



5. COMPLIANCE

Policy 5.2

BUILDING OVER EASEMENTS

Version 3

5. COMPLIANCE

5.2 BUILDING OVER EASEMENTS

OBJECTIVE:

To provide a policy in regard to existing and proposed structures over easements.

POLICY:

1. That no building or structure of any type be permitted to be constructed over water, sewer or drainage easements without the express written consent of the Council.
2. That where existing buildings or structures are found to be located within a water, sewer or drainage easement, the property owner may be requested to remove the building or structure if and when Council needs to access the infrastructure.
3. That the General Manager is delegated authority to adjudicate any exception to this policy in extreme or unusual circumstances. Extreme or unusual circumstances include:
 - No other reasonable alternative to relocate the structure away from the easement
 - Unreasonable cost to the applicant to relocate the infrastructure and the easement
4. Council staff will review the alignment of infrastructure compared to the documented location of easements whenever reviewing a particular easement and undertake the appropriate actions to correct easement notation if required.
5. Wherever possible new easements for Council infrastructure are to be located in land owned or controlled by the Council.

Maintained by Department:	Development	Approved by:	Council		
Reference:	Dataworks: Policy Register	Council Policy No:	5.2	Effective Date:	11/5/09
Min No:	V1 - 06-349 V2 – 09-189 V3 - TBA	Version No:	3	Review Date:	October 2013
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5. COMPLIANCE

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ENCROACHMENTS ONTO PUBLIC ROADS

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5. COMPLIANCE

5.3 ENCROACHMENTS ONTO PUBLIC ROADS

OBJECTIVE:

To ensure that users of the footpaths and carriage ways are not obstructed, and to encourage uniformity of projections in relation to the streetscape.

POLICY:

Generally buildings will not be allowed to encroach onto the Road Reserve. However for buildings not the subject of normal building line requirements the following exemptions will apply:

Awnings:

- The height of the awning (ie the distance between the footpath and underside of the awning) shall be a minimum of 2.6 metres.
- If required to achieve uniformity with awnings on adjoining premises, Council will consider awnings of lesser height than 2.6 metres.
- If adjoining awnings are greater than 2.6 metres, Council may require the applicant for a new awning to match the awning height of those adjoining premises.
- Awnings must be set back a minimum of 600mm from the kerb line. Council may consider variations from this set back providing the proposed awning is not a post supported awning.

Awning Blinds:

The height above the footpath shall be a minimum of 2.6 metres.

Advertising Signs:

The height above the footpath shall be at least 2.6 metres and must be a minimum 600mm from the vertical projection of the kerb line or carriage way.

Pole signs shall not project further than 1.2 metres into the road reserve. The pole and footings must be within the property boundaries.

Eaves, Cornices, the Like:

The height above the footpath shall be a minimum of 2.6 metres.

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5. COMPLIANCE

Policy 5.4

FOOTPATH TRADING

Version 3

5. COMPLIANCE

5.4 FOOTPATH TRADING

- OBJECTIVES:**
- i) To control the display of goods for sale/display on the footpath/road reserve areas.
 - ii) To encourage the establishment of outdoor seating areas in accordance with clearly documented guidelines.

POLICY:

Council may permit the use of public footpaths for the display of goods (including signage) by an adjacent shop or outdoor eating areas in association with an adjacent restaurant or food premises.

1. General

- (i) Any person lawfully occupying a business premises adjacent to a Council footpath may apply to Council for approval to display goods, place advertising structures or place tables/chairs for dining subject to the terms of this policy.
- (ii) Council does not permit the obstruction of pedestrian accesses / crossings by goods displayed on footpaths, road reserves or other community/public areas unless Council has issued an approval in pursuant to this policy and/or any special conditions applied to any approval.
- (iii) Any approval issued under this policy is renewable annually and will expire on 30 June each year.
- (iv) Council will send a reminder notice to renew the approval at least one (1) month prior to the expiry of the approval which.
- (v) An application to renew an approval shall be submitted to Council no later than two (2) weeks prior to expiration of the expiry date referred to in 1(ii).
- (vi) Applications submitted for renewal within the timeframe referred to in 1(iv) shall ensure, subject to compliance with 1(vi), that the approval in does not expire on 30 June but will remain in place until Council has determined the renewal application and informed the applicant of the decision.
- (vii) Applicants or persons benefiting from an approval under this policy are required to hold a Public Liability Policy of at least \$20,000,000. Council is to be supplied with a certified copy of the insurance policy with application for approval; at least annually with the renewal application; within 7 days of the issuance of a new or replacement policy or upon request. Such a policy is to have Council's interest noted. The applicant/proprietor must indemnify the Council from any liability arising from the agreement to a minimum of \$20,000,000."

- (viii) An approval issued under this policy is invalid in the event that the public liability insurance referred to in 1(vi) expires and the approval remains invalid until such time as a copy of any new or replacement policy is supplied to Council, Council acknowledges receipt and confirms such insurance policy complies with the terms of this policy.
- (ix) The Council reserves the right to cancel or suspend any approval issued under this policy at any time should the terms of this policy and any approval be contravened; should any fees remain unpaid; or should access to the footpath or nearby area be required for construction or repair works.
- (x) Should the requirements of this policy be varied from time to time then persons with the benefit of an approval may be required to comply with the terms of any new or updated policy.
- (xi) Any fees payable for an application for approval, renewal or any other aspect of this policy shall be the subject of annual review by Council in consideration of its annual fees and charges.
- (xii) Should an applicant for approval or renewal under this policy wish to seek a variation from the terms of this policy, then they should clearly state the reasons why the variation is sought and provide justification as to why Council should allow a variation from the policy.
- (xiii) Variations will not be considered for the insurance requirement as outlined in 1(vii) above.
- (xiv) The General Manager has the authority to consider variations in respect of any of the requirements of this policy relating to distances, measurements, clearances and dimensions. All other variations are to be considered by the elected Council.
- (xv) This policy does not apply to the use of footpaths in association with 'special events' (eg Celebrate Lithgow) which are subject to a separate process.

2. Goods on footpaths (including signage)

- (i) There will be clear identification of the area in which goods are intended to be displayed with any application for approval or annual renewal that the applicant supplies to Council.
- (ii) All display areas, if approval is given, shall allow a minimum clearance for pedestrian traffic of at least 1.5m.
- (iii) Goods shall be placed in an area no more than 1.5 metres from the shop front.
- (iv) Notwithstanding 2(iii) goods on footpaths may be displayed on the 'kerb side' of the footpath providing the clearance for pedestrian traffic referred to in 2(ii) is provided and a minimum clearance of 600mm from

the kerb is provided. (NB – The 600mm clearance from the kerb may be reduced where adjacent street furniture is already less than 600mm)

- (v) All goods displayed on the footpath shall be of good quality construction and finishes and shall (if necessary) be secured so as not to cause a hazard in times of high wind.
- (vi) The applicant/proprietor shall be responsible for the goods and any insurance issue arising from goods obstructing access.
- (vii) The applicant/proprietor shall be responsible for the removal of all goods on a daily basis at the close of trading.
- (viii) Display of goods shall be confined to the area of footpath adjacent to the premises. Before consideration would be given to areas not adjacent to the premises, the written consent of the adjoining owner and tenant must be obtained by the proprietor (to use the adjoining footpath frontage).
- (ix) Advertising signs shall have maximum dimensions of 1000mm wide and 1100mm high and shall only contain content associated with the adjacent business.

3. Restaurant Seating

- (i) There will be clear identification of the area in which seating, tables and any associated items are intended to be displayed with any application for approval or annual renewal that the applicant supplies to Council.
- (ii) All restaurant seating, if approval is given, shall allow a minimum clearance for pedestrian traffic of at least 1.5m. Where seating is associated with a table this distance is to be measured with each chair setback 300mm from the table.
- (iii) Restaurant seating shall be placed in an area no more than 1.5 metres from the shop front.
- (iv) Notwithstanding 2(iii) restaurant seating on footpaths may be situated on the 'kerb side' of the footpath providing the clearance for pedestrian traffic referred to in 2(ii) is provided and a minimum clearance of 600mm from the kerb is provided. (NB – The 600mm clearance from the kerb may be reduced where adjacent street furniture is already less than 600mm)
- (v) All seating, tables and associated items to be situated on the footpath shall be of good quality construction and finishes and shall (if necessary) be secured so as not to cause a hazard in times of high wind.
- (vi) The applicant/proprietor shall be responsible for the seating, tables and associated items and any insurance issues arising from obstructing access.

- (vii) The applicant/proprietor shall be responsible for the removal of all seating, tables and associated items on a daily basis at the close of trading.
- (viii) The applicant/proprietor shall be responsible for the disposal of litter and cleaning of the footpath occupied by the outdoor eating area.
- (ix) Placement of chairs and tables shall be confined to the area of footpath adjacent to the restaurant premises. Before consideration would be given to areas not adjacent to the restaurant, the written consent of the adjoining owner and tenant must be obtained by the proprietor (to use the adjoining footpath frontage).
- (x) No advertisements will be permitted to be placed within the agreed outdoor eating area or in the adjoining footpath area unless it complies with the terms of this policy.
- (xi) Outdoor eating furniture shall not restrict the access to public seating facilities. The Council may in certain circumstances agree to the relocation of such facilities at the expense of the proprietor. No interference or use of the facilities will be permitted without the approval of the Council.

Maintained by Department:	Development	Approved by:	Council		
Reference:	Dataworks: Policy Register	Council Policy No:	5.4	Effective Date:	11/5/09
Min No:	V1 - 06-349 V2 - 09-189 V3 (ie New Policy) - 12-476	Version No:	3	Review Date:	14/5/12 26/11/12 July 2017
Attachments:					



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5. COMPLIANCE

Policy 5.5

ENFORCEMENT POLICY

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5. COMPLIANCE

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5.5 COMPLIANCE – ENFORCEMENT POLICY

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OBJECTIVE:

To establish clear guidelines for dealing with alleged or suspected unlawful activity or failure to comply with terms of conditions of approvals, consents or orders.

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POLICY:

- The Policy applies to the investigation and enforcement of alleged or suspected unlawful activity or failure to comply with terms or conditions of approvals, consents or orders.

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- Unlawful activity** means any activity or work that has been or is being carried out:
 - Contrary to an environmental planning instrument that regulates the activity(ies) or work that can be carried out on particular land;
 - Contrary to the terms or conditions of a development consent or other approval under the control of council;
 - Contrary to a legislative provision regulating a particular activity or work
 - Without a required development consent or other approval.

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- The policy covers, but is not limited to, compliance issues in areas such as regulation of development activity, pollution control, regulation of parking, regulation of food premises and control of animals.

1. COMPLAINTS REGISTRATION¹

- All alleged unlawful activity complaints are to be registered in the Action Request system.
- Every complaint is to be assigned to one officer for consideration and determination if further investigation is required. Many complaints received by Council have neighbourhood disputes at their origin and therefore establishing the initial facts is essential before determining if further investigation is needed;
- If further investigation is required, the officer may recommend another department to undertake the task and nominate who is to become the responsible officer or continue with the process themselves;
- The responsible officer should conduct investigations into alleged unlawful activity in accordance with this policy;
- As a complaint proceeds, the responsible officer must complete the Action Request item by providing details of the actions and conclusion of the investigation throughout the processes undertaken;
- Responses to the complainant will be in writing with the exception of minor items specifically listed in Appendix 2.
- Where a verbal response is given to a complainant, the officer providing the information is to record the date, their name and the content of the advice in the Action Request system including specifically identifying the advice was given verbally.
- At all times Council must observe privacy and not provide information to any party that could identify another party.

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¹ In instances where investigation into a matter is triggered by a complaint or customer request

- Responses are to be noted in the Action Request system identifying the content;
- Where letters are sent confirming actions, a full copy or all correspondence is to be placed on the Records management system by the responsible officer.
- Response times will be in accordance with Council's levels of service, however, matters of a serious nature may be escalated for priority treatment.

2. INVESTIGATION PRINCIPLES AND REPORTS

- The checklist attached is to be completed when investigating unlawful activity to determine the next step and if further investigation is needed.
- The complainant will be responded to within 14 days of the reporting of unlawful activity indicating the actions to be undertaken – i.e. if further investigation will occur or not;
- The responsible officer shall provide a report to their immediate supervisor within 14 days of the report of alleged unlawful activity and this report shall include their recommendation on actions, if any are to be taken, regarding the alleged unlawful activity and the need for further investigation if required.
- Council will establish if there is a need for further investigation after the initial consideration of an allegation of unlawful activity. Council may seek an external body's comments but will not rely solely on those comments without satisfying itself of the facts in the issue.
- Anonymous complaints/action requests will not be investigated unless matters of public health or safety are alleged.
- Conflicts of interest will be considered in investigation processes.
- Privacy and confidentiality will be considered in the investigation processes used.
- The principle of procedural fairness will be observed and applied to ensure those who allegations are made against are made aware of the allegations and full investigation and establishment of facts are pursued.

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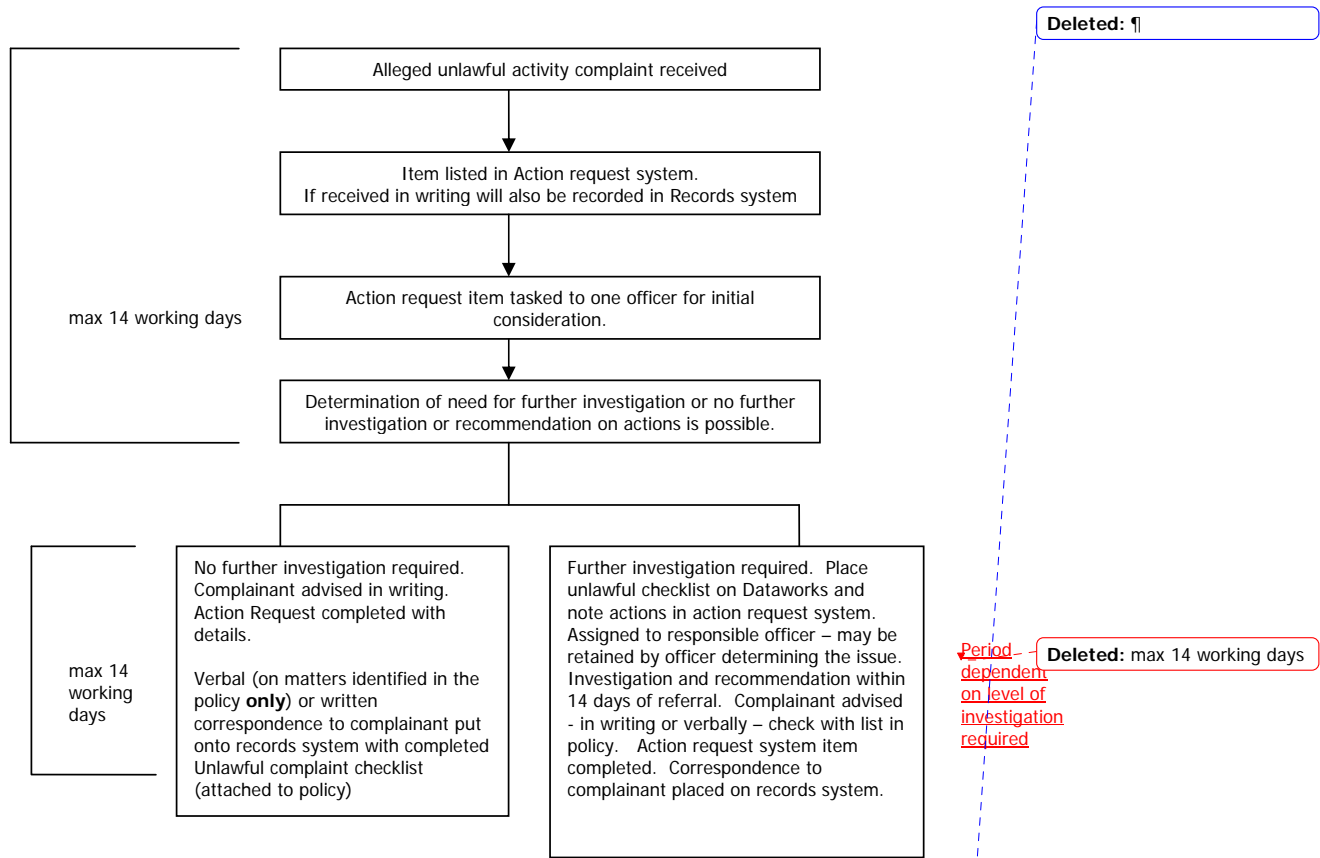
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3. ACTIONS AVAILABLE TO COUNCIL IN CASES OF ALLEGED UNLAWFUL ACTIVITY

Consideration of the principles of reasonableness will be at the heart of the actions taken – options include:

- A warning may be given prior to the issuing of any enforcement action in some situations. Appendix 2 lists such instances;
- Matters where actions without warning will be taken are listed in Appendix 3;
- Referral to an external agency for further investigation or prosecution;
- Taking no action on the basis of a lack of information or evidence;
- Counselling the person or persons subject of the investigation to educate them on the relevant council requirements;
- Negotiating a course of actions to address the areas of concern;
- Advising of the processes of seeking a modification to the development consent conditions;
- Issuing a letter advising the work to be done or the activity to cease in lieu of more formal action;
- Issuing a notice of intention to serve an order or notice under relevant legislation followed by the serving of that notice;
- Issuing a notice requiring work to be done under various legislation;
- Recommendations may include starting legal action such as proceedings in the Land and Environment Court for an order to remedy or restrain a breach of the relevant Act or Regulations;

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- Seeking an injunction from the Land and Environment Court or the Supreme Court;
- Issuing a summons in the Local Court;
- Issuing a penalty infringement notice;
- Taking proceedings for an offence against the relevant Act or Regulation;
- Carrying out the works specified in an order under the Local Government Act, ~~Environmental Planning and Assessment Act; notice under the Protection of the Environment Operations Act; notice or order under the Food Act~~ at the cost of the person served with the notice or order;
- All enforcement actions will be monitored and a decision made in relation to non-compliance within a 2 week period of any deadline imposed.

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4. TAKING ENFORCEMENT ACTION

When taking enforcement action. Council will consider the circumstances of the case, including these issues:

- Has the Council created an estoppel situation? ²
- Council will consider the reasonableness and proportionality of actions and consider the issue in terms of the public interest;
- The effects of the unlawful activity will be considered with regard to the local area taking into consideration the impact on amenity, health, safety, environmental issues for example.
- Is the breach a technical one only? For example a minor or inconsequential change to the plans done during construction.
- If considering prosecution action, Council will consider if there is admissible evidence that establishes the offence beyond all reasonable doubt, is there a reasonable prospect of conviction and are there discretionary factors to consider?
- If consent had been sought, would it have been given? This would be a particular consideration if the owner has sought approval of their own volition.
- Are there particular circumstances of hardship which should be considered?
- Does the person who is the subject of the complaint show due contrition?
- Council will consider if an educative process would yield better results, however, will continue to monitor the situation to ensure it is satisfied with the case.
- If there is a draft local environmental plan or other planning instrument on exhibition that would allow the activity the Council will consider deferring any actions giving the owner time to lodge an application that would be compliant with the new instrument.

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5. DELEGATIONS

Delegations of Council staff are reflected in their individual delegations and authorities.

² Estoppel prevents a person from later denying conduct or words which have been relied upon previously. For example, if Council had previously advised no action would be taken, ~~or despite being advised of the issue no action was taken.~~

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Maintained by Department:	Environment and Development	Approved by:	Council		
Reference:	Dataworks: Policy Register	Council Policy No:	5.5	Effective Date:	11/5/09
Min No:	V1 - 07-542 V2 - 09-189 V3 - TBA	Version No:	3	Review Date:	October 2013
Attachments:	1. Unlawful Activity Complaint checklist 2. Offences where a warning may be given 3. Offences where a warning will not be given				

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UNLAWFUL ACTIVITY COMPLAINT CHECKLIST

Issue: _____

Officer investigating: _____

Date: _____

DA number: _____

Property number: _____

Customer Acton request number: _____

Dataworks doc number: _____

Issue	Y/N – circle one	Response/comments
Is the matter within the jurisdiction of the Council?	Y / N	If yes proceed with investigation checklist. If no note and ensure complainant is advised in writing and if possible identify for them who is the appropriate authority.
Is the complaint premature – eg does it relate to some unfinished aspect of work that is still in progress?	Y / N	If yes, identify is premature note on Action Request system. It may highlight the need for a follow up inspection and the officer should note that for future action and schedule in their diary. The complainant is to be notified in writing and a copy of the correspondence placed in the Council's records system. If not premature proceed with investigation assessment.
Is the activity or work permissible with or without consent?	With consent / without consent	If permissible without consent note on the Action Request system and provide written confirmation of this to the complainant File on Council's Records system a copy of the correspondence. If requires consent check to determine if consent has been given.
Is the complaint frivolous, vexatious or trivial?	Y / N	If yes identify as such noting on the Action Request system and providing written confirmation of this to the complainant. A copy of the written correspondence needs to be authorised by the departmental manager and placed on the Records system. Actions are to be completed with 7 days of complaint.
How much time has elapsed since the events the subject of the complaint took place?	Note number of days/weeks	_____ days / weeks have elapsed
Is the activity having a significant detrimental environmental effect?	Y / N	If yes review in terms of relevant legislation to determine appropriate action and immediacy
Is the activity causing a risk of public safety?	Y / N	If yes review in terms of relevant legislation to determine appropriate action and immediacy
Does the complaint indicate one of a series of complaints on the same or similar matters?	Y / N	If yes, this may establish a pattern of conduct that requires immediate attention by the officer depending on the issues involved.

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Is there a public interest to investigate the complaint?	Y / N	If yes proceed with investigation. Even if the answer to this is no, there may be a Council priority or policy that indicates this is an area of focus and the investigation should proceed.
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RECOMMENDATION:

Is further Investigation needed? YES NO

If yes, Who will undertake the further investigation?

Date issue tasked to the officer: ____ / ____ / ____

If no, What reason(s) is (are) noted for not proceeding:

Signed: _____ Position: _____

ACTION REQUEST SYSTEM FILES COMPLETED:

Date: ____ / ____ / ____ Officer completing: _____

CORRESPONDENCE TO COMPLAINANT:

If verbal advice given: Date: ____ / ____ / ____ Noted on Action Request:

Letter sent: Date ____ / ____ / ____ Dataworks Doc number: _____

Action request system item completed: Date ____ / ____ / ____

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Offences which may result in prior warning being given before enforcement action is taken.

Council **may** determine to issue a warning before any enforcement action in the form of the service of an order or notice or penalty infringement notice or court action in the following matters:

Advice to the **Complainant** on the actions Council will take/has taken will be in writing except in the following circumstances, which are of a minor nature, where advice may be given verbally. All verbal advice is to be noted (date, time, officer advising, advice given) in the Council's Action Request system:

- Advertising signs without approval or that are unsightly
- Air pollution – smoky chimney
- Barking/Roaming/Unregistered dog
- Commercial swimming pool not properly maintained
- Erosion or sediment control matters
- Noise pollution arising from air conditioner, intruder alarm, musical instruments or sound equipment, power tools, motor vehicles on residential premises or the use of refrigeration equipment fitted to a motor vehicle –each requires a warning to be issued.
- Obstruction of a public place/road where is a minor matter
- Residential swimming pool issue – not serious (example – failure to display resuscitation chart)
- Deposit litter from a vehicle
- Deposit litter/ Dumping rubbish
- Dllapidated building
- Fire hazard threatening an asset
- Land clearing of a minor nature
- Littering
- Not complying with condition of development consent/ approval to operate
- Open burning without approval or not in accordance with an approval or cause excessive smoke
- Pollute waters
- Parking offences
- Remove and or damage trees
- Swimming pool fence/gate open
- Street trading without consent
- Minor hygiene or cleanliness non-compliance for Skin Penetration Premises
- Minor food premises matter.

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With regard to the person alleged to have been acting unlawfully, Council **may** determine to issue a warning before any enforcement action in the form of the service of an order or notice or penalty infringement notice or court action in the following matters:

- Annual Fire Safety Statement – non-submission by owner – subject to submission within 7 days of request
- Advertising signs without approval or that are unsightly – subject to lodgement of DA within 7 days and/or removal
- Air pollution – smoky chimney
- Barking/Roaming/Unregistered dog
- Commercial swimming pool not properly maintained – subject to compliance in 7 days

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- Development/Activity without consent or not in accordance with consent conditions where there is minor development or an old unauthorised development or where there is a minor breach of conditions
- Erosion or sediment control matters (owner/builder/ no prior warning) – subject to compliance in 14 days
- Fire hazard of a minor nature
- Noise pollution arising from air conditioner, intruder alarm, musical instruments or sound equipment, power tools, motor vehicles on residential premises or the use of refrigeration equipment fitted to a motor vehicle –each requires a warning to be issued
- Non compliance with an Order/Notice/Direction where works partially completed and demonstrated mitigating circumstances can be specified which have caused delay in completion
- Obstruction of a public place/road where is a minor matter
- Residential swimming pool issue – not serious (example – failure to display resuscitation chart)
- Revocation of approval – example footpath dining/ public place entertainment – subject to compliance in 7 days
- Minor non-compliance with Food Standards Code provided no previous warning given
- Failure to have wastewater system serviced in accordance with approval to operate – subject to service report received with 7 days of requests and no previous warning.
- Onsite wastewater system not registered.\
- Minor hygiene or cleanliness non-compliance for Skin Penetration Premises

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Note : this list is indicative – all offences will be considered on the merits established in the policy.

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Offences where no warning will be given

Council **may** determine not to issue a warning before any enforcement action in the form of the service of an order or notice or penalty infringement notice or court action in the following matters:

- Dangerous Dog Order/ Attacking Dog/Restricted Dog
- Dangerous awning/building
- Dangerous waterhole
- Deposit litter from a vehicle
- Development not in accordance with consent that gives cause to a risk to safety, health, bush fire protection compromise or where notice of intention is issued by PCA
- Deposit litter/ Dumping rubbish
- Dilapidated building
- Environmental damage of a significant nature
- Erosion and sediment control matters
- Fire hazard threatening an asset
- Food safety matters of a serious nature
- Failure to pay clean up fee/ Prevention Notice fee
- Failure to comply with notice/order/cease use of premises/ failure to comply with order regarding development consent/ demolish remove unlawful building/ threatening life/ public safety/ environment/ amenity protection/ fence land/ keeping of birds and animals/ remove object from public place/ contravene noise control notice/ noise pollution.
- Land clearing of a significant nature
- Littering
- Noise abatement direction
- Noise pollution generally after prescribed mandatory warning
- Not comply with condition of development consent/ approval to operate
- Nuisance Dog Order
- Obstruction of road/ public places – involving safety
- Obstruction/ intimidation/ assault of a council officer
- Open burning without approval or not in accordance with an approval or cause excessive smoke
- Pollute waters
- Parking offences
- Pollution incident – failure to notify
- Remove and or damage trees
- Swimming pool fence/gate open
- Street trading without consent/ approval

Note : this list is indicative – all offences will be considered on the merits established in the policy.

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5. COMPLIANCE

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Companions Animals Policy

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5. COMPLIANCE

5.6 COMPANIONS ANIMALS POLICY

OBJECTIVE:

Council's objectives in relation to the management of companion animals are to:

- Manage companion animals in partnership with the community and in accordance with the Companion Animals Act 1998 (NSW).
- Ensure a balanced approach to the effective management of domestic pets recognising the benefits, including improved health and quality of life, as well as the responsibilities of pet ownership.
- Use community education and behavioural change in preference to enforcement.
- Enforce the Companion Animals Act 1998 when necessary.
- Encourage microchipping, registration, picking up of litter and community safety.
- Take proactive measures to ensure that owners of Restricted Breeds and Dangerous Dogs comply with all relevant provisions of the Companion Animals Act and to strictly enforce sanctions when owners of Restricted Breeds and Dangerous Dogs allow dogs to enter prohibited areas such as playgrounds and childcare facilities or cause repeated damage to private property.
- Identify and promote suitable and sufficient off-leash parks and open space areas for dog exercise.
- Install and maintain clear signage and convenient dog-tidy stations in off-leash areas.
- Reduce the number of lost and wandering cats and dogs.
- Educate non-pet owners and children on animal behaviour and how to interact with other people's pets.

Background

Companion animals such as cats and dogs have significant social and health benefits for their owners. Pets teach responsibility to children, give love, comfort and companionship to their owners and provide security, particularly for older people and those who live alone.

Lithgow City Council values pet ownership and is committed to encouraging responsible pet ownership to benefit the whole community, as well as the welfare of the pets.

This Policy is consistent with the aims of *The Companion Animals Act 1998 (NSW)*, which contains regulations relating to pets that must be enforced by Council.

This plan does not apply to parks and open spaces not managed and controlled by Lithgow City Council.

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POLICY:

2.1 Community Education

Education and awareness are the keys to achieving responsible pet ownership and community harmony. There is growing recognition that enforcement of laws will not on its own result in lasting voluntary changes in human behaviour.

Council will undertake a number of key actions in relation to community education on responsible pet ownership including providing educative material, regularly monitoring parks and effectively promoting off-leash areas.

2.2 Legislation – Companion Animals Act

The Companion Animals Act 1998 is designed to benefit pets, their owners and the wider community.

The permanent identification and lifetime registration system which came into effect on 1 July 1999 assists Council in returning lost and injured animals to their owners.

Since 1 July 1999 all dogs and cats in NSW must be microchipped at the point of sale, change of ownership or by 12 weeks of age, whichever occurs first. If a puppy, kitten, dog or cat is purchased in NSW, under the Companion Animals Act 1998 it must be microchipped first.

Council's Key Regulatory Roles under the Act

	Cats
Section 31	The issuing of a nuisance notice or order - issued where a cat persistently makes a noise or the noise continues to such a degree or extent that it unreasonably interferes with the peace, comfort or convenience of any person in any other premise or where a cat repeatedly damages anything outside the property on which it is ordinarily kept.
Sections 92:30; 10A	Issuing of penalty infringement notices - Cats found in prohibited places such as food preparation / consumption areas and designated wildlife protection areas. Note: Roaming cats are not regulated other than in these areas. A notice can also be issued where a cat has not been microchipped, registered or is not properly identified while away from the property on which it is ordinarily kept. Council does not have regulatory powers to restrict roaming cats, unless clear evidence is available that shows the cat is causing a nuisance to neighbours and wildlife.
	Dogs
Section 34	Declaration of a dangerous dog - Council can declare a dog as dangerous where it displays unreasonable aggression or is kept for hunting.
Section 21	The issuing of a nuisance notice or order - issued where a dog is habitually at large, persistently barks or makes a noise that continues to such a degree or extent that it unreasonably interferes with the peace, comfort or convenience of any person in another premise; repeatedly defecates outside the property; repeatedly chases or runs at any person or vehicle; endangers the health of any person and / or repeatedly causes substantial damage to anything outside the property on which it is kept.
Sections 18:57	Seizure of an attacking and / or biting dog and where control requirements associated with restricted breeds are not complied with.
Sections 92:14:12A;	Issuing of penalty infringement notices - Dogs found in prohibited places such as child care centres, children's play areas, food preparation and consumption

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areas (unless in a road reserve), public bathing areas and parks / recreational areas so indicated as prohibiting dogs; and designated wildlife protection areas. Dogs not being contained within a property and not on a leash whilst in a public place other than a designated off leash area; as well as fines for dogs defecating in public place; the sale of a restricted dog or proposed restricted dog; where a dog has not been microchipped and registered.

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2.3 Control of Dogs

Under the *Companion Animals Act 1998 (NSW)* dogs must always be under the effective control of their owners including when they are let off the leash in designated off-leash areas. A dog is not considered to be under the effective control of a person if that person has more than four dogs under his or her control.

Council will encourage all dog owners to enrol their dogs in a training course if they feel they are not able to effectively control their dog.

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Council will also encourage education for non-pet owners (in particular children and their parents) on how to approach other people's dogs and in animal behaviour.

2.4 Off-Leash Areas

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Dogs are required to be restrained while in a public place with the exception of prescribed dog exercise areas. These areas include the designated fenced areas of:

- Endeavour Park, Lithgow
- Montague St , Lithgow
- Lake Wallace, Wallerawang
- Williwa St, Portland

Dog owners need to have control over their dogs and it is required by law that dog droppings must be removed and disposed of correctly.

2.5 Prohibited Areas

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Council considers that people should be able to move freely in the community without loss of amenity due to cats and dogs not being under effective control. Likewise, cats and dogs are important companions to their owners and the rights of owners to enter public places with their pets needs to be protected.

Under Section 14 of the *Companion Animals Act* dogs are prohibited at all times in the following public places:

- food preparation or eating areas,
- school or childcare grounds (unless prior permission from the Principal is granted),
- wildlife protection areas,
- recreation and public bathing areas where signage prohibits,
- within 10 metres of children's play equipment,
- shopping arcades / complexes where animals are prohibited unless secured in a vehicle, or with the permission of the person controlling the place or going to or from a vet or pet shop.

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Under the Act, cat owners must also ensure that their cat stays out of restricted areas including food preparation and wildlife protection areas.

2.6 Dog Litter

Owners have a legal and social responsibility to pick up after their dogs.

Uncollected faeces pose a potential health risk and can impact on creeks and waterways. This is particularly a problem in playgrounds, on sports fields, on neighbour's properties, and on public footpaths.

Lithgow City Council provides dog tidy stations (including dog litter bags) at all off-leash parks and other suitable locations. Council Rangers work to ensure dog owners meet their social and legal responsibility to clean up after their dogs by promoting awareness of these responsibilities, including:

- to take a plastic bag with them when they take their dog for a walk, and
- that it is an offence not to put their dog litter in the bin.

Dog litter bags are also available at Council's Customer Service Centre 180 Mort Street, Lithgow.

2.7 De-Sexing

Lithgow City Council strongly recommends that pets be de-sexed unless they are intended for breeding purposes. Council receives hundreds of unwanted, abandoned, and stray cats and dogs each year. The majority of these animals are the result of uncontrolled breeding and, unfortunately, many must be euthanased because homes cannot be found for them.

A desexed cat or dog is cheaper to register and can save more than two-thirds of the cost of registration.

2.8 Lifetime Registration and Microchipping

Under *The Companion Animals Act 1998 (NSW)* cat and dog owners must take two steps to provide their pet with lifetime protection; permanent microchip identification and lifetime registration.

This two-step system greatly assists Lithgow City Council and other councils in returning pets to their owners in the event that it is lost, hurt or stolen. It also provides Council with a more effective means of keeping track of cats and dogs for the benefit of the wider community.

The Act requires cats and dogs to be identified by microchip by the age of 12 weeks and lifetime registered by the age of 6 months.

Registration Exemptions

The only allowable registration exemptions are provided for in Section 17 of the Companion Animals Regulation 2008:

There is an exemption from payment of a registration fee for the registration of the following:

- (a) any animal the Director-General is satisfied is in the service of a public authority,
- (b) a working dog.

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Note: A working dog is defined in [the Act](#) as a dog used primarily for the purpose of droving, tending, working or protecting stock.

2.9 Lost, Seized and Surrendered Animals

Lithgow City Council will seek to return all unaccompanied pets safely home to their owners.

Where this is not practicable, or where a dog is found straying on more than one occasion, the animal will be taken to Council's Animal Holding Facility. Once at the facility the owner will be given 14 days to claim a registered dog or cat or seven days to claim an unregistered animal, before the animal becomes the property of Council.

Animals will not be released from the pound until all appropriate fees and charges are paid and the animal is microchipped and registered.

The only exception to not charge a registration fee is if the owner agrees to have animal desexed within 28 days of leaving the Animal Holding Facility. The owner can then pay the lower registration fee immediately there afterwards.

An animal can be surrendered to Council by filling in a Surrendered Animal form and submitting this to Council with the appropriate fee. Drop off cages are also available at Council's Animal Holding Facility where stray animals, or animals seized by the Police or other agencies, can be taken outside of the facility opening hours.

Under the Companion Animals Act, once an animal becomes the property of Council, Council Rangers will make an assessment of the animal and decide whether the animal is suitable for rehousing or passing onto a welfare agency. Otherwise, the animal will be euthanased by a Veterinarian.

Council will seek to rehouse or foster animals to accredited animal welfare agencies where applicable.

Rangers will only rehouse animals when they can be assured that the applicant can adequately care and house the animal and that the animal won't impact on neighbourhood amenity.

The euthanising of animals at Council's Animal Holding Facility is completed by a qualified Veterinarian and this and all other activities at the facility are completed in accordance with Council's Standard Working Procedure for the facility.

2.10 Cat Management

Under the Companion Animals Act, cats are required to be identified in the form of a microchip or collar and tags that provides the name of the cat and the address and telephone number of the owner.

Cats are prohibited from wildlife protection areas and food preparation areas, and can be declared nuisance cats if they persistently make noise that unreasonably interferes with the wellbeing of neighbours or if they repeatedly damage the property of others.

Council makes a distinction between domesticated pet cats and feral or stray cats (which don't have an owner). If there are feral cats in built areas, they may be trapped and removed by the Council or by residents with consent from the Council.

If a Council Ranger believes a cat to be a feral or stray animal, and not a companion or domestic animal, the animal can be euthanased immediately.

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2.11 Maximum Number of Companion Animals

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Urban or Residential Areas

To maintain the amenity of residential and urban areas and the health and safety of neighbourhoods, Council ~~may restrict the number of companion animals per residential property to reasonable levels when it is considered that companion animals are impacting on residential amenity, eg continual barking dogs, odour issues associated with poor hygiene, or poor management of animal wastes.~~

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When this is demonstrated Council ~~may restrict the number of companion animals over the age of six months per residential property. Whilst each situation will be assessed on its merits Council will use as a guide a maximum of 3 companion animals per residential property with an average residential property being 800 square metres in area.~~ Where there are continuing impacts on residential amenity from companion animals on a particular premise, Council ~~may enforce a further reduction in the number of adult and juvenile companion animals.~~

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To enforce this Council will utilise Order number 18 of section 124 of *the Local Government Act 1993* that stipulates that Council can issue an Order to:

Not to keep birds or animals on premises, other than of such kinds, in such numbers or in such manner as specified in the order

Council can issue this Order to the occupier of the premises in the following circumstances:

- (a) in the case of any premises (whether or not in a catchment district)—of an inappropriate kind or number or are kept inappropriately, or
- (b) in the case of premises in a catchment district—birds or animals (being birds or animals that are suffering from a disease which is communicable to man or to other birds or animals) or pigs

Companion Animals Outside of Residential or Urban Areas

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Kennels, catteries, breeding facilities or facilities for Animal Welfare Agencies all require development approval by Council.

In considering development applications for kennels, catteries etc, Council will give consideration to the "Animal Welfare Code of Practice – Breeding Dogs and Cats" produced by Industry & Investment NSW.

Where companion animals are impacting on rural amenity Council will use all necessary powers under the Local Government and Companion Animals Acts to address this.

2.12 Barking Dogs

Persistent dog barking can be a neighbourhood nuisance and a major source of community complaint. Persistent barking may be caused by boredom, lack of exercise and stimulation, or confinement to an inappropriately small space.

To address dog barking Council will pursue positive and proactive approaches such as:

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- Providing off-leash areas for dogs to socialise
- Providing community education and training for dog owners'
- Providing a citronella collar for residents to hire

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Council Rangers will issue a Nuisance Dog Order where persistent barking is considered to be nuisance behaviour. In serious cases, dog owners may be liable to prosecution.

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2.13 Dog Attacks

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Dog attacks have been shown to have serious consequences.

Lithgow City Council together with the Department of Local Government and RSPCA will work with residents to educate them about animal behaviour and how to avoid attacks. Council Rangers will work with school children in particular to teach them how to safely interact with pets, especially dogs.

Council will also continue to enforce its responsibilities in regard to, "dangerous dogs" and "restricted breeds."

Council Rangers will follow up all serious complaints of dog attacks immediately.

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2.14 Restricted Breeds

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It is an offence in New South Wales to sell, acquire or breed dogs on the restricted dog list including the offspring of restricted dogs:

- American Pitbull terrier or Pitbull Terrier
- Japanese tosa
- Dogo Argentino (Argentinean fighting dog)
- Fila Brasileiro (Brazilian fighting dog)
- Any dog declared by a Council under Division 6 of the Act to be a restricted dog##
- Any other dog of a breed kind, or description prescribed by the Regulation for the purposes of this section

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##This means any dog where the Council is of the opinion that a dog is of a breed or kind of dog on the restricted dog list or a cross-breed of any such breed or kind of dog.

Owners of restricted breeds (and dogs declared 'dangerous') must ensure:

- The dog is desexed.
- The dog is kept in a child proof enclosure.
- A 'dangerous dog' warning sign is clearly displayed on their property.
- The dog at all times wears a distinctive collar and tag.
- The dog is always leashed and muzzled when in public and under the control of a person over the age of 18 years.
- The dog's registration details are up to date.
- Council is immediately notified if the dog attacks or injures a person or animal.

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2.15 Dangerous Dogs

A dog is "dangerous" if it has, without provocation, attacked or killed a person or animal, or, repeatedly threatened to attack or repeatedly chased a person or animal.

“Dangerous dogs” in NSW are dogs that are the subject of a declaration under the Act by a council or a court that the dog is considered dangerous. Council must give notice to the owner of a dog of the Council’s intention to declare the dog to be dangerous.

Police and Council Rangers are empowered to impound dogs declared as dangerous. Owners of dogs declared dangerous must comply with all the conditions for restricted breeds listed above and must not be sold to a person under the age of 18 years.

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