
Compliance & Enforcement Policy

1. The purpose of this policy is

To confirm that Warringah Council has a minimal tolerance approach to unlawful activity.

To provide consistency in enforcement action in matters of non-compliance and to ensure transparency, procedural fairness and natural justice principles are followed.

2. Policy statement

Warringah 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.

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

Council's Charter and Values of *openness, equity, integrity, efficiency, service and respect* apply to all actions taken under this Policy.

3. Principles

3.1 Responding to complaints of alleged unlawful activity

Compliance Services 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 some form of action will be taken within 10 days (although the specific issue may not be resolved within that time).

Under normal circumstances, an acknowledgement will be forwarded within 5 working days specifying the timeframe in which the matter will be actioned.

Complaints will be investigated and actioned in accordance with the priority turnaround times specified within Planning & Assessment Services Standard Procedures. Briefly these turnaround times are:

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,
- 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,
- roaming dogs,
- asbestos on public or private land, and
- other serious incidents where the environment or public health and safety is at immediate risk.

Priority 2: General compliance matters are usually investigated within 10 days but up to 15 working 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.

Priority 3: Nuisance matters are actioned within 15 days but up to 20 working days. Examples may be;

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

It is reasonable that the priority of the matter is determined by the Investigating Officer after assessing the complaint or customer action request. This may involve a discussion with the complainant. Team Leaders or Managers must be consulted where it may not be clear. Customers will be advised by acknowledgement letter as to the time frame for the matter to be actioned.

Customers should be made aware that timeframes will also vary according to staffing levels and other resources. Acknowledgment letters will reflect revised investigation times in such instances.

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 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)
- 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. Council has a separate complaints management policy which also governs these matters.
- 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.

1.2.1 *Authorised Officers, Delegated Authority and Lawful Powers of Entry*

Council will delegate authority and authorize 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; 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 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:

- *Local Government Act 1993 – CHAPTER 8 PART 2- Entry onto Land.*

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 dangerous dog or restricted breed dog if the requirements of section 51 and 56 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.

3.3 Non –enforcement action, where there is evidence of unlawful activity

In accordance with Council's values and charter, 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. Council's own mediation service is not the appropriate forum for compliance matters. It is specific to resolving objections during the development application process only.
- *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 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. Warringah 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.

3.4 Enforcement Action

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 may result in further penalty infringement notices being issued or alternatively commencement of criminal proceedings for the offence of failing to comply. In addition, civil proceedings may be commenced in the appropriate Court to seek enforcement of the Notices or Orders issued.

3.4.2 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.

3.4.3 Making of Representations to Notices of Intention

Where a person is afforded the right to make representations to a Notice of Intention, Council requires those representations to be made in writing. This ensures representation documents can be recorded and filed in Council's records system. After written representations are considered by the Council, representations may be made in person where Council Management considers it to be appropriate.

3.5 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 (DataWorks) 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.

3.6 Special provisions – Development & Building Compliance

3.6.1 *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 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 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. 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.

3.6.1.1 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.

(d) Modification of Construction Certificates

Clause 148 of the Environmental Planning & Assessment Regulation 2000 recognises that an application may be made to modify an existing construction certificate to incorporate changes to the building works. The circumstances where such an application may be appropriate includes where a retrospective section 96 application to modify the consent has been determined by approval.

The issue of a modified construction certificate under those circumstances is reasonable and permissible and would allow the issue of an Occupation Certificate on completion of the works.

3.6.2 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.

3.6.3 Fire Safety

Importantly, Council has a separate *Fire Safety Compliance Policy* which outlines our approach to fire safety matters. However, in terms of compliance and enforcement, the principles outlined in the Compliance & Enforcement Policy will still be applied.

3.6.4 Places of Public Entertainment

Council's Compliance and Planning Staff are authorised to assess applications and issue approvals in relation to Places of Public Entertainment. The provisions for Place of Public Entertainment approvals have transferred from the Local Government Act 1993 into the Environmental Planning & Assessment Act 1979. It is Council's approach that in issuing approvals, Council is 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.

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

3.7 Special provisions – Policy on Environmental Health & Protection Compliance

3.7.1 Food Safety Compliance Policy

Warringah 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 NSW Food Safety Standards. 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 Warringah.

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 graduated according to the risk assessment of the premises and the cost of carrying out the service. This is in keeping with other local governments in NSW.

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.

3.7.1.1 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.

3.7.1.2 Food Safety Educational Initiatives

Council recognizes 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.

3.7.1.2 *Compliance with construction requirements*

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

3.7.2. **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 Warringah.

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
- Audit each registered regulated system once annually for compliance with the legislation, codes of practice and Australian Standards in terms of maintenance and operation requirements; and
- Charge inspection and registration fees where 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. Council supports the introduction of PINs for minor offences and in the event they are introduced, will implement those provisions in keeping with this Policy.

Comprehensive standard procedures outline the approach to implementing Council's Legionella Program. These procedures were developed in consultation with NSW Health, Northern Sydney Public Health Unit.

3.7.3 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) at least once annually 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 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.

3.7.4 On-site Sewage Management Systems

Council acknowledges that certain lands within Warringah 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.

Our Environmental Health Officers and Environmental Protection 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 on-site 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 Warringah Council's On-site Sewage Management Systems 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 for 'Pollute waters', 'Fail to comply with clean-up/prevention notice', 'Fail to pay clean-up/prevention notice fee';
- Prosecution under Section 627 of the Local Government Act 1993 and under the Protection of the Environment Operations Act 1997.

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

3.7.5 Brothels

Council acknowledges that there are certain localities where it is permissible under Council's Local Environmental Plan for these premises to exist and operate lawfully.

It is also 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 keep a register of premises for the purposes of conducting inspections 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.

Complaints regarding public health issues at Brothels are usually investigated by the NSW Department of Health.

Complaints regarding unlawful brothels will be investigated by Council in accordance with the Community Protection (Closure of Illegal Brothels) Bill 2006. The bill will amend the Environmental Planning and Assessment Act 1979 to enable 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. 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.

3.7.6 Residential Swimming Pool Fencing

Council acknowledges the immediate safety risk that unfenced or inadequately fences 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.

3.7.7 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. This Act is enforced by WorkCover NSW. 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 licenced 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.

3.8 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 also 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;
- Pollution 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.

3.8.1 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 Department of Environment and Climate Change Guidelines; "Considering Environmental Values of Water when Issuing Prevention Notices", prior to taking any required action.

3.8.1.2 Erosion & Sediment Control and Water Pollution on Building Sites

Council will proactively audit construction sites to ensure compliance with erosion & 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 should have a standard condition requiring sediment controls to be maintained to prevent pollution. Again 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.

3.8.2 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.

3.8.2.1 Backyard Burning

Backyard burning is prohibited in the Warringah Council area under the Protection of the Environment (Control of Burning) Regulation 2000.

Council will respond to complaints and Authorised Officers will issue Penalty Infringement Notices for offences. Repeat offences may result in further legal action in accordance with section 3.4 of this Policy.

3.8.2.2 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 Department of Environment & Conservation's 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.

3.8.2.3 Smoky vehicles

Council encourages vehicle owners to maintain their vehicles to prevent smoky emissions. Authorised Officers will report smoky vehicles to the NSW Department of Environment and Conservation. A standard report is produced by the DEC and used by Council's Authorised Officers for this purpose. Only those vehicles which meet the criteria specified by the DEC report format will be reported.

3.8.2.4 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.

3.8.3 Littering 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.

3.9 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 2000 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 Department of Environment & Conservation 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.

3.9.1 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.

3.9.2 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.

3.9.3 Noise from Licensed Premises

Council often receives complaints in relation to the noise from a licensed premises. The Department of Environment & Conservation recommend that such complaints be referred to the Liquor Administration Board (LAB) for investigation.

Council recognises the conditions of a liquor licence issued under the Liquor Act 1982 are very strict, and that the LAB 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 1982 will be referred to the NSW Liquor Administration Board (LAB) as a general rule. However, where there is a condition of a development consent relating to noise that is being breached, it is considered reasonable that Council will take compliance action itself in addition to referring the matter to the LAB, subject to resources being available. Often these complaints relate to times when Council does not have staff on duty. Council will also assist the LAB where requested subject to available technical knowledge and resources.

3.9.4 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”.

3.10 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 Corporate Lawyer, Manager Compliance Services and Team Leader Regulatory Compliance & Parking Patrol.

In considering infringement appeals, the Panel will:

- Refer to and abide by any NSW SDRO Guidelines
- Operate in accordance with the Adjudication Panel Charter and Planning & Assessment Standard procedures
- 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. On occasion, the SDRO may adjudicate on a matter without reference to Council. It is important the process is followed to ensure compliance with the Deed and that all representations are handled in the same way.

3.11 Special Provisions – Policy on Dogs, Dog Attacks and Dangerous Dogs

3.11.1 Dog attacks

Council encourages responsible dog ownership and views dog attacks very seriously. Council Rangers will take *immediate* action on receipt of notifications regarding dog attacks or incidents involving a dangerous dog. An investigation will take place in accordance with standard investigation processes contained in Compliance Services Procedures.

Legal action will be commenced for every attack where there is serious injury to a person or animal or where serious medical treatment is required. Where the attack does not result in serious injury, a Penalty Infringement Notice should be issued to the person responsible for the attacking dog. Any legal action must be in accordance with standard rules of evidence collection and legal advice. A notice of intention to declare the attacking animal dangerous must also be issued to the registered owner.

3.11.2 Dangerous Dog Declarations & 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. Council 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.

The statutory process under the Companion Animals Act provides avenues for representations to a Notice of Intention and appeal against a Declaration once they are issued. Council will consider representations to a Notice of Intention whereas the Court considers an appeal against an actual Declaration. 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 issued, but it is recognised that Council is not legally obligated to do so. A declaration may only be revoked 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 28 of the Companion Animals Regulation 2000;
- 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 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.

3.11.3 *Seizure, Impounding and Destruction*

Standard investigation procedures will be strictly followed to determine the required action in each instance. Dog Investigation and Seizure procedures are contained within the Compliance services component of the Planning & Assessment Procedures Manual.

Council will comply with the legislation and make all reasonable attempts to contact owners where dogs have been found away from home. Reasonable contact will include:

- telephoning the contact numbers listed on the NSW Companion Animals Database,
- research in the white pages telephone book; and
- visiting the premises to see if the owner is home.

If no contact is made, the dog may be taken to the Pound. The officer must then continue to make contact with the Owners in an effort to repatriate the animal.

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.

Dogs may only be destroyed in accordance with the Companion Animals Act 1998. Instances where this provision will be used includes where a dangerous dog has been seized and impounded and an Authorised Officer (with delegated authority) forms the opinion that the registered owner is not able to demonstrate compliance with the requirements of the legislation, specifically section 51 of the Act.

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.

3.11.4 *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 Council's Prosecutions Policy and any legal advice.

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 Court authorisation to implement such Orders where the circumstances are considered to warrant. Such circumstances include – where there are multiple attacks or multiple breaches of dangerous dog declarations. All decisions will be made by the Manager or Director with the delegated authority to do so after consultation with the Corporate Lawyer

3.11.5 Media & Publicity – Dangerous Dogs and Dog Attacks

Council's Marketing & Communications Department will co-operate with the media and manage their enquiries in relation to dog attacks. In addition, Council may choose to publicise the outcome of legal action regarding any dog attacks, but will not release information which may jeopardise an investigation or breach privacy legislation or policy.

Council promotes responsible dog ownership and recognises the value of education and enforcement in achieving compliance.

Council will lobby the NSW Government in relation to any weakness identified in the legislation where public safety is placed at risk.

3.11.6 Nuisance Dogs

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 a nuisance dog complaint or nuisance dog becomes known to Council, the Authorised Officer will visit premises where the alleged nuisance dog resides, and discuss the behaviour with the registered owner before any other action is taken. This will also involve handing the registered owner educational materials outlining how the behaviour of the dog may be controlled to prevent nuisance.

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:

- recording the barking on a recording device;
- 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, Council 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.

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.

3.11.7 Issuing Penalty Infringements Notices for Dog Offences

Penalty infringement notices (PIN) and warning letters will be issued for the first instance of non-compliance regarding non-compliance with a dangerous dog 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 legal action may be commenced.

Council will not issue PIN's unnecessarily 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, Council could issue two fines under the legislation. However, it is considered reasonable to issue a fine for the dog being loose and a warning that a fine will be issued if the dog owner does not give the dog a collar and tag within 7 days. Similarly, if a dog is not registered, whether or not in addition to another offence, the owner should be given 7 days to register the animal before a PIN is issued.

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 should 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.

3.12 Special provisions – Position on Roads, Traffic, Vehicle & Abandoned articles

3.12.1 *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 Compliance Services Procedures.

The Act specifies an abandoned vehicle may be impounded by Council within 72 hours of notifying the last registered owner. However, Council recognises that there may be difficulties faced by owners in such tight timeframes and will allow up to 7 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 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 moneys held by Council minus the cost of storage and sale.

Council **does not** implement the destruction of vehicle provisions under the Act. Staff do not have qualifications to value vehicles in order to implement these provisions. In the interests of transparency and protection of regulatory staff, all vehicles will be valued and auctioned independently by a third party.

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.

3.12.2 *Clearways and Parking Offences*

Roads and regulated car parks in Warringah 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.

Exceptions to issuing clearway fines may arise in circumstances where a person may be incapacitated or the like. In those circumstances Council will assist the

person as much as possible to obtain medical assistance and have the vehicle moved to a safe location away from the clearway rather than issuing a PIN.

3.12.3 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. Licenced 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.

3.12.4 Vehicle and article sales and advertising on Public Roads

Council does not generally support the commercial use of public places, which includes public roads, for private vehicle or article sales or the use of vehicles or articles for advertising purposes.

- *Vehicles & Articles specifically*

It is considered that vehicles for sale on public roads, in particular, attract and encourage pedestrian traffic onto roads to view the exterior and interior of vehicles to judge worthiness. Potential buyers are placed into unsafe circumstances and are at increased risk of being hit by passing vehicular traffic. Additionally, passing drivers may also be distracted by signage and pedestrian buyers, creating a further hazard to following traffic and pedestrians alike.

Council has a duty of care to ensure compliance with the legislative provisions in terms of the protection of public safety.

Under Part F of the Approvals Table to section 68 of the Local Government Act 1993, approval from Council is required in order to use a standing vehicle or article to sell any article, which includes a vehicle, on a public road. It is an offence under section 626 of the Act if a person does not obtain the approval of Council before carrying out this activity. Penalties under the Act apply and a Penalty Infringement Notice may be issued or alternatively prosecution may be taken.

Council will enforce the provisions where breaches occur as follows:

- In the first instance a caution notice will be issued and attached to the vehicle and the registration details of the vehicle will be recorded;

- A photograph of the offence will be taken and recorded on Councils files;
- In second or further instances, a Penalty Infringement Notice will be issued to the vehicle owner and placed under the windscreen of the vehicle. A further photograph will be taken and stored on Council files to demonstrate the offence.

Council will defend infringement appeals where issued correctly in accordance with this policy and standard issuing procedure.

Where an approval process may be implemented by Council, Rangers will enforce conditions of those approvals according to the principles in this policy.

- *Vehicles used principally for advertising on Public Roads*

Council will not tolerate parked, standing or stopped vehicles or articles being used principally for the purposes of advertising on any public place, without prior approval of Council.

The Warringah Local Environmental Plan 2000 clearly specifies that development consent is required for the use of a vehicle principally for the purposes of advertising. Such a use constitutes “development” for the purposes of the Environmental Planning & Assessment Act 1979 and penalties apply for non-compliance under that Act.

For the purposes of this policy and the legislation, a vehicle includes a truck, motor cycle, van or trailer, whether currently registered or otherwise.

Important: Unregistered vehicles in a public place may also be subjected to abandoned vehicle procedures which may result in impounding and penalty infringements being issued separately.

Where Council detects alleged offences, the following compliance and enforcement action will be taken:

The vehicle will be subjected to surveillance by Authorised Officers to establish a pattern of use:

- If surveillance reveals the vehicle is being used principally for the purposes of advertising without a development consent being in force then a written warning will be issued to the vehicle owner. The warning letter will contain reasons why the Council believes an offence is being committed and what action will be taken if it continues. A period of 24 should be given for the offending vehicle to be removed.
- If the established unlawful use continues, a penalty infringement notice and a Notice of Intention will be issued. Following consideration of any representations, Council may then issue Orders.
- Failing to comply with the Order will result in standard enforcement in accordance with this Policy, including further Penalty Infringements or Criminal prosecution or commencement of civil proceedings to ensure the Order is complied with.
- Repeat offenders may be issued with further Notices, Orders and Infringements without Council issuing another initial warning letter.

3.12.5 Abandoned shopping trolleys and other articles

- *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 will conduct impounding blitzes from time to time to enforce compliance.

- *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 PIN’s 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.

3.12.6 *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.

3.12.7 *Enforcement of other permits and approvals on public roads & 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.

Again, 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.

3.13 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 land owner.

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 land owners 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 by Council's Project Services Department.

3.14 Occupational Health & 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.

3.14.1 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.

3.15 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 & 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 Warringah 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.

4. Amendments

This policy supercedes the following policies:

- ENV-PL550 Illegal works and Environmental Offences Policy
- ENV-PL 540 Illegal Land Uses Policy
- ENV-PL 545 Illegal Dumping of Materials
- ENV-PL 210 Policy for Management of Hairdresser and Skin Penetration Premises
- ENV-PL 215 Policy for Commercial Food Preparation

- ENV-PL 520 On-site Sewage Management Systems for Non-sewered Areas

5. Authorisation

This Policy was authorised by Council on 14 February 2006

This Policy was reviewed and amended on 13 October 2007.

This Policy will be reviewed in October 2009.

6. Who is responsible for implementing this policy?

Primary responsibility rests with the Manager Compliance Services and Authorised Compliance Services staff including Team Leaders, Environmental Health Officers, Environmental Protection Officers, Development Compliance Officers, Building Surveyors, Student Environmental Health & Building Officers, Fire Safety Specialist, Rangers and Parking Patrol Officers.

Authorised Officers in Environmental Management must also comply with this policy in relation to their compliance and enforcement functions.

Consultants and contractors authorised to carry out functions on behalf of Council must also comply with this policy.

Others who have responsibility include;

- Warringah Council;
- General Manager;
- Director Planning & Development Services; 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.

7. Document owners

Director Planning & Assessment Services
Manager Compliance Services

8. File number

To be generated from Records Manager

9. Legislation and references

1. This policy assists in the compliance and enforcement implementation of the following legislation:

2. Local Government Act 1993 & Regulations
3. Environmental Planning and Assessment Act 1979 & Regulation
4. Food Act 2003, Regulations & NSW Food Safety Standards
5. Protection of the Environment Operations Act 1997 & Regulations
6. Waste Avoidance & Resource Recovery Act 2001 & Regulations
7. Noxious Weeds Act 1993
8. Public Health Act 1991 & Regulations
9. Companion Animals Act 1998 & Regulations
10. Roads Act 1993 & Regulations
11. Road Transport (Safety & Traffic Management) Act 1999, Regulations and Australian Road Rules
12. Impounding Act 1993 & Regulations
13. Recreational Vehicles Act 1983
14. Swimming Pools Act 1993
15. Fisheries Management Act 1994 & Regulations
16. Liquor Act 1982 & Regulations
17. Council acknowledges the following references:
18. *Planning & Development Services Compliance & Enforcement Policy*, 2 August 2004, North Sydney Council
19. *Enforcement Guidelines for Council's*, Office of the NSW Ombudsman, June 2002.
20. *Planning & Assessment Services Divisional Standard Procedures*, Warringah Council, 2005
21. *Prosecutions and Legal Action Policy (GOV-PL 310)* Warringah Council, August 1984
22. *Complainants Management Policy*, Warringah Council, [enter date adopted]

9.1 Definitions

“Unlawful activity” is any activity or work that has been or is being carried out:

- a. Contrary to the terms or conditions of a development consent, approval, permit or licence;
- b. Contrary to the Warringah Local Environmental Plan 2000, as amended, that regulates the activities or work that can be carried out on particular land;
- c. Contrary to a legislative provision regulating a particular work or activity
- d. Without a development consent, certificate, approval, permission or licence; and includes unauthorised works and uses; and
- e. Contrary to the laws of New South Wales where Warringah Council is the regulatory authority

“legal advice” means legal advice received from Council's Corporate Lawyer or external legal advisors appointed by Council for that purpose.

“Community Land” has the same meaning as defined in the Local Government Act 1993.



“Operational Land” has the same meaning as defined in the Local Government Act 1993.

“Authorised Officer” means an Officer of Council authorized to carry out functions of legislation and has the same meaning as defined in the legislation being enforced by that Authorised Officer

“Delegated Authority” means the authority to carry out certain functions under legislation which are delegated to an Officer of Council by the General Manager under section 377 of the Local Government Act 1993.

“Place of Public Entertainment” has the same meaning as defined in the Local Government Act 1993.

“Penalty Infringement Notice” or **“PIN”** means a penalty or fine, also known as an “on the spot fine” issued in lieu of prosecution for an offence and in accordance with the New South Wales Self Enforcing Infringement Notice (SEIN) System.

ADJUDICATION PANEL**CHARTER****SEPTEMBER 2005****ADJUDICATION determination PANEL CHARTER****1. Purpose**

To adjudicate those client representation schedules sent to Council for adjudication by the Infringement Processing Bureau (IPB) and advise the IPB of the Panel's decision to cancel Penalty infringement notices (PIN) or alternatively to let the PIN stand with a caution issued.

2. Objectives

- a) Improve Compliance Services outcomes in a professional manner.
- b) Ensure openness and transparency in the decision making process with regard to PIN appeals and representatives.
- c) Ensure a balanced assessment is made against each representation and that standard IPB Guidelines and Council Policies are consistently and fairly considered and applied; and
- d) To prevent Council process being called into question by external parties or the Office of the Internal Ombudsman.

3. Outcomes

- a) Consistent outcomes on infringement matters consistent with the intent of our statutory requirements.
- b) A reduction in the number of Court Appeals
- c) Reduction in the number of inconsistencies in relation to these matters.
- d) Full and transparent records of all decisions made by the Panel will be kept on Council's electronic records management system.

4. Functions

- a) To assess requests relating to infringement notices issued and to make determinations on the matters presented to the panel.

The Compliance Manager & Ranger Team Leader have the discretion to refer any item to the AP for consideration.

- b) In considering matters arisen the reporting Officer must show the Panel in the report that the following matters have been considered in forming a recommendation:

- Compliance with statutory provisions.

- The standard NSW Infringement Processing adjudication guidelines and principles
 - Specific considerations outlined in Council's Compliance and Enforcement Policies
 - Whether the PIN was correctly issued by the Officer. Significant Officer error in issuing a PIN will lead to cancellation without the need to consider the representation further.
 - Did the Issuing Officer act professionally, lawfully and in accordance with Council Policy and standard procedure?
 - What was the impact of the offence committed and did it place any person in an unsafe, unhealthy or hazardous situation?
 - Has the person who received the PIN admitted the offence?
 - Are there any mitigating or aggravating factor to consider?
 - Is there any doubt over the evidence relied upon to issue the PIN?
 - What effect would the cost of enforcing the PIN have on Council?
 - Important: The Adjudication Panel will not recommend cancellation of PIN's based on the grounds of age, gender, nationality, race, length of driving record, whether there is an illness in the family or of an associate which had no bearing on the offence at the time, or if the representation does not have the required documentary evidence to support the reasons provided.
- c) To determine issues by recommending to the Manager Compliance that a PIN be cancelled, let stand or deferred for further information. The panel will consider the reports from the Team Leader Rangers having regard to:
- The information available to the Panel, including Acts, regulations, Council Policies, any IPB Guidelines, Council records, Penalty Infringement Notices, contemporaneous notebooks, Datworks records, photographs or Authorised Officer Interviews; and
 - The recommendation of the Team leader Rangers
- d) Adjudication Panel will meet on Tuesday of every week at 9.30 a.m.

5. Panel Appointment

- a) The Panel will consist of two (2) persons as follows:

Panel	Alternates
Manager Compliance	Director Planning & Assessment Services (PAS)
Corporate Lawyer as an Independent	Director Planning & Assessment



(non-PAS representative)	Services (PAS)
Reporting Officer	Alternate
Team Leader Rangers	Team Leaders in Compliance services or delegate.

- b) No member of the Panel shall have interest in the matters being reported to the Panel.
- c) The Panel will review its operation within six (6) months of its anniversary date on a continuous yearly cycle.
- d) Should a Panel member or alternate not be available for a meeting, the Manager Compliance can make an appointment as required.

6. Meeting Notification and Reporting

- a) Agendas for meetings shall include information on meeting date, venue, business proposed to be conducted and reports prepared by the Ranger Team Leader.
- b) Agendas shall be made available to Panel Members and staff on the Friday prior to the meeting.
- c) Additional to the meeting agenda containing the Report from the Ranger Team Leader, Panel members shall be provided with associated documents from Council records, including copies of the infringement notices, any photos taken, as well as copies of contemporaneous notebook entries where relevant. The Ranger Team leader will source the required documents for Administration to collate into the agenda.
- d) Panel meetings will be held at 9.30 a.m. on Tuesday of every week. The location of the meeting will be identified on the Agenda.
- e) Reports shall be in a proforma style and shall include attachment of the actual infringement notices. Details of the infringement should be clearly specified and a recommendation from the Ranger Team Leader should be included.
- f) The Team leader Rangers & Parking Patrol shall (with Administration Officer support) report to the Panel at the first meeting of each month as to the previous months performance, by maintaining statistics of the following:
 - the number of determinations made by the Panel per month
 - the number of decisions by the Panel for each determination. ie number of "Infringement to stand"; "No action"; "Cancelled" ; "More information required"
 - the type of infringements deliberated upon and their offence codes and penalty values
 - the number of infringements determined by staff name (this shall remain confidential)

- the number of occasions where the panel makes recommendations to the Team Leader to advise staff about significant officer error.(this shall remain confidential)

These reports will be provided to the Director Planning and Assessment each quarter and the General Manager and Council where requested.

7. Meeting Procedures

- a) Details of the reports shall be held confidential.
- b) Any member of the Panel can request further information for clarification.
- c) Any matter presented can be deferred for the purpose of clarification
- d) Two (2) members shall form a quorum.
- e) The first item of business at Panel inspections and the meeting will be members identifying any pecuniary or non-pecuniary conflicts of interest that may prevent them from participating in or considering any item on the agenda.
- f) An administrative support officer from Council shall assist the Panel by minuting the meeting, preparing correspondence to the IPB and ensuring documents are registered on Dataworks.

8. Determination Procedures

- a) The Panel's decision can be a recommendation for a PIN to be cancelled, to stand, or for a decision to be deferred for clarification.
- b) In assessing each matter the panel members may request additional information and have the matter deferred.
- c) Should the Panel members not support the Team Leader Rangers recommendation reasons are to be provided in the resolution.
- d) All Panel decisions shall be by unanimous decision. Where a Panel member requires additional information to enable a unanimous decision to be reached the item shall be deferred and referred to the next meeting.

Where a unanimous decision is not reached at the next meeting the application shall be referred to the IPB for a decision.

- e) Should the Panel, in its deliberations, note the need for policy review, it shall refer such matters to the Director Planning and Assessment, copy to the General Manager, to enable the policy issue to be addressed through report to the appropriate committee.

Should the Panel, in its deliberations, note significant officer errors in process or performance of staff who misuse infringements, it shall refer such matters to the appropriate Team Leader, to enable the issue to be addressed. This is a verbal advice in the first instance and in writing where there are repeated instances. Human Resources processes apply in this regard.