



Burwood

Inc.1874

COMPLIANCE AND ENFORCEMENT POLICY

PO Box 240, BURWOOD NSW 1805
Level 2, 1-17 Elsie St, BURWOOD NSW 2134
Phone: 9911-9911 Fax: 9911-9900
Email: Council@burwood.nsw.gov.au
Website: www.burwood.nsw.gov.au

Public Document
Adopted by Council: 11 February 2020 (Min. No.11/20)
Trim No.: 19/19818
Version No: 6
Ownership: Compliance

Purpose	3
Scope	3
Definitions	3
Responsibility	3
Primary Regulation	3
Compliance and Enforcement Action Principles	4
Natural Justice Principle	4
Work Health and Safety – Council’s Authorised Officers	4
Investigating unlawful activity	5
Non – enforcement action, where there is evidence of unlawful activity	7
Enforcement Action	7
Special Provisions – Building and Compliance	8
Special Provisions – Environment and Health	9
Special Provisions - Pollution Incidents	12
Special Provisions – Dogs, Dog Attacks and Dangerous Dogs	15
Special Provisions – Position on Roads, Traffic, Vehicle and Abandoned Articles	16
Special Provisions - Shopping Trolleys and Articles	18
Special Provisions - Outdoor Eating Areas on Footways	18
Special Provisions - Other permits and approvals on public roads and footways	18
Special Provisions – Encroachments on Council or Community Land	19
Special Provisions – Parking Enforcement	19
Related Information/Glossary	20
Acknowledgements	21
Review	21
Contact	21

Purpose

To provide:

- a graduated and proportionate approach to the implementation of enforcement provisions.
- consistency in enforcement action in matters of non-compliance and to ensure transparency, procedural fairness and natural justice principles are followed.

Scope

Applies to all compliance and enforcement actions where Burwood Council has a regulatory responsibility under New South Wales legislation. It applies to all Council Officers and contractors who must carry out their duties lawfully.

Definitions

Authorised Officer - Officer of Council authorised to carry out functions detailed in legislation and has the same meaning as defined in the legislation being enforced by that Authorised Officer.

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*.

Penalty Infringement Notice (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.

Smoking - hold or otherwise have control over, an ignited smoking product including e-cigarettes, cigarettes, pipes and water pipes.

Sub-delegated Authority – the authority to carry out certain functions under legislation which are delegated to an Officer of Council by the General Manager under Section 381 of the *Local Government Act 1993*.

Unlawful activity - is any activity or work that has been or is being carried out contrary to:

- a. the terms or conditions of a development consent, approval, permit or licence
- b. the Burwood Local Environmental Plan 2012, that regulates the activities or work that can be carried out on particular land
- c. a legislative provision regulating a particular work or activity
- d. a development consent (or lack thereof), certificate, approval, permission or licence; and includes unauthorised works and uses
- e. the laws of New South Wales where Burwood Council is the regulatory authority

Responsibility

Responsibility for this policy rests with the General Manager.

Primary Regulation

Under the *Local Government Act 1993* Council is to ensure that, in the exercise of its regulatory functions, it acts consistently and without bias particularly where an activity of the Council is affected.

Compliance and Enforcement Action Principles – Unlawful Activities

Prior to any compliance or enforcement action being taken the Authorised Officer will acknowledge the circumstances of each case and may apply the following principles:

- Are the breaches technical or inconsequential in nature?
- Are there aggravating or mitigating circumstances surrounding the activity?
- Is the unlawful activity having or likely to have a serious negative impact on any person?
- Has the unlawful activity created a health, safety or environmental hazard or is there potential for this to occur?
- Has the unlawful activity affected a significant number of people?
- How long has the unlawful activity been occurring and is enforcement statute barred?
- Is there any doubt over the evidence or the offence?
- Would a conviction by a Court be necessary to prevent re-occurrence?
- How common is the offence and would action act as a deterrent?
- Has the person or corporation who carried out the unlawful activity had an opportunity to provide representations or submissions on the matter?
- Have Council Officers acted appropriately in investigating the matter and were standard procedures followed?

If it is determined after these considerations that enforcement action is required, then it will be taken in accordance with legislation and Council procedures.

Natural Justice Principle

Council recognises that in taking enforcement action, there are statutory processes which provide for representations and appeals and thereby natural justice principles are observed.

Work Health and Safety – Council’s Authorised Officers

Council is required to provide for the health, safety and welfare of its Authorised Officers. In this regard, Council's Authorised Officers will observe safe work practices.

Investigations may place Council Officers 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 Council Officers 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 may be verbally abused, intimidated, obstructed from carrying out their duties or are threatened or assaulted

Intimidation, Obstruction or Assault on Authorised Officers

Council views intimidation, obstruction, threatening behaviour and assault against Council Officers 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.

Anonymous Complaints

Burwood Council encourages complainants to provide full contact information when lodging complaints.

In the event of an anonymous complaint, Council will determine whether the complaint will be investigated dependent upon the seriousness of the complaint, and provided there is sufficient information in the complaint to enable an investigation to be conducted. Council will determine whether there is a statutory requirement for identification of the complainant in accordance with Council's Complaints Management Policy.

Investigating unlawful activity

Council will investigate all complaints and alleged unlawful activities except in the following circumstances:

- Development matters where 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.
- Where there is no lawful provision for Council to take action and accordingly Council has no jurisdiction. Examples include 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 and, therefore, an investigation is not required.
- The complaint is frivolous, vexatious or trivial in nature.
- The complaint is anonymous and there is insufficient information to ascertain whether there is a risk to public health or safety or support 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 a clear rationale as to the decision made. The complainant must then be advised of the decision and the reasons for no action.

Authorised Officers, Sub-delegated Authority and Lawful Powers of Entry

Under relevant legislation Council delegates authority and authorises certain Council Officers to carry out investigative duties and take necessary action. Council views the power to enter private property seriously and will ensure that the exercise of these functions will only be undertaken in accordance with the legislation.

All Council Officers who carry out inspections on private land for regulatory purposes will:

- Have sub-delegation to enter premises and carry out investigations as specified in Council's sub-delegations.
- Be authorised by Council where this is required under specific legislation to permit inspections on private property.
- Carry photographic identification demonstrating authorisation to enter premises and private lands under the relevant Act
- Carry documentation or certificates of authority where required by the relevant legislation

Lawful powers of entry for Authorised Officers are specified in the relevant Act. The following acts and sections are the most commonly used in Council's regulatory functions in relation to powers of entry on land:

Local Government Act 1993 –Entry onto Land

An Authorised Officer may enter any premises for the purpose of enabling a Council to exercise its functions at any reasonable hour in the daytime or at any hour during which a business is in progress or is usually carried out at the premises.

Environmental Planning and Assessment Act 1979 –Entry onto Land and other Powers

Council 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.

Protection of the Environment Operations Act 1997

A regulatory authority or public authority may, by its employees, agents or contractors, enter any premises at any reasonable time for the purpose of exercising its functions in relation to investigating and issuing environment protection notices.

Authorised Officers are appointed subject to conditions, limitations or restrictions that are imposed on appointment. For example, an Officer may have 15 years experience in investigations and, therefore have a broader authorisation than a graduate or student under this Act.

Food Act 2003

An Authorised Officer may enter and inspect any premises that the Authorised Officer reasonably believes are used in connection with the handling of any food intended for sale or the sale of food, or any food transport vehicle. Authorised Officers have a range of powers.

Public Health Act 2010 – Powers of Entry

Powers of entry are conferred on an Authorised Officer for purposes of inspection and other required action.

Companion Animals Act 1998

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.

Biosecurity Act (NSW) 2015

An Authorised Officer or other person delegated by a local authority to control priority weeds on land may enter any premises. Entry may be made at all reasonable times.

Swimming Pools Act 1992

An Authorised Officer may enter any premises with the consent of the occupier of the premises for the purposes of implementing the provisions of the Act.

Search Warrants to Lawfully Enter Premises

Council may co-operate with and attend premises accompanied by the NSW Police Force where there are threats against a Council Officer 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 regulatory functions in those circumstances. However, it is Council's approach to first obtain the owner's or occupant's permission to enter a premise.

Proceeding to obtain a search warrant is a last resort and is to be approved by the General Manager.

Non-enforcement Action, Where There is Evidence of Unlawful Activity

Formal written warnings may be issued if a breach is minor in nature or specified in other policy or procedures for such warning to be issued in the first instance.

Enforcement Action

Any formal enforcement action will be undertaken in accordance with the principles outlined in this policy.

The following enforcement actions are standard across local government:

- Issuing of Notices
- Notice of Proposed Order
- Orders
- Directions and Declarations requiring compliance with legislative requirements or an environmental planning instrument.
- Issuing an Infringement Notice or alternatively commencing criminal proceedings for an offence under legislation.
- Commencement of civil proceedings in a Court to either remedy or restrain unlawful activity.

Photographic/Video Evidence

Council Officers are assigned mobile devices capable of recording and obtaining video and/or photographic evidence of legislative breaches. These devices may include in-built car cameras, body cameras, mobile phones, cameras, remote-piloted devices and/or video recorders. Any evidence obtained by these devices may be used in any proceedings in line with the above enforcement actions.

Failure to Comply with Notices and/or Orders

Most legislative provisions which permit Notices and Orders to be issued also have offence provisions for failure to comply. Where Council has issued Notices and/or Orders and follow up investigations reveal non-compliance, and where there has been no appeal against the Notice or Order, Council may apply enforcement action.

Failure to Obtain a Consent or Approval Where Such Consent or Approval was Required

It is an offence under the *Environmental Planning and Assessment Act 1979*, *Local Government Act 1993* and the *Roads Act 1993*, to carry out an activity without a consent or approval where a consent or approval was required.

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.

Discretionary Powers

Council's Authorised Officers have the ability to apply discretionary powers whenever investigating and actioning a complaint. Such discretionary powers are not unrestricted and must be applied in line with policy, practices and/or rules. Council does not encourage the application of discretionary powers for parking matters whenever the manner of parking imposes a risk or dangerous to other road users including pedestrians. Discretionary powers (if used) should be applied consistently

and fairly in line with policy, public interest, legislation and the individual case. The NSW Ombudsman Office has produced enforcement guidelines highlighting how such powers can be exercised.

Special Provisions – Building and Compliance

Position on Principal Certifying Authority (PCA) and Private Certifiers

A Principal Certifying Authority (PCA) is responsible for compliance with the Building Regulation in accordance with a building development. It is important to note that a PCA may be either Council or a Private Certifier pending the appointment by an applicant for the development.

Council will only investigate matters where a Private Certifier is nominated as a 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
- it is in the public interest to do so

Council will inform the nominated PCA in writing of complaints Council receive regarding their sites:

- where a complaint has been lodged by a member of the public,
- where all such complaints must be directed to the appointed PCA for that site,
- where a site is managed by a Private Certifier,
- the complaint should be directed to them in the first instance, this gives 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,
- Council will forward this to the PCA with a request to investigate and respond.
- where the PCA has not addressed 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.

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, Council will carry out inspections and follow up on development sites and take action where there are breaches.

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

Building Certificate Applications under Section 6.23 of the Environmental Planning and Assessment Act 1979

Council does not support or encourage the submission of Building Certificate Applications under *Section 6.23 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*.

Council may still take punitive action against a person who carried out unlawful works, irrespective of whether a Building Certificate was applied for.

Fire Safety - Places of Public Entertainment

Authorised Council Officers 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* to the *Environmental Planning and 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 the Authorised Council Officer carrying out inspections and taking action where non-compliance is identified.

Swimming Pool Regulations

Council acknowledges the immediate safety risk that unfenced or inadequately fenced swimming pools pose to children and other persons. Council's Authorised Officers will carry out inspections on complaints or where incidents of non-compliance are brought to Council's attention through proactive inspection programs or development consents being issued for pools.

Council may commence enforcement action with non-compliance of the regulations.

Breaches of Development Consent

Authorised Council Officers are to issue an infringement notice for a breach of consent. A warning notice is attached to a development consent advising applicants that breaches will automatically incur an enforcement action. No warning will be issued for breaches and if breaches become frequent, other enforcement actions may be used.

Special Provisions – Environment and Health

Food Safety

Burwood Council supports pro-active and routine inspections of food businesses to prevent food borne illness and ensure compliance with the *Food Act 2003* 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 Burwood.

Council has delegated authority to act as an Enforcement Agency.

Council's authorised Environmental Health Officers carry out annual food safety inspections on all food premises consistent with the requirements of the Food Regulation. Inspections may occur more frequently depending on the risk classification of the food business.

Inspection fees are charged to assist with cost recovery. Fees are graduated according to the risk assessment of the premises and the cost of carrying out the service.

There are a range of regulatory measures available to Council to improve food safety in the Burwood Local Government Area, these include:

- Warning Letters
- Improvement Notices
- Penalty Infringement Notices
- Prohibition Orders and
- Prosecution through the Local Court

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.” These protocols are available on the NSW Food Authority website www.foodauthority.nsw.gov.au. If required, Council will also consult with the NSW Food Authority.

Food Safety Educational Initiatives

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

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

Smoking Laws

Smoke free laws are regulated by NSW Health and bans apply to all enclosed public area and certain outdoor public areas. Please refer to the NSW Health webpage for more specific information on these laws – www.health.nsw.gov.au.

Boarding Houses

Council recognises that boarding houses being places of shared accommodation can present a public health and safety risk to the occupants.

Council maintains a register of boarding houses located in the Burwood Local Government Area and carries out annual inspections to ensure the premises are maintained in a clean and healthy condition and that the fire safety features are properly serviced and operational.

Prevention of Legionnaire’s Disease

Council will co-operate fully with the Public Health Unit of NSW Health and immediately investigate any outbreak of Legionnaire’s Disease occurring within the Burwood Local Government Area.

In an effort to prevent outbreaks of Legionnaire’s Disease, Council strictly implements the legislative provisions of the *Public Health Act 2010* and *Public Health Regulation 2012*, in an effort to ensure owners of regulated systems fully comply.

Under Part 2 of the Regulation, Council undertakes the following actions:

- maintains a register of water cooling and warm water systems
- ensures that regulated systems are registered with Council by the system owners
- audits each registered regulated system once annually for compliance with the legislation, codes of practice and Australian Standards in terms of maintenance and operation requirements
- charges inspection and registration fees; where required to cover costs of regulation
- takes prompt action where there is 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. Offences can be dealt with by way of an Improvement Notice, Penalty Infringement Notice or a Court Prosecution.

Skin Penetration

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 Immunodeficiency Virus (HIV), Hepatitis B and Hepatitis C. Other skin diseases can also 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 2010* (the Act) at least annually to ensure that 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 premise to ensure that they understand the requirements.

Operators of these premises must comply with the Code of Practice and legislation. Failing to comply is an offence under the *Public Health Act 2010*.

Offences can be dealt with by way of an Improvement Notice, Penalty Infringement Notice or a Court Prosecution.

Brothels

Council acknowledges that there are certain localities where it is permissible under Council's Local Environmental Plan for brothels 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.

Complaints regarding unlawful brothels will be investigated by Council in accordance with the *Environmental Planning and Assessment Act 1979*. This Act enables Council to order the closure of illegal brothels within 48 hours, to enforce the order and prevent persons from entering the premises in the event the Order is not being complied with.

However, it remains difficult for Councils to obtain proof that some illegal brothels are conducting sex services. Council will involve other agencies where necessary to investigate and close illegal brothels.

Asbestos

Council frequently investigates matters involving alleged unlawful asbestos removal. The removal of asbestos is of concern to the community due to the perceived immediate threat to health.

The *Work Health and Safety Act 2011* regulates the safe removal of asbestos. Council will investigate all complaints received in relation to asbestos removal. Council is the regulatory authority for investigations of these matters and any removal not in compliance with the provisions will result in the commencement of an enforcement action. The *Local Government Act 1993* has a provision permitting Council to issue orders to ensure premises are placed or kept in a safe condition. These provisions will be used where necessary.

Tree Preservation

Council investigates matters involving vandalism, cutting, lopping, topping, poisoning and removal of trees both on private and public land unlawfully. The protection of trees on private and public land is covered in the *State Environmental Planning Policy (SEPP) (Vegetation in Non-Rural Areas) 2017* and Council's Development Control Plan (DCP section 6.1).

The following tools may be used in resolving breaches of the Tree Provisions (TP):

- A warning may be issued for minor matters whereby the damage does not affect the safety, health or longevity of the tree(s) and no further remedial maintenance is required as a result of the damage.
- Penalty Infringement Notices may be issued under the *Local Government Act 1993* for breaches pertaining to public land. For a breach on private land, penalty infringement notice(s) will be issued under the *Environmental Planning and Assessment Act 1979*. A Penalty infringement notice will be issued for instances when the health, safety and longevity of the tree is impacted or when remedial work is required to return the tree to its former health and appearance.
- Prosecution is commenced for matters where the issuing of a warning or penalty infringement notice is not justified as an applicable means to resolve the breach of the TP. An example of such a matter includes, but is not limit to, heritage listed trees, or trees on a heritage site, or whereby the damage inclusive of cutting, vandalism, topping, poisoning or removal affect the health and longevity of the tree(s).

In prosecution matters, Council will also seek the following orders in the court:

- Recovery of 100% of Council costs
- Recovery of the monetary value of the Council Asset (inclusive of all maintenance and replacement costs for trees on public land)
- Orders and bond for the replacement of all trees removed to the exact size, species and condition (prior to be destroyed) for tree(s) on private land (inclusive until the tree reaches maturity).

Council has a zero tolerance approach to TP breaches.

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 implement the provisions of the POEO Act where there are offences identified.

Provisions to consider where there are offences include:

- Clean-up Notices – issued where a pollution incident has occurred or is likely to occur. If issued verbally the notice will have no effect after 72 hours if not followed up with a written Clean-up Notice.
- Pollution Prevention Notice - applies where an activity is being carried out in an environmentally unsatisfactory manner.
- Compliance Cost Notice - 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 penalty infringement notices or alternatively commencing proceedings for an offence.

Water Pollution Generally

Water pollution is the most common pollution incident reported to Council. Council recognises 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 and enforcement action considered if breach and offender is identified.

Erosion and Sediment Control and Water Pollution on Building Sites

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

Under the *Environmental Planning and Assessment Act 1979*, a Notice of Commencement must be submitted to Council prior to commencement of construction. Council conducts audits of sites following submission of the Notice of Commencement.

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

- *Protection of the Environment Operations Act 1997* - Council may issue penalty infringement notices, or Environment Protection notices requiring works to be carried out or clean up to occur.
- *Environmental Planning and Assessment Act 1979* - failure to comply with a condition of development consent. All development consents issued have a standard condition requiring sediment controls to be maintained to prevent pollution. A penalty infringement notice may be issued and notices and orders may be issued requiring compliance with the development consent

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. Authorised Officers must have appropriate evidence of the air pollution, which includes visiting the site affected and smelling or seeing the pollution first hand.

Backyard Burning

Backyard burning is prohibited in the Burwood Council Local Government Area under the *Protection of the Environment (Clean Air) Regulation 2010*.

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

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.

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

- Follow up complaints about air pollution caused by this type of heating.
- Check to ensure the NSW Office of Environment and Heritage 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 policies to enable the resident an opportunity to address the problem without regulatory intervention.
- Commence enforcement action if a breach is identified.

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 with appropriate Australian Standards for operation and maintenance.

Littering and Dumped Rubbish

Council will use one or more of the enforcement actions where littering and dumping offences are committed under the POEO Act. For more serious dumping offences, prosecution will be considered in accordance with the legislation.

Litter Blitzes - will be conducted from time to time to raise public awareness of littering and to prevent it from occurring. During a public place litter blitz, Council's Authorised Officers may offer educational advice, however if a person who has littered does not co-operate, the Authorised Officer(s) will obtain the name and address of the offender and issue a litter penalty infringement notice.

Littering from Vehicles - Authorised Officers will issue penalty infringement notices to persons littering from vehicles.

Dumped Rubbish - will be investigated by Council's Authorised Officers. Such investigation may include obtaining statements, photographs and issuing one or more enforcement actions. Council also has developed a "dob in a dumper" program and streets with high rates of illegal dumping may receive a leaflet in the letterbox seeking offender details.

Noise

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

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

- Noise Abatement Directions - Council will issue these directions where offensive noise has been emitted within the last seven days. 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 Notices for offences.

- Noise Control Notices – These Notices 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 enforcement actions of this policy.

Council may 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.

Special Provisions – Dogs, Dog Attacks and Dangerous Dogs

Attacks

Council encourages responsible dog ownership and views dog attacks very seriously. Council Authorised Officers will take immediate action on receipt of notifications regarding dog attacks or incidents involving a dangerous dog.

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 may 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 may also be issued to the registered owner.

Council maintains a register of dog attacks for all events in the Local Government Area.

Dangerous Dog Declarations and Restricted Breeds

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 1998* 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 abides by the statutory process and recognises that it provides natural justice for accused parties.

Council may take legal action or issue a Penalty Infringement Notice if a Dangerous Dog Declaration is not complied with.

Council may also declare a dog to be a restricted breed within our local area under the *Companion Animals Act 1998*. Council will also carry out inspections to ensure restricted breed requirements are being complied with.

Seizure, Impounding and Destruction

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 directory
- visiting the premises to see if the owner is home

If no contact is made, the dog may be taken to the pound. The Council 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.

Legal Action

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

Council may 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 may seek Destruction Orders and seek Court authorisation to implement such orders where the circumstances are considered to warrant this action. Such circumstances may include – where there are multiple attacks, or a serious attack causing human death or multiple breaches of Dangerous Dog Declarations.

Media

Council's Media and Communication Team 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.

Nuisance Companion Animals

Council will implement the provisions of the *Companion Animals Act* where there is evidence the dog is causing a nuisance.

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 may result in one or more of the enforcement actions.

Special Provisions – Position on Roads, Traffic, Vehicle and Abandoned Articles

Abandoned Vehicles

Council enforces the *Impounding Act 1993* in relation to abandoned vehicles.

The *Impounding 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 seven days for the last registered owner to remove an abandoned vehicle prior to it being impounded.

If a vehicle is not claimed by an owner within that time frame, the vehicle is impounded and an infringement notice is issued to the last registered owner or a person nominated by the last registered owner as being the owner at the time of the offence. Impounded vehicles are stored at

Council's specified impounding facility for the statutory timeframe of a minimum of 28 days or destroyed if the value of the vehicle is under \$500.

If impounded vehicles are not claimed within that timeframe, under the *Impounding 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.

If a person claims ownership of a vehicle and fails to register the vehicle whilst still on a public roadway, Council officers will issue Orders under the *Local Government Act 1993*. If a person fails to comply with the terms of the Order, enforcement action will commence.

In cases where an abandoned vehicle is in an unsafe location and deemed parked in a dangerous manner, an Authorised Council Officer may elect to impound the vehicle immediately and convey it to a Council holding facility. The same statutory timeframes will be applied for the last registered owner to pick up the vehicle prior to fines being issued or the vehicle being auctioned.

Heavy Vehicles and Load Limited Road Patrols

Council enforces the provisions of the *Roads Transport Act 2013* and regulations in relation to heavy vehicles unlawfully using load limited roads.

Penalty Infringement notices are issued to all heavy vehicle owners who do not comply with sign posted local load limits. Additionally, Authorised Officers with delegated authority will 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.

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 and 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 in 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.

Under the *Local Government Act 1993*, approval from Council is required to use a standing vehicle or article to sell any article, which includes a vehicle, on a public road. It is an offence under the Act if a person does not obtain the approval of Council prior to 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 warning notice will be issued and attached to the vehicle and the registration details of the vehicle will be recorded along with a photograph of the offence
- in the second or further instances, either a Penalty Infringement Notice and/or an Order under the *Local Government Act* will be issued to the vehicle owner depending on the extent of the obstruction along with a further photograph

Vehicles or Articles Used Principally for Advertising on Public Roads

Council does not condone 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 Burwood Local Environmental Plan (LEP) 2012 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 and Assessment Act 1979* and penalties apply for non-compliance under that Act.

The Burwood Development Control Plan (DCP) highlights controls on motor vehicles, trailers or articles placed on the roadway being used for advertising purposes.

Breaches of the LEP and DCP may result in the use of one or more of the enforcement actions.

Special Provisions – Shopping Trolleys and Articles

Shopping Trolleys

Council will carry out its legal responsibility to enforce and impound abandoned or left unattended shopping trolleys under the provisions of *Section 15 of the Impounding Act 1993*.

Council will co-operate and consult with stakeholders in an effort to ensure trolleys and other articles are not abandoned or left unattended on our streets. Council Officers will follow standard procedures when investigating and actioning these matters.

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 articles if they are considered abandoned or left unattended in a public place.

Council will take compliance action in line with specific procedures when articles are abandoned or left unattended in a public place and this may include immediate impounding. Impounding fees will apply for the article to be released to the owner in accordance with Council’s Schedule of Fees and Charges.

Enforcement action may be taken if the article is deemed abandoned.

Special Provisions - Outdoor Eating Areas on Footpaths

Council issues approvals under the *Roads Act 1993* for the use of footpaths for restaurant purposes. Council Officers enforce the conditions of approvals and in circumstances where the footpath is being used without Council’s consent, or not in accordance with a valid licence, a direction may be issued by Council’s Compliance Team under *the Act* for the use to cease. Failure to comply may result in impounding dining furniture, cancelling the outdoor eating licence and/or one or more of the enforcement actions.

Smoking is prohibited in outdoor eating areas as of 1 July 2015.

Special Provisions - Other Permits and Approvals on Public Roads and Footpaths

Council has authority under the *Road Act 1993* to issue permits and/or approvals for various uses of the roadway and footpath. Such uses may include crane permits, a-frames, merchandise, hoardings, scaffolding, rubbish skips, street stalls and other articles.

If the roadway or footpath is being used without approval or contrary to the approval provisions, one or more of the enforcement actions will be used to ensure compliance.

Special Provisions – Encroachments 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.

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 and supporting Plans of Management.

Council does not permit, support or encourage any person or organisation to carry out works which might result in an unlawful encroachment onto Community Land.

Special Provisions – Parking Enforcement

General Provisions

Burwood Council requires its Parking Enforcement Team to enforce all parking provisions consistently and fairly to ensure a constant turnover of motor vehicle parking spaces.

Council's Officers enforcing parking provisions do not have the authority to cancel any penalty infringement notice once it has been commenced or completed.

The onus to comply with the parking provisions lies solely with each driver of a motor vehicle.

Council Officers are now equipped with cameras which are capable of recording footage which may be used later in court proceedings.

Surveillance and Parking Enforcement Programs

In rare circumstances Council may conduct a covert operation which involves Council Officers not being visible to members of the public. A covert operation will only be conducted upon prior approval from the Deputy General Manager, Land, Infrastructure and Environment.

Council Officers authorised to enforce parking provisions will also undertake a range of activities when enforcing parking restrictions in addition to patrolling on street and off street parking enforcement. Such activities will target specific illegal parking behaviour and methods of monitoring parking breaches and may include:

- School Enforcement – targets illegal parking breaches within school zones to ensure safe passage for school children within these zones.
- Complaint Based Program - seeks to monitor ongoing complaints from the Council's Customer Request Management System (CRM) via tasking sheets to ensure long term compliance of parking provisions.
- Mobility Parking Scheme Program – targets the misuse and abuse of the Mobility Parking Scheme.

Placement of Parking Penalty Infringement Notices

Where possible all Council Officers authorised to enforce parking provisions should attempt to issue the penalty infringement notice by placing it on the motor vehicle or handing it to the driver at the time of the offence unless the:

- vehicle observed breaching the parking provisions drives away prior to the completion of the penalty infringement notice process
- Council Officer forms the opinion that it would be unsafe to issue the notice in the normal manner

- equipment issued to Council Officers prevents the penalty infringement notice being issued at the time of the offence

Photographs

Photographs are to be obtained for all parking provision breaches unless circumstances prevent this occurring, including when a vehicle has driven off prior to the completion of the penalty infringement notice process or a photograph cannot be obtained due to the specific circumstances of the matter.

Those people relevant to the issued penalty infringement notice may view copies of the photograph on the Revenue NSW webpage.

Adjudication Process

It is important to direct all requests for adjudication for a penalty infringement notice to Revenue NSW and not Council. Revenue NSW are responsible for the adjudication of all representations and ensure fairness and consistency in the review process.

The General Manager at his/her discretion may support a representation to Revenue NSW.

Representations to Revenue NSW can be forwarded to their webpage www.revenue.nsw.gov.au or to their email address fines@revenue.com.au or contacted on 1300 138 118.

Complaints Lodged Against Council Officers

All complaints lodged against Council Officers will be investigated in accordance with the Council's Complaint Management Policy. All complaints should be in writing, clearly outlining the incident and/or the penalty infringement notice number.

It should be noted that complaints lodged against Council Officers are investigated by Council.

The penalty infringement notice review is considered as a separate item and reviews are forwarded to Revenue NSW for adjudication. Revenue NSW is only informed of the outcome of the internal investigation if it affects the credibility of the notice.

Related Information/Glossary

This policy assists in the enforcement implementation of the following legislation:

- *Local Government Act 1993* and Regulations
- *Environmental Planning and Assessment Act 1979* and Regulations
- *Food Act 2003*, Regulations and NSW Food Safety Standards
- *Protection of the Environment Operations Act 1997* and Regulations
- *Biosecurity Act (NSW) 2015*
- *Public Health Act 2010* and Regulations
- *Companion Animals Act 1998* and Regulations
- *Roads Act 1993* and Regulations
- *Road Transport Act 2013* and Regulations
- *Road Rules 2014*
- *Impounding Act 1993 and Regulations*
- *Swimming Pools Act 1992*
- *Work Health and Safety Act 2011* and Regulations
- *Complaints Handling Policy*
- *Smoke-Free Environment Act 2000*
- *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*

- *Biodiversity Conservation Act 2016*
- *Burwood Local Environmental Plan 2012*
- *Burwood Development Control Plan*

Acknowledgements

Council acknowledges the following references:

- Compliance and Enforcement Policy, Warringah Council
- Enforcement Guidelines for Councils, Office of the NSW Ombudsman, December 2015

Review

This policy will be reviewed every four years.

Contact

Group Manager Compliance