

**FILE NO:** PSC2007-3003

**TITLE:** COUNCIL PROSECUTIONS

**OWNER:** GOVERNANCE SECTION MANAGER

## **1. PURPOSE:**

- 1.1 As part of its role in the community, Council needs to ensure that breaches of law, which it has authority to pursue are dealt with in a consistent and equitable manner. It is also imperative that, in observance of the principles of good government, Council has in place a framework for the proper exercise of powers of enforcement vested in it.
- 1.2 This policy is aimed at providing the basis for separation of powers in relation to Council enforcement of legislation. It is also aimed at ensuring effective use of Council resources in relation to legislative enforcement.

## **2. CONTEXT/BACKGROUND:**

- 2.1 As part of its regulatory role, Council is responsible for enforcing provisions under a number of NSW Acts and Regulations.
- 2.2 This policy recognises the balance between Council's responsibility to enforce legislation and its ongoing objective of enhancing community relations and awareness. It also acknowledges the importance of the separate roles of Council employees, the elected body of Council and the Courts of Law in dealing with alleged offences.

## **3. SCOPE:**

- 3.1 It is through the adoption and use of policies that Council can aim to deal with matters consistently, particularly where such matters have a direct effect on the rights, interests or legitimate expectations of individuals within the community.
- 3.2 This policy is designed to provide guidance as to when and under what circumstances Council will pursue legal action in relation to alleged offences for which it has authority to prosecute. This policy pertains only to summary and criminal offences for which Council is the prosecuting authority; it does not apply to civil law matters involving Council.
- 3.3 Council has a responsibility to try to ensure that breaches of the law are dealt with appropriately and to meet community expectation that pursuit of Council's enforcement functions will be undertaken in a consistent and equitable manner.

A consistent approach also helps Council to deal with breaches of the law in a procedurally sound and cost effective way.

## **4. DEFINITIONS:**

4.1 An outline of the key definitions of terms included in the policy.

|                          |                                                                       |
|--------------------------|-----------------------------------------------------------------------|
| Elected body of Council  | Mayor and Councillors of Port Stephens Council                        |
| Employees                | Those employed by Port Stephens Council                               |
| NSW Acts and Regulations | Various Acts and Regulations passed by the New South Wales Parliament |
| Policy                   | A policy that is adopted by Port Stephens Council                     |

## **5. STATEMENT:**

5.1 Council's mission is to foster a network of people that focuses on achieving best value services and facilities for our Community.

5.2 This envisages that Council will work with the community to achieve its goals. Council sees its role as principally being that of communicating with the community and making each citizen aware of their individual responsibilities in supporting and maintaining a sustainable community.

5.3 In its regulatory role, however, Council has a responsibility to use its enforcement functions when necessary. Legal action is one option available to Council when people purportedly break the law.

5.4 Council, when it becomes aware of alleged breaches of the law, will aim to ensure alleged offenders are treated equitably by having in place internal procedures and guidelines to address a number of issues including:

5.4.1 The intent of the alleged offender and the circumstances surrounding the alleged offence.

5.4.2 Options available to Council to help educate the community and raise awareness about legal obligations and responsibilities with the aim of deterring future similar offences. These options may include alternative dispute resolution procedures as well as sanctions and court action.

5.4.3 Criteria to help ensure reasonableness and procedural fairness.

5.4.4 The quality of evidence available to support Court action.

- 5.4.5 The legal, administrative and other costs associated with Court action.
- 5.4.6 The likelihood of success of any Court action.
- 5.4.7 The potential outcomes of any Court action, including the quantum of any fines that Council might be paid as a result of Court action.
- 5.4.8 The deterrent effect of Court action.
- 5.4.9 Alternatives to Court action, including the issuing of infringement notices.
- 5.4.10 Whether the alleged offence has wider policy implications for Council.
- 5.5 An administrative review panel will be available if required to assess whether or not Council should pursue legal proceedings in relation to alleged offences. Internal review by the administrative review panel will be undertaken at the direction of the General Manager or the General Manager's delegate. Internal procedures will be used to help determine the stages where internal review can take place.
- 5.6 Requests by staff, the elected body of Council or members of the public for internal review of a matter must be made by representations to the General Manager or the General Manager's delegate, who will then determine whether or not such review is to be undertaken. The administrative review panel will make its recommendations to the General Manager or the General Manager's delegate for determination as to whether or not to proceed.
- 5.7 The final decision to prosecute will be made by the General Manager or the General Manager's delegate. The General Manager may, if he or she deems it appropriate, refer particular cases to Council. Council will be kept informed of any prosecutions.
- 5.8 It should be noted that, where possible, Council will attempt to recover all legal costs incurred as a result of legal proceedings it pursues in relation to alleged offences.
- 6. RESPONSIBILITIES:**
- 6.1 The Legal Services Manager is responsible for the implementation of this policy in conjunction with other Council officers as appropriate.
- 7. RELATED DOCUMENTS:**
- 7.1 Council has authority to prosecute under a number of NSW Acts and Regulations, including but not restricted to:

- 7.1.1 Local Government Act 1993 (NSW)
- 7.1.2 Environmental Planning and Assessment Act 1979 (NSW)
- 7.1.3 Protection of the Environment Operations Act 1997 (NSW)
- 7.1.4 Companion Animals Act 1998 (NSW)
- 7.1.5 Biosecurity Act 2015 (NSW)
- 7.1.6 Public Health Act 2010 (NSW)
- 7.1.7 Swimming Pools Act 1992 (NSW)
- 7.1.8 Food Act 2003 (NSW)
- 7.1.9 Public Spaces (Unattended Property) Act 2021 (NSW)
- 7.1.10 Boarding Houses Act 2012 (NSW).

7.2 In addition to the above, the following also relate to this policy:

- 7.2.1 Government Information (Public Access) Act 2009 (NSW)
- 7.2.2 Port Stephens Code of Conduct.

## CONTROLLED DOCUMENT INFORMATION:

|                                                                                                                                                                                                                                                                  |                                                                      |                         |            |
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| This is a controlled document. Hardcopies of this document may not be the latest version. Before using this document, check it is the latest version; refer to Council's website: <a href="http://www.portstephens.nsw.gov.au">www.portstephens.nsw.gov.au</a> . |                                                                      |                         |            |
| <b>EDRMS container No.</b>                                                                                                                                                                                                                                       | PSC2007-3003                                                         | <b>EDRMS record No.</b> | 25/311435  |
| <b>Audience</b>                                                                                                                                                                                                                                                  | Port Stephens Community, elected body of Council & Council employees |                         |            |
| <b>Process owner</b>                                                                                                                                                                                                                                             | Governance Section Manager                                           |                         |            |
| <b>Author</b>                                                                                                                                                                                                                                                    | Legal Services Manager                                               |                         |            |
| <b>Review timeframe</b>                                                                                                                                                                                                                                          | 4 years                                                              | <b>Next review date</b> | 26/08/2029 |
| <b>Adoption date</b>                                                                                                                                                                                                                                             | 20 June 2000                                                         |                         |            |

## VERSION HISTORY:

| Version | Date       | Author        | Details            | Minute No. |
|---------|------------|---------------|--------------------|------------|
| 1.0     | 20/06/2000 | Legal Officer | Adopted by Council | 319        |

| Version | Date       | Author                 | Details                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Minute No. |
|---------|------------|------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| 2.0     | 28/03/2017 | Legal Services Manager | Minor administrative review and transfer to new corporate policy template.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | 070        |
| 3.0     | 10/12/2019 | Legal Services Manager | <p>Reviewed this policy, including numbering to each paragraph and updated version control.</p> <p>Policy Owner – now Governance Section Manager</p> <p>1.1 – inserted the word “This” to read “This policy...”</p> <p>2.2– inserted the word “This” to read “This policy...”</p> <p>- replaced “Councillors” with “the elected body of Council”</p> <p>3.2 - – inserted the word “This” to read “This policy...”</p> <p>4 – deleted the definition of “Councillors” and replaced with the definition of “Elected body of Council”</p> <p>5.6 – replaced “Councillors” with “the elected body of Council”</p> <p>6. Policy Responsibilities - Removed a number of personnel listed and replaced with “6.1 The Legal Services Manager is responsible for the implementation of this policy in conjunction with other Council officers as appropriate.”</p> <p>7.1 – deleted references to legislation no longer applicable (Roads Act 1993, Rural Fires Act 1997 and Road Transport Act 2013) and included legislation now applicable (“7.1.5 Biosecurity Act 2015 (NSW)”, “7.1.10 Boarding Houses Act 2012 (NSW)”)</p> | 255        |

| Version | Date       | Author                 | Details                                                                                                                                                                                          | Minute No. |
|---------|------------|------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| 4.0     | 28/06/2022 | Legal Services Manager | Reviewed this policy and made minor amendment:<br><br>Updated policy into new template.<br>Changed the review timeframe to 3 years, in line with process for review of all Council policies.     | 163        |
| 5.0     | 23/09/2025 | Legal Services Manager | Reviewed this policy and updated legislation at 7.1.9.<br>Updated policy into new template.<br>Changed the review timeframe to 4 years, in line with process for review of all Council policies. | 228        |