which has now been released as a consultation draft).

In co-operation with Warringah Council and SCCG, Pittwater Council has sought information and advice from the new Minister in regard to the emergency action sub-plans and other difficulties being experienced by coastal councils as a result of the new legislative provisions. No response to the letter has been received to date, but OEH staff have contacted council staff and the SCCG to clarify and help resolve these issues.

Emergency Action Sub-plans for Mona Vale Basin Beach and Bilgola Beach are now being prepared in accordance with the draft guide note.

- Coastal Zone Management Plan – Pittwater Estuary

Council completed a draft Pittwater Estuary Management Plan in accordance with the process outlined in the NSW Government's Estuary Management Manual (1992) and adopted the plan in December 2010. The Manual has been superseded by new Guidelines for Preparing Coastal Zone Management Plans which now requires estuary management to focus on a monitoring, evaluation and reporting (MER) approach to managing estuarine health as measured against state-wide natural resource targets.

The Pittwater Estuary Management Plan (2010) was referred to the then DECCW for ministerial endorsement in January 2011. As the new Act came into force on 1 January 2011, coastal zone management plans may be required to be reviewed by the NSW Coastal Panel and must be certified by the Minister before they take statutory effect.

Consequently, the Pittwater Estuary Management Plan is yet to be certified as a coastal zone management plan and awaits the Minister's consideration. Should the Minister so direct; Council may be obliged to amend the existing plan in accordance with the Minister's recommendations or those of the NSW Coastal Panel. Should the Minister decline to certify the existing plan, Council will be obliged to prepare a new plan in accordance with the Guidelines for Preparing Coastal Zone Management Plans and any recommendations from the NSW Coastal Panel.

- Coastal Zone Management Plans – Ocean Beaches

Once coastal zone management plans have been completed for the authorised locations in accordance with the ministerial direction, Council will be required to prepare coastal zone management plans (which incorporate emergency action sub-plans) for all remaining ocean beaches in Pittwater. The preparation of coastal zone management plans is eligible for funding under the NSW Government's Coastal Management Program, but even as a 50% equity partner, Councils contribution to the preparation of the remaining CZMPs could exceed \$200,000.

- Land Use Planning and Development Assessment

The former state government did not intend that development in the coastal zone should be prohibited as a result of the planning reforms, rather that local government put in place appropriate planning provisions to manage risk associated with coastal hazards to an acceptable level for the lifespan of permitted development.

As councils have responsibility for the detailed planning and management of development in coastal areas, especially through the preparation of local environmental plans, development control plans and the assessment of development applications, the successful implementation of the coastal planning reforms rely, in large part, on coastal councils.

Council's planning strategies, standard LEP (in particular, the relevant hazard overlays) and DCP will need to take into consideration and accommodate the legislative amendments and their implications on land use planning as well as the specific planning requirements recommended in certified coastal zone management plans. The necessary actions of reviewing and amending Councils LEP and DCP to be consistent with CZMPs (once certified) are currently not included in the costs of preparing CZMPs and will need to be separately resourced.

- Community Engagement and Awareness

Much of the community and many affected stakeholders have little understanding of the nature of the planning reforms and the implication of the reforms for future development in the coastal zone. OEH has recommended that community education will be an important component of the preparation of CZMPs and the imposition of planning and development controls on affected lands in each LGA.

Information that describes the coastal hazards present and the extent of the hazards described in each plan should be conveyed to the community under present sea level conditions and for the 50 and 100 year planning horizons. The consequent planning restrictions that relate to the management of these hazards for any development or redevelopment of land subject to the hazards should be conveyed in a manner suitable for a non-specialist audience and also placed on council websites. Councils should not rely upon statutory devices, such as planning certificates, alone to convey this information to affected stakeholders.

Financial assistance under the Auxiliary Disaster Resilience Grant Scheme has been sought under the 2011/12 program in order to develop a coastal hazard community awareness strategy in partnership with the SES, Warringah and Manly Councils that will provide consistent information and advice to the broader community.

3.0 SUSTAINABILITY ASSESSMENT

3.1 Supporting & Connecting our Community (Social)

- 3.1.1 The Coastal Planning Reforms, the accompanying Flood and Coastal Risk Management Guides and the Sea Level Rise Policy Statement assists in informing and preparing our community for the potential impacts of sea level rise. A community engagement strategy will be developed to effectively convey this information.

The overarching aim of flood and coastal risk management is to:

- increase safety for residents and businesses;
- increase the community's resilience and reduce the social dislocation.

- 3.1.2 Communication of risks from natural hazards helps increases community awareness and resilience thereby reducing the potential risk to life and property.

3.2 Valuing & Caring for our Natural Environment (Environmental)

- 3.2.1 Assessing the predicted impacts of climate change will allow for future conservation planning and mitigation of impacts on tidal ecosystems, ground water dependent ecosystems, water quality, threatened ecological communities and natural beach systems.

3.3 Enhancing our Working & Learning (Economic)

- 3.3.1 One of the key objectives of the NSW Government's planning reforms relating to natural hazards is the 'protection of public and private infrastructure and assets'. By ensuring there are adequate planning and development controls in place to deal with natural hazards will reduce future economic impacts across the whole of the Pittwater community.

3.4 Leading an Effective & Collaborative Council (Governance)

- 3.4.1 The adoption of the sea level rise benchmarks and incorporation into Council's hazard management planning will provide compliance with Council's obligations under the *Coastal Protection Act 1979*, NSW Coastal Policy and the NSW Flood Prone Land Policy. This can provide Council with indemnity under Section 733 of the *Local Government Act 1993*.

3.5 Integrating our Built Environment (Infrastructure)

- 3.5.1 The NSW Government's coastal planning reforms have been designed to assist local government and coastal communities to make informed decisions to manage existing coastal assets and infrastructure and to plan for future investment and development in the NSW coastal zone.

4.0 EXECUTIVE SUMMARY

- 4.1 Coastal communities such as Pittwater and their local councils are currently facing significant and difficult strategic planning decisions in order to manage the coastal erosion and oceanic inundation impacts that are likely to be exacerbated by climate change (and in particular sea level rise) along the NSW coastline.

- 4.2 The NSW Government has assembled coastal planning reforms to help councils make appropriate planning decisions and provide a more comprehensive toolkit for both councils and communities to utilise when adapting to climate change and rising sea levels.
- 4.3 Key components of the reforms include the NSW Sea Level Rise Policy Statement, the NSW Coastal Planning Guideline: Adapting to Sea Level Rise, *the Coastal Protection and Other Legislation Amendment Act 2010* (the Act) and supporting technical guidelines prepared by OEH. The reform package has been designed to accommodate both emergency coastal protection works and long term coastal protection works.
- 4.4 The Act makes provision for emergency temporary coastal protection works, increased penalties for illegal activities, the levying of a coastal protection service charge for rateable properties that benefit from landowner funded permanent protection works, improved order powers and more extensive exemptions from liability for local government.
- 4.5 Whilst many aspects of the reform package are positive and potentially of great assistance to affected coastal councils and their communities, the LGSA, SCCG and many affected coastal councils have raised concerns over the transfer of much responsibility for coastal strategic planning and the protection of private assets and critical public infrastructure to local government.
- 4.6 The coastal planning reforms oblige coastal councils to undertake specific administrative, planning and management actions to enable coastal landowners to protect their properties from coastal erosion and inundation by short term emergency measures and through long term coastal protection works, with potential impacts on public beach amenity and access.
- 4.7 Until coastal zone management plans have been completed (and certified) for the coastal zone of the Pittwater LGA, it will be difficult for Council to ascertain the costs of administering and resourcing the planning and management actions recommended by the state government, particularly the levying of a coastal protection service charge.
- 4.8 Pittwater Council has engaged a coastal engineering consultancy to undertake a coastal hazard identification study and climate change vulnerability assessment of the Pittwater open coastline to provide the hazard and risk data necessary to inform the planning and management actions required to implement the NSW Coastal Planning Reforms.
- 4.9 Council has authorised locations (coastal erosion hot spots) at Mona Vale Basin Beach and Bilgola Beach and has received Ministerial Directions to prepare Emergency Action Sub-plans and Coastal Zone Management Plans for these locations.
- 4.10 In co-operation with other SHOROC Councils and the SES, Council staff are developing community awareness and engagement strategies to better inform the broader community of the coastal planning reforms, emergency provisions and implications for future coastal development.

RECOMMENDATION

- 1. That the implementation of legislative and policy changes, by the NSW Government, relating to coastal planning matters, be noted.

2. That the program of planning and management works that Pittwater Council is obliged to undertake as a result of the coastal planning reforms be funded in accordance with the timeframes stipulated in the relevant legislation and by the ministerial directions through the Pittwater Council Delivery Program and Budget 2011-2015.
3. That staff seek, whenever possible, financial assistance through applicable grants from both the state and federal governments to help offset the costs of these works.
4. That Pittwater Council not consider delegating an authorised officer until emergency action plans and coastal zone management plans have been completed for the two (2) authorised locations and the implications of emergency management actions are better understood.
5. That in the interim, should the services of an authorised officer be required in Pittwater, that Council request the services of a state government agency nominated authorised officer.
6. That Pittwater Council not consider levying a coastal protection service charge for the maintenance and management of landowner funded permanent seawalls until coastal zone management plans have been completed for all Pittwater ocean beaches and the likely costs to Council of administering such a charge are better understood.
7. That in the interim, development applications that include coastal protection works on private property be conditioned so as to make the landowner responsible for all costs associated with the maintenance of the seawall and the management of off-site erosion impacts for the life of the proposed development in accordance with the provisions of the *Coastal Protection Act 1979*.
8. That further updates on the coastal planning reforms and the implications for Council and the Pittwater community be reported to Council as the required actions are implemented in the Pittwater local government area.

Report prepared by
Paul Hardie - Principal Officer – Coast & Estuary

Jennifer Pang
MANAGER – CATCHMENT MANAGEMENT & CLIMATE CHANGE

C9.2	Minutes of the Natural Environment Reference Group Meeting held on 11 May 2011
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Meeting: Natural Environment Committee

Date: 4 July 2011

STRATEGY: Business Management

ACTION: Maintain and Service Council's Range of Committees

PURPOSE OF REPORT

To present to Council for consideration, the Natural Environment Reference Group Minutes of 11 May 2011 (**see Attachment 1**).

1.0 BACKGROUND

- 1.1 The Natural Environment Reference Group has a primary role of assisting the Pittwater 2020 Strategic Plan process by critically analysing and reviewing the Strategic Goals aligned to the Pittwater Natural Environment and providing Reference Points for further consideration by Council.
- 1.2 The Natural Environment Reference Group has previously established a priority order to eventually consider each of the aligned Strategic Goals. The attached Minutes relate, in part, to a Discussion Paper on

"Towards a Carbon Neutral Community"

This highlighted what Council along with the community has/is doing and where gaps currently exist.

There is obviously much more to be done to achieve carbon neutrality and incremental improvements are making a positive difference.

2.0 ISSUES

- 2.1 **NE4.1 - Pittwater 2020 Strategic Plan and Natural Environment Reference Group Involvement**
- 2.2 **NE4.2 - Towards a Carbon Neutral Community**

The discussion paper and video created a lot of interaction and comment.

It was noted that the Council and the Pittwater community can work together to create a more sustainable Pittwater which is a driving force behind Pittwater's 2020 Strategic Plan.

It is further noted that the State Government has recently reinstated its former solar power generation rebate scheme.

- 2.3 **NE4.3 - Community Education, Awareness and Involvement in Water Quality Improvements**

Careel Creek community involvement and awareness is seen as an important pilot project. A pamphlet has been developed to assist community engagement.

2.4 **NE4.4 - Future Topics – Consideration of Strategic Initiatives**

- To respond effectively to the causes and impacts of climate change and sea level rise.
- To maintain urban forest.

2.5 **NE4.5 - Updates on Major Issues**

- **Special Rate Variation**
 - **Land Planning Strategy**
 - **2011-2015 Delivery Program and Budget**
-

3.0 **SUSTAINABILITY ASSESSMENT**

This report does not require a sustainability assessment.

4.0 **EXECUTIVE SUMMARY**

- 4.1 The Natural Environment Reference Group assists the review of Council's 2020 Strategic Plan, in particular the goals aligned to the Pittwater Natural Environment.

The attached Minutes of the Meeting held 11 May 2011 relate, in part, to:

- A Discussion Paper on *“Toward a Carbon Neutral Community”*
 - An update on community education, awareness and involvement in water quality improvements.
-

RECOMMENDATION

1. That the Minutes of the Natural Environment Reference Group Meeting held on 11 May 2011 that relate, in part, to a Discussion Paper on:

“Towards a Carbon Neutral Community”

and the Actions and Progress to date, along with further initiatives and reference points to strengthen these initiatives be noted and this information be taken into consideration as part of Council's Strategic Plan and Management Plan processes.

2. That the proposed community education and awareness campaign to improve the water quality of Careel Creek be noted.

Report prepared by

Chris Hunt
DIRECTOR – URBAN & ENVIRONMENTAL ASSETS

Minutes

Natural Environment Reference Group

held in the Training Room at the Coastal Environment Centre,
Lake Park Road, North Narrabeen on

11 May 2011

Commencing at 4:03pm

Chris Hunt
DIRECTOR, URBAN & ENVIRONMENTAL ASSETS



Attendance:

Cr Peter Hock, Chairperson

Members:

Mr David Williams, Bayview–Church Point Residents Association
Mr John Waring, Clareville and Bilgola Residents Association
Ms Gloria Carroll, Manly Warringah and Pittwater Historical Society
Mr Hans Hui, Newport Residents Association
Ms Susan Young, Newport Residents Association
Mr Trevor Holman, Palm Beach Whale Beach Association
Ms Kristine Martin, Careel Bay / Pittwater Protection Association
Mr Martin Porter, Surfrider Foundation
Mr Robert Williams, Pittwater Resident Representative
Mr Roger Treagus, Pittwater Resident Representative
Mr Cecil Ellis, Pittwater Resident Representative

And the following Council Advisors:

Mr Chris Hunt, Director, Urban & Environmental Assets
Ms Jane Mulroney, Community Engagement Officer, Corporate Strategy
Ms Pamela Tasker, Administration Officer / Minute Secretary
Ms Jennifer Pang, Group Leader – Catchment Management and Climate Change
Mr Mark Beharrell, Manager, Natural Environment & Education
Ms Jo Tulau, Project Leader – Climate Change Mitigation

Observers:

Mr Graeme Jessup, Sustainability Pittwater
Ms Sharon Kinnison, Scotland Island Residents Association

Natural Environment Reference Group Meeting

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	- Special Rate Variation	
	- Land Planning Strategy	
	- 2011-2015 Delivery Program and Budget	
5.0	Emerging Business	
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1.0 Welcome and Introductions

Cr Hock welcomed those in attendance and conducted a brief introduction to the new members.

1.1 Apologies

Apologies were received from:

Ms Marita Macrae (Avalon Preservation Trust/Pittwater Natural Heritage Association)
Ms Roberta Conroy, Pittwater Resident Representative
Mr Alan Yuille, West Pittwater Community Association
Ms Margaret Makin, Bayview–Church Point Residents Association
Ms Dianne Campbell, Scotland Island Residents Association

and leave of absence was granted from the Natural Environment Reference Group Meeting held on 11 May 2011.

The Reference Group members accepted the apologies.

2.0 Overview of Operations of Reference Groups

Ms Jane Mulroney addressed the meeting on this item, explaining the operations of reference groups, detailing administrative arrangements, terms of reference, etc. The PowerPoint presentation which illustrated this overview was made available to members in hard copy for their convenience and for their future reference.

Mr Chris Hunt requested that members familiarise themselves with the definitions of pecuniary and non-pecuniary conflicts of interest.

Ms Mulroney encouraged all community group representative members to nominate alternate delegates.

2.1 Declarations of Pecuniary Interest – Nil

3.0 Confirmation of Minutes

REFERENCE GROUP RECOMMENDATION

That the Minutes of the Natural Environment Reference Group Meeting held on 9 February 2011 be confirmed as a true and accurate record of that meeting.

(Mr Martin Porter / Cr Hock)

4.0 Discussion Topics

NE4.1 Pittwater 2020 Strategic Plan and Natural Environment Reference Group Involvement

Proceedings in Brief

Mr Chris Hunt addressed the meeting on this item. In addition to the update of the actions to be incorporated into the Delivery Program and Budget 2011-2015, a copy of the Direction 2 – Supporting & Connecting our Community was also provided to group members.

NE4.2 Towards a Carbon Neutral Community

Proceedings in Brief

Ms Jo Tulau, Project Leader – Climate Change Mitigation, addressed the meeting on this item.

Ms Tulau presented a short DVD on the village of Ashton Hayes, an established Carbon Neutral Community in the county of Cheshire, UK. This initiative has worked so well that it is now being implemented by other villages, town and cities across the county.

Questions & Answers:

Q: The documentary was produced in 2007. Is the program still operational? Have they made any progress since then?

A: The community is still very active and in March 2011 won the UK Climate Week 'Inspirational Leader' Award. They were also recently consulted by South Korea which is aiming to become the first carbon neutral country.

Read more at: www.goingcarbonneutral.co.uk

Q: Has the idea spread across the country?

A: Carbon Neutral Communities are part of a growing movement. They also get lots of Government support in the UK which encourages participation.

Q: The sequestering of greenhouse gases into 'sinks' appears to be politically convenient but perhaps impractical. Surely the only way to become truly carbon neutral is to stop using fossil fuels?

A: Yes. We need to stop transferring carbon from 'sinks' in the earth (such as coal deposits) into the atmosphere via burning. We need to move away from fossil fuels and towards a low carbon economy as quickly as possible.

But sequestration will be important because we need to stop the levels of greenhouse gases rising further, but we also need to reduce concentrations of CO2 from levels of 390ppm (parts per million) back towards 350ppm. Sequestration into sinks through various means such as reforestation, or in geological structures, will be necessary to achieve reduction from current levels. Pre-industrial levels of CO2 were around 280ppm.

Q: Some years ago Pittwater Council looked at getting a credit on existing trees but it was all considered a bit too hard at the time. Has any progress been made on this in the interim?

A: Unfortunately there is no process in Australia at present to claim carbon credits for existing trees. This is an emerging field and it may come in the future but it is just not available at present. Progress is being made at the international level through development of accounting systems and financial instruments for ecosystem carbon management. In Australia, the Government is currently developing similar tools to facilitate 'carbon farming', where landowners may obtain credits for sequestering carbon in trees on their land.

Q: Does Council have any climate change programs in place in local schools?

A: Council's sustainability education team supports local schools with their climate change programs through mentoring and facilitating teachers and program development. Council is currently partnered with the Peninsula Community of Schools 'Cool Kids for a Cool Climate Project' and assists schools with applications for climate change grants and projects. Pittwater's schools, such as Pittwater High School, are doing great work. There is an important role for the Reference Group members to help get the message out.

Q: What requirements in terms of energy efficiency does Council place on new development?

A: Any new development has to comply with BASIX (Building Sustainability Index) which ensures new homes meet the NSW State Government criteria. Council would ideally like to go beyond BASIX but unfortunately we can't do that.

Council is very proactive in encouraging greater energy efficiency and sustainability in development and has introduced a number of positive approaches. Through a working group including both Council and community members from the Planning an Integrated Built Environment Reference Group, we have produced an aspirational document to encourage people to go beyond BASIX when planning a new building or additions to an existing dwelling. This is the Pittwater Sustainability Principles and Checklist for Residential Design. See the link below to access the sustainability guidelines on new developments via Pittwater's website:-

www.pittwater.nsw.gov.au/environment/sustainability/pittwater_sustainability_principles_-and-_checklist

The natural environment of Pittwater is also effective in offsetting carbon emissions. We have been very fortunate in that we have been able to lock away green belts such as the Warriewood Escarpment. We have also embarked on tree planting programs in reserves and on road reserves. Further sustainability funding has been put aside by Council to continue these initiatives. Hopefully we will be able to provide demonstration sites in the future for the public to lock onto.

Escalating energy costs are also an incentive for energy efficiency for Council and the Pittwater community alike. Potable water saves on water costs. Pittwater recycling percentages are already way above Ashton Hayes and the Kimbriki Waste Management Centre has a number of excellent initiatives to encourage recycling.

There are still some areas which need to be improved. For instance public transport in this area is totally inadequate. Together with the other SHOROC Councils (Mosman, Manly and Warringah) we are currently lobbying the new State Government to improve public transport which will hopefully lead to a reduction in traffic and everything associated with that.

Q: Re Aston Hayes - How much money has this community spent? How much have they saved? And how much carbon dioxide did they reduce?

A: This is a village of 1,000 people. They have reduced their carbon emissions by over 23% by working together, sharing ideas and implement behavioural change. Mostly these savings were from energy efficiency gains and would have involved zero or very small cost.

General Discussion Points:

- Sustainability is just as important as being carbon neutral. Let's not forget the local when looking at the global.
- The Government pulling the plug on solar rebates was most upsetting.
- The best method for reducing the carbon footprint is to put the focus on reduction in consumption.
- Carbon offset programs are limited – we can only plant so many trees, and trees use water which is also in short supply. We should look to energy efficiencies instead, eg: change from petrol to gas which emits less CO2.

Website links for further reference:

- **One Million Women Campaign** – networking re consumption reduction at personal / family level. An inspirational Pittwater resident making a difference is Natalie Isaacs, found of the One Million Women Campaign, which aims to inspire a million women to reduce their carbon footprint by one tonne of CO2-e per year.

www.1millionwomen.com.au

- **The Pittwater Sustainability Principles and Checklist for Residential Design.** See the link below to access this document and a range of sustainability guidelines, suggestions and initiatives on new developments via Pittwater's website:-

www.pittwater.nsw.gov.au/environment/sustainability/pittwater_sustainability_principles_-and-_checklist

NE4.3 Community Education, Awareness and Involvement in Water Quality Improvements

Proceedings in Brief

Mr Mark Beharrell, Manager – Natural Environment and Education, addressed the meeting on the following:-

- **The Yellow Fish Road Program for stormwater drains as a reminder to residents**
 - the Yellow Fish Road Program was introduced in Pittwater in 1998. Council developed and printed 10,000 fish shaped brochures with grant funding and developed drain stencil kits for use by community volunteers. The actual stenciling and associated letterbox drops were done by volunteers, lots of schools, scout groups, etc. However, the risk issues that arose led to the program being discontinued. These included the dangers of working in the road carriageway and chemicals in paints. The program was picked up by the Stormwater Industry Association and rolled it out as a national program with support and advice from Pittwater. The program is not currently active in Australia as far as we know.
- **Community education programs that seek to minimise pollution of waterways, beaches and the ocean**
 - Catchment education – eg Yellow Fish Road Program and the Streamwatch project at Mullet Creek.
 - Numerous school programs run by the Coastal Environment Centre. Many of the excursions are based around issues associated with water, including the water cycle, water conservation and catchment health.
 - Community events – three events focusing on stormwater pollution are in development over the next few months. These will be run throughout the year.
 - Adopt a SQID – Stormwater Quality Improvement Device – community monitor the local creek.
 - Regional, state and federal programs. Not a lot of joint ventures running at present but hopeful re upcoming initiatives.
 - Streamwatch Groups active on and off. The only one up and running at present is the Mullet Creek Monitoring group.
- **Assisting local community organisations to work together on clearing leaf litter, vegetation and pollutants from kerbs and gutters in their neighbourhood**

Local communities are involved in various initiatives:

- Direct Involvement – Clean Up Australia Day
- Behavioural change – eg reduce littering, green waste recycling

- **Advising registered community groups in the LGA of the proposed education program and seeking their assistance**
 - letter box drop of the Careel Creek and Water Quality Information Sheet in the vicinity of Careel Creek. Local resident community groups could do this.
 - a short list of initiatives to be developed and taken back to community groups – opportunity for grass roots change.
 - all the local resident associations have their own newsletters – any information of interest should be distributed to them as part of a grass roots education program.
 - an events calendar to be developed which can be distributed with an update to community groups
 - a reminder to local groups when events and programs are on

General Discussion Points:

- Fire brigade may be a good organisation to involve as volunteers – they have a vested interest in the health of stormwater outlets.
- Pittwater Clean Up Day: This is a suggestion currently under consideration by the Community Engagement & Information Reference Group. It was envisaged as being run in addition to Clean Up Australia Day as this provided two separate clean up days per annum.
- Strategies such as education programs / penalties – it is better to stop people littering in the first place. However, it was conceded that it is hard to change people's behaviour. They continue to litter because they know Council will pick up rubbish.
- Initiatives such as the Stop Plastic Bags in Supermarkets campaign have proven effective. It is a pity there are no longer deposit returns on bottles and cans as this used to encourage kids to return bottles and can to earn pocket money.

REFERENCE POINTS:

- **Careel Creek and Water Quality Information Sheet pamphlet:**
 - *investigate a display being erected at Careel Creek itself – the pamphlet has some valuable information which would be of interest to locals, including procedures for reporting pollution if they spot it whilst walking there.*
 - *letter box drop in area of Careel Creek by local resident community groups. Members are to consult their community associations on likely interest levels. Ms Jennifer Pang is to look into pamphlet supplies for interested groups.*
 - *brochure hand out / information display re stormwater pollution in the Avalon village (probably at Woolworths) on a Saturday morning.*
 - *shortlist of initiatives to be taken back to community groups – opportunity for grass roots change.*

- *all the local resident associations have their own newsletters – any information of interest should be distributed to them as part of a grass roots education program.*
 - *an events calendar to be developed which can be distributed with an update to community groups – should include an automatic reminder to local groups alerting them to imminent events and programs*
 - *Mark Beharrell and Sharon Kinnison to develop a program for consideration for possible implementation next year.*
-

NE4.4 Future Topics – Consideration of Strategic Initiatives

Proceedings in Brief

Mr Chris Hunt suggested that this item be brought to the next meeting. A full program is being developed which will cover the next eighteen months.

Members were encouraged to consider presenting to future meetings on strategic goals or any other issues of interest to them. They could do this either individually or in collaboration with other reference group members. This also enables Council to take advantage of the expertise of our reference group participants.

REFERENCE POINTS:

- *That for the next two meetings the Natural Environment Reference Group would focus on the two remaining discussion topics:*
 - *To respond effectively to the causes and impacts of climate change and sea level rise*
 - *To maintain urban forest*
-

NE4.5 Updates on Major Issues

Mr Chris Hunt addressed the meeting on this item.

Special Rate Variation Application: Council submission with the State Government; a decision is expected by 10 June 2011.

Land Planning Strategy: On public exhibition until 20 May 2011. Public Meeting held at Mona Vale on 3 May 2011.

Delivery Program and Budget 2011-2015: On public exhibition until 20 June 2011. Public Meeting to be held at the Nelson Heather Centre in Warriewood on 1 June 2011.

5.0 Emerging Business

The Chairperson tabled a letter from Ms Roberta Conroy. Ms Conroy extended her apologies as she could not be present at the meeting. In the interim, she asked that the following comments on the Pittwater 2020 Strategic Plan be passed on to members for their consideration:

1. There appears to be no mention in the document of managing threatening processes, eg: inappropriate fire regimes, pests and weeds and diseases such as Myrtle Rust. Also there appears to be no mention of ecological restoration programs. Both will contribute to the objective of maintaining abundance of native plants and animals.
2. There also appears to be little reference to the other side of natural heritage, ie, geoheritage, of which Pittwater has some significant examples which potentially are also under threat unless properly recognised, eg: tombolo at Palm Beach, Hole in the Wall at Avalon and laterites alongside some of our roads (eg: Mona Vale Road).
3. I would have liked to have asked at the meeting how Council encourages developers and builders to adopt sustainable actions and practices within their development proposals, particularly those who have been contracted by Council. For example, is there an initiative that we should be thinking of including in this document related to this?

REFERENCE POINT:

- ***Response to be provided to Ms Conroy (and to the members of the Natural Environment Reference Group).***

6.0 Next Meeting

The next meeting of the Natural Environment Reference Group will be held on Wednesday, 10 August, 2011 at the Coastal Environment Centre, North Narrabeen, commencing at 4.00pm.

The discussion topic for that meeting will be:-

To respond effectively to the causes and impacts of climate change and sea level rise

**THERE BEING NO FURTHER BUSINESS
THE MEETING CONCLUDED AT
6.05PM ON WEDNESDAY 11 MAY 2011.**

Council Meeting

**10.0 Adoption of Community, Recreation and Economic
Development Committee Recommendations**

**11.0 Adoption of Natural Environment Committee
Recommendations**

12.0 Councillor Questions
