

ADOPTED BY COUNCIL: 6 MAY 2024

## PURPOSE

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

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

SEINS is administered by Revenue NSW which has commercialised its services and undertakes, on behalf of government authorities, the processing of fines. 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 Revenue NSW, its parent organisation the NSW Department of Customer Service and in certain circumstances, can be reviewed by the NSW Ombudsman and the Independent Commission Against Corruption (ICAC).

There are a number of Divisions within Wollongong City Council that issue fines, including Regulation and Enforcement, Open Space and Environmental Services and Development Assessment and Certification.

Fines are not issued unless prima facie evidence of an offence exists and in all cases evidence is gathered, including, but not limited to, contemporaneous notes, photographs, measurements and/or samples.

## POLICY INTENT

The main objectives of this policy are to:

- 1 Clarify and make consistent the procedures undertaken by council officers when issuing and reviewing fines.
- 2 Identify the rights of individuals in receipt of a fine and the involvement of Council staff, Councillors and Members of Parliament in ensuring an open and transparent approach is undertaken in all dealings.

## WOLLONGONG 2032 OBJECTIVES

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

## POLICY

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

## OFFENCES

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

The assigning of Penalties to an offence and specific penalty amounts is reviewed and amended by the Parliamentary Council. Once gazetted, the changes are enforced. Reviews are undertaken periodically.

### ISSUING FINES

All Council officers that issue fines must complete the SEINS Online training before commencing with issuing Fines - this training will be refreshed as required.

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

Special dispensation is not given when issuing fines. Fines 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.

Council only processes fines electronically and issues them via a handheld computer system. Electronic fines can be issued for all offences and comprise of one (1) document. The fine can be served in the field, or once the officer returns to the office. The data entered into the hand-held device is electronically uploaded by Council staff to the Revenue NSW website for processing.

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

### PAYMENT OR APPEAL

Under legislation, an individual has four (4) options to deal with a fine:

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

**Please note: 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 responsible for the offence and must be submitted to Revenue NSW.

- 3 Make representation to Revenue NSW requesting the matter be reviewed (Request for Review) and special consideration given due to exceptional circumstances:

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

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

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

### REVIEW PROCEDURES

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

Where a person makes a written representation to Council, this representation will be forwarded to Revenue NSW for consideration as if the representation was made directly to Revenue NSW (as

required under clause 2.3 of the current Memorandum of Understanding between the Commissioner of Fines Administration and Wollongong City Council, for services provided under the *Fines Act 1996*). The person making this representation will be advised that this has occurred.

Only representations supplied through Revenue NSW will be considered.

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

## 1 REVIEWING OFFICER

- The Reviewing Officer must be either the relevant Supervisor/Coordinator, Manager or Divisional Manager, depending on the officer responsible for issuing the fine.
- The Reviewing Officer will consider and determine all cases on their individual merits. Discretion, common sense, fairness, consistency and adherence to Council's policies and procedures will be used when making a decision. The review will always include reference to any previous warning, contemporaneous notes, photographs and/or physical evidence. Comments from the Issuing Officer will be sought whenever considered necessary for the clarification of either offence details or aspects raised within the representation.

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

- Fine 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.

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

Alternatively, the Reviewing Officer can complete a Council 'Review of Fine Form' (Attachment 1). The scanned, completed form must then be attached to an email and transmitted to Revenue NSW and the sent item registered in Council's records management system and related to the request from Revenue NSW on file.

## 2 AUTHORITY TO WITHDRAW FINE

Where it is determined that the fine be withdrawn, only a relevant Supervisor/Coordinator, Manager or Divisional Manager can approve such action.

## 3 CONFLICT OF INTEREST

It is unacceptable for a Reviewing Officer to handle representations in which they have a personal interest, or where it may be construed that they have a personal interest e.g. representation by family, friends, etc. In such cases the Divisional Manager will review the matter.

## REVENUE NSW ENFORCEMENT PROCESS

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

In accordance with the current Memorandum of Understanding, Revenue NSW applies the following process for enforcing fines on behalf of Council:

### 1 Processing of fine issued

- 2 Fine reminder where correspondence has not been received (21 days)
- 3 Enforcement Order and administration fee issued where correspondence has not been received (28 days)
- 4 Cancellation of Driver Licence/vehicle registration
- 5 Garnish offenders' wages and administration fee/ Sheriff's Office - Property Seizure Order
- 6 Option to undertake community service/imprisonment.

#### **ENQUIRIES FROM COUNCILLORS AND MEMBERS OF PARLIAMENT**

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

A written reply will be provided to the Councillor or Member of Parliament within 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 fine, nor are they able to contact Council Officers regarding the issuing of any fine. Any Officer contacted directly by a Councillor on such matters has a duty to report the matter to their Director and/or General Manager and/or Professional Conduct Coordinator.

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

#### **LEGISLATIVE REQUIREMENTS**

*Fines Act 1996*

#### **RELATED POLICIES AND PROCEDURES**

Compliance and Enforcement Policy.

#### **REVIEW**

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

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

## Attachment 1

## FORM REVIEW OF FINE



**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

Fine 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

## I ACKNOWLEDGE THE ABOVE RECOMMENDATION

CHOOSE

APPROVAL AND REVIEW	
Responsible Division	Regulation & Enforcement
Date adopted by Council	6 May 2024
Date/s of previous adoptions	27/05/2019; 25/11/2013; 28/11/2011
Date of next review	31 May 2027