

ITEM 2 POST EXHIBITION - ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 COMPLIANCE COST NOTICE CHARGE

In late 2021 the Environmental Planning and Assessment Act 1979 introduced an ability for councils to recover the costs associated with issuing a notice and order. This paper proposes the introduction of a Compliance Cost Notice charge in Council’s Revenue Policy (Fees and Charges).

RECOMMENDATION

The introduction of a Compliance Cost Notice charge of \$500 under the Revenue Policy (Fees and Charges 2022-23) be endorsed by Council.

REPORT AUTHORISATIONS

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

ATTACHMENTS

- 1 NSW DPIE Fact Sheet - Compliance Cost Notices

BACKGROUND

As enforcement agencies under the Environmental Planning and Assessment Act 1979, councils utilise notices and orders on a regular basis to achieve compliance for a range of issues including unauthorised use and unauthorised building works. The investigation of alleged non-compliance places a resource burden on Council and usually involves site inspections, administrative drafting of the notice/order and service of the notice and order. It is estimated that Council officers spend on average eight hours undertaking these tasks for each investigation proceeding to order.

At present, the cost processing non-compliance actions is borne by the community. Whilst fines are often issued for non-compliance, these are designed as a deterrent from further non-compliance rather than to recover costs associated with the processing of the notice or order.

To assist Councils in recovering costs, the EP&A Act 1979 was amended in October 2021 to allow the levying of a Compliance Cost Notice (see attached fact sheet).

PROPOSAL

Following a recent public exhibition, it is proposed that a Compliance Cost Notice charge of \$500 be included in Council’s Revenue Policy (Fees and Charges).

This charge is calculated as follows.

Avg. hourly rate of an officer (incl. on costs) x average hours spent on an investigation proceeding to Order

\$75/hr x 8hrs* = \$600 (exhibition proposed a conservative charge of \$500)

*Tasks generally involved in an investigation reaching Order stage are.

Task	Time
Initial site inspection (including travel)	1hr
Reinspection (including travel)	1hr
Drafting of notice	1hr
Service of notice (including travel)	1hr
Reinspection (including travel)	1hr
Drafting of order	1hr
Service of order (including travel)	1hr
Reinspection (including travel)	1hr

A conservative flat fee has been selected as it is a simpler process to administer rather than calculating costs for each individual investigation.

On average, 125 of the investigations undertaken by Council per annum proceed to Orders under the Environmental Planning and Assessment Act 1979.

The initial introduction of a \$500 charge is conservative and will be monitored and reviewed. Any increase to the charge may be considered through future reviews of the Revenue Policy (Fees and Charges).

CONSULTATION AND COMMUNICATION

Consultation within Council's Regulation and Enforcement Division has occurred, and feedback has been received from staff and management. Advice has also been sought from Council's Legal Team and Rates Team.

The Proposed New Compliance Cost Notice Charge was exhibited from Monday 21 November 2022 to Monday 19 December 2022 via Council's Our Wollongong exhibition webpage.

Council's webpage was visited 48 times.

In response to the exhibition process, Council received one submission in support of the Compliance Cost Notice Charge inclusion.

PLANNING AND POLICY IMPACT

This report contributes to the delivery of Our Wollongong 2032 Goal 1 "*We value and protect our environment*".

FINANCIAL IMPLICATIONS

The introduction of the Compliance Cost Notice charge could generate an estimated \$60,000 per annum to offset Council's processing costs.

CONCLUSION

The Environmental Planning and Assessment Act was amended in October 2021 to enable councils to charge for compliance orders and notices. The introduction of the proposed \$500 Compliance Cost Notice charge will assist Council in recovering costs associated with its compliance role under the Environmental Planning and Assessment Act 1979.

Department of Planning and Environment Frequently asked questions



Compliance cost notices

This document answers frequently asked questions about the new compliance cost notice framework

The NSW Government has reshaped the compliance funding system as part of reforms to build a faster and simpler planning system. The new compliance cost notice framework came into effect on 27 October 2021.

What is a compliance cost notice?

A compliance cost notice allows an enforcement authority, usually a council, to recover the reasonable cost and expenses associated with compliance activities, such as:

- monitoring action under a development control order
- ensuring a development control order is complied with
- an investigation leading to the issue of a development control order; and
- preparing or serving a notice of intention to issue an order

The notices provide authorities with a compliance tool to ensure that those who are breaking the rules, pay for the costs associated with investigations, instead of ratepayers.

Why were the changes made?

The department received feedback that councils were not using compliance cost notices, because they were too complex and did not sufficiently cover the costs and expenses typically associated with investigations.

The new framework provides councils with the resources needed to ensure builders are following the rules, while minimising the impact on those seeking to do the right thing.

What are the changes?

The compliance cost notices framework has been simplified to make them a more useful enforcement tool for councils and support councils recover compliance costs. This included:

- Simplifying the process for councils to issue notices by eliminating unnecessary administrative requirements.
- Increasing the cap on compliance cost notices related to a notice of intention to give an order from \$500 to \$750, so that councils can recover costs most likely to be incurred at that stage.
- Removing the cap on the amount councils can collect for an investigation. This should ensure ratepayers are not subsidising costly investigations created by those who break the rules.

Frequently asked questions



What safeguards are in place?

Councils are still only able to recover their reasonable costs and expenses associated with compliance investigations. Where builders and developers believe the costs are unreasonable, they can challenge this in the Land and Environment. This must be done within 28 days after the notice is served.

Further Information

For more information please visit [our website](#).