

ITEM 14 POLICY REVIEW: PENALTY NOTICE REVIEW POLICY

Regulation and Enforcement staff have conducted a review of the Penalty Notice Review Policy in accordance with Council's Policy review schedule. Only minor changes are proposed relating to Government Agency changes, language and staff training requirements.

RECOMMENDATION

That the Penalty Notice Review Policy be adopted by Council.

REPORT AUTHORISATIONS

Report of: Danny Madigan, Manager Regulation and Enforcement
Authorised by: Mark Riordan, Director Planning and Environment - Future City and Neighbourhoods (Acting)

ATTACHMENTS

- 1 Penalty Notice Review Council Policy

BACKGROUND

Council's Regulation and Enforcement Division has completed a review of the Penalty Notice Review Policy with this report seeking Council's adoption of the Policy. This Policy has been previously adopted by Council on 28 November 2011 and 25 November 2013. The Policy establishes the framework for the issue and review of Penalty Notices (on the spot fines).

PROPOSAL

A number of minor changes and modifications to this Policy are proposed with the key changes being detailed below:

- Language changes to reflect Council's recently adopted Compliance and Enforcement Policy.
- The change of name from State Debt Recovery Office (SDRO) to Revenue NSW.
- A requirement that all Council Officers that issue Penalty Notices undertake mandatory Self-Enforcing Infringement Notice Scheme (SEINS) training prior to issuing Penalty Notices. This had not previously been the case.

CONSULTATION AND COMMUNICATION

The Penalty Notice Review Policy has been referred to internal stakeholders, as detailed below for comment:

- Development Assessment and Certification
- Open Space and Environmental Services
- Council's Professional Conduct Coordinator

This Policy was also tabled with Council's Executive Management Committee on 18 December 2018.

PLANNING AND POLICY IMPACT

This report contributes to the delivery of Our Wollongong 2028 goal "We have affordable and accessible transport" and "We have a healthy community in a liveable City".

It specifically delivers on core business activities as detailed in the Regulatory Control Service Plan 2018-2019.

FINANCIAL IMPLICATIONS

There are no financial impacts from the review of the Policy. Staff training in regards the issue of Penalty Notices is undertaken from existing budget.

CONCLUSION

The Penalty Notice Review Policy, provides a framework for Council staff to review contested Penalty Notices in an ethical, transparent and consistent manner whilst managing risks to the organisation. Only minor changes are proposed. These include language, Government Agency changes and staff training requirements.



ADOPTED BY COUNCIL: [TO BE COMPLETED BY CORP SUPPORT]

BACKGROUND

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

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

SEINS is administered by Revenue NSW the State Debt Recovery Office (SDRO) which has commercialised its services and undertakes, on behalf of government authorities, the processing of Penalty Notices. Council has entered into a "premium level" Service Level Agreement with Revenue NSW for this service to be provided to Council.

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

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

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

RELATED POLICIES AND PROCEDURES

Wollongong City Council Compliance & Enforcement Policy.

OBJECTIVE

The main objectives of this Policy are to :-

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

POLICY REVIEW AND VARIATION

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

POLICY STATEMENT

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

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STATEMENT OF PROCEDURES

OFFENCES

The types of offences which incur a Penalty Notice are listed within the "Local Government – Fixed Penalty Handbook". The Handbook identifies the short title description of the offence, the corresponding penalty amount, the codes that Revenue NSW the SDRQ uses for processing, along with the relevant Act and Section the offence occurs under.

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

ISSUING PENALTY NOTICES

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

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

No Special dispensation is not given when issuing Penalty Notices. Penalty Notices can be issued to members of the public, businesses and organisations (recognised legal entities), and Local or State Government contractors, Councillors, Council staff and Members of Parliament.

Currently there are two (2) types of Penalty Notices, the hand-written or electronic issued notices. Wollongong City Council only issues Penalty Notices electronically via a handheld computer system. Electronic Penalty Notices can be issued for all offences and comprise of one (1) document. The Penalty Notice can be served in the field or once the Officer returns to the office. The data entered into the hand-held device is electronically downloaded by Council staff to the Revenue NSW SDRQ website for processing.

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

PAYMENT OR APPEAL

Under the Legislation, an individual has four (4) options to deal with an Infringement Notice:

- 1 Pay the Infringement Notice penalty amount to Revenue NSW the SDRQ within the prescribed period (21 days from date of issue). It should be noted that payment is not an admission of guilt.

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

- 2 Enact the owner-onus provision:

This refers to the transfer of responsibility. For example, in the case of a Deposit Litter from Vehicle offence, the owner of the vehicle may nominate the person responsible for the vehicle at the time of the offence, or the offender.

The transferring of responsibility requires the completion of a Statutory Declaration, nominating the full name and address of the person actually responsible for the offence and must be submitted to Revenue NSW the SDRQ.

- 3 Make representation to Revenue NSW the SDRQ requesting the matter be reviewed and special consideration given due to exceptional circumstances:

For all pollution/environmental/building offences the matter will be referred to Council for comment. In these instances, a Review Officer will make a decision and advise the Revenue NSW SDRQ of the outcome.

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

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REVIEW PROCEDURES

Council cannot accept representations other than in circumstances outlined above and recipients of Penalty Notices must be advised to direct their enquiries to [Revenue NSW the SDRQ](#).

Where a person makes a written representation to the Council this representation will be forwarded to [Revenue NSW the SDRQ](#) for [Revenue NSW the SDRQ](#) to consider as if the representation was made directly to [Revenue NSW the SDRQ](#) (as required by clause 2.36 [Revenue NSW SDRQ](#) Service Level Agreement). The person making this representation will be advised that this has occurred.

Only representations supplied through [Revenue NSW the SDRQ](#) will be considered.

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

1 Reviewing Officer

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

Comments [offrom](#) the Issuing Officer will be sought whenever considered necessary for the clarification of either offence details or aspects raised within the representation.

Final adjudication will fall within one (1) of the following categories -

- Penalty to Stand* - where prima facie evidence of an offence is disclosed (ie issued lawfully) and no leniency is extended.
- Caution* - where prima facie evidence of an offence is disclosed and leniency is extended under exceptional circumstances.
- Withdrawn* - where no offence is disclosed and includes an administration oversight.

The Reviewing Officer will complete a "Review of Penalty Notice Form" (Attachment 1). This form is the basis for notification to [Revenue NSW the SDRQ](#) of WCC recommendations - for auditing purposes a copy will be kept on Council's document management system.

2 Authority to withdraw Penalty Notice

Where it is determined that the Penalty Notice be withdrawn, only a relevant [Middle Assistant Manager, Manager](#) or Divisional Manager can approve such action.

3 Conflict of Interest

It is unacceptable for a Reviewing Officer to handle representations in which they have a personal interest, or where it may be construed that they have a personal interest [ege.g.](#); representation by family, friends, etc. In such cases the Divisional Manager shall review the matter.

REVENUE NSW SDRQ ENFORCEMENT PROCESS

Council currently has a "premium level" [Service Level Agreement contract](#) with [the Revenue NSW SDRQ](#). For each Penalty Notice that Council issues, no matter ~~what~~ the amount, [Revenue NSW the SDRQ](#) automatically deducts a set processing fee. This fee pays for various administrative services undertaken by [Revenue NSW the SDRQ](#) on Council's behalf, including the issuing of reminder letters, ~~l~~reviews of representations, processing of Court ~~A~~attendance Notices and the collection and transfer of monies.

[In accordance with the current Service Level Agreement, Revenue NSW The SDRQ currently](#) applies the following process for enforcing Penalty Notices [on behalf of Council](#):

- 1 Processing of Penalty Notice issued;
- 2 Penalty Notice reminder where correspondence has not been received (21 days);
- 3 Enforcement Order and administration fee issued where correspondence has not been received. (28 days);

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- 4 Cancellation of driver licence/vehicle registration;
- 5 Garnish offenders' wages and administration fee/ Sheriff's Office - Property Seizure Order;
- 6 Option to undertake community service/imprisonment.

ENQUIRIES FROM COUNCILLORS AND MEMBERS OF PARLIAMENT

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

A written reply shall be provided to the Councillor or Member of Parliament within ten (10) working days—and a copy of the reply will be stored on Council's document management system.

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

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

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Adopted by Council: [Date]

Document No: Z18/173732

FORM REVIEW OF PENALTY NOTICE



Privacy Notification (Privacy and Personal Information Protection Act 1998 – Section 10) - The personal information that Council is collecting from you on this application form is personal information for the purposes of the Privacy and Personal Information Protection Act 1998 ('the Act'). The intended recipients of the personal information are officers within the Council and any person wishing to inspect the application in accordance with the Local Government Act 1993 or the Government Information (Public Access) Act 2009. The supply of the information by you is not voluntary and if you cannot provide or do not wish to provide the information sought, the Council will be unable to process your application. You may make application for access or amendment to information held by Council. You may also make a request that Council suppress your personal information from a public register. Council will consider any such application in accordance with the legislation. Council is to be regarded as the agency that holds the information. Enquiries concerning this matter can be addressed to Council by telephoning 4227 7111.

CHOOSE FROM THIS DROP DOWN MENU

Date	
Penalty Notice Number	
Short Title of Offence	
Date of Offence	
Recipient	
Recipient's Address	
Penalty Amount	
Location of Offence	

COMMENTS

REVIEW RECOMMENDATIONS

Penalty to Stand
 Caution
 Withdrawn

ANNULMENT APPLICATION SCHEDULE RECOMMENDATION

Proceed to Court
 Caution
 No Action

REVIEWING OFFICER

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I ACKNOWLEDGE THE ABOVE RECOMMENDATION

CHOOSE	
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REVIEW OF PENALTY INFRINGEMENT NOTICE

Date	
Penalty Notice Number	
Short title of offence	
Date of offence	
Recipient	
Offenders Address	
Penalty Amount	
Location of offence	

Comments:

Recommendation:

Penalty to Stand	<input type="checkbox"/>
Caution	<input type="checkbox"/>
Withdrawn	<input type="checkbox"/>

Reviewing Officer: _____ Date: _____

I acknowledge the above recommendation:

Assistant/Divisional Manager: _____ Date: _____

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SUMMARY SHEET	
Responsible Division	Regulation and Enforcement
Date adopted by Council	[To be inserted by Corporate Governance]
Date of previous adoptions	25 November 2013, 28 November 2011
Date of next review	November 2021
Responsible Manager	Compliance & Regulation Manager Manager Environment and Development Compliance
Authorised by	Manager Regulation and Enforcement