

## LOCAL ORDERS

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### Policy Statement

Day to day duties for Council's Authorised Officers are to investigate complaints from local residents and visitors to our area. These complaints often refer to the condition of a yard, the condition of structures, illegal building work, noise, and animals. Authorised Officers, whilst carrying out their duties, may themselves detect an area of concern that requires attention.

As a result, Authorised Officers must take appropriate action, and dependant upon the result of the investigation, issue notices or orders.

The purpose of this Policy is to set the procedures to be followed for the issue of Orders/Notice's under the provisions of the Local Government Act, the Environmental Planning and Assessment Act and the Protection of the Environment Operations Act in a fair and reasonable manner.

This Policy has been prepared under the provisions of Part 3 Section 159 of the Local Government Act.

### ORDERS

#### 1. Local Government Act and Environmental Planning and Assessment Act.

Letter of Request (Initial investigation)

1.1 Upon receipt of a complaint concerning the condition of any property/building, use of any property/building, or any other issue concerning any property/building, that may result in action being taken by Council under the provisions of the Acts listed above, an authorized officer will investigate the matter to determine what action should be taken by Council; or  
If an authorised officer discovers the condition of any property/building, the use of any property or building, or any other issue concerning any property or building, may be in breach of any of the above mentioned acts, the authorised officer will investigate the matter to determine what action should be taken by Council.

1.1.1 If in the opinion of the authorised officer, the complaint is not valid, a record of the findings will be made on the property file and no further action will be taken, and the complainant (if known) will be advised in writing, or if a contact number is available, per phone.

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- 1.1.2 If in the opinion of the authorised officer, the complaint is valid, and is not an issue that requires urgent attention, the authorized officer will cause a letter to be delivered to the owner/occupier of the property advising the owner/occupier of the complaint and request action be taken to remedy the problem. A reasonable time period for action to be taken is normally 28 days, however where it is considered by the authorised officer that a quick, but non urgent response to the problem is required, and dependant on what action is to be carried out, a period of 14 or even 7 days may be given. Where the complaint is in regard to structures on the property or the land, the letter shall be directed to both owner and occupier. The complainant (if known) will be advised in writing, or if a contact number is available, per phone.
- 1.1.3 If in the opinion of the authorised officer the complaint is valid and due to the circumstances of the problem, public safety may be at imminent risk, an Emergency Order may be issued to the owner/occupier for immediate action. The complainant (if known) will be advised in writing, or if a contact number is available, per phone.

Notice Of Intent (Sec. 132 of the Local Government Act – Sec. 121H of the Environmental Planning and Assessment Act)

- 1.2 At the expiration of the time stated in a letter, the authorised officer will re-inspect the property/building to determine the next appropriate course of action to be taken.
  - 1.2.1 If in the opinion of the authorised officer, the action required has been completed, a notation should be made on the file and no further action should be taken. The complainant (if known) will be advised in writing, or if a contact number is available, per phone.
  - 1.2.2 If in the opinion of the authorised officer, the required action has not been completed, a Notice of Intent to issue an Order shall be issued to the owner/occupier of the property for action to be taken. This again may have a stipulated time of 7 to 14 days for semi urgent matters, or a minimum of 28 days for non urgent matters. Where the complaint is in regard to structures on the property or the land, the notice of intent shall be directed to both owner and occupier. The complainant (if known) will be advised in writing, or if a contact number is available, per phone
  - 1.2.3 In regard to paragraph 1.1.3 (Emergency Order) see paragraph 1.4

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- 1.2.4. A person may make representations concerning the proposed order. The issuing or other authorised officer is required to hear and to consider any representations made. If, in the opinion of an authorised officer, there are mitigating circumstances which are beyond the jurisdiction of the authorised officer, then the matter shall be referred to Council for determination.
- 1.2.5. After hearing and considering any representations made concerning the proposed order, the authorised officer or Council, may determine:
- (a) to give an order in accordance with the proposed order; or
  - (b) to give an order in accordance with modifications made to the proposed order; or
  - (c) not to give an order.
- If the determination is to give an order in accordance with modifications made to the proposed order, the Council is not required to give notice under this division of the proposed order as so modified.
- 1.2.6. During this period the authorised officer should gather evidence of the alleged offence by way of photo's, confirmation with Police or by any other appropriate means in case of later prosecution procedures being undertaken.

Order/Notice (Sec. 124 of the Local Government Act – 121B of the Environmental Planning and Assessment Act)

- 1.3. At the expiration of the stated time in a Notice of Intent, the authorized officer will re-inspect the property/building to determine the next appropriate course of action to be taken.
- 1.3.1 If in the opinion of the authorised officer, the action required has been completed, a notation should be made on the file and no further action should be taken. The complainant (if known) will be advised of the progress of the complaint in writing, or if a contact number is available, per phone.
- 1.3.2. If in the opinion of the authorised officer, the required work has not been completed, an Order/Notice shall be issued to the owner/occupier of the property for action to be taken. As opposed to the issue of a letter or a Notice of Intent, the Order shall stipulate work to be completed within a minimum of 28 days of the date of issue of the notice. Where the complaint is in regard to structures on the property or the land, the notice/order shall be directed to both owner and occupier. The complainant (if known) will be advised of the progress of the complaint in writing, or if a contact number is available, per phone.

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- 1.3.3. An order is given by serving a copy of the order on the person to whom it is addressed and takes effect from the time of service or a later time specified in the order. If appropriate in the circumstances of the case, an order may direct two or more people to do the thing specified in the order jointly.
- 1.3.4. A notice required by or under this Act to be served on a person may be served
- (a) personally; or
  - (b) by delivering the notice at or on the premises at which the person to be served lives or carries on business, and leaving it with any person apparently above the age of 14 years resident or employed at the premises; or
  - (c) by posting the notice by prepaid letter addressed to the last known place of residence or business or post office box of the person to be served; or
  - (d) by facsimile transmission to a number specified by the person (on correspondence or otherwise) as a number to which facsimile transmissions to that person may be sent; or
  - (e) by fixing the notice on any conspicuous part of the land, building or premises owned or occupied by the person; or
  - (f) in the case of an offence involving a vehicle, by attaching the notice to the vehicle; or
  - (g) if the person to be served maintains a box at a document exchange established in New South Wales, by depositing the notice in that box or leaving it at another such exchange for transmission to the first mentioned exchange for deposit in that box.
- 1.3.5. In addition to the means of service prescribed, service may also be made as follows:-
- (a) in any case where the person to be served is, or after inquiry appears to be, absent from New South Wales, the service may be on the agent of that person by any of the means prescribed by sub Section 1.3.3. (a), (b), (c) or (d); and
  - (b) in any case where the land, building or premises are unoccupied and the owner or the owner's address or place of residence is not known to the council, the service may be by advertisement in the approved form published in a newspaper circulating in the district in which the land, building or premises are situated.
- 1.3.6. The notice may be addressed by the description of "rateable person" or "owner" or "occupier" of the land, building or premises (naming or

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otherwise sufficiently indicating the same) in respect of which the notice is served, and without further name or description.

- 1.3.7. Proof by affidavit or orally that a notice has been posted in accordance with this Section is conclusive evidence of service. A justice of the peace is authorised to take and receive an affidavit, whether any matter to which the affidavit relates is or is not pending in any court.
- 1.3.8. A person may make representations concerning the order. The issuing, or other authorised officer, is required to hear and to consider any representations made. If, in the opinion of an authorised officer, there are mitigating circumstances which are beyond the jurisdiction of the authorised officer, then the matter shall be referred to Council for determination.
- 1.3.9. After hearing and considering any representations made concerning the order, the authorised officer or Council, may determine to:
  - (a) accept the particulars without modification or with such modifications as it thinks fit; or
  - (b) reject the particulars.
- 1.3.10 Where an order served is likely to have the effect of making a resident homeless, Council must ensure there is alternative accommodation in the city.
- 1.3.11 The authorised officer may revoke or modify the order at any time.
- 1.3.12 Any notice issued must notify the recipient of their right to appeal to the Land and Environment Court against the order or parts of it and the specified period within which the appeal may be made.

**Entering Land and Carrying Out Works (Terms of Order) (Section 191 of the Local Government Act – Sec. 121zj of the Environmental Planning and Assessment Act)**

- 1.4 At the expiration of the time stated on an Emergency Order issued under part 1.1.3 of this policy, or an Order/Notice issued under part 1.3.2, the authorised officer will check to see if any written response to the issue of the order has been received by Council and if no response has been received, re-inspect the property/building to determine the next appropriate course of action to be taken. If a written response has been received by Council, the authorised officer will determine the validity of claims made in the correspondence and make an appropriate response to the correspondence in accordance with part 1.3.8 and 1.3.9.

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- 1.4.1 If in the opinion of the authorised officer, the action required has been completed, a notation should be made on the file and no further action should be taken in regard to the original complaint. The complainant (if known) will be advised in writing, or if a contact number is available, per phone.
- 1.4.2 If in the opinion of the authorised officer, the required work has not been completed, the authorised officer will make arrangements for the work to be completed or begin prosecution procedures. Any quotes obtained should be in compliance with Councils Purchasing Policy.

Notice of Intent to Enter Premises (Sec. 193 of the Local Government Act)

- 1.5 Authority to enter premises.
  - 1.5.1. Before Council, or an agent for Council, can enter any premises, the Council must give the owner or occupier of the premises written notice of the intention to enter the premises. The notice must specify the day on which the person intends to enter the premises and must be given before that day.
  - 1.5.2. A power to enter premises, or to make an inspection or take other action on premises, may not be exercised unless the person proposing to exercise the power is in possession of an authority and produces the authority if required to do so by the owner or occupier of the premises.
  - 1.5.3. The authority must be a written authority which is issued by the council and which:
    - (a) states that it is issued under this Act; and
    - (b) gives the name of the person to whom it is issued; and
    - (c) describes the nature of the powers conferred and the source of the powers; and
    - (d) states the date (if any) on which it expires; and
    - (e) describes the kind of premises to which the power extends; and
    - (f) bears the signature of the general manager.

**2. Protection of the Environment Operations Act (POEOA)**

- 2.1. Upon receipt of a complaint concerning an alleged offence against the POEOA or it's Regulations, that may result in action being taken by Council, an authorised officer will investigate the matter to determine what action should be taken by Council; or As a result of general patrols an authorised officer discovers a possible breach of the POEOA or its Regulations, the authorised officer will investigate the matter to determine what action should be taken by Council. Dependant upon the seriousness of the alleged offence,

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an authorized officer will generally caution the offending party, and advise owner/occupant of their obligations under the provisions of the POEOA in regard to the specific breach of the Act that has occurred.

- 2.1.1. If in the opinion of the authorised officer, the complaint is not valid, a record of the findings will be made on the property file and no further action will be taken, and the complainant (if known) will be advised in writing, or if a contact number is available, per phone.
- 2.1.2. If in the opinion of the authorised officer, the complaint is valid, and is not of a serious nature, the authorised officer will generally caution the owner/occupier of the property advising the owner/occupier of the complaint and request action be taken to remedy the problem. A record of the findings will be made on the property file and no further action will be taken. The complainant (if known) will be advised in writing, or if a contact number is available, per phone.
- 2.1.3. If in the opinion of the authorised officer, the complaint is valid, and is of a serious nature, the authorised officer may issue an appropriate order/notice/direction to the owner/occupier of the property for specific action to be taken. A record of the findings will be made on the property file and the complainant (if known) will be advised in writing, or if a contact number is available, per phone. The authorised officer will re-visit the complaint after the specified time stated in the order/notice/direction to ensure action has been taken and completed.
- 2.1.4. On any subsequent complaint and investigation and, if in the opinion of the authorised officer, the complaint is not valid, a notation should be made on the file and no further action should be taken. The complainant (if known) will be advised in writing, or if a contact number is available, per phone.
- 2.1.5. On any subsequent complaint and investigation, and, if in the opinion of the authorised officer, the complaint is valid, an appropriate Order/Notice/Direction may be issued to the owner/occupier of the property for specific action to be taken. A record of the findings will be made on the property file. The complainant (if known) will be advised in writing, or if a contact number is available, per phone. The authorised officer will re-visit the complaint after the specified time stated in the order/notice/direction to ensure action has been taken and completed.
- 2.1.6. An order is given by serving a copy of the order on the person to whom it is addressed and takes effect from the time of service or a later time specified in the order. If appropriate in the circumstances of the case,

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an order/notice/direction may direct two or more people to do the thing specified in the order jointly.

2.1.7. During this period the authorised officer should gather evidence of the alleged offence by way of photo's, confirmation with Police or by any other appropriate means in case of later prosecution procedures being undertaken.

## 2.2. Clean-Up Notices (Sec. 91 of the Protection of the Environment Operations Act)

A clean-up notice may be issued when a leak, spill or other escape or deposit of a substance that results in pollution is likely to occur, has occurred or is occurring, not just once it has occurred, as clean up action may include: 'action to prevent, minimise, remove, disperse, destroy or mitigate any pollution resulting or likely to result from a pollution incident. A clean-up direction may be issued in writing, or orally. An oral clean-up direction must be confirmed by a written clean-up notice within 72 hours, or it ceases to have effect. There is no right of appeal against a clean-up notice.

2.2.1. Dependant upon the seriousness of the breach, and if in the opinion of the authorised officer, the complaint is valid, the authorised officer may immediately issue a clean-up notice or noise/smoke prevention notice under the provisions of the Protection of the Environment Operations Act and its Regulations. However, in relation to minor issues, a caution will generally be given, and advice can be given to the alleged offender. The complainant (if known) will be advised in writing, or if a contact number is available, per phone.

2.2.3. In the case of an Order being raised under the provisions of the Protection of the Environment Operations Act, the Administration fee associated with the issue of the notice may be waived in accordance with Councils Waiving of Notice Preparation Fees Policy.

## 2.3. Noise Control Notice (Sec. 264 of the Protection of the Environment Operations Act)

2.3.1. An authorised officer may issue a Noise Control Notice to a person, prohibiting the person from causing, permitting or allowing any specified activity to be carried on at a premises, or any specified article to be used or operated at the premises, or both, in such a manner as to cause the emission from the premises at all times or on specified days, or between specified times on all days or on specified days, of noise that, when measured at any specified point is in excess of a

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specified level. A noise meter is required to be used in conjunction with this notice.

2.3.2. Dependant upon the seriousness of the breach, and if in the opinion of the authorised officer, the complaint may be valid, the authorised officer will investigate the complaint by the use of noise monitoring equipment.

2.3.3. An authorised officer may issue a Noise Control Notice to the owner/occupier of a property if it is deemed the noise is in excess of a specified level.

2.3.4. In the case of an Order being raised under the provisions of the Protection of the Environment Operations Act, the Administration fee associated with the issue of the notice may be waived in accordance with Councils Waiving of Notice Preparation Fees Policy.

2.4. Noise Abatement Direction (Sec. 276 of the Protection of the Environment Operations Act).

2.4.1. If it appears to an authorised person that offensive noise is being, or has at any time within the past 7 days been, emitted from any premises, the authorised person may direct the person whom he/she believes to be the occupier of the premises to cause the emission of the offensive noise to cease, or direct any person whom the authorised person believes to be making or contributing to the making of the noise to cease making or contributing to the making of offensive noise.

2.5 Prevention Notice (Sec. 96(2) of the Protection of the Environment Operations Act)

2.5.1. Prevention Notices can only be issued if an activity is being carried out in an “environmentally unsatisfactory manner” as defined in the POEO Act.

2.5.2. Depending on the circumstances, a prevention notice may be issued to:

- the occupier of the premises concerned;
- the person who is carrying on the activity in an environmentally unsatisfactory manner.

When the notice is served on the occupier, but the occupier is not the person carrying out the activity, the occupier must take all available steps to cause the action specified in the notice to be taken.

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- 2.5.3. A prevention notice, or a variation of a prevention notice, operates from the day the notice is given unless a later date is specified, so an Appropriate Regulatory Authority may require action within the appeal period. A person given a prevention notice may appeal against it to the Land and Environment Court within 21 days of being served with it, unless otherwise specified in the Regulations. If the recipient appeals against the notice or its variation, compliance with the notice is still required unless the Land and Environment Court directs that the notice is stayed. In this case the notice does not operate until the stay ceases, or the Land and Environment Court confirms the notice, or the appeal is withdrawn, whichever occurs first.
- 2.5.4. A prevention notice needs to specify actions to be taken or an action plan to be implemented, to prevent the activity being carried out in an “environmentally unsatisfactory manner”.
- 2.6. Smoke Abatement Notice (Sec. 135(b) of the Protection of the Environment Operations Act)
- 2.6.1. An authorised officer may issue a smoke abatement notice if it appears to the authorised officer that excessive smoke is being, or has been, emitted from a chimney on or in residential premises and must be issued within 7 days of the observation.
- 2.6.2. A smoke abatement notice cannot be issued for a chimney that is in or on an incinerator or is used only for smoke originating from outside a residence as these matters are regulated under the Protection of the Environment Operations (Control of Burning) Regulation 2000.
- 2.6.3. The smoke abatement notice may be issued to the person whom the authorised officer believes to be the occupier of the premises. This can include the tenant of a rental property.
- 3. Food Act**
- 3.1 Upon receipt of a complaint concerning unclean or unfit food premises, vehicle or equipment, an authorised officer will investigate the matter to determine what action should be taken by Council.
- 3.1.1. If the authorised officer discovers there may be a breach in the above Act , the authorised officer will determine what action should be taken.
- 3.1.2. If, in the opinion of the authorised officer, the complaint is not valid, a record of the findings will be made on the property file and no further

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action will be taken. The complainant (if known) will be advised in writing, or if a contact number is available, per phone.

- 3.1.3. If, during an authorised officer's routine inspection of a food premises or vehicle, the officer the authorised officer discovers there may be a breach of the Act, the authorised officer will determine what action should be taken.
- 3.1.4. Evidence of any breaches of the Act should be collected such as photo's, samples, etc in case of later prosecution.
- 3.1.5. Where the authorised officer deems the breach to be minor, a verbal warning together with a note on the officers checklist and a letter to the proprietor will be given.

### 3.2 Improvement Notices

Where an authorised officer believes, on reasonable grounds, that:

- (a) any premises used by a food business in connection with the handling of food intended for sale or any equipment or food transport vehicle is in an unclean or unsanitary condition or is otherwise unfit for the purpose for which it is designed or intended to be used, or
- (b) any premises used by a food business in connection with the handling of food intended for sale or any equipment or food transport vehicle does not comply with a provision of the Food Safety Standards with which the food business is required to comply, or
- (c) in relation to any premises used in connection with the handling of food for sale or any food transport vehicle, any relevant food safety program prepared in accordance with the regulations is not being implemented adequately by a food business, or
- (d) any provision of the Food Standards Code with which a food business is required to comply is being contravened in relation to the handling of food intended for sale on any premises, or in any food transport vehicle, used by the food business in connection with the handling of food intended for sale, the authorised officer may serve an improvement notice on the proprietor of the food business.

3.2.1 An improvement notice is to take the form of an order that:

- (a) premises, equipment or a food transport vehicle be put into a clean and sanitary condition, or be repaired, to the satisfaction of an authorised officer, or
- (b) equipment or a vehicle be replaced, or

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- (c) a food safety program be prepared if required by the regulations, or
- (d) a food safety program required by the regulations be revised so as to comply with the requirements of the regulations, or
- (e) in relation to the handling of food intended for sale, measures be taken to implement the provisions of any relevant food safety program required to be prepared by the regulations, or
- (f) in relation to the handling of food intended for sale, measures be taken to implement the requirements of the Food Safety Standards, within a period of 24 hours (or such longer period as is specified in the notice) after the service of the notice on the proprietor of the food business. Before the end of the period specified in the improvement notice, the authorised officer who issued the notice may, on his or her own motion or on the application of the proprietor of the food business, extend the period within which the proprietor of the food business is to take action in accordance with the notice. An improvement notice is to state that it is issued under section 58.

3.2.2. If an improvement notice is complied with, an authorised officer is to note the date of compliance on a copy of the notice. An authorised officer must give a copy of an improvement notice, noted in accordance with this section, to the person on whom the improvement notice was served if requested to do so by the person.

### 3.3 Prohibition Orders

If the authorised officer believes, on reasonable grounds:

- (a) that any of the circumstances specified in section 3.2 above exist, and that:
  - (i) the proprietor of a food business has not complied with an improvement notice within the time required by section 58 for compliance, or
  - (ii) the issue of the order is necessary to prevent or mitigate a serious danger to public health, the authorised officer may serve a prohibition order on the proprietor of the food business in accordance with section 60 of the Act.

3.3.1. A prohibition order is to take the form of an order that:

- (a) no food intended for sale is to be handled on specified premises or a specified part of specified premises, or
- (b) no food intended for sale is to be conveyed in a specified vehicle, or

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- (c) specified equipment is not to be used in connection with food intended for sale, or
- (d) no food intended for sale is to be handled by a food business in a specified way or for a specified purpose, until the proprietor of the food business has been given a certificate of clearance stating that the premises, part of the premises, vehicle or equipment may be used for the handling or conveyance of food intended for sale, or for use in connection with such food, or that the food may be handled in the specified way or for the specified purpose, as the case may be.

3.3.2. A prohibition order is to state that it is issued under section 60.

3.3.3. The authorised officer that made the order must give a certificate of clearance if, after an inspection of the premises, part of the premises, vehicle or equipment, or the way of handling food, specified in the prohibition order, the authorised officer finds that:

- (a) the premises, part of the premises, vehicle or equipment, or the handling of food by the food business in the specified way or for the specified purpose, is not a serious danger to public health, and
- (b) the person on whom the prohibition order was served has complied with the prohibition order and any improvement notices served on the person.

#### 3.4. Scope of Notices and Orders

An improvement notice or a prohibition order may be made with respect to any one or more of the following:

- (a) any premises or any part of any premises, food transport vehicle or equipment specified in the notice or order,
- (b) all equipment contained on any premises or any part of any premises, or in a food transport vehicle, specified in the notice or order, or any specified equipment so contained,
- (c) the handling of food intended for sale by a food business in a specified way or for a specified purpose.

#### 3.5. Notices and Orders to contain certain information.

An improvement notice or prohibition order under this Part:

- (a) must specify any provision of the Food Standards Code to which it relates, and

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- (b) may specify particular action to be taken by a person to ensure compliance with the provision of the Food Standards Code to which it relates.

### 3.6. Request for Re-inspection

3.6.1. The proprietor of the food business whose premises (other than a vehicle) are affected by a prohibition order may at any time after the order has been served make a written request to the person who made the order to cause the premises to be inspected by an authorised officer.

3.6.2. The proprietor of the food business whose vehicle or equipment is affected by a prohibition order may at any time after the order has been served make a written request to the person who made the order to cause the vehicle or equipment to be inspected by an authorised officer:

- (a) at the place where it was originally inspected, or
- (b) if it is not convenient for it to be inspected at that place, at some other place that the person who made the order has agreed to.

3.6.3. If a request for inspection is made under section 63 of the Act and the premises, vehicle or equipment concerned, through no fault of the proprietor of the food business, is not inspected by an authorised officer within the period of 48 hours of the receipt of the request by authorised officer, a certificate of clearance is taken to have been given to the proprietor of the food business under section 60.

### 3.7. Review of decision to refuse Certificate of Clearance

The proprietor of a food business on whom a prohibition order has been served may apply to the Administrative Decisions Tribunal for a review of a decision of the person who made the order to refuse to give a certificate of clearance under section 60 to the proprietor.

## 4. Failure To Comply with Order/Notice

Under the provisions of the Local Government Act, the Environmental Planning and Assessment Act, and the Protection of the Environment Operations Act, any person who fails to comply with an Order/Notice commits an offence. Council may take legal action against any person for failure to comply with an Order/Notice by either Court Action or the issue of a penalty notice. Determination of legal action to be taken shall be considered having regard for Councils Enforcement Policy.

Maintained by:	DDE	Approved by:	GM	Effective Date:	25/07/07
File Number:	C9/7	Council Policy No:	CP91	Version No.:	1
Previous EDate:	N/A	Other Reference:			
Application:					
Attachments:					

**5. Associated Council Policies**

- Enforcement Policy
- Waiving of Notice Preparation Fee

**AUTHORISATION:**

.....  
 Position:       General Manager  
 Date:            ...../...../.....

Maintained by:	DDE	Approved by:	GM	Effective Date:	25/07/07
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