His Worship the Mayor, Councillor Ross Fowler OAM, speaking at the 2019 Australia Day Citizenship Ceremony on Saturday 26 January 2019 in the Council Chambers at the Penrith Civic Centre.

Policy Review Committee Meeting
11 March 2019
Dear Councillor,

In pursuance of the provisions of the Local Government Act, 1993 and the Regulations thereunder, notice is hereby given that a **POLICY REVIEW COMMITTEE MEETING** of Penrith City Council is to be held in the Passadena Room, Civic Centre, 601 High Street, Penrith on Monday 11 March 2019 at 7:00PM.

Attention is directed to the statement accompanying this notice of the business proposed to be transacted at the meeting.

Yours faithfully,

[Signature]

Warwick Winn
General Manager

**BUSINESS**

1. **LEAVE OF ABSENCE**

2. **APOLOGIES**

3. **CONFIRMATION OF MINUTES**
   
   *Policy Review Committee Meeting - 11 February 2019.*

4. **DECLARATIONS OF INTEREST**
   
   *Pecuniary Interest* (The Act requires Councillors who declare a pecuniary interest in an item to leave the meeting during discussion of that item)
   
   *Non-Pecuniary Conflict of Interest – Significant and Less than Significant* (The Code of Conduct requires Councillors who declare a significant non-pecuniary conflict of interest in an item to leave the meeting during discussion of that item)

5. **ADDRESSING THE MEETING**

6. **MAYORAL MINUTES**

7. **NOTICES OF MOTION TO RESCIND A RESOLUTION**

8. **NOTICES OF MOTION**

9. **DELIVERY PROGRAM REPORTS**

10. **REQUESTS FOR REPORTS AND MEMORANDUMS**

11. **URGENT BUSINESS**

12. **CONFIDENTIAL BUSINESS**

Enquiries regarding this Business Paper should be directed to the Governance Coordinator, Mr Adam Beggs on (02) 4732 7597
TABLE OF CONTENTS

MEETING CALENDAR

CONFIRMATION OF MINUTES

DELIVERY PROGRAM REPORTS
# 2019 MEETING CALENDAR

**January 2019 - December 2019**

(ADOPTED BY COUNCIL - 26 NOVEMBER 2018)

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<tr>
<th></th>
<th>JAN</th>
<th>FEB</th>
<th>MAR</th>
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<th>MAY</th>
<th>JUNE</th>
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<td><strong>Ordinary Council Meeting</strong></td>
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<td>23✓</td>
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<td>16</td>
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<tr>
<td><strong>Policy Review Committee</strong></td>
<td>7.00pm</td>
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<td>12</td>
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<td>21</td>
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<td>9</td>
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❖ Meeting at which the draft corporate planning documents (Delivery Program and Operational Plan) are endorsed for exhibition
* Meeting at which the draft corporate planning documents (Delivery Program and Operational Plan) are adopted
# Meetings at which the Operational Plan quarterly reviews (March and September) are presented
@ Meetings at which the Delivery Program progress reports (including the Operational Plan quarterly reviews for December and June) are presented
^ Election of Mayor/Deputy Mayor
✓ Meeting at which the 2018-2019 Annual Statements are presented
∞ Meeting at which any comments on the 2018-2019 Annual Statements are adopted
+ Meeting at which the Annual Report is presented
> Briefing to consider Budget, draft fees & charges and corporate documents

- Extraordinary Meetings are held as required;
- Members of the public are invited to observe meetings of the Council (Ordinary and Policy Review Committee).

Should you wish to address Council, please contact Governance Coordinator, Adam Beggs on 4732 7597.
UNCONFIRMED MINUTES
OF THE POLICY REVIEW COMMITTEE MEETING OF PENRITH CITY COUNCIL HELD
IN THE PASSADENA ROOM, PENRITH
ON MONDAY 11 FEBRUARY 2019 AT 7:02PM

PRESENT
His Worship the Mayor, Councillor Ross Fowler OAM, Deputy Mayor, Councillor Greg Davies, and Councillors Jim Aitken OAM, Bernard Bratusa, Brian Cartwright, Robin Cook, Marcus Cornish, Kevin Crameri OAM, Mark Davies, Tricia Hitchen, Karen McKeown OAM, and John Thain.

APOLOGIES
PRC 1 RESOLVED on the MOTION of Councillor Brian Cartwright seconded Councillor Tricia Hitchen that apologies be received for Councillors Kath Presdee, Aaron Duke, Todd Carney.

CONFIRMATION OF MINUTES - Policy Review Committee Meeting - 10 December 2018
PRC 2 RESOLVED on the MOTION of Councillor Tricia Hitchen seconded Councillor Brian Cartwright that the minutes of the Policy Review Committee Meeting of 10 December 2018 be confirmed.

DECLARATIONS OF INTEREST
There were no declarations of interest.

DELIVERY PROGRAM REPORTS
OUTCOME 2 - WE PLAN FOR OUR FUTURE GROWTH

1 Planning Proposal to reclassify Council-owned land at 11 - 13 Chesham Street, St Marys

PRC 3 RESOLVED on the MOTION of Councillor Brian Cartwright seconded Councillor Tricia Hitchen

That:

1. The information contained in the report on Planning Proposal to reclassify Council-owned land at 11 - 13 Chesham Street, St Marys be received.

2. Council endorse the Planning Proposal for 11 - 13 Chesham Street, St Marys provided in the separate enclosure to this report.

3. The General Manager be granted delegation to update and finalise the Planning Proposal referred to in resolution 2 prior to Council's submission of the Planning Proposal to the Minister for Planning and Parliamentary Counsel.

4. Council officers forward the Planning Proposal to the Minister for Planning and Parliamentary Counsel with a request to make the local environmental plan amendment.

In accordance with Section 375A of the Local Government Act 1993, a DIVISION was then

This is Page No 1 of the Unconfirmed Minutes of the Policy Review Committee Meeting of Penrith City Council held in the Passadena Room on Monday 11 February 2019
called with the following result:

For                                      Against
Councillor John Thain                      
Councillor Bernard Bratusa                  
Councillor Kevin Crameri OAM               
Councillor Karen McKeown OAM               
Councillor Greg Davies                      
Councillor Mark Davies                      
Councillor Ross Fowler OAM                  
Councillor Jim Aitken OAM                   
Councillor Tricia Hitchen                   
Councillor Marcus Cornish                   
Councillor Brian Cartwright                 
Councillor Robin Cook                       

2 Amending Precinct Plan for the Central Precinct of St Marys Release Area

PRC 4 RESOLVED on the MOTION of Councillor Marcus Cornish seconded Councillor Greg Davies

That:

1. The information contained in the report on Amending Precinct Plan for the Central Precinct of St Marys Release Area be received.

2. The matter be deferred to a future Councillor Briefing.

In accordance with Section 375A of the Local Government Act 1993, a DIVISION was then called with the following result:

For                                      Against
Councillor John Thain                      
Councillor Bernard Bratusa                  
Councillor Kevin Crameri OAM               
Councillor Karen McKeown OAM               
Councillor Greg Davies                      
Councillor Mark Davies                      
Councillor Ross Fowler OAM                  
Councillor Jim Aitken OAM                   
Councillor Tricia Hitchen                   
Councillor Marcus Cornish                   
Councillor Brian Cartwright                 
Councillor Robin Cook                       

OUTCOME 7 - WE HAVE CONFIDENCE IN OUR COUNCIL

3 Procurement Policy

PRC 5 RESOLVED on the MOTION of Councillor Bernard Bratusa seconded Councillor John Thain

That:

1. The information contained in the report on Procurement Policy be received.

2. The Procurement Policy be formally endorsed by the Policy Review Committee prior to being adopted by the Council.

There being no further business the Chairperson declared the meeting closed the time being 7:18pm.
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<thead>
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<td>Pedestrian Lighting Strategy</td>
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<td>2</td>
<td>Compliance and Enforcement Policy and Guidelines</td>
<td>9</td>
</tr>
<tr>
<td>3</td>
<td>Hawkesbury River County Council - Biosecurity Act update</td>
<td>12</td>
</tr>
</tbody>
</table>
THIS PAGE HAS BEEN LEFT BLANK INTENTIONALLY
OUTCOME 1 - WE CAN WORK CLOSE TO HOME

There were no reports under this Delivery Program when the Business Paper was compiled.
OUTCOME 2 - WE PLAN FOR OUR FUTURE GROWTH

There were no reports under this Delivery Program when the Business Paper was compiled
OUTCOME 3 - WE CAN GET AROUND THE CITY

There were no reports under this Delivery Program when the Business Paper was compiled.
### OUTCOME 4 - WE HAVE SAFE, VIBRANT PLACES

<table>
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<tbody>
<tr>
<td>1</td>
<td>Pedestrian Lighting Strategy</td>
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</table>
1 Pedestrian Lighting Strategy

Compiled by: Rebekah Elliott, City Engagement Officer
Dimity Mullane, City Project Officer

Authorised by: Jeni Pollard, Place Manager

<table>
<thead>
<tr>
<th>Outcome</th>
<th>We have safe, vibrant places</th>
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</thead>
<tbody>
<tr>
<td>Strategy</td>
<td>Help make our major centres and important community places safe and attractive</td>
</tr>
<tr>
<td>Service Activity</td>
<td>Support the revitalisation of Penrith City Centre and St Marys Town Centre</td>
</tr>
</tbody>
</table>

Executive Summary

The draft Penrith City Centre Pedestrian Lighting Strategy promotes pedestrian safety, amenity and way finding. It aims to enhance peoples’ experience of the Penrith City Centre at night, supporting the Night Time Economy Strategy and provides Council with a clear approach to addressing identified issues with the existing lighting levels within our city centre.

Following a presentation at a Councillor Briefing on 16 October 2017, Council officers have continued to work on developing the strategy to include specific options for the installation of creative lighting treatments within the Penrith City Centre.

The following report provides an update on the development of a Pedestrian Lighting Strategy including the project background, process undertaken to date, key findings and as requested by Councillor’s further information on the creative lighting treatments.

The report recommends that Council adopt the attached draft Penrith City Centre Pedestrian Lighting Strategy (Attachment 1).

Background

During the development of the Night Time Economy (NTE) Strategy for the Penrith City Centre, Council received feedback that indicated lighting in the city centre for pedestrians in some locations was considered inadequate. This feedback was focused on linkages between parking areas and night time destinations on Thursday, Friday and Saturday evenings. The impact of poor lighting can contribute to the negative perceptions of safety and amenity in the city centre at night and have a detrimental impact on economic and community activity. The NTE strategy also highlighted that the prevalence of roller shutters and the lack of lighting outside shopfronts added to the poor presentation of the city centre at night.

The NTE Strategy identified that lighting could also be used more effectively in creative and artistic ways to define Penrith’s identity as a regional city. In response to this feedback Council commenced a process to develop a Pedestrian Lighting Strategy in 2017 for the Penrith City Centre.

The project had three key objectives. These were:

1. To gain an understanding of the existing lighting levels in the Penrith City Centre;
2. To gain an understanding of the appropriateness of the existing lighting levels in the context of the Australian Standards and the specific needs and condition of each street or area; and
3. To develop a strategy that:
   a. Provides Council with a clear approach to addressing any issues with the existing lighting levels
   b. Promotes pedestrian safety, amenity and way finding
   c. Encourages a reduction in energy use, and
   d. Aims to enhance peoples’ experience of the Penrith City Centre at night and thus support the night time economy.

Scope of the Study
The area chosen for the audit is shown in the map below. In summary, the scope of the study was to include:

1. Penrith City Centre – footpaths
2. Peripheral residential streets
3. Places where people may expect to congregate or travel through, in and around the city centre such as parks, car parks and plazas

Note – the focus of the study was on pedestrian lighting rather than lighting for vehicle movement. This meant that the audit focused on footpath areas rather than roadways.

Process
The development of the Lighting Strategy was undertaken by Ironbark Sustainability (Ironbark). Ironbark were chosen following a competitive selection process and had previously undertaken work for Council including the Sustainable Council Buildings Benchmarking Program (2015) and provided support for the recent residential street light upgrade program. Ironbark has completed a similar strategy for other local government
areas including the City of Melbourne. Ironbark demonstrated throughout the process their capacity to manage the technical aspects of the work, starting with the lighting audit.

**Findings from the Lighting Audit**

Overall the lighting audit of pedestrian pathways in the Penrith City Centre and peripheral residential streets found the lighting assessed to be of a relatively high quality, commensurate with a city centre location.

The pedestrian lighting level audit assessed the lighting levels measured throughout the Penrith City Centre and adjoining peripheral residential areas against the five lighting subcategories for roadways, pedestrian paths and laneways in the Australian Standards for Pedestrian Category Areas (AS/NZs 1158.3 Pedestrian Area Lighting). The categories range from the highest standard of P1 to the lowest of P5. The lighting subcategory achieved in each area was then compared to the targets set in Council’s Public Domain Lighting Policy. To note, Council’s policy is consistent with the Australian Standards for Pedestrian Category Areas.

Footpath lighting along city centre streets was assessed to be of high quality, with the highest subcategory achieved along most segments of the footpath. However, there was a level of variability in the lighting levels recorded. Most footpaths included some segments that fell below the P1 standards and even P2, which is the level required under Council’s lighting policy.

Lighting levels were lower on footpaths along the periphery residential streets with minimum standard observed. Council’s target has a required level of P3 in these areas with most falling below this standard and only achieving P4 or P5. This was in some instances due to the age of the Endeavour Energy asset or due to street trees casting shadows over the footpath.

Six public spaces were audited, three of these were found to fall below standards, including Memory Park and Woodriff Lane which have both been identified for creative lighting treatments to be discussed further in this report.

**Pedestrian Lighting Strategy - Implementation**

The Strategy will guide Council in achieving best practice in the management of pedestrian lighting assets, including street lighting, pathway and open space lighting, and car park lighting.

The role of the strategy is to promote pedestrian safety, improve amenity, assist with way finding, minimise energy use and enhance peoples experience in the city centre at night.

The strategy has three key focus areas:

- **Functional Lighting** - identifies the key issues and actions relating to lighting which provides the ‘base’ level of illumination to assist pedestrians to move about safely and comfortably.

- **Creative Lighting** - introducing lighting which makes the city centre attractive, reinforces a sense of place, is used to highlight certain spaces and as a mode of creative and artistic expression.

- **People Spaces** - Identifies the key pedestrian precincts and provides guidance of the functional and/or creative lighting that should be considered.

Through the recent upgrade works in High Street some of the identified issues were able to be rectified through the construction process.
It is proposed that upgrades to pedestrian lighting and creative lighting installs will be scheduled and undertaken within existing program budgets with a program for creative lighting elements to be delivered through a planned program subject to funding opportunities. Staff will work collaboratively to identify potential funding opportunities to support the implementation of projects, where available.

**Creative Lighting**

Creative lighting in the public domain is an important feature identified in the draft Pedestrian Lighting Strategy. Creative lighting is used to make public spaces attractive, reinforces a sense of place, and is a mode for creative and artistic expression.

The strategy recommends that creative lighting be used to target or highlight specific locations and is to provide contrast to functional lighting with the key objective of highlighting or emphasising particular spaces or features within the public realm. The installation of creative lighting in the city centre will also address a number of priority actions identified in the NTE Strategy including:

- Improved amenity
- Wayfinding
- Connections to parking
- Safety
- Activation

The public spaces suggested for a creative lighting treatment in the draft Strategy include:

- Woodriff Lane
- The Civic Arts Precinct
- Lawler Park
- Memory Park
- High Street Precinct
- Triangle Park
- City Park
- Judges Park
- High Street to Great River Walk

To note the recent construction works in the city centre have included creative lighting elements as outlined in the draft Strategy. The installation of creative light bollards at the linear plazas in High Street was supported by a Federal Government grant and is almost completed. Triangle Park works included two lighting projectors and LED strip lighting to highlight street furniture in the park at night.

Whilst the upgrade works were underway, designs progressed on exploring creative lighting treatments at two pedestrian walkways that provide important links to the priority night time economy precincts of High Street and Woodriff Street to support afterhours access from High Street to parking in Allen Place and Judges Car Park.

At the Ordinary Council meeting on 17 December 2018, Council approved Works on Private Land to undertake the installation of creative lighting elements in both the Broadwalk Arcade
and Woodriff Lane. Through a competitive selection process, Council engaged Steensen Varming in collaboration with KI Studio Pty Ltd to deliver the creative lighting treatments.

Their brief has been to deliver lighting treatments that will integrate into the urban fabric and landscape of the existing spaces, delivering a low-cost high impact solution. The consultants were requested to deliver a design with minimal structural and building impact on surrounding private property.

The intent of the creative lighting treatments is to be unobtrusive during the day while providing a playful and lively experience at night time. They are to create an entry into the recently upgraded High Street precinct of our city centre and assist in the creation of a safe night time environment establishing an atmosphere of warmth, welcome and safety.

To date the consultant has presented concept lighting designs for the two pedestrian laneways to internal and external stakeholders including property managers and the Penrith CBD Corporation. The concept development has been well received, with further attention required to the holistic management of the Broadwalk arcade including maintenance and placemaking outcomes. This is currently being scoped with the relevant department.

The concept development in Woodriff Lane is to utilise existing lighting poles and install a lampshade effect creating a playful, decorative solution that will encourage people to firstly feel safe and secondly to explore the surrounding businesses.

The indicative concept for Broadwalk involves a treatment on Judges Car Park façade and directional pavement treatment linking the Broadwalk to High Street. Staff will continue to work with the consultant and property owners to further develop both concepts with a focus on a placemaking approach focusing on creating the link between both pedestrian arcades and High Street. The concept design documentation is attached for information (Attachment 2).

**Conclusion**

The draft Penrith City Council Pedestrian Lighting Strategy supports Council in further activating our city centre and night time economy, particularly through the installation of creative lighting elements to further facilitate activation, improve safety and the amenity of key public spaces at night.

It is proposed that upgrades to lighting and creative lighting installs will be scheduled and undertaken within existing delivery program budgets this year and next financial year. Staff will work collaboratively to identify potential funding opportunities to support the implementation of projects, where available.

**RECOMMENDATION**

That:

1. The information contained in the report on Pedestrian Lighting Strategy be received.
2. The draft Penrith City Centre Pedestrian Lighting Strategy be adopted.

**ATTACHMENTS/APPENDICES**

1. Draft Pedestrian Lighting Strategy 75 Pages Attachments Included
2. Lighting Concepts 2 Pages Attachments Included
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</table>
2 Compliance and Enforcement Policy and Guidelines

Compiled by: Greg McCarthy, Environmental Health and Compliance Manager
Authorised by: Wayne Mitchell, Executive Manager - Environment & City Development

<table>
<thead>
<tr>
<th>Outcome</th>
<th>We care for our environment</th>
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<tr>
<td>Strategy</td>
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<tr>
<td>Service Activity</td>
<td>Help minimise impacts on the environment from unauthorised activities</td>
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Executive Summary

Regulatory and compliance functions come with significant responsibilities under multiple Acts and statutes. This is an important and critical service that Council provides and one that our community must have confidence in.

Compliance has to be consistent, transparent and supported by robust policies and procedures to protect both Council’s interests and the staff working in this environment. Such policies have been developed in recent years and are based on recommendations by the NSW Government. Key reference documents have included the Model Compliance and Enforcement Policy by the NSW Ombudsman and the Model Code of Conduct by the Office of Local Government. These policies however are recommended to Council and can be adapted to some extent to suit the circumstances and values of our Council and City. It is also good practice for the Council to regularly review these policies to ensure they are contemporary and achieving the desired outcome.

A new Compliance and Enforcement Policy has been drafted that is consistent with the Ombudsman’s model policy.

The policy has been prepared following consultation with Councillors and Council staff. It is recommended the attached policy be adopted by Council.

Background

Penrith City Council is an enforcement authority and its officers are required to make decisions about appropriate enforcement actions when non-compliant issues are identified. Sometimes regulatory and enforcement actions can be complex and difficult to investigate and resolve.

Council has a responsibility under Section 8 of the Local Government Act 1993 to ensure its regulatory activities are carried out in a consistent manner and without bias. To facilitate these requirements, the Compliance and Enforcement Policy was developed and adopted in February 2016 with consideration of the “Model Policy” prepared for Local Councils by the NSW Ombudsman.

The policy addresses a number of important enforcement issues including:

- Council’s compliance and enforcement principles
- Risk based regulation
- Dealing with Unlawful activity
- Managing unreasonable complainant conduct
- Anonymous reports
- Deciding on Enforcement action
- Taking Legal Action
• Shared Enforcement responsibilities
• Private Certifiers
• Building Certificates
• Role of Councillors in Enforcement

Draft New Compliance and Enforcement Policy

A special briefing on Compliance and Enforcement and an initial draft policy was tabled to Council on 5 December 2018. Feedback from Councillors from the briefing and subsequent consultation with staff has been considered and an updated policy has been prepared.

The Current Compliance and Enforcement Policy is three years old and scheduled for review in accordance with our policy register requirements. In that time there has been a new model policy released by the NSW Ombudsman and various other legislative changes. A contemporary new draft policy has been developed and is attached to this report for consideration (Attachment No. 1).

Some key changes to the draft policy include:

Risk Based Approach - The categorisation of complaints has been removed and replaced with risk-based approach that references a risk matrix for decision about the urgency or priority of investigations.

Private Certifiers - A different approach to complaints involving private certifiers. The role and responsibility of Private Certifiers is still acknowledged; it does suggest that Council will investigate if the complaint has not been addressed within a reasonable timeframe. Proposed changes to the Environmental Planning & Assessment Act will help to assist in this situation. The current policy suggests that all complaints be directed to the relevant certifier except for emergency situation such as a safety issue or a pollution event. This is an enhanced service and as such may require additional resources. Workloads in this regard will need to be monitored.

Taking Enforcement Action
A revised section on determining what enforcement action to take. These include considerations about the alleged offence and impact, the alleged offender, the impact of any enforcement action, and potential for remedy.

Councillors and Enforcement
This policy includes an additional section on the role of Councillors in enforcement which builds on the current references in the “Interaction Between Councillors and Staff Policy”

Supporting Guidelines

An internal supporting document known as the ‘Compliance and Enforcement Guidelines’ (Attachment No. 2) has also been updated to provide further details for Council Officers on compliance and enforcement options and conducting investigations. This document will also help to facilitate a consistent approach for departments with regulatory responsibilities and will ensure officers deliver the objectives of the policy. The attached version has been adapted for Council using the December 2015 NSW Ombudsman Enforcement Guidelines. The guidelines are intended to be a dynamic document that will continue to be reviewed and updated as needed by the relevant departments to ensure they remain contemporary.
Legal Services Support

The Legal Services Manager supports the revised policy. It will provide Compliance Officers with support and consistency in managing compliance matters. Importantly, the policy is designed to ensure there is an escalated approach to enforcement action, with the flexibility of taking immediate enforcement action, include legal proceedings, where the gravity of the alleged offence calls for such action.

The policy will also demonstrate the Council’s approach to compliance and enforcement action. Courts will expect compliance and enforcement action to be conducted in accordance with the policy, and the Courts will expect for litigation to be conducted as a last resort, or where the gravity of the alleged offence warrants that action.

Conclusion

Council has a responsibility as an enforcement authority to ensure compliance and enforcement decisions and actions are applied consistently. Community confidence in this function is important. Clear policy is needed to ensure a consistent and transparent approach is taken by all involved. A revised “Compliance and Enforcement Policy” is recommended for consideration to ensure our approach is consistent with best practice in Local Government.

The policy has been prepared incorporating feedback from Councillors and ongoing consultation with an internal working group.

It is recommended the attached policy be adopted by Council.

RECOMMENDATION

That:

1. The information contained in the report on Compliance and Enforcement Policy and Guidelines be received.
2. Council adopt the attached Compliance and Enforcement Policy.

ATTACHMENTS/APPENDICES

1. DRAFT Compliance and Enforcement Policy Feb 2019 17 Pages Included
2. DRAFT Compliance and Enforcement Guidelines Feb 2019 36 Pages Included
3 Hawkesbury River County Council - Biosecurity Act update

Compiled by: Murray Halls, Acting City Presentation Manager - Public Spaces Maintenance
Authorised by: Brian Steffen, Executive Manager - City Assets

<table>
<thead>
<tr>
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<tr>
<td>Service Activity</td>
<td>Maintain Council’s natural areas</td>
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Presenter: Chris Dewhurst, General Manager – Hawkesbury River County Council

Executive Summary
The General Manager of the Hawkesbury River County Council (HRCC) will be briefing Council on their updated approach to providing contemporary weed management education. Known as Community Based Social marketing (CBSM), this approach helps to identify barriers that local landholders face in introducing effective weed management practices on their properties.

Background
The Hawkesbury River County Council is a single purpose authority aiming to administer the Biosecurity Act 2015. The HRCC provides a broad range of weed management services for member Councils – Penrith City Council, Blacktown City Council, Hawkesbury Council and the Hills Shire Council. Each council pays an annual contribution charge of $175,000 to HRCC.

The organisation takes a nil-tenure, landscape approach to weed management across the region, with a focus on early detection of new incursions and containment of high-risk plant species that impact on biodiversity, agriculture and property.

An important strategy in the management of weeds centres around community engagement and education. A key component of the work undertaken by the HRCC surrounds community awareness, with the aim being to provide the community with an effective level of understanding of weed awareness and management strategies.

Penrith City Council currently undertakes a range of education programs through its Bushcare management team that engages school children, community groups and Bushcare volunteers. These programs focus on the impact of weeds, weed identification and active participation in weed management programs.

Public Education and Awareness Campaign
HRCC’s traditional education and awareness programmes were recently subject to a dramatic shift from previous years. The NSW Department of Primary Industries (DPI) is driving a new initiative known as Community Based Social Marketing (CBSM) to help identify the barriers that landholders face that prevent them from undertaking effective weed management practices on their properties.

HRCC is well advanced in its development of two (2) of these projects:
- Fireweed in commercial turf supplies; &
- toxic weeds on horse properties

The organisation was scheduled to commence delivery of these community based social marketing programs in 2019.

HRCC is keen to present to Council how CBSM will be localised in Penrith, and their attempts to incorporate priority weeds.

Conclusion
The presentation by the General Manager of the Hawkesbury River County Council will provide Councillors with an overview of HRCC’s new Community Based Social Marketing education initiative.

RECOMMENDATION
That the information contained in the report on Hawkesbury River County Council - Biosecurity Act update be received.

ATTACHMENTS/APPENDICES
There are no attachments for this report.
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OUTCOME 6 - WE ARE HEALTHY AND SHARE STRONG COMMUNITY SPIRIT

There were no reports under this Delivery Program when the Business Paper was compiled.
OUTCOME 7 - WE HAVE CONFIDENCE IN OUR COUNCIL

There were no reports under this Delivery Program when the Business Paper was compiled
ATTACHMENTS

Date of Meeting: Monday 11 March 2019
Report Title: Pedestrian Lighting Strategy
Attachments: Draft Pedestrian Lighting Strategy
Lighting Concepts
Pedestrian Lighting Strategy

PENRITH
CITY COUNCIL
Prepared for
Penrith City Council

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<th>Author</th>
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<th>Description of changes</th>
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<tr>
<td>V1a</td>
<td>Ross McKirdy, Paul Brown, Keith Harwood, Hannah Snape, Lei Zhong</td>
<td>23/3/2017</td>
<td>First draft for Council comment</td>
</tr>
<tr>
<td>V2a</td>
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<td>8/5/2017</td>
<td>Final draft for Council comment</td>
</tr>
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</tr>
</tbody>
</table>

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Ironbark Sustainability is a specialist consultancy that works with government and business around Australia by assisting them to reduce energy and water usage through sustainable asset and data management and on-the-ground implementation.

Ironbark has been operating since 2005 and brings together a wealth of technical and financial analysis, maintenance and implementation experience in the areas of building energy and water efficiency, public lighting and data management. We pride ourselves on supporting our clients to achieve real action regarding the sustainable management of their operations.

Our Mission
The Ironbark mission is to achieve real action on sustainability for councils and their communities.
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1 EXECUTIVE SUMMARY

The Penrith City Council Pedestrian Lighting Strategy (the Strategy) has been developed in response to the Penrith Night Time Economy Strategy 2015 which identified the need to improve pedestrian light levels in the City Centre.

The role of the Strategy is to:

- promote pedestrian safety
- improve amenity
- assist with way finding
- minimise energy use, and
- enhance peoples’ experience of the City Centre at night.

The Strategy also seeks to help Council achieve best practice management of its pedestrian lighting assets, including street lighting, pathway and open space lighting, and car park lighting.

The Strategy is divided into three key sections:

- Functional Lighting - Identifies the key issues and actions relating to lighting which provides the ‘base’ level of illumination to assist pedestrians to move about safely and comfortably.
- Creative Lighting - Introducing lighting which makes the City Centre attractive, reinforces a sense of place, is used to highlight certain spaces, and may act as a mode for creative and artistic expression.
- People Spaces - Identifies the key pedestrian precincts and provides guidance on the functional and/or creative lighting that should be considered.

The Strategy development process included a detailed audit of pedestrian light levels within the City Centre and peripheral residential areas, and thorough consultation with key staff.

The Strategy defines issues, identifies actions and helps set priorities for Penrith City Centre pedestrian lighting projects. The Strategy will be used as the basis for developing a detailed implementation plan which will outline a program of tasks to be completed and resources required to achieve compliance with functional lighting requirements, implement creative lighting solutions, and to bring Council up to best practice level of management of pedestrian lighting assets.
2 INTRODUCTION

This Pedestrian Lighting Strategy seeks to promote pedestrian safety, amenity and way finding; minimise energy use; and enhance peoples’ experience of the Penrith City Centre at night. The Strategy addresses the functional role that pedestrian lighting plays, but is also based on the understanding that lighting of the public domain can reinforce a sense of place and be a mode for creative and artistic expression. This Strategy will contribute to the identity of the City Centre and its peripheral residential areas, and serve as a medium for promotion, attracting tourism and increasing night-time patronage of businesses.

2.1 Pedestrian Lighting Strategy Focus and Objectives

The Strategy has two key areas of focus:

**Functional Lighting** - provides a ‘base’ level of illumination, ensuring that pedestrians, cyclists and vehicles have a safe and comfortable visual environment at night. Functional lighting is required throughout the Penrith City Centre.

**Creative Lighting** - makes the Penrith City Centre attractive, reinforces a sense of place, and is a mode for creative and artistic expression. Creative lighting will be used to target or highlight specific locations, may be seasonal, dynamic or linked to specific events, and will provide contrast to functional lighting.

Council’s approach to the provision of both functional and creative pedestrian lighting in the Penrith City Centre and peripheral residential areas also seeks to address the key objectives outlined below, and which are described further in Section 4:

- Design Directions
- Safety and Amenity
- People Attraction
- Sustainable and Smart Cities
- Maintenance

2.2 Pedestrian Lighting Strategy Scope

This Strategy provides direction for lighting pedestrian spaces in the Penrith City Centre and surrounds. The areas to which this Strategy applies are identified in Figure 1, and includes existing pedestrian areas as well as planned sites such as the proposed City Park and City Square on Station Street. Pedestrian areas are classified as one of the following:

**City Centre Footpaths** where pedestrian activity is highest in the Penrith City Centre.

**Peripheral Residential Area Footpaths** where City Centre workers and visitors may park vehicles before entering the Penrith City Centre area.
People Spaces where pedestrian activity is high (including park pathways, key connecting routes and car parks) or where people may be expected to meet and gather (including plazas and lanes).

The Strategy seeks to promote pedestrian safety, amenity, way finding and minimise energy use, while enhancing people’s experience of the Penrith City Centre at night. The Strategy defines issues, identifies actions and helps set priorities for Penrith City Centre pedestrian lighting projects.

The Strategy does not apply to the illumination of on-road spaces. However, it is acknowledged that there will be some overlap, whereby in practice public lighting provides illumination for both on-road and pedestrian areas.

Figure 1: Pedestrian areas within the scope of the Strategy

2.3 Pedestrian Lighting Strategy Structure

The Strategy is divided into three key sections:

Section 4 Functional Lighting - This section outlines key issues and actions relating to functional pedestrian lighting in the Penrith City Centre and its peripheral residential areas.
**Section 5 Creative Lighting** - This section defines creative lighting and the outlines the general principles that govern where and how it should be applied.

**Section 6 People Spaces** - Identifies the key pedestrian precincts and provides guidance on the functional and/or creative lighting that should be considered.

Section 2.1 outlines the key objectives that underpin the expected lighting outcome in each area. These objectives are then addressed in an exploration of key issues within Sections 4, 5 and 6. A concise description of each issue is provided, followed by relevant actions.

Although each pedestrian lighting issue can be read independently, key actions under different headings are often related. Some actions also follow a critical path, and may not be able to be completed until previous actions are completed. For this reason, the document should be applied and understood as a whole.
3 BACKGROUND

3.1 What is Pedestrian Lighting?

Pedestrian lighting caters for various types of public spaces, and involves many different lighting types. Figure 2 provides a summary of the main lighting types that Council either manages or pays for. These include:

- pathway/open space lighting which can include lighting of any elements within open space such as BBQ’s, pergolas and features
- car park lighting where the car park is wholly council managed
- residential street lighting which is generally found on minor roads in residential areas
- main road lighting which is generally found on major arterial roads
- foreshore lighting (similar to pathway/open space lighting)

![Diagram of pedestrian lighting types]

**Figure 2: What is pedestrian lighting?**
3.2 Responsibility for Pedestrian Lighting

There are three main management structures for pedestrian lighting infrastructure:

- Council has full responsibility - Councils are fully responsible for many outdoor pedestrian lighting assets (examples are for open space and around some wholly council managed buildings and car parks). Illustrated as the **BLUE** boxes in Figure 2.

- Council has no responsibility - Asset installation, operation and maintenance commonly the responsibility of private owners. Examples include under-awning, shop-front and building security lighting. Illustrated as the **GREEN** boxes in Figure 2.

- Council shares responsibility with Distribution Network Service Provider (DNSP, i.e. Endeavour Energy) - The DNSP is responsible for most maintenance and asset management decisions (for example, unmetered street lighting). Council is responsible for paying part or all costs, and can have responsibility for non-standard (decorative) lighting and shared responsibility for lighting levels. Illustrated as the **ORANGE** boxes in Figure 2.

The majority of the pedestrian lighting assets in the City Centre are street lights owned by Endeavour Energy, especially where peripheral residential areas are concerned. Endeavour Energy maintain ownership of the majority of poles and luminaires, and specify the range of luminaires and poles that can be installed at these locations. Council is responsible for paying for the energy consumption and maintenance of these poles and luminaires.
In 2013 and 2014 the Western Sydney Regional Organisation of Councils (WSROC) and councillors reviewed the ownership structure in preparation for a large-scale LED lighting changeover of Endeavour Energy’s assets. During this process, it became clear that Endeavour Energy intended on retaining its assets. Council cannot acquire these assets without Endeavour’s consent.

Within this Strategy a pragmatic approach to this issue has been considered. This approach is to focus on the outcomes and service levels Council wants to achieve, whilst balancing value for money and quality outcomes.

All of the actions and strategies within this document can be delivered under the current ownership model. If there are any changes to ownership and management responsibility then the actions may require reviewing.

Roads and Maritime Services (RMS) are another key stakeholder when it comes to pedestrian lighting along state roads in the Penrith City Centre and peripheral residential areas. In such instances, Endeavour Energy still maintain ownership of poles and luminaires, however energy and maintenance costs are shared between Council and RMS.

It should also be noted that while the primary purpose of a given public light may be to provide illumination for vehicles or cyclists, for example on footpaths along major roads, in practice this lighting may serve the dual purpose of also providing illumination for pedestrians, and therefore is considered within the scope of this Strategy.

3.3 Stakeholder Engagement

From December 2016 to May 2017 a series of stakeholder workshops were conducted with key Council stakeholders. Council stakeholders included representatives from the following Council departments/areas:

- Assets
- Community Safety
- Transport
- Sustainability
- Landscape
- Cultural Development
- Wayfinding
- Economic Development

The purpose of the workshops was to identify the key issues and actions to be addressed by the Strategy, and to establish desired light levels for key pedestrian areas within the Penrith City Centre. Establishment of desired light levels was in part informed by the
results of a pedestrian lighting level audit conducted across sites in the City Centre in January 2017.

This Strategy incorporates the outcomes of the stakeholder consultations, with actions specifically designed to allow Council to address key issues identified.

While Council can exert significant influence on pedestrian lighting, it is also acknowledged that a wider range of stakeholders need to be consulted and collaborated with to achieve ideal outcomes. As such, Council will seek further consultation with the following external stakeholders:

- Endeavour Energy
- Local Police
- Penrith Valley Chamber of Commerce
- Endeavour Energy
- Roads and Maritime Services (RMS)
- Transport for NSW
- Penrith CBD Corporation

3.4 Strategic and Policy Context

This Strategy aligns with the objectives outlined in the following key Council plans, strategies and policies:

- Penrith Progression - A Plan for Action, 2015
- Penrith Night Time Economy Strategy, 2015
- Penrith City Centre Public Domain Masterplan, 2013
- Penrith City Council Wayfinding Strategy, 2014
- Penrith City Centre Car Parking Strategy, 2011
- Public Art and Place Making Policy, 2011

A number of other background documents were referred to in the development of this Strategy:

- Public Domain Lighting Policy, 2004
- Penrith Civic Arts Precinct Technical Specification, 2015
- Triangle Park Lighting Design, 2016
- Penrith City Council Lighting Level Audit Report, 2017

Of particular importance is the Penrith City Council Lighting Level Audit Report commissioned by Council in 2017 to inform the development of this Strategy. The audit assessed pedestrian lighting levels within the City Centre and peripheral residential areas against both the Australian Standards’ and Council’s own target light levels for pedestrian lighting in the City Centre (established in consultation with key staff). Overall, pedestrian lighting levels were found to be at a relatively high standard with

---

1 AS/NZS 1128.3 Pedestrian Area Lighting
most areas complying to at least minimum Australian Standards. However, some areas failed to meet Council’s desired light level targets. A high-level summary of the audit results is presented in Table 1.

Table 1: Audit findings according to Council’s light level targets.

<table>
<thead>
<tr>
<th>Audited Area (no. of sites)</th>
<th>Target Light Level</th>
<th>Results</th>
</tr>
</thead>
<tbody>
<tr>
<td>Footpaths along City Centre Streets (27)</td>
<td>P2 level</td>
<td>Six footpaths fully comply with target. The remaining 21 footpaths included one or more segments with lighting levels that fell below the requirements of the P2 level target.</td>
</tr>
<tr>
<td>Footpaths along peripheral residential streets (20)</td>
<td>P3 level</td>
<td>No footpaths fully comply with target (though 12 of these included segments that met P3 level).</td>
</tr>
<tr>
<td>Pathways (5)</td>
<td>P1 to P3 level (site-specific)</td>
<td>One pathway complies with Council targets. Overall relatively good levels with four out of the five complying with at least the minimum subcategory of P5 level.</td>
</tr>
<tr>
<td>Public Spaces (5)</td>
<td>P8 level</td>
<td>Two comply with target.</td>
</tr>
<tr>
<td>Car Parks (8)</td>
<td>P11b level (standard car parking) P12 level (disabled car parking)</td>
<td>None comply with target.</td>
</tr>
</tbody>
</table>

Community consultation conducted as part of the development of Council’s Night Time Economy Strategy highlighted a public perception that the City Centre does not have adequate public lighting, and that improvements to lighting of public spaces would assist with the development of the local night time economy. However, the results of the pedestrian light level audit (described above) indicated relatively high levels of compliance with Council’s desired light level targets for some key precincts (e.g. High Street). The apparent conflict between public perception and audit results may be a function of the inconsistent and ad-hoc provision of public lighting in some areas (e.g. a wide range of light types, colours, mounting heights etc.), rather than an accurate assessment of overall light levels. As a result, a key focus of this Strategy is the development of a consistent lighting style or aesthetic across the City Centre, in addition to achieving uniform minimum light levels.
4 FUNCTIONAL LIGHTING

Functional Lighting provides a ‘base’ level of illumination ensuring that pedestrians, cyclists and vehicles have a safe and comfortable visual environment at night. Functional lighting is required within the Penrith City Centre and peripheral residential areas.

Outdoor public lighting of pedestrian areas is vital for ensuring the Penrith City Centre and its peripheral residential areas are accessible, safe and attractive for pedestrians. This is to be achieved by a ‘base’ level of functional lighting. The key purpose of this section of the Strategy is to define the functional lighting requirements for public pedestrian areas within the Penrith City Centre and peripheral residential streets, both in terms of illumination and technical specifications.

The use of functional lighting as specified in this Strategy will help Council achieve the objectives as outlined in Section 2.1.
4.1 Design Directions

The Design Directions objective is concerned with ensuring pedestrian lighting in the Penrith City Centre and its peripheral residential areas is consistent, attractive and balanced. Design Directions specify technical and performance requirements as well as some more general design principles that should be adhered to.

While these Design Directions should apply to all functional lighting, they should also be considered for creative lighting (refer to Section 5), although creative lighting solutions are likely to depart from these directions due to the specific requirements of certain sites (refer also to Section 6).

In general, functional lighting should enable people to navigate easily and comfortably through the Penrith City Centre and its peripheral residential areas. Functional lighting should provide a sense of completeness and continuity throughout the Penrith City Centre and peripheral residential areas, and should present public spaces as warm and inviting. Functional lighting hardware (luminaires and poles) should be selected to minimise capital and maintenance costs, and be a background element in the streetscape. Functional lighting should also consider people with vision impairment who require clear visual cues to navigate through public spaces.

Table 2 below outlines specific issues and associated design responses and actions relating to Design Directions.
<table>
<thead>
<tr>
<th>Ref</th>
<th>Issue</th>
<th>Design Response and Action(s)</th>
</tr>
</thead>
</table>
| 4.1.1| Lighting levels to be appropriate for the space and consistent with the street hierarchy | Lighting levels for pedestrians in the Penrith City Centre and peripheral residential areas shall be consistent and appropriate for the relevant space type, reflecting Council’s functional hierarchy of streets and public spaces.  
Key action(s):  
- Ensure pedestrian lighting achieves the relevant minimum light levels as specified in Section 4.1.                                                                                                                        |
| 4.1.2| Lighting infrastructure to contribute to a coherent and consistent streetscape | Functional pedestrian lighting infrastructure should be elegant and simple, and contribute to a coherent and consistent streetscape.  
Avoid the use of non-standard or decorative luminaires for functional lighting purposes.  
Key action(s):  
- For metered sites (Council-owned and maintained) develop a limited suite of standard luminaires and poles to be used for functional lighting of City Centre footpaths, Peripheral Residential footpaths, People Places and car parks. |
<p>| 4.1.3| Review of Public Domain Lighting Policy and Public Domain Technical Manual | Review and update the existing Public Domain Lighting Policy and Public Domain Technical Manual to cater for updated standards and new technologies (e.g. LED lighting, smart lighting, smart poles etc.) and to align with relevant requirements specified in this Strategy (e.g. light level and control requirements). |</p>
<table>
<thead>
<tr>
<th>Ref</th>
<th>Issue</th>
<th>Design Response and Action(s)</th>
</tr>
</thead>
</table>
| 4.1.4| Smart technology opportunities            | Smart Lighting Infrastructure should be included in all metered pedestrian lighting installations. Council to also advocate to Endeavour Energy the use of smart technology in unmetered installations. Once advocacy successful, Council to select smart controls.  
Smart Lighting Infrastructure should at a minimum include the following:  
- remote dimming  
- time switching  
- identification of maintenance requirements  
Refer also to 4.4.7.                                                                |
| 4.1.5| Under-awning and shop-front lighting     | Retail streets (such as High Street) feature large amounts of shop frontage and under-awning space. Lighting of these features should contribute to a consistent, coherent and attractive streetscape.  
Consistent with actions identified in the Penrith City Night Time Economy Strategy, Council should develop and implement policies and programs to guide under-awning and shop-front lighting displays.  
Council has previously undertaken a study into the under-awning lighting on High Street. The report and its recommendations may form the basis of an under-awning lighting policy, however any policy should:  
- include more detailed exploration of the challenges associated with private ownership of these lighting assets  
- ensure that any policy positions are consistent with those specified in this Strategy  
- review technical performance specifications to ensure they are consistent with best practice  
Key action(s):  
- Develop and implement Under-Awning Lighting Policy  
- Develop and implement Shopfront Display Lighting Program |
<table>
<thead>
<tr>
<th>Ref</th>
<th>Issue</th>
<th>Design Response and Action(s)</th>
</tr>
</thead>
</table>
| 4.1.6 | Guidance and wayfinding | Functional pedestrian lighting installations should align with and complement Council’s Wayfinding Strategy. To assist with navigation and wayfinding, feature lighting may also be used to highlight key landmarks. Landmarks should be chosen based on existing or desired pedestrian circulation patterns. Lighting of landmarks should be carefully designed and targeted to avoid excessive illumination, glare or light spill. Lighting of landmarks should be switched (at a time to be determined by Council). Key action(s):  
- Refer to Section 6. |
Lighting Levels and Controls

Lighting Levels and Controls for City Centre and Peripheral Residential Area Footpaths

Footpaths along streets and roads within the Penrith City Centre and Peripheral Residential Areas are identified and classified as per Figure 3.

![Map of Penrith City and Peripheral Residential Areas](image)

Figure 3: City Centre and peripheral residential area footpaths

The lighting levels specified in Table 3, as defined in AS/NZS 1158.3.1, are to be provided for each footpath type.

Table 3: Lighting levels for footpaths

<table>
<thead>
<tr>
<th>Footpath Type</th>
<th>Lighting Category</th>
</tr>
</thead>
<tbody>
<tr>
<td>City Centre</td>
<td>P2 level  Monday to Thursday - dim to P3 level after 1am</td>
</tr>
<tr>
<td></td>
<td>Friday to Sunday - do not dim</td>
</tr>
<tr>
<td>Peripheral Residential Area</td>
<td>P3 level  Dim to P4 level after 11pm</td>
</tr>
</tbody>
</table>
### Lighting Levels for People Spaces

People Spaces include transport interchanges, plazas, lanes, malls, parks and car parks. Lighting levels specified in Table 4, as defined in AS/NZS 1158.3.1, are to be provided for People Spaces.

<table>
<thead>
<tr>
<th>People Space Type</th>
<th>Lighting Category 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transport interchanges (e.g. Penrith Station Forecourt Plaza)</td>
<td>P6 level</td>
</tr>
<tr>
<td></td>
<td>Do not dim</td>
</tr>
<tr>
<td>Plazas, squares, malls and lanes</td>
<td>P8 level</td>
</tr>
<tr>
<td></td>
<td>Monday to Thursday - Dim to P2 after 1 am</td>
</tr>
<tr>
<td></td>
<td>Friday to Sunday - do not dim</td>
</tr>
<tr>
<td></td>
<td>Provide capacity to temporarily increase light levels for special events (e.g. markets, festivals)</td>
</tr>
<tr>
<td>Major pathways in parks</td>
<td>P2 level</td>
</tr>
<tr>
<td></td>
<td>Dim to P3 after 1am</td>
</tr>
<tr>
<td>Minor pathways in parks</td>
<td>P3 level</td>
</tr>
<tr>
<td></td>
<td>Dim to P4 after 1am</td>
</tr>
<tr>
<td>Standard car parking</td>
<td>P11c level</td>
</tr>
<tr>
<td></td>
<td>Switch off outside hours of use of facility</td>
</tr>
<tr>
<td>Car parking for people with disabilities</td>
<td>P12 level</td>
</tr>
<tr>
<td></td>
<td>Switch off outside hours of use of facility</td>
</tr>
<tr>
<td>Temporary car parking</td>
<td>Do not light</td>
</tr>
</tbody>
</table>

---

2 Dimming to be applied where dimming capability available.
Lighting Levels for Pedestrian Crossings and Kerb Extensions

Existing pedestrian crossings and kerb extensions in the City Centre include those identified in Figure 4.

Figure 4: City Centre pedestrian crossings and kerb extensions

Pedestrian Crossings

The lighting levels specified in Table 5, as defined in AS/NZS 1158.4, are to be provided for pedestrian crossings in the specified environment.

Table 5: Lighting levels for pedestrian crossings

<table>
<thead>
<tr>
<th>Pedestrian crossing environment</th>
<th>Lighting Category</th>
</tr>
</thead>
<tbody>
<tr>
<td>City Centre street with speed limit &lt;= 60 km/h</td>
<td>PX1</td>
</tr>
<tr>
<td></td>
<td>Do not dim</td>
</tr>
<tr>
<td>City Centre street with speed limit &lt;= 50 km/h</td>
<td>PX2</td>
</tr>
<tr>
<td></td>
<td>Do not dim</td>
</tr>
<tr>
<td>Peripheral Residential street</td>
<td>PX3</td>
</tr>
<tr>
<td></td>
<td>Do not dim</td>
</tr>
</tbody>
</table>
Kerb Extensions

Kerb extensions (or ‘blisters’) such as those identified in Figure 4 shall be treated as ‘local area traffic management devices intended to slow traffic’ (other than a roundabout), and lighting provided in compliance with the requirements of AS/NZS 1158.3.1 (Cl 3.2.6.2).

Lighting Levels and Controls for Key Pedestrian Precincts

Some key pedestrian precincts will have specific functional lighting requirements that differ to the general requirements outlined in this section. Section 6 outlines additional requirements for existing key pedestrian precincts. For these and any other key pedestrian precincts identified or developed in the future, switching and/or dimming times are to be determined by Council on a case-by-case basis depending on an assessment of the particular use of the site.

Lighting and Controls for Other Locations and Applications

In addition to the lighting level and control requirements outlined above, Table 6 provides general guidance on the provision and control of lighting in other specific locations.

Table 6: Lighting and controls for other locations and applications in the City Centre and peripheral residential areas

<table>
<thead>
<tr>
<th>Location/Applications</th>
<th>Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lighting in parks</td>
<td></td>
</tr>
<tr>
<td>Areas of high use (off-path)</td>
<td>Lights may be installed with timers in areas of high use.</td>
</tr>
<tr>
<td>Local/neighbourhood parks, linear and house front reserves</td>
<td>Lighting is not appropriate as there is little visitation in these reserves after dark.</td>
</tr>
<tr>
<td>Playgrounds</td>
<td>Lighting is not appropriate as playground activity is better suited to daylight hours.</td>
</tr>
<tr>
<td>Recreation areas including skate parks, basketball courts, BBQs</td>
<td>Do not light unless specifically intended for night time use.</td>
</tr>
<tr>
<td>Lighting for transport - walking, cycling, public transport and vehicles</td>
<td></td>
</tr>
<tr>
<td>Transport nodes</td>
<td>Lights may be installed with timers linked to operating hours of public transport.</td>
</tr>
<tr>
<td>Bike paths</td>
<td>Lights may be installed with timers on popular commuter routes.</td>
</tr>
<tr>
<td>Location/Applications</td>
<td>Requirements</td>
</tr>
<tr>
<td>--------------------------------------------------</td>
<td>-----------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Laneways</td>
<td>Lights may be installed where the laneway provides a logical shortcut for pedestrians.</td>
</tr>
<tr>
<td>Lighting around buildings</td>
<td></td>
</tr>
<tr>
<td>Building security lighting</td>
<td>Lights may be installed with timers directly linked to the operating hours of the building and/or on motion sensors. Motion sensors for all new security lighting installations.</td>
</tr>
<tr>
<td>General</td>
<td></td>
</tr>
<tr>
<td>Uplighting/feature lighting of signs, trees,</td>
<td>Lights may be installed with timers based on a needs assessment. Timers installed linked to operating hours of the associated site or building. Solar powered lights with minimal maintenance requirements are preferred.</td>
</tr>
<tr>
<td>buildings, monuments, art</td>
<td></td>
</tr>
<tr>
<td>Areas of High Vandalism</td>
<td>Lights may be installed, subject to trial in the following order:</td>
</tr>
<tr>
<td></td>
<td>• turning lighting off to deter vandalism</td>
</tr>
<tr>
<td></td>
<td>• using motion sensors</td>
</tr>
<tr>
<td></td>
<td>• increase lighting in accordance with the Crime Prevention through Environmental Design Guidelines</td>
</tr>
</tbody>
</table>


4.2 Safety and Amenity

The Safety and Amenity objective is concerned with providing pedestrian lighting that contributes to reducing people’s perceptions and fear of crime, as well as aiming to increase people’s enjoyment of public spaces. Such lighting may be a mixture of functional and creative lighting.

The issues of safety and amenity cannot be separated. People’s perceptions of safety are influenced by factors such as visual comfort, way-finding, and the ease with which objects and places can be recognised. At night, the presence of artificial light affects these factors. Lighting determines our ability to negotiate the city at night and perform tasks comfortably, efficiently and safely.

People usually only become aware of lighting conditions when they are poor, dysfunctional or intrusive. However, the causes of bad lighting are complex, and often escape our attention. The amount of light is only one factor to be considered when illuminating an area for safety and amenity. Frequently, the distribution, direction and even the colour of light are more important variables. Impressions are also formed by comparison. Dimly lit areas appear darker if contrasted with patches of bright light. Therefore, it is helpful to take an holistic approach to lighting issues.

Table 7 below outlines specific issues and associated design responses and actions relating to Safety and Amenity.
<table>
<thead>
<tr>
<th>Ref</th>
<th>Issue</th>
<th>Design Response and Action(s)</th>
</tr>
</thead>
</table>
| 4.2.1| Glare and light spill                      | - Where relevant, new public lighting schemes shall be compliant with AS 4282 Control of Obtrusive Effects of Lighting.  
- LED lighting shall be used, given that light output from LEDs is directional and can be targeted exactly where it is needed.  
- Any design for new public lighting should aim to minimise upwards light spill from luminaires in accordance with AS 4282 and AS/NZS 1158.6.  
- Any designs for new off-street public lighting schemes should consider the use of full cut-off luminaires and site-specific photometrics (e.g., narrow beam lenses for pathways) to direct light where it is needed.  
- Any design for new public lighting should utilise luminaires that comply with the glare requirements of AS/NZS 1158.  
- Lighting should be dimmed or switched off outside of the hours where the site or road is to be utilised to avoid nuisance lighting for residents. |
| 4.2.2| Colour temperature and colour rendering    | All functional lighting in areas that cater for outdoor evening dining should have colour temperature of 3000K (within the range outlined in AS/NZS 1158.6:2015).  
Functional lighting in all other areas should have colour temperature of 4000K (within the range outlined in AS/NZS 1158.6:2015). Colour temperatures in a given area should be consistent.  
Choice of colour temperature should be in conjunction with appropriate design to limit spill, nuisance lighting and reduce lighting levels outside of peak times.  
Pedestrian lighting shall have a colour rendering index (CRI) of not less than 80, to ensure the natural colour of objects and surfaces can be perceived. |
<p>| 4.2.3| Crime Prevention Through Environmental Design | Lighting designs shall consider the Crime Prevention Through Environmental Design (CPTED) design principles on a case-by-case basis.                                                                                                           |</p>
<table>
<thead>
<tr>
<th>Ref</th>
<th>Issue</th>
<th>Design Response and Action(s)</th>
</tr>
</thead>
</table>
| 4.2.4 | Lighting and CCTV     | • Any new CCTV infrastructure should be selected based on its ability to perform at a wide range of lighting levels and colour temperatures.  
• Due to limitations in CCTV capabilities, the prioritisation of certain colour temperatures over others, as well as increased lighting levels, may be required in locations where high crime exists.  
• Ensure that dimming and switching does not conflict with CCTV needs. |
| 4.2.5 | Dimming and Switching | Lighting is a tool to attract people to spaces. When Council does not want people to be in specific locations or to discourage visitations at certain times lighting should not be provided. The use of switching as well as dimming and lighting removals should be utilised.  
Refer also to Section 4.1. |
4.3 People Attraction

The People Attraction objective is concerned with providing pedestrian lighting that brings more activity into the Penrith City Centre by drawing people in and enhancing their experience once they have arrived. People Attraction is of particular relevance to the Penrith City Centre and People Places, and of less importance for peripheral residential areas.

Creative lighting solutions can play a key role in attracting evening crowds, and as such, the creative lighting solutions outlined in Section 6 are a key element of addressing the objective of People Attraction. However, innovative and well-considered functional lighting can also enhance the attraction to particular public spaces.

Table 8 below outlines specific issues and associated design responses and actions relating to People Attraction.
Table 8: People Attraction issues, design responses and actions

<table>
<thead>
<tr>
<th>Ref</th>
<th>Issue</th>
<th>Design Response and Action(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.3.1</td>
<td>Clear connections between key precincts</td>
<td>The pedestrian connections between key precincts should be clearly articulated to draw people along and encourage seamless movement from one area to another. Key connections include:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• From Riley Street into High Street</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• From Riley Street to the Civic Arts Precinct (via Henry and High Streets)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• From the Civic Arts Precinct into High Street (via Triangle Park)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• From High Street into Woodriff Street</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• From Memory Park into High Street and Woodriff Lane</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• From Penrith Train Station to key precincts including:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>o City Square</td>
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<tr>
<td></td>
<td></td>
<td>o City Park</td>
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<tr>
<td></td>
<td></td>
<td>o High Street Precinct</td>
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<td></td>
<td>o Penrith Stadium (refer also to Section 6.14)</td>
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<td></td>
<td></td>
<td>• From Judges Park through to Union Lane and Station Street (refer also to Section 6.11)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Laneway access from Belmore Street to Henry Street</td>
</tr>
<tr>
<td></td>
<td></td>
<td>A summary of these key connections is provided in Figure 5.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>From a functional lighting perspective, clear articulation of these connections shall be supported by ensuring footpaths are lit to minimum requirements (refer to Section 4.1), however higher light levels may be considered appropriate for the key connections outlined above.</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>Key action(s):</strong></td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Determine light level requirements for key connections.</td>
</tr>
<tr>
<td>Ref</td>
<td>Issue</td>
<td>Design Response and Action(s)</td>
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<tr>
<td>------</td>
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</tr>
<tr>
<td>4.3.2</td>
<td>Adapting functional light levels for specific night time events</td>
<td>Functional pedestrian lighting should be adaptive, such that light levels can be temporarily increased for specific night time events (e.g. night markets, festivals, special events etc.), and returned to normal levels afterwards.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Key action(s):</td>
</tr>
<tr>
<td>4.3.3</td>
<td>Infrastructure for temporary, event-based lighting in key public spaces</td>
<td>Certain streets and public places are likely to host special events. For such locations, supplementary power outlets and ducts for video or computer cables should be included in the design of light poles. Provide underground services and discrete hookups within large open spaces.</td>
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<tr>
<td></td>
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<td>Key action(s):</td>
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</tbody>
</table>
Figure 5: Key pedestrian connections between precincts
4.4 Sustainable and Smart Cities

The Sustainable and Smart Cities objective is concerned with providing pedestrian lighting that minimises negative effects on the environment by maximising energy efficiency, and limiting resource use. It is also concerned with providing and ensuring compatibility with “Smart City” infrastructure, where this overlaps with the provision of pedestrian lighting.

Sustainable Cities

Public lighting is, in many cases, the single biggest energy user for local government. Therefore, the desire to reduce energy usage is a fundamental part of this Strategy.

Reducing the energy usage of public lighting can be as simple as replacing old inefficient lamp technologies such as mercury vapour with efficient LED technology. In such cases lighting levels are maintained with significant gains in energy efficiency. Sustainability becomes more complex when switching, dimming, zoning and light removal are involved. Whilst these actions address sustainability, they can be in conflict with other objectives such as safety and amenity. It is therefore vital to make decisions on switching, dimming, zoning and removal using a Strategy-wide perspective.

Table 9 below outlines specific issues and associated design responses and actions relating to Sustainable Cities.
Table 9: Sustainable Cities issues, design responses and actions

<table>
<thead>
<tr>
<th>Ref</th>
<th>Issue</th>
<th>Design Response and Action(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.4.1</td>
<td>Reducing energy usage associated with public lighting</td>
<td>Key actions:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Replace all existing public lighting with more efficient LED lamp technology</td>
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<td></td>
<td></td>
<td>• Consider the removal of existing public lighting where over-lighting exists or lighting is</td>
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<td></td>
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<td>deemed inappropriate.</td>
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<td></td>
<td></td>
<td>• Ensure all new public lighting utilises the latest smart and energy efficiency technology</td>
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<tr>
<td></td>
<td></td>
<td>• Ensure all new public lighting is designed to the most appropriate lighting level (see</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Section 4.1) to ensure over lighting does not occur.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Use timers, dimmers and motion sensors to switch public lighting off or turn it down when</td>
</tr>
<tr>
<td></td>
<td></td>
<td>it is not needed.</td>
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<tr>
<td></td>
<td></td>
<td>• Use smart city technology such as usage sensors and traffic counters to improve the</td>
</tr>
<tr>
<td></td>
<td></td>
<td>appropriateness of switching and dimming times.</td>
</tr>
<tr>
<td>4.4.2</td>
<td>The desire to minimise energy use whilst seeking to ensure safety</td>
<td>Key action(s):</td>
</tr>
<tr>
<td></td>
<td>and amenity is catered for</td>
<td>• Ensure potential conflicts between reducing energy usage (via switching, dimming, zoning</td>
</tr>
<tr>
<td></td>
<td></td>
<td>and removal) and safety/amenity are minimised by basing decisions on real-world data</td>
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<tr>
<td></td>
<td></td>
<td>such as traffic counts, site usage patterns and public transport timetables.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Utilise smart city technology to create public lighting schemes that can adapt to</td>
</tr>
<tr>
<td></td>
<td></td>
<td>changing usage patterns e.g. increase lighting levels via remote dimming technology</td>
</tr>
<tr>
<td></td>
<td></td>
<td>during festivals.</td>
</tr>
<tr>
<td>4.4.3</td>
<td>Collect environmental data</td>
<td>To assist with environmental reporting and progress</td>
</tr>
<tr>
<td></td>
<td></td>
<td>towards targets, Council will collect environmental data (energy consumption, greenhouse</td>
</tr>
<tr>
<td></td>
<td></td>
<td>gas emissions) for pedestrian lighting.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Refer also to 4.5.3.</td>
</tr>
</tbody>
</table>

**Smart Cities**

The term ‘smart cities’ has emerged in recent years to describe the transformative effect modern technology is having on the way urban infrastructure is used, operated and managed.
As a concept, smart cities is inherently ambiguous owing both to the broad range of asset and infrastructure types within an urban environment and the seemingly endless ways in which technology can be integrated into the application, operation and management of assets and infrastructure. This ambiguity is leading many local governments in Australia to seek to better define what the concept of smart cities means for them.

For Penrith, pedestrian lighting has been identified as having the potential to be both directly enhanced by smart city technology as well as playing a central role in a broader smart city network.

The ability to control pedestrian lighting via remote switching, remote fault reporting and remote dimming are ways in which smart city technology can beneficially augment pedestrian lighting. In addition, the ubiquity, existing power supply and presence above ground level allows pedestrian lights and poles to act as the hubs and nodes of a smart cities network.

Smart City Infrastructure Options

When talking about pedestrian lighting within the context of smart city infrastructure there are two elements to consider.

- How smart city infrastructure can be used to augment pedestrian lighting; and
- How pedestrian lighting infrastructure can be used as a central element within a broader smart city network.

The first element is relatively simple in that it relates to controlling (switching, dimming, colour changing) and monitoring (faults reporting, energy usage) pedestrian lighting assets via a smart city network. For the purpose of this Strategy this capability should be designed into all new lights, both road lighting (owned by Council or Endeavour Energy).

The second element is more complex in that it relates to using pedestrian lighting infrastructure as the backbone of a smart city network as well as a key connection point (either physically or as a wireless node) for other smart city technologies such as sensors and input/output devices. Standard street lights connected to a smart grid system can assist in establishing a smart grid system in a given location and ensuring effective coverage. In addition, smart (or multifunction) poles can be located in certain areas to achieve specific smart city outcomes.

Smart poles are one of the more obvious solutions for leveraging pedestrian lighting infrastructure to create a smart city network. They are generally modular in design and easily adaptable to current and future smart city needs. This allows them to incorporate smart city technologies such as telecommunications, Wi-Fi, community messaging, parking management, data capture, surveillance, people counting, and electric vehicle car charging as well as traditional pole functions (signage and lighting) into a single uncluttered solution. Figure 6 below provides an example of a smart pole and possible features and functionality.
Smart poles also enable councils and others to consider more innovative business models to on-sell the location of the pole for advertising, to telecommunication carriers and others.

Figure 6: Examples of ‘smart pole’ features and functionality

Table 10 below outlines specific issues and associated design responses and actions relating to Smart Cities.

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### Table 10: Smart Cities issues, design responses and actions

<table>
<thead>
<tr>
<th>Ref</th>
<th>Issue</th>
<th>Design Response and Action(s)</th>
</tr>
</thead>
</table>
| 4.4.4 | Planning for smart pedestrian lighting network | Complete an Expression of Interest (EOI) process seeking smart lighting organisations for the installation and management of smart (modular) poles throughout the City Centre (in line with the objectives of this Strategy). EOI to cover:  
  - Use of smart (modular) poles and/or luminaires  
  - Ability to leverage unmetered lighting assets  
  - Smart lighting features (e.g. switching, dimming, colour temperature, fault reporting)  
  - Consideration of other basic (signs, CCTV cameras) or smart cities (sensors, wi-fi, data repeaters) infrastructure to be attached to poles  
  - Investigation of possible revenue opportunities |
| 4.4.5 | Implementation of metered smart pedestrian lighting network | Deliver and maintain metered smart pedestrian lighting network (refer to 4.4.4).  
  Note: modular smart poles are to be used on City Centre streets, and smart-enabled assets are to be installed on unmetered peripheral residential streets. |
| 4.4.6 | Metered pedestrian lighting | Incorporate Smart Lighting Infrastructure (e.g. switching, dimming, colour temperature, fault reporting) into all metered pedestrian lighting.  
  To be achieved by specifying the use of luminaires with 7-pin NEMA PE cell base connected to variable control gear. |
| 4.4.7 | Unmetered smart street lighting network | Liaise with Endeavour Energy to:  
  - advocate for the future proofing of new unmetered street lighting via the use of smart-compatible PE Cell bases such as the 7-pin NEMA base connected to a dimmable control gear  
  - determine minimum smart capabilities (e.g. switching, dimming, colour temperature)  
  - establish governance arrangements (e.g. accessibility to data, ability to dim and relevant levels) |
4.5 Maintenance

The Maintenance objective is concerned with ensuring pedestrian lighting infrastructure is selected and operated in such a way as to minimise maintenance and on-going operating costs.

The maintenance of metered and unmetered public lighting assets is managed separately. The majority of street lighting is unmetered and managed by Endeavour Energy. Metered sites on the other hand are owned and maintained by Council.

The careful selection and design of lighting, as well as keeping the range of approved lighting infrastructure to a manageable portfolio, will help to reduce ongoing maintenance costs. The introduction of “smart lighting” capabilities (remote monitoring and management) also represents an opportunity for improved maintenance service delivery and subsequent improvements to amenity. In general, lighting schemes should be expected to have a minimum design life of 20 years.

Table 11 below outlines specific issues and associated design responses and actions relating to Maintenance.

Table 11: Maintenance issues, design responses and actions

<table>
<thead>
<tr>
<th>Ref</th>
<th>Issue</th>
<th>Design Response and Action(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.5.1</td>
<td>Quality of infrastructure</td>
<td>Ensure that all metered lighting infrastructure used is designed for long life.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Key action(s):</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• All luminaires shall comply with the technical requirements of AS/NZS 1158.6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• All poles shall comply with requirements of the Penrith CBD Public Domain Technical Manual</td>
</tr>
<tr>
<td>4.5.2</td>
<td>Remote monitoring of metered assets</td>
<td>All metered pedestrian lighting installations should incorporate Smart Lighting Infrastructure.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Key action(s):</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Refer to 4.1.4</td>
</tr>
<tr>
<td>Ref</td>
<td>Issue</td>
<td>Design Response and Action(s)</td>
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<tr>
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</tbody>
</table>
| 4.5.3 | Maintaining asset information | Council will collect and maintain information on all metered pedestrian lighting assets. At a minimum this information will include:  
• for new installations, as-built drawings integrated into GIS systems  
• condition of poles, luminaires and cabling (collected at least every four years)  
• relevant safety information on assets as well as asset identification  
• lighting levels (and how they apply to specific installation from an electrical supply perspective) and time settings recommended in this Strategy (documented and followed)  
• Data will be maintained on GIS layers for easy review by relevant staff and users.  
Key action(s):  
• Collect and maintain information on metered assets and assess their condition  
Refer also to 4.4.3. |
| 4.5.4 | Proactive maintenance         | Council will:  
• develop performance criteria and management plans for all metered public lighting installations  
• regularly monitor systems, clean and adjust luminaires  
Key action(s):  
• Introduce proactive maintenance programs |
| 4.5.5 | Lighting in trees            | Lighting attached to trees, including bud-lighting and other types of fixed lighting, should not be used given the risk of damage to the tree itself, and given such forms of lighting are maintenance intensive.  
Instead, where lighting of trees is desired, use pole-based lighting or lighting mounted on other infrastructure.  
Key action(s): |
<table>
<thead>
<tr>
<th>Ref</th>
<th>Issue</th>
<th>Design Response and Action(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>• Avoid bud-lighting or other lighting fixed to trees</td>
</tr>
<tr>
<td>4.5.6</td>
<td>In-ground up-lighting in footpaths</td>
<td>In-ground uplighting in footpaths is maintenance intensive and expensive to operate, as well as leading to increased glare and spill lighting.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Key action(s):</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Avoid in-ground uplighting</td>
</tr>
<tr>
<td>4.5.7</td>
<td>Stakeholder liaison regarding unmetered street lighting assets</td>
<td>Council will liaise with other key stakeholders involved in the operation, maintenance and funding of unmetered street lighting assets (Endeavour Energy and Roads and Maritime Services (RMS)) with a view to achieving improved maintenance outcomes and new technology approvals</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Key actions:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Refer to 4.1.4 and 4.4.7</td>
</tr>
</tbody>
</table>
5 CREATIVE LIGHTING

As discussed in Section 2.1, creative lighting is used to make public places attractive, reinforces a sense of place, and is a mode for creative and artistic expression. Creative lighting will be used to target or highlight specific locations, may be seasonal, dynamic or linked to specific events, and will provide contrast to functional lighting.

Creative lighting should be applied as an overlay to functional lighting within the Penrith City Centre and peripheral residential pedestrian areas (refer to Figure 7) with the key objective of highlighting or emphasising particular spaces or features within the public realm.

Figure 7: Key locations with creative lighting opportunities

Most of the Penrith City Centre and peripheral residential pedestrian areas should therefore be lit to ‘functional’ standards and serve as a backdrop for specific focal points where creative lighting is used to highlight features, spaces and draw people into and through spaces. Overuse of creative lighting should be avoided, so that the contrast and effect provided is not diluted. Overuse of creative lighting would also conflict with aiming to improve sustainability and limit lighting nuisance.
Section 6 describes key pedestrian precincts and provides guidance on creative lighting opportunities where they exist.
6 PEOPLE SPACES

Key pedestrian precincts include parks, squares and lanes, significant landmarks, gateways to the Penrith City Centre, and other locations where increased night time pedestrian activity is currently high or is desirable. Some sites represent creative lighting opportunities. Other sites have functional lighting requirements that differ from the basic requirements outlined in Section 4. For each precinct, key issues and actions are summarised, and site-specific functional or creative lighting requirements or recommendations are provided.
6.1 High Street and Mulgoa Road Intersection and Surrounds

Figure 8: High Street and Mulgoa Road intersection and surrounds aerial overview

Site Overview

The High Street and Mulgoa Road intersection and the Mulgoa Road railway underpass are key gateways to the City Centre to the east as identified in Council’s Wayfinding Strategy. Most pedestrian movement through the intersection is concentrated along the shared pathways running east-west and north-south (refer to Figure 9), with the intersection forming a key part of the pedestrian connection from the City Centre to the Great River Walk precinct (refer to Section 6.13).

The intersection is under the management of RMS, with a major upgrade funded and currently undergoing a detailed design process with input from Council. The area covered by this upgrade roughly encompasses Mulgoa Road from John Tipping Grove Reserve to north of the railway underpass, and High Street from Peach Tree Creek to the Penrith City Council car park entrance. The upgrade is proposed to involve:

- Widening Mulgoa Road between High Street and Jane Street from 8 to at least 10 lanes
- Upgrading of all major road lighting
- Relocation of the “Penrith” garden bed to the northeastern corner of the intersection
- Installation of gate marker signage at various locations (refer to Figure 9)

Woodriff Gardens is located on the corner of High Street and Mulgoa Road adjacent to the Nepean District Tennis Association. The Gardens feature a network of internal pathways, with the Garden’s open spaces dominated by trees. The Gardens are generally not patronised after dark.

Figure 9: East-west shared pathway and proposed gate marker locations surrounding the High Street and Mulgoa Road intersection

**Functional Lighting Overview**

High Street and Mulgoa Road Intersection - Most east-west pedestrian movement through the intersection (connecting the City Centre to the Great River Walk precinct) is concentrated along the shared pathway, which is located immediately adjacent to the road carriageway. As such, functional pedestrian lighting is provided by the existing major road lighting.

It is expected that the RMS intersection upgrade will result in relatively high light levels, and therefore it is not anticipated there will be a need for additional functional pedestrian lighting to achieve the desired target (P2 level; refer to Section 4.1) once the upgrade is complete. However, should additional functional pedestrian lighting be deemed necessary in the future it should consider:
- Consistency and clear connection with the functional lighting theme used for the rest of the High Street to Great River Walk precinct (refer to 6.13)
- Limited space for trenching on some sections of the path (e.g. west of the intersection)

**Woodriff Gardens** - The internal pathways of the Gardens are serviced by varying degrees of spill lighting from the nearby major road lighting on High Street and Mulgoa Road and the nearby tennis courts (when in use), as well as some limited internal Garden lighting. Given the Gardens are not patronised after dark, provision of functional lighting of internal Garden pathways is not recommended.

**Creative Lighting Overview**

High Street and Mulgoa Road Intersection - There is currently no creative lighting associated with this site. Given the RMS upgrade is expected to result in relatively high light levels which would limit the impact of any creative lighting, in general such lighting is not recommended. However, illumination shall be provided for gate marker signage installed as per Council’s Wayfinding Strategy.

Woodriff Gardens - There is currently no creative lighting associated with this site, and creative lighting is not recommended given the space is not patronised after dark.

**Table 12: High Street and Mulgoa Road intersection issues, design responses and actions**

<table>
<thead>
<tr>
<th>Ref</th>
<th>Issue</th>
<th>Design Response and Action(s)</th>
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</table>
| 6.1.1 | Functional lighting of east-west shared pathway through High Street and Mulgoa Road Intersection | If RMS lighting upgrade does not achieve target functional light levels, additional functional lighting to consider:  
  - Consistency and clear connection with the functional lighting theme used for other sections of the High Street to Great River Walk connection (refer to 6.13)  
  - Limited space for trenching on some sections of the path (e.g. west of the intersection) |  

| 6.1.2 | Creative lighting of gate marker signage at High Street and Mulgoa Road intersection | Install creative LED uplighting to illuminate gate markers.  
Creative lighting to switch off (at a time to be determined by Council). |  

6.2 Civic Arts Precinct
Figure 10: The Civic Arts Precinct aerial overview

**Site Overview**

The Civic Arts Precinct includes the Joan Sutherland Performing Arts Centre (the Joan) and the Mondo (the open space between the Joan, Westfield Penrith, Council Civic Centre and Penrith Library). The Mondo is a recently completed development which included re-landscaping of the area and new functional and creative lighting installed. This is a heavily used pedestrian precinct both during the day and after dark, and intended as a place where people can meet and gather. The Joan Sutherland Performing Arts Centre is one of Penrith’s landmark buildings.

In terms of pedestrian movement, the following issues have been identified for the Precinct:

- The lack of any active frontage from the Joan onto High Street; and
- Ensuring clear connection to the Mondo and the Joan for pedestrians from:
  - the west (from High Street and the Council Civic Centre car park); and
  - the east (from High Street)
Functional Lighting Overview

Most of the Mondo’s open space is adequately lit from a functional lighting perspective, however, some key pedestrian routes at the western end and northern edges of the space, and also the circulation roundabout adjacent to the Council Civic Centre entrance are underlit (as identified by audit; refer also to Section 3.4). Figure 11 identifies those pedestrian routes that have been assessed as underlit. Poles and luminaires used should be consistent in style/theme with those used elsewhere in the Mondo.

Creative Lighting Overview

The Mondo features various creative lighting elements (e.g. art panels embedded in seating, dimming capability) as well as facility to provide additional temporary creative lighting for special events. However, opportunity exists to use creative lighting to activate the western end of the Joan to more clearly signal the presence of the building to pedestrians approaching along High Street from the west (refer also to Figure 11).

Figure 11: Location of proposed lighting upgrades/installations in Civic Arts Precinct
Table 13: Civic Arts Precinct issues, design responses and actions

<table>
<thead>
<tr>
<th>Ref</th>
<th>Issue</th>
<th>Design Response and Action(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.2.1</td>
<td>Connecting pathways at western end of Mondo underlit</td>
<td>Install upgraded lighting on connecting pathways on western and northern edge of the Mondo to achieve target P1 level.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Dim to P3 level (at a time to be determined by Council).</td>
</tr>
<tr>
<td>6.2.2</td>
<td>Circulation roundabout adjacent to Council Civic Centre entrance underlit</td>
<td>Install upgraded lighting to P11b level.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Dim to P11c level (at a time to be determined by Council).</td>
</tr>
<tr>
<td>6.2.3</td>
<td>Western façade of the Joan lacks presence at night</td>
<td>Install creative LED uplighting of trees (e.g., colour-changing RGB LED) to the west of the Joan.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Install creative lighting on western façade of Joan to illuminate underside of building eyes and portico (e.g., colour-changing RGB LED with DALI control).</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Creative lighting to switch off (at a time to be determined by Council).</td>
</tr>
</tbody>
</table>
6.3 Lawler Park

Figure 12: Lawler Park aerial overview

Site Overview
Lawler Park is located on the corner of High Street and the Great Western Highway adjacent to Kendall Street, with the High Street and Great Western Highway intersection a key gateway to the City Centre to the west as per Council’s Wayfinding Strategy. The Park features a short internal pathway and areas of undercover seating, however the internal park space is generally not patronised after dark.

Functional Lighting Overview
The Park’s internal pathway as well as footpaths around the perimeter of the Park are serviced by spill lighting from road lighting on High Street, the Great Western Highway and Kendall Street. Given the Park is not patronised after dark, provision of functional lighting of the internal Park space is not recommended.

Creative Lighting Overview
Given that the Park is not patronised after dark, and also is not part of a connecting route between key precincts, creative lighting is not recommended other than to
highlight gate marker signage that is installed as per Council’s Wayfinding Strategy (refer to Figure 13).

Figure 13: Proposed location of gate marker in Lawler Park

Table 14: Lawler Park issues, design responses and actions

<table>
<thead>
<tr>
<th>Ref</th>
<th>Issue</th>
<th>Design Response and Action(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.3.1</td>
<td>Creative lighting of gate marker signage in Lawler Park</td>
<td>Install creative uplighting at two gate markers.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Creative lighting to switch off (at a time to be determined by Council).</td>
</tr>
</tbody>
</table>
6.4 Woodriff Lane

Figure 14: Woodriff Lane aerial overview

Site Overview

Woodriff Lane is a key pedestrian connection between High Street and Memory Park to the south and the Allen Place and Edwards Place car parks to the north. At present, the Lane is predominantly used as a pedestrian thoroughfare connecting the Allen Place and Edwards Place car parks with High Street, however it has potential for activation to become a “night-time destination” in its own right, including outdoor eating and other attractions.

Functional Lighting Overview

The site is currently serviced by three (dual-head) light columns located down the centre of the Lane, with additional spill lighting emanating from awnings and shop frontages. In order to provide an environment supportive of outdoor dining and other activities, it is recommended that the existing pole-mounted functional lighting be removed and replaced by a sophisticated building-mounted catenary lighting system.
Creative Lighting Overview

The site currently features a simple catenary lighting set up. In order to support creation of a “night-time destination”, a more sophisticated building-mounted catenary lighting system should be used that can play the role of providing both functional light levels (see above) and also creative lighting during peak hours of night time activity (e.g. to be achieved by using DALI-controlled, colour-changing RGB LEDs). The upgraded catenary lighting may also support a curated lighting aspect.

Table 15: Woodriff Lane issues, design responses and actions

<table>
<thead>
<tr>
<th>Ref</th>
<th>Issue</th>
<th>Design Response and Action(s)</th>
</tr>
</thead>
</table>
| 6.4.1 | Remove existing lighting assets (poles and catenary) and install upgraded catenary lighting system in Woodriff Lane | Existing lighting (pole-mounted lighting and catenary lighting) to be removed and replaced with upgraded building-mounted catenary lighting system (e.g. colour-changing RGB LED with DALI control) which will serve as both functional and creative lighting at different times of the night. Provide functional lighting to P8 level. Dim as follows:  
  • Monday to Thursday - dim to P2 (at a time to be determined by Council)  
  • Friday to Sunday - do not dim  
  Creative catenary lighting to be activated during hours of evening dining (specific timing to be determined by Council). |
6.5 Memory Park

Figure 15: Memory Park aerial overview

Site Overview

Memory Park is located on the southwestern corner of the High Street and Woodriff Street intersection, at the eastern gateway to High Street. Pedestrian movement is predominantly concentrated along the western, eastern and northern (High Street) edges of the Park which serve as a key connection to High Street (refer to Figure 5 and 4.3.1). The internal Park area serves as a memorial and ceremonial space, with a key stakeholder being the RSL.

Future residential development is planned for the land immediately to the south of the Park which will likely see increased north-south pedestrian traffic through the Park via the western and eastern perimeters.

Functional Lighting Overview

The eastern and western perimeters of the Park are serviced by eleven vertical artistic light columns, which are intended to serve both a functional and creative lighting purpose, with dimming activated during memorial services. The western edge of the Park (including the privately-owned colonnade) is also serviced by varying levels of awning lighting and spill lighting from shop windows. The eastern and northern edges of
the Park are also serviced by spill lighting from the adjacent road lighting on Woodriff Street.

The overall combined result of the vertical light column, awning, shop-front and adjacent road lighting is to provide an inconsistent and patchy functional lighting effect, with the light columns also reported to be a significant source of glare. Replacement of the existing vertical artistic light columns is recommended. Functional lighting should provide a clear visual connection by minimising spacing and mounting height. Poles and luminaires used should be consistent in style with those used in other key precincts.

The eastern and western perimeters of the Park are the prime pedestrian routes through the Park and are currently underlit (as identified by audit; refer also to Section 3.4).

Figure 16: Location of proposed lighting upgrades/installations in Memory Park

Creative Lighting Overview

The eleven artistic vertical light columns can be dimmed during memorial services. There is also a pole-mounted spot light that is used to light the flag pole.

Opportunity exists to highlight the Park as a gateway to High Street and to assist with drawing pedestrians from the south into High Street and Woodriff Mall by the use of creative uplighting of the palm trees at the northern end of the Park.
### Table 16: Memory Park issues, design responses and actions

<table>
<thead>
<tr>
<th>Ref</th>
<th>Issue</th>
<th>Design Response and Action(s)</th>
</tr>
</thead>
</table>
| 6.5.1| Functional lighting of north-south pedestrian routes along western and eastern perimeters of Park | Remove existing eleven artistic vertical light columns and replace with LED pole-mounted luminaires with DALI control. Light to P8 level (refer to Figure 16).  
Dim as follows:  
- Monday to Thursday - dim to P2 level (at a time to be determined by Council)  
- Friday to Sunday - do not dim |
| 6.5.2| Creative lighting to highlight gateway to High Street                | Install creative LED uplighting of palm trees at northern end of Park (e.g. colour-changing RGB LED with DALI control) (refer to Figure 16).  
Creative lighting to switch off (at a time to be determined by Council). |

![Image of Memory Park]
6.6 High Street Precinct (Triangle Park to Memory Park)

Figure 17: High Street Precinct aerial overview

Site Overview

The section of High Street from Triangle Park and Memory Park is the premier retail strip and heart of the City Centre and is one of the most heavily used pedestrian routes. High Street has the highest concentration of retail, restaurant, café and commercial businesses outside of Westfield. High Street also acts as a key pedestrian connection between several key precincts (refer to Figure 5 and 4.3.1).

Functional Lighting Overview

The section of High Street between Station Street and Woodriff Street is currently serviced by decorative (non-standard) pedestrian category (Category P) luminaires. The section of High Street from Station Street to Triangle Park is currently serviced by standard major road (Category V) luminaires. Both sections are also serviced by varying levels of under awning and shop-front lighting, all of which contributes to a perception that High Street is inconsistently and patchily lit, even though overall light levels have been confirmed to meet minimum requirements (as identified by audit; refer also to Section 3.4).
High Street is a logical location for “smart” poles with various smart city features installed. Functional lighting should also involve consistent lighting techniques along the length of the street to support a strong sense of identity for the space, and provide a clear visual connection by minimising spacing and mounting height. Poles and luminaires used should be consistent in style with those used in other key precincts.

**Creative Lighting Overview**

The use of all-in-one modular smart poles (see Functional Lighting Overview above) will allow the installation of programmable colour-changing beacons to provide a creative lighting element.

Opportunity exists to complement the functional lighting along High Street through the creative uplighting of the trees on kerb extensions located at pedestrian crossings between Station Street and High Street (featuring mature trees).

**Table 17: High Street Precinct issues, design responses and actions**

<table>
<thead>
<tr>
<th>Ref</th>
<th>Issue</th>
<th>Design Response and Action(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.6.1</td>
<td>Functional lighting of footpaths along High Street</td>
<td>Removal of existing Category P and Category Y functional lighting and installation of all-in-one modular smart poles with colour-changing RGB LED beacons.</td>
</tr>
<tr>
<td>6.6.2</td>
<td>Creative lighting to complement High Street functional lighting</td>
<td>Installation of creative LED uplighting of trees (e.g. colour-changing RGB LED) on footpath blisters at pedestrian crossings between Station Street and Woodriff Street. Uplighting to include DALI control. Creative lighting to switch off (at a time to be determined by Council).</td>
</tr>
</tbody>
</table>
6.7 Triangle Park

Figure 18: Triangle Park aerial overview

Site Overview

Triangle Park is located at the western gateway to High Street, and is a key connecting element between the Civic Arts Precinct and High Street (refer to Figure 5 and 4.3.1). A detailed lighting design has been completed and funding confirmed, with the site to be developed in the near future.

Triangle Park is a logical location for “smart” poles with various smart city features installed. Any lighting upgrade should also include the capacity to dim and/or increase light levels at specific times or for special events (e.g. markets, festivals).

Functional Lighting Overview

The lighting design for the proposed development:

- Proposes LED in-ground uplighting, use of which is not recommended (refer to Section 4.5)
- Proposes principle pathways to be lit to P2 level, which would meet the minimum light levels specified by this Strategy for this type of space (refer to Section 4.1)
• Does not include provision for adaptive light levels (i.e. remotely dimming or increasing light levels at different times of the night, or for special events)
• Does not include provision of “smart” poles

Creative Lighting Overview

The lighting design for the proposed development includes a variety of creative lighting features including:

- LED projectors
- LED strip lighting
- LED in-ground uplighting
- LED spotlights

Table 18: Triangle Park issues, design responses and actions

<table>
<thead>
<tr>
<th>Ref</th>
<th>Issue</th>
<th>Design Response and Action(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.7.1</td>
<td>Triangle Park proposed lighting design:</td>
<td>Review existing design to consider:</td>
</tr>
<tr>
<td></td>
<td>• Specifies the use of in-ground uplighting</td>
<td>• Avoiding the use of in-ground uplights (replace with post top lighting)</td>
</tr>
<tr>
<td></td>
<td>• Does not include provision for adaptive light level control</td>
<td>• Lighting pathways to P2 level (as per design), and dim to P3 level (at a time to be determined by Council)</td>
</tr>
<tr>
<td></td>
<td>• Does not specify the use of modular smart poles</td>
<td>• Including capacity to remotely dim/increase light levels</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Installation of modular smart poles</td>
</tr>
</tbody>
</table>
6.8 City Park (Corner of Station Street and Henry Street)

Figure 19: City Park aerial overview

Site Overview

This future City Park site will be located in the space between Station Street and Gaymark Lane, and Henry Street and Allen Place. It will be the principal open space within the City Centre, and act as a central meeting point for pedestrians as well as punctuating the pedestrian connection with other precincts such as High Street (refer to Figure 5 and 4.3.1). During special events, it is anticipated that the adjacent stretches of Station Street and Henry Street will be closed to traffic, and the public space temporarily extended to incorporate the former Council Chambers forecourt to the north. This site will undergo a detailed master-planning process which will determine the locations and requirements of the lighting and smart city infrastructure at the site.

Functional Lighting Overview

Lighting should cater for high-use pedestrian activity, outdoor dining and activity spaces. The City Park is also a logical location for “smart” poles with various smart city features installed. Any lighting upgrade should also include the capacity to dim and/or increase light levels at specific times or for special events (e.g. markets, festivals). A catenary lighting system that has the ability to provide both functional and creative lighting (e.g. colour changing) is recommended.
Creative Lighting Overview

As outlined above, the City Park presents a unique opportunity to implement an integrated catenary lighting system that provides both functional and creative lighting. Given the intended role of the site as the principal meeting and gathering space in the City Centre, it is the ideal location for additional artistic lighting features. Additional artistic lighting features should consider:

- Artistic lighting feature integrated into catenary lighting (see Functional Lighting Overview above)
- Under-seat and/or in-wall LED colour-changing strip lighting
- A bespoke light/art feature with the theme “Water and Light”
<table>
<thead>
<tr>
<th>Ref</th>
<th>Issue</th>
<th>Design Response and Action(s)</th>
</tr>
</thead>
</table>
| 6.8.1 | Functional lighting of City Park | Installation of a fully-programmable pole-mounted catenary lighting system (e.g. colour-changing RGB LED with DALI control) which will serve as both functional and creative lighting at different times of the night, as well as all-in-one modular smart poles with colour-changing RGB LED beacons along the Station Street interface. Provide functional lighting to P8 level. Dim as follows:  
  - Monday to Thursday - dim to P2 (at a time to be determined by Council)  
  - Friday to Sunday - do not dim  
Creative catenary lighting to be activated during hours of evening dining (specific timing to be determined by Council). |
| 6.8.2 | Creative lighting to complement City Park catenary lighting system | In addition to the catenary lighting system (which includes creative lighting capability) consider as part of master-planning process:  
  - Artistic lighting feature integrated into catenary lighting (see Functional Lighting Overview above)  
  - Under-seat and/or in-wall LED colour-changing strip lighting  
  - A bespoke light/art feature with the theme “Water and Light” |
6.9 City Square

Figure 20: City Square and surrounds

Site Overview

This future City Square site is located on the eastern side of Station Street, north of the former Council Chambers. Similar to the future City Park to the south, it will act as a meeting point for pedestrians, and punctuate the pedestrian connection between Penrith Station and other key precincts to the south such as High Street (refer to Figure 5 and 4.3.1). This site will undergo a detailed master-planning process which will determine the locations and requirements of the lighting and smart city infrastructure at the site.

Functional Lighting Overview

Lighting should cater for high-use pedestrian activity and activity spaces. The City Square is also a logical location for “smart” poles with various smart city features installed. Any lighting upgrade should also include the capacity to dim and/or increase light levels at specific times or for special events (e.g. markets, festivals). A catenary lighting system that has the ability to provide both functional and creative lighting (e.g. colour changing) is recommended.
Creative Lighting Overview

As outlined above, the City Square presents a unique opportunity to implement an integrated catenary lighting system that provides both functional and creative lighting, consistent in theme and style with the nearby City Park. Given the smaller scale of the City Square however, additional creative lighting is not recommended.

Table 20: City Square issues, design responses and actions

<table>
<thead>
<tr>
<th>Ref</th>
<th>Issue</th>
<th>Design Response and Action(s)</th>
</tr>
</thead>
</table>
| 6.9.1| Functional lighting of City Square             | Installation of a fully-programmable pole-mounted catenary lighting system (e.g. colour-changing RGB LED with DALI control) which will serve as both functional and creative lighting at different times of the night, as well as all-in-one modular smart poles with colour-changing RGB LED beacons along the Station Street interface.  
Provide functional lighting to P8 level.  
Dim as follows:  
- Monday to Thursday - dim to P2 (at a time to be determined by Council)  
- Friday to Sunday - do not dim  
Creative catenary lighting to be activated during specific hours to be determined by Council. |
6.10 Westfield Entrance Plaza (Henry Street, between Riley and Station Streets)

Figure 21: Westfield entrance plaza aerial overview

Site Overview

This small plaza is located outside the entrance to Westfield on Henry Street (between Riley and Station Streets) and forms part of the pedestrian connection between key precincts such as Station Street and the Civic Arts Precinct (refer to Figure 5 and 4.3.1) as well as marking an entrance point to Westfield Penrith.

Functional Lighting Overview

The site is currently serviced by spill lighting from the adjacent Westfield complex as well as nearby road lighting. Given that the site is not considered a key meeting or gathering point, but rather a space that pedestrians pass through en route to other nearby precincts (e.g. Station Street, High Street and the Civic Arts Precinct) the provision of functional lighting should be for the purposes of safe movement through the space. Functional lighting should provide a clear visual connection by minimising spacing and mounting height. Poles and luminaires used should be consistent in style with those used in other key precincts.
Creative Lighting Overview

As outlined above, given that the site is not considered a key meeting or gathering point, standalone creative lighting is not recommended. However, the use of all-in-one modular smart poles will allow the installation of programmable colour-changing beacons to provide a creative lighting element (if desired).

Table 21: Westfield Entrance Plaza issues, design responses and actions

<table>
<thead>
<tr>
<th>Ref</th>
<th>Issue</th>
<th>Design Response and Action(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.10.1</td>
<td>Provision of functional lighting to support pedestrian movement through space to nearby key precincts</td>
<td>Installation of all-in-one modular smart poles with colour-changing beacons adjacent to Henry Street road reserve in alignment with preferred pedestrian route through space.</td>
</tr>
</tbody>
</table>
6.11 Judges Park

Figure 22: Judges Park aerial overview

Site Overview

Judges Park is bordered by the PCYC Penrith, the Penrith Bowling and Recreation Club and the Penrith Senior Citizens Centre, and includes a heavily used public pathway stretching from Woodriff Street to Union Lane. While a large open space, it is typically used as a pedestrian thoroughfare and not as a place to meet and gather.

Functional Lighting Overview

The public pathway is currently serviced by varying levels of lighting emanating from dedicated pathway lighting and other sources of spill lighting. However, the existing light levels are considered inadequate (as identified by audit; refer also to Section 3.4) and should be increased to encourage use during likely periods of pedestrian activity.

Given that the site is not considered a key meeting or gathering point, but rather a space that pedestrians pass through en route to car parking (to the south) and other nearby precincts (e.g. Station Street) to the north, the provision of functional lighting should be for the purposes of safe movement through the space. Functional lighting should provide a clear visual connection by minimising spacing and mounting height.
Poles and luminaires used should be consistent in style with those used in other key precincts.

**Creative Lighting Overview**

As outlined above, given that the site is not considered a key meeting or gathering point, creative lighting is not recommended.

**Table 22: Judges Park issues, design responses and actions**

<table>
<thead>
<tr>
<th>Ref</th>
<th>Issue</th>
<th>Design Response and Action(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.11.1</td>
<td>Provision of functional lighting to support pedestrian movement through space to nearby key precincts</td>
<td>Remove existing light columns and replace with LED pole-mounted luminaires with DALI control. Light to P2 level. Dim as follows: • Monday to Thursday - dim to P4 level (at a time to be determined by Council) Friday to Sunday - do not dim</td>
</tr>
</tbody>
</table>
6.12 Penrith Station Transit Plaza

Figure 23: Penrith Station Plaza aerial overview

Site Overview

The Penrith Station Transit Plaza is one of the principle gateways to the City Centre. The space is managed by Transport for NSW, with some areas currently undergoing redevelopment, and other slated for future development. While Council has been invited to provide input into the design process, determination of the final design is at the sole determination of Transport for NSW. A major feature of the planned future works will be the construction of a pedestrian overpass connecting the Station to Station Street.

Functional Lighting Overview

The Transit Plaza space is currently serviced by dedicated plaza lighting as well as spill lighting from the nearby Belmore Street. However, the majority of this lighting will likely be upgraded during future development works.

Despite the limited control Council has over future design decisions, and given the status of the Station as one of the principal gateways to the City Centre, it is recommended that Council continue to engage with Transport for NSW with the objectives of:

- emphasising the Train Station as the key gateway to the City Centre
• achieving consistency with the public lighting theme used elsewhere in the City Centre (e.g. the installation of smart poles)

Given the frequency of public transport services and the limited time between last and first services each evening, any proposal to dim functional lighting is not recommended.

Creative Lighting Overview

In liaison with Transport for NSW, and in line with the objective of emphasising the Station as a gateway, Council may wish to consider advocating for creative lighting solutions such as:

• Special pole elements

• Coloured illuminated signage directed at pedestrians entering the City Centre from the train station

Table 23: Penrith Station Transit Plaza issues, design responses and actions

<table>
<thead>
<tr>
<th>Ref</th>
<th>Issue</th>
<th>Design Response and Action(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.12.1</td>
<td>Consultation with Transport for NSW</td>
<td>Council to continue to liaise with Transport for NSW regarding any proposed changes to plaza lighting or layout, with the objective of emphasising the plaza as the key gateway to the City Centre and achieving consistency with lighting themes used elsewhere in the City Centre.</td>
</tr>
</tbody>
</table>
6.13 High Street Connection to the Great River Walk

Figure 24: High Street to Great River Walk aerial overview

**Site Overview**

This pedestrian route runs along High Street from Triangle Park out of the City Centre to the Nepean River, and will eventually connect to the Great River Walk once works on the pedestrian footbridge are complete.

**Functional Lighting Overview**

The extension of High Street through to the Nepean River is serviced by variable pedestrian light levels, mostly provided by spill lighting from major road lighting servicing High Street. Current pedestrian light levels are considered inadequate (as identified by audit; refer also to Section 3.4) and should be increased in line with the route’s classification as a City Centre street in this Strategy.

A large section of this route will be affected by the future RMS upgrade of the High Street and Mulgoa Road intersection (refer to Section 6.1), with road lighting expected to provide adequate pedestrian light levels, therefore the installation of any additional functional pedestrian lighting in this section should be considered carefully, and for the purposes of providing clear visual connection along the route. For other sections, in particular west of Peach Tree Creek, upgraded functional lighting is recommended.
Given that the route is not in itself a key meeting or gathering point, but rather a thoroughfare connecting to other precincts (e.g. High Street and the Great River Walk) the provision of functional lighting should be for the purposes of safe movement. Functional lighting should provide a clear visual connection by minimising spacing and mounting height. Poles and luminaires used should be consistent in style with those used in other key precincts.

**Creative Lighting Overview**

As outlined above, given that the site is not considered a key meeting or gathering point, standalone creative lighting is not recommended. However, the use of all-in-one modular smart poles will allow the installation of programmable colour-changing beacons to provide a creative lighting element (if desired).

**Table 24: High Street connection to Great River Walk issues, design responses and actions**

<table>
<thead>
<tr>
<th>Ref</th>
<th>Issue</th>
<th>Design Response and Action(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.13.1</td>
<td>Functional lighting of footpaths along Memorial Avenue and Old Ferry Road (to west of Peach Tree Creek)</td>
<td>Removal of existing Category P functional lighting along Memorial Avenue and Old Ferry Road and installation of all-in-one modular smart poles with colour-changing RGB LED beacons. Light to P2 level. Dim to P3 level (at a time to be determined by Council).</td>
</tr>
</tbody>
</table>
6.14 Station Street (from Train Station to Penrith Stadium)

Figure 25: Penrith Station to Penrith Stadium aerial overview

Site Overview

This route is the principle pedestrian connection between the Penrith Train Station to Penrith Stadium, and includes Ransley Street which also serves as a key pedestrian gateway to the Stadium precinct.

Large-scale residential development is planned for the land between Station Street and Woodriff Street (north of Jamison Road), and the entrance to Station Street off Jamison Road is considered a gateway to the City Centre.

Functional Lighting Overview

The length of Station Street is serviced by highly variable pedestrian light levels, mostly provided by adjacent road lighting. Current pedestrian light levels are considered inadequate (as identified by audit; refer also to Section 3.4) and should be increased in line with the route’s classification as a City Centre street in this Strategy.

Given that the route is not in itself a key meeting or gathering point, but rather a thoroughfare connecting to other precincts (e.g. the Train Station, High Street etc.) the provision of functional lighting should be for the purposes of safe movement. Functional
lighting should provide a clear visual connection by minimising spacing and mounting height. Poles and luminaires used should be consistent in style with those used in other key precincts.

**Creative Lighting Overview**

Given that this route connects the major public transport interchange in the City Centre with the Stadium, and experiences large volumes of pedestrian activity at those times when events are held at the stadium, creative lighting is recommended to identify the route, with the ability to be activated only during events (may be switched off or serve solely as functional lighting at other times).

**Table 25: Station Street (from Train Station to Penrith Stadium) issues, design responses and actions**

<table>
<thead>
<tr>
<th>Ref</th>
<th>Issue</th>
<th>Design Response and Action(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.14.1</td>
<td>Functional lighting of footpaths along Station Street and Ransley Street</td>
<td>• Removal of existing Category P functional lighting and installation of all-in-one modular smart poles with colour-changing RGB LED beacons.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Light to P2 level.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Dim to P3 level (at a time to be determined by Council).</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Creative catenary lighting to be activated during specific hours to be determined by Council.</td>
</tr>
</tbody>
</table>
## GLOSSARY

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Category P</td>
<td>Pedestrian category roads (sometimes referred to as “Cat P” or “minor” roads)</td>
</tr>
<tr>
<td>Category V</td>
<td>Vehicular category roads (sometimes referred to as “Cat V” or “major” roads)</td>
</tr>
<tr>
<td>Catenary lighting</td>
<td>Lighting suspended from a cable (or cables) typically secured to poles or building facades.</td>
</tr>
<tr>
<td>CCT</td>
<td>Correlated colour temperature describes the colour of a light source, and is measured in degrees Kelvin (K). Blue-white lamps have a high colour temperature (e.g. 4000K). Yellow lamps have a low colour temperature, (e.g. 2000K)</td>
</tr>
<tr>
<td>Colour Rendering</td>
<td>Colour rendering describes the degree to which natural colours can be perceived under different kinds of artificial light. It is measured on a colour rendering index (CRI). A CRI of 100 indicates that colours are depicted accurately. A CRI of less than 30 indicates colours are distorted and difficult to recognise. A CRI of 80 or above provides an acceptable standard for outdoor lighting.</td>
</tr>
<tr>
<td>Decorative</td>
<td>Refer to ‘non-standard’</td>
</tr>
<tr>
<td>DNSP</td>
<td>Distribution Network Service Provider, also known as Energy Distribution Business (EDB) also known as distributors.</td>
</tr>
<tr>
<td>GHG</td>
<td>Greenhouse Gas</td>
</tr>
<tr>
<td>Lamp</td>
<td>The light bulb in a luminaire</td>
</tr>
<tr>
<td>LED</td>
<td>Light emitting diode</td>
</tr>
<tr>
<td>Luminaire</td>
<td>The lamp, fitting and control gear of the light</td>
</tr>
<tr>
<td>Non-standard lighting</td>
<td>Lighting that is typically not held in stock by DNSPs, sometimes also referred to as ‘decorative’. Typically found in URD areas.</td>
</tr>
<tr>
<td>RMS</td>
<td>Roads and Maritime Services</td>
</tr>
<tr>
<td>Standard lighting</td>
<td>Lighting that is typically held in stock by DNSPs, and is found on their list of products approved for use.</td>
</tr>
<tr>
<td>Street Lighting</td>
<td>Street lighting found in residential streets and main roads</td>
</tr>
<tr>
<td>URD</td>
<td>Underground Residential Developments</td>
</tr>
<tr>
<td>WSROC</td>
<td>Western Regional Organisation of Councils</td>
</tr>
</tbody>
</table>

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**PENRITH CITY COUNCIL • PEDESTRIAN LIGHTING STRATEGY**  
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Date of Meeting: Monday 11 March 2019
Report Title: Compliance and Enforcement Policy and Guidelines
Attachments: DRAFT Compliance and Enforcement Policy Feb 2019
DRAFT Compliance and Enforcement Guidelines Feb 2019
<table>
<thead>
<tr>
<th>POLICY NAME</th>
<th>EH 006</th>
</tr>
</thead>
<tbody>
<tr>
<td>DATE ADOPTED</td>
<td>PRC</td>
</tr>
<tr>
<td>ECM NUMBER</td>
<td>POLICY TYPE</td>
</tr>
<tr>
<td>REVIEW DATE</td>
<td>Council</td>
</tr>
<tr>
<td>RELATED DOCUMENTS</td>
<td>Environmental Health and Compliance</td>
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1 PURPOSE
This policy applies to regulatory programs, investigation of complaints and enforcement actions. This includes response to unlawful activity including failure to comply approvals or legal directions such as notices and orders. It outlines how to assess and prioritise matters for investigation, describes regulatory options, and explains the matters to be taken into consideration when determining how to best respond compliance cases.

It is based on the NSW Ombudsman "Enforcement Guidelines for Councils" and "Model Policy" (2015).

2 POLICY STATEMENT
The Policy applies a risk based approach to compliance management to ensure resources are focused on those matters posing the biggest risk to the community and environment. This approach is applied to both proactive compliance activities and also in response to reports alleging unlawful activity (reactive compliance). Council will undertake enforcement action where appropriate in accordance with this Policy document.

3 SCOPE
This Policy provides information for all internal and external stakeholders and interested parties about Council’s position on compliance and enforcement matters in Penrith.

The purpose of this Policy is to provide structure for consistency and transparency in decision making, and to facilitate a proportional approach to compliance and enforcement. It is also intended to assist Council staff to act promptly, effectively and consistently in response to allegations of unlawful activity.

This Policy outlines matters to be considered at the various stages of the enforcement process from the receipt and investigation of reports alleging unlawful activity, through to what enforcement option Council will consider and whether to commence criminal or civil proceedings.

In certain circumstances Council will have shared enforcement responsibilities with other regulatory authorities. Advice and guidance is also provided on the role of Council in building and construction compliance matters where there is a Private Certifier, and the role of Councillors in enforcement.

Responsible Council staff are not limited by this Policy in their use of discretion and exercise of official functions. The full circumstances and facts of each case need to be considered and a decision made on the merits.

Council’s regulatory responsibilities are applicable to threatened or actual unlawful activity, as well as a failure to take action (in order to be compliant with certain legal requirements). For simplicity, this Policy refers to both an act and/or an omission by an alleged offender as ‘unlawful activity’.

4 OBJECTIVE
The objectives of this Policy are:

1 To establish clear guidelines and protocols for Council staff in the management of Council’s regulatory activities.
2. To provide a framework to facilitate a responsive and risk-based approach to proactive and reactive compliance and enforcement matters.

3. To improve compliance management and reduce the impact of unlawful activity on the community and our environment.

The Policy also provides advice and guidance on the role of Private Certifiers and the role of Councillors in enforcement.

5. COMPLIANCE AND ENFORCEMENT PRINCIPLES

The following are the principles that underpin Council actions relating to compliance and enforcement.

<table>
<thead>
<tr>
<th>Principle</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accountable and transparent</td>
<td>• Acting in the best interests of public health and safety and in the best interests of the environment</td>
</tr>
<tr>
<td></td>
<td>• Ensuring accountability for decisions to take or not take action</td>
</tr>
<tr>
<td></td>
<td>• Acting fairly and impartially and without bias or unlawful discrimination</td>
</tr>
<tr>
<td></td>
<td>• Providing information about compliance and enforcement priorities and reasons for decisions to improve understanding and certainty and promote trust by the regulated community</td>
</tr>
<tr>
<td></td>
<td>• Ensuring meaningful reasons for decisions are given to all relevant parties, particularly when there is a departure from this Policy.</td>
</tr>
<tr>
<td></td>
<td>• Acting on any complaints or concerns about the conduct of compliance officers in accordance with Council’s complaints management policy and procedures</td>
</tr>
<tr>
<td></td>
<td>• Advising people and organisations subject to enforcement action of any avenues available to seek an internal or external review of a decision</td>
</tr>
<tr>
<td>Consistent</td>
<td>• Ensuring compliance and enforcement action is implemented consistently</td>
</tr>
<tr>
<td></td>
<td>• Encouraging customer reports about possible unlawful activity by acting reasonably in response to the circumstances and facts of each matter</td>
</tr>
<tr>
<td>Proportional</td>
<td>• Ensuring the level of enforcement action is proportionate to the level of risk and seriousness of the breach</td>
</tr>
<tr>
<td></td>
<td>• Making cost effective decisions about enforcement action</td>
</tr>
<tr>
<td></td>
<td>• Taking action to address harm and deter future unlawful activity</td>
</tr>
<tr>
<td>Timely</td>
<td>• Ensuring responses to reports alleging unlawful activity and decision making in relation to those is timely.</td>
</tr>
</tbody>
</table>

6. RISK BASED REGULATION

Our community has become more expectant of living in a healthy and livable city where we value and protect our environment. It is understandable that a direct correlation of this expectation is that the number of laws and regulations have increased expanding the scope of necessary enforcement. From time to time reports alleging unlawful activity will exceed available resources.

Risk based regulation works on the basis that the type of compliance action chosen will be dependent on an evaluation of the degree of risk, and the impact of the non-compliance on Council’s ability to achieve its objectives. It is a way to target resources where they are most needed and where they will produce the most effective impact.

Council is committed to developing and implementing both proactive and reactive strategies to achieve effective and efficient risk based compliance enforcement.
programs. To this end, Council uses intelligence gained from its customer management systems to determine the most appropriate strategy.

Proactive compliance monitoring assists Council in meeting its statutory requirements, respond to common complaints and maintain a positive monitoring presence. The aim of proactive strategies is to reduce the amount of reactive incidents requiring a Council response.

Education and awareness raising activities are both proactive approaches to preventing breaches of the law and can be very cost effective in achieving compliance. Providing information to the public through media releases, Council’s website, workshops with target groups and brochures together with incentives e.g. financial awards, are all strategies Council will explore to determine the best fit for the areas of focus.

Reactive compliance enforcement incorporates a risk based approach which categorises the request into low, medium and high having regard to Council’s Risk Category Guidelines (refer Appendix C).

Periodic reviews of risk categories will be undertaken using intelligence collated from its case management systems as well as other sources to ascertain whether systemic or more serious patterns are emerging which warrant re-categorising the risk levels of unlawful activities.

7 RESPONSIBILITY

Council receives information about alleged unlawful activity from members of the public, contact from other Government Agencies and information gathered by its Officers during proactive inspections.

Only Council staff with appropriate delegations from the General Manager can undertake investigations or compliance and enforcement action in relation to this Policy.

Council staff are required to:

- treat all relevant parties with courtesy and respect
- communicate with all relevant parties and provide feedback on the progress of an investigation and any reasons for delay without compromising the integrity of the investigation
- make full and proper records in relation to the assessment and investigation of reports alleging unlawful activity, including reasons for any decisions
- inform all relevant parties of reasons for decisions
- provide as much information as possible to all relevant parties about the outcomes of investigations to show that adequate and appropriate action was taken and/or is proposed to be taken in response to a report of alleged unlawful activity
- provide information to all relevant parties about any avenues to seek an internal or external review of a decision

All reports alleging unlawful activity are to be entered into Council’s customer request system and actioned within the appropriate risk based time frame by the appropriate business unit.

8 SUBMITTING REPORTS OF UNLAWFUL ACTIVITY

Reports alleging unlawful activity will be recorded in Council’s customer request systems and will be allocated a unique reference number. The report will be referred to the relevant Council Officer to commence any necessary action.
The name, address and contact details of the person submitting the report will also be recorded. This information is critical as Council may need to rely on evidence from the complainant to prove any alleged offence and commence enforcement action. Council will advise any complainants of the action, if any, taken or the reasons why no action was taken in the circumstances.

Council generally seeks to keep confidential, personal information identifying a complainant. However, Council may be required to disclose this information in a variety of circumstances including the following:

- When access to the information is permitted under another Council Policy (consistent with legislation)
- Legal proceedings are commenced and the information is disclosed in evidence served
- When access to the information is permitted under Legislation, including the Government Information (Public Access) Act 2009 or the Local Government Act 1993.
- the disclosure is required to comply with the principles of procedural fairness
- the disclosure is necessary to investigate the matter.

Also, in some circumstances it may be possible to ascertain the identity of the person submitting the report by the nature of the allegation.

8.1 What Council expects from people who report allegations of unlawful activity:

Council expects that people who report allegations of unlawful activity will cooperate and act in good faith in respect of any investigations conducted by Council. This includes:

- providing a clear description of the problem (and the resolution sought, if relevant)
- providing a clear description/account of the impact that the alleged activity is having
- giving all available and relevant information to Council, including any new information about the alleged activity that may become known to the person following the making of their report
- not giving any information that is intentionally misleading or wrong
- cooperating with Council’s inquiries and giving timely responses to questions and requests for information
- treating Council’s staff with courtesy and respect

9 RESPONDING TO CONCERNS ABOUT UNLAWFUL ACTIVITY

Council will record every report alleging unlawful activity.

Not all reports will, can or need to be investigated. A preliminary assessment of all matters will be made to determine the priority for a response, and whether investigation or other action is required.

An investigation of alleged unlawful activity may take a significant amount of time to complete, particularly where the issues are complex. If Council decides to investigate, staff will give the person who reported the alleged unlawful activity regular feedback on the progress of the investigation, and any reasons for delay. This does not mean that the individual can expect to be given details about every aspect of the investigation or information that would compromise the integrity of the investigation.

Decisions about what action should be taken by Council are made at the Council’s discretion. This means the objective is that reports alleging unlawful activity will be resolved to the satisfaction of Council, not necessarily the person raising the matter. Council will generally
try to resolve matters as quickly and informally as possible so as to avoid the need to take formal action.

Council staff will endeavour to manage the expectations of people who report alleged unlawful activity, and in particular explain that in the absence of sufficient evidence of unlawful activity, Council may be unable to take further action. Council does not have unlimited resources and powers to deal with reports alleging unlawful activity.

10 ANONYMOUS REPORTS

Anonymous reports will be recorded and assessed in accordance with the above requirements. However, because it is not possible to seek clarification or additional information about a matter, it may be more difficult to evaluate the allegations and therefore these reports are less likely to warrant investigation.

11 UNREASONABLE COMPLAINANT CONDUCT

Council has an obligation to use resources efficiently and effectively. While Council acknowledges a customer’s entitlement to make requests and complaints, it reserves the right to cease responding to customers that continually exhibit unreasonable customer behaviour including:

a) requests that place unreasonable demands on Council’s staff
b) requests that place unreasonable demands on Council’s resources
c) unreasonable persistence
d) unreasonable lack of cooperation
e) requests or complaints based on unreasonable arguments

In the context of the above situations officers will follow Council’s Policy on Managing Difficult Customer Behaviour.

If there is a concern about a customer’s conduct the General Manager, Assistant General Manager, Executive Manager, Chief Governance Officer or Public Officer will write to the customer with a proposed course of action. The customer will be given an opportunity to make representations to the General Manager or authorising officer about Council’s proposed course of action.

12 INVESTIGATING ALLEGED UNLAWFUL ACTIVITY

A preliminary assessment of all requests will be made to determine whether investigation or other action is required. Council will prioritise matters based on the Compliance and Enforcement Principles (Section 5).

If there is insufficient information in the report to undertake a preliminary assessment, the customer will be advised and the matter not tasked for investigation.

12.1 Circumstances where no action will be taken

Council will take no further action if, following a preliminary assessment, it is identified that:

- the report is not supported with evidence or appears to have no substance.
- Council does not have jurisdiction to investigate or is not the appropriate authority to take action on the issues raised. Where there is another appropriate authority or
course of action, Council may bring the matter to the attention of the authority or provide information and contact details to the individual. For example, NSW WorkCover for workplace safety matters, the NSW Environment Protection Authority (EPA) for possible environmental offences and Community Justice Centres NSW for personal disputes.

- the report relates substantially to a matter previously determined by Council and no new or compelling information is presented which would cause Council to change its earlier decision. In this case, staff will acknowledge the report and advise that no further action will be taken as no new information had been provided (other than where the person has previously been advised they would receive no further response).
- the allegations relate to a lawful activity (e.g., where there is an existing approval or the activity is permissible without Council approval or consent being required).
- the relevant Manager, Director or the General Manager determines that investigation or other action would have an unreasonable impact on resources and/or is unlikely to achieve an outcome sufficient to justify the expenditure of resources.

12.2 Relevance factors guiding decisions as to whether to take action:

When deciding whether to investigate, Council will consider a range of factors including whether:

- the activity is having a significant detrimental effect on the environment or it constitutes a risk to public safety
- the report is premature as it relates to some unfinished aspect of work that is still in progress
- the activity or work is permissible with or without permission
- all conditions of consent are being complied with
- much time has elapsed since the event, the subject of the report, took place
- another body is a more appropriate agency to investigate and deal with the matter
- it appears there is a pattern of conduct or evidence of a possible widespread problem
- the person or organisation reported has been the subject of previous reports
- the report raises matters of special significance in terms of the Council’s existing priorities
- there are significant resource implications in relation to an investigation and any subsequent enforcement action
- it is in the public interest to investigate the report.

The above are factors for Council to consider and weigh in making a determination. Council staff are not limited in their use of discretion by these considerations and may decide to investigate based on these and other factors.

The objective of the processes Council staff use when investigating incidents of alleged unlawful activity, is to:

- determine the cause of the incident
- determine if there has been a contravention of law, policy or standards
- gather evidence to the required standard to support any required enforcement action
- determine any necessary action to mitigate the possibility of recurrence of similar incidents.

Any decision not to investigate an allegation of unlawful activity will be recorded and the reasons for that decision clearly stated.
13 DECIDING WHETHER OR NOT TO TAKE ENFORCEMENT ACTION

When deciding whether to take enforcement action in relation to a confirmed case of unlawful activity, Council will consider the full circumstances and facts of the matter and the public interest. The following general considerations will assist Council staff in determining the most appropriate response in the public interest:

13.1 Considerations about the alleged offence and impact:
- the nature, extent and severity of the unlawful activity, including whether the activity is continuing
- the harm or potential harm to the environment or public health, safety or amenity caused by the unlawful activity
- the seriousness of the breach, including whether the breach is merely technical, inconsequential or minor in nature
- the time period that has lapsed since the date of the unlawful activity.

13.2 Considerations about the alleged offender:
- any prior warnings, cautions, instructions, advice that was issued to the person or organisation reported or previous enforcement action taken against them
- whether the offence was committed with intent
- whether the person or organisation reported has been proactive in the resolution of the matter and assisted with any Council requirements and instructions
- any mitigating or aggravating circumstances demonstrated by the alleged offender
- any particular circumstances of hardship affecting the person or organisation reported.

13.3 Considerations about the impact of any enforcement action:
- the need to deter any future unlawful activity
- whether an educative approach would be more appropriate than a coercive approach in resolving the matter
- the prospect of success if the proposed enforcement action was challenged in Court
- the costs and benefits of taking formal enforcement action as opposed to taking informal or no action
- what action would be proportionate and reasonable in response to the unlawful activity
- whether Council is prevented from taking action based on earlier advice given, i.e. whether an estoppel situation has been created.

13.4 Considerations about the potential for remedy:
- whether the breach can be easily remedied
- whether it is likely consent would have been given for the activity if it had been sought
- whether there is a draft planning instrument on exhibition that would make the unauthorised use legal.

14 OPTIONS FOR DEALING WITH CONFIRMED CASES OF UNLAWFUL ACTIVITY

Council will use the most effective, informal option to deal with unlawful activity where ever possible unless there is little likelihood of compliance with such options. Council staff will use discretion to determine the most appropriate response to confirmed cases of unlawful activity.
and may take more than one approach.

Any enforcement action taken by Council will depend on the full circumstances and facts of each case, with any decision being made on the merits.

There are a range of enforcement actions available as shown below in Figure 1.

Enforcement options are not necessarily mutually exclusive; for example, in some circumstances it may be appropriate to simultaneously issue an Order and a Penalty Notice.

14.1 Figure 1: Enforcement actions available to Council

**Remedial or Rectification Action**

- **Court Order**
  - An order from the Court requiring certain things to be done to achieve compliance
  - *(Civil proceedings)*

- **Order / Notice**
  - A Notice/Order from Council requiring certain things to be done to achieve compliance

- **Letter requesting undertaking**
  - A letter requesting an undertaking that corrective action will be taken within a certain timeframe

- **Negotiation**
  - With alleged offender and written confirmation of commitments made

- **Caution / Warning or advisory letter**
  - To encourage future compliance and caution that further action may be taken

- **Record the breach**
  - No further action – for very minor breaches only

**Penalty Action**

- **Criminal Prosecution**
  - In the Land and Environment Court or the Local Court

- **Penalty Notice**

*Note: it may be appropriate to use more than one enforcement option in some cases. If initial enforcement action does not achieve a satisfactory outcome it may be necessary to proceed to a higher level of enforcement response. For example, if a warning letter or notice of intention does not achieve the desired response, it may be appropriate to give an Order, or if an Order is not complied with, it may be appropriate to bring enforcement or prosecution proceedings.*
14.2 Following up enforcement action

All enforcement action will be reviewed and monitored to ensure compliance with any undertakings given by the subject of enforcement action or advice, directions or orders issued by Council. Reports alleging continuing unlawful activity will be assessed and further action taken if necessary. If the unlawful activity has ceased or the work has been rectified, the matter will be resubmitted for follow up action to ensure compliance outcomes are met. Should initial enforcement action be found to have been ineffective, Council staff will consider other enforcement options.

15 TAKING LEGAL ACTION

Council and delegated staff will be guided by legal advice in deciding whether to commence criminal or civil proceedings and will consider the following:

- whether there is sufficient evidence to establish a case to the required standard of proof
- whether there is a reasonable prospect of success before a Court
- whether the public interest warrants legal action being pursued
- time within which to commence proceedings

15.1 Whether there is sufficient evidence to establish a case to the required standard of proof

Council considers the decision to take legal action a serious matter, and as such will only initiate and continue proceedings once it has been established that there is admissible, substantial and reliable evidence to the required standard of proof.

The basic requirement of any criminal prosecution is that the available evidence establishes a prima facie case. The prosecutor is required to prove the elements of the offence beyond reasonable doubt.

In civil enforcement proceedings, Council will require sufficient evidence to satisfy the Court that an actual or threatened breach has occurred on the balance of probabilities.

15.2 Whether there is a reasonable prospect of success before a Court

Given the expense of legal action Council will not take legal action unless there is a reasonable prospect of success before a Court. In making this assessment, Council staff will consider the availability, competence and credibility of witnesses, the admissibility of the evidence, all possible defences, and any other factors which could affect the likelihood of a successful outcome.

15.3 Whether the public interest requires legal action to be pursued

The principal consideration in deciding whether to commence legal proceedings is whether to do so is in the public interest. In making this determination, the same factors to be considered when taking enforcement action apply.

The following considerations relate more specifically to the decision to commence legal proceedings and will assist Council and its delegated staff in making this determination:

- the availability of any alternatives to legal action
- whether an urgent resolution is required (Court proceedings may take some time)
- the possible length and expense of Court proceedings
15.4 Time within which to commence proceedings

Council staff must be aware of legislative time limits in which enforcement proceedings must be commenced. Sometimes legal action will be statute barred despite good evidence that unlawful activity has occurred.

16 SHARED ENFORCEMENT RESPONSIBILITIES

Some reports will raise matters involving shared regulatory responsibilities between Council and other authorities including the Environment Protection Authority, NSW Police, NSW Liquor and Gaming, NSW Fair Trading, NSW Food Authority and Crown Lands.

Council recognises that collaboration and cooperation between authorities to address issues of shared regulatory responsibility is the best approach. To this end, where there are shared legislative responsibilities, Council staff will work with relevant authorities to establish:

- which authority will take the leading role on any joint investigation
- which activities each authority will carry out
- responsibilities for updating an individual where relevant
- protocols for exchanging confidential information between the relevant authorities.

Council will reasonably endeavor to respond to requests for information or assistance on joint regulatory matters in a timely manner.

17 ROLE OF COUNCIL WHERE THERE IS A PRIVATE CERTIFIER

Where the Private Certifier has been appointed as the Principal Certifier the Council recognises that the Private Certifier is the authority responsible for ensuring compliance with the conditions of development consent.

Private Certifiers have limited enforcement powers of which they can use to issue a notice of intention to issue an order to the owner or builder to comply with the conditions of consent or rectify any breaches. A copy of any Notice of Intention issued by a Private Certifier must be subject to an initial assessment by the Certifier. Council may then determine if they will enforce the notice by issuing an Order.

Persons making complaints regarding a site under the supervision of a Private Certifier will be advised to contact the Private Certifier in the first instance. This will give the Private Certifier an opportunity to address the issues and take appropriate action.

Should the Private Certifier fail to use their enforcement powers to address the issue raised within a reasonable timeframe, Council may act to investigate the matter.

It must be noted that Council is not the regulator of Private Certifiers and any complaints about the conduct of Private Certifiers must be directed to the Building Professionals Board www.bpb.nsw.gov.au.
Council will endeavor to work with Private Certifiers to resolve any issues when they arise to achieve compliance with the development consent or complying development certificate. Council staff will take steps to ensure individuals are clear about which agency performs which role.

18 BUILDING CERTIFICATES

Council recognises that persons who may have carried out unlawful building works may, as an option, apply for a Building Certificate under section 148D of the Environmental Planning and Assessment Act to retain the structure. If a building certificate is issued Council cannot ask for demolition or alterations unless after 7 years of fair wear and tear.

It is Council’s policy however that such applications should not be encouraged to justify unlawful works. Irrespective of whether or not a Building Certificate is applied for, Council may take action against a person who carried out an unlawful works.

The action may include the issuing of a penalty notice or in conjunction with criminal proceedings, where it is considered appropriate and necessary for punitive action to also be taken, having regard to the restriction provisions provided under Section 127 (7) of the EP&A Act.

19 ROLE OF COUNCILLORS IN ENFORCEMENT

Compliance and enforcement matters are sensitive and easily susceptible to allegations of impropriety, bias or inconsistency. Gathering of evidence can be a matter that is complex and subject to information not being able to be admitted into evidence because of the way it was gathered.

In order to manage those risks, and consistent with the Council’s Code of Conduct, and Councillors/Staff Interaction Policy, Councillors must not attend on-site meetings with Council staff, where they are meeting with complainants, or persons the subject of investigation or enforcement action. Councillors can meet and assist individuals who raise concerns with them but those meetings should be recorded by the Councillors and not involve staff. Councillors can request that a meeting be held with the Executive Manager, Environment and City Development or the Compliance Manager to discuss the constituents concern. Those meetings generally unless otherwise agreed to by the Executive Manager or Manager should be held at Council Offices. Where the Council is seeking to take enforcement action the Manager and Executive Manager may refuse to meet with the persons the subject of the enforcement action but will meet with the Councillor to discuss the concerns.

Section 352 of the Local Government Act states “A member of staff of a council is not subject to direction by the council or by a councillor as to the content of any advice or recommendation made by the member”. Accordingly it is not appropriate for Councillors to direct staff in relation to particular outcomes relating to investigations or enforcement options or actions. Councillors can help individuals who raise concerns with them by satisfying themselves that the council’s policies as adopted by Council are being carried out correctly. As much as Council policy provides direction to the staff they also guide the Councillors in their role.
20 RELATED POLICIES

- Asbestos Management Policy
- Complaint Management Policy
- Feral and Infant Animal Policy
- Keeping of Animals Local Orders Policy
- Onsite Sewage Management & Grey-water Re-use Policy
- Managing Difficult Customer Behaviour Policy
APPENDIX A

The Policy applies but is not limited to, Council’s responsibilities under the following Acts, their associated Regulations and any subsequent legislative amendments:

- Australian Road Rules 2014
- Roads Act 1993
- Road Transport Act 2013
- Boarding Houses Act 2012
- Companion Animals Act 1998
- Contaminated Land Management Act 1997
- Crown Lands Act 1989
- Environmental Planning & Assessment Act 1979
- Fines Act 1996
- Food Act 2003
- Impounding Act 1993
- Local Government Act 1993
- Motor Dealers Act 1974
- Biosecurity Act 2015
- Protection of the Environment Operations Act 1997
- Public Health Act 2010
- Swimming Pool Act 1992
- Rural Fires Act 2008
- Sydney Water Act 1994
APPENDIX B

DEFINITIONS

The following are the definitions of key terms in this Policy:

Complaint

A complaint is an expression of dissatisfaction made about council services, staff or the handling of a complaint, where a response or resolution is explicitly or implicitly expected or legally required.

For the purposes of this policy, a complaint does not include:

- a report alleging unlawful activity (see definition below)
- a request for information about a council policy or procedure
- a request for an explanation of actions taken by council
- a request for internal review of a council decision.

Enforcement:

Actions taken in response to serious or deliberate contraventions of laws.

Regulation:

Using a variety of tools and strategies to influence and change behaviour to achieve the objectives of an Act, Regulation or other statutory instrument administered by Council.

Report alleging unlawful activity:

An expression of concern or a request for service in relation to alleged unlawful activity, where a response or resolution is explicitly or implicitly expected or legally required.

Unlawful activity:

Any activity or work that has been or is being carried out contrary to the below and/or failure to take required action in order to be compliant with:

- terms or conditions of a development consent, approval, permit or license
- an environmental planning instrument that regulates the activities or work that can be carried out on particular land
- a legislative provision regulating a particular activity or work
- a required development consent, approval, permission or license.
## APPENDIX C

### RISK CATEGORY GUIDELINES

<table>
<thead>
<tr>
<th>RISK CATEGORY</th>
<th>HIGH</th>
<th>MEDIUM</th>
<th>LOW</th>
</tr>
</thead>
<tbody>
<tr>
<td>FEATURES OF CATEGORY</td>
<td>Matters likely to cause significant risk or harm to the environment and/or public safety (i.e. likely to cause serious and irreversible impacts).</td>
<td>Matters likely to cause moderate risk of harm to the environment and/or public health and safety (i.e. impacts of concern that need to be controlled or mitigated).</td>
<td>Matters likely to cause minimal risk of harm to the environment and/or public health and safety (i.e. low impact, reversible and easily mitigated).</td>
</tr>
</tbody>
</table>

### INDICATIVE TIMEFRAME OF INITIAL RESPONSE

| | Immediately or within 48 hours | Response within 15 working days | Response within 20 working days |

### EXAMPLE REPORT TYPES/ISSUES

| Large scale/major pollution incidents | Roaming dogs, animal registration and general companion animal enquiries | Barking dogs | All other animal related enquiries |
| Serious public health issues such as food poisoning outbreaks and Legionnaires’ cases | Abandoned motor vehicles | Domestic noise complaints (power tools, air conditioners, pool pumps, amplified music) |
| Dangerous Dog attacks, straying stock | Minor pollution incidents - air, noise, odour and water quality | Overgrown land | Accumulation of rubbish or material on land |
| Clearing or removal of significant trees and vegetation | Breaches of Vegetation Permits | Home business/home occupation | |
| Abandoned vehicles in unsafe locations | Swimming pool with non-compliant fence or barrier | Minor unauthorised / non complying building works (criteria) | |
| Collapsed or unsafe building works adjacent to public areas | Commercial or industrial air and noise complaints | Smoke nuisance from domestic wood heaters, outdoor BBQ’s, burning prohibited items | |
| Poor sediment control on building sites | Food premises complaints - e.g. health and hygiene, condition of premises, suspected food poisoning | Illegal Parking | |
| Swimming pool with no fence or barrier | Public Health complaints - e.g. condition of swimming pools and spas, skin penetration premises, cooling towers | | |
| Significant fire safety issues | Significant unauthorised / non complying building and land use matters | | |
| Urgent asbestos removal | Unauthorised building works where a Private Certifier is appointed | | |
| Demolition or damage to a heritage item | Minor landfilling, or rubbish dumping | | |
| Sewer leaks and overflows | Footpath obstructions | | |
| Large scale unauthorised landfilling and waste disposal | On-site Sewage Management Systems failures | | |

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**Note:** The action undertaken by Council in response to a request will be proportionate to the quantum of resources available at the time. For example, where the number of requests exceeds the amount of resources available, requests may be actioned using compliance through voluntary action (letters of cooperation). Conversely, when resources are available, more detailed investigations may be conducted.

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**Penrith City Council**
Penrith City Council

COMPLIANCE AND ENFORCEMENT GUIDELINES

Compliance and Enforcement Guidelines
Version: February 2019

PENRITH CITY COUNCIL
Based on the NSW Ormisdarian Enforcement Guidelines for Councils December 2015
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PART 1
Compliance and Enforcement Options

1. Introduction

Penrith City Council is an enforcement authority and its Officers are required to make decisions and use discretion about appropriate enforcement action when non-compliant issues are identified.

Council also has a responsibility under Section 8 of the Local Government Act 1993 to ensure that its regulatory activities are carried out in a consistent manner and without bias.

Council's regulatory and enforcement actions should be exercised to ensure the health, safety and environmental protection of all stakeholders including residents, visitors, workers and business operators. All stakeholders should have confidence in the decision making and internal review processes.

These guidelines are based on NSW Ombudsman Enforcement Guidelines December 20-15 and have been adapted for use by Penrith City Council as a supporting document to its Compliance and Enforcement Policy.

The information in this document provides additional guidance on:

- responding to allegations of unlawful activity
- choosing options after an investigation
- using discretion
- taking enforcement action
- deciding on prosecution action
- preventing unlawful activity, and
- conducting enforcement investigations.

2. Responding to allegations of unlawful activity

2.1 What is ‘unlawful activity’?

For the purposes of these guidelines, ‘unlawful activity’ is any activity or work that has been or is being carried out:

- contrary to the terms or conditions of a development consent, approval, permission or licence
- contrary to an environmental planning instrument that regulates the activities or work that can be carried out on particular land
- contrary to a legislative provision regulating a particular activity or work
- without a required development consent, approval, permission or licence.
In summary, unlawful activity is any activity or work that is:

- contrary to the terms and conditions of consents, construction certificates, approvals, licences, planning instruments or applicable legislation
- illegal, whether prohibited or merely unauthorised.

These guidelines are primarily directed at the regulation of development activity. However, they are applicable to other regulatory activities such as pollution control, public health and control over keeping animals.

2.2 Recording and acting on allegations of unlawful activity

The public are an important source of information on possible unlawful activity. When councils receive a report or a complaint about unlawful activity, they must make a full and proper record of the complaint.

The key elements of an effective complaint handling system are:

- accessibility: to both members of the public and people subject to regulation
- simplicity: this is particularly important with complaint handling in the enforcement area because many councils use a single system for complaints and work requests
- responsiveness: ideally reflected in standards of service
- fairness
- objectivity
- commitment: to taking complaints seriously
- visibility
- record-keeping: making and keeping full and accurate records.

Council has established systems for recording and acting on complaints. Important features of these systems include:

- Recording a complainant's details on a central register. This record should include the complainant's name, address and telephone number, and the details and location of the activity or work.
- Allocating the complaint to a particular staff member for appropriate action to be completed within specified turnaround times.
- Informing complainants about the council's rights and obligations regarding confidentiality and checking whether they would be willing to be a witness.
- Examining the zoning of the site and deciding if the activity or work is prohibited, permissible with consent or permissible without consent.
- Examining the consent history for the site and determining prima facie if the activity or work is permissible and, if so, whether council records show that any works or activities have been or are being carried out in accordance with all conditions of consent. Inspecting the site and trying to interview the owner/operator if there is prima facie evidence of unlawful activity or works.
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- Assessing the matter and recommending appropriate enforcement action if there is evidence of unlawful activity or works.
- Initiating informal enforcement action, usually starting with letters directing that the activity cease or the work be rectified.
- Reviewing the effectiveness of the initial enforcement action and proceeding, if appropriate, with formal enforcement action by issuing a relevant notice.
- If the unlawful activity ceases or the work has been rectified.
- Informing the complainant of the outcome of the investigation or other action taken.

2.3 Determining when an investigation is warranted and the nature of that investigation

Correctly identifying or categorising the nature of the complaint will help you to decide how you should deal with it.

Not every complaint will require an investigation. Many complaints can be resolved informally by providing prompt and accurate advice. This could be, for example, by confirming that a consent is in place for an activity or work or that it is permissible without consent.

Any decision not to investigate an allegation of unlawful activity needs to be recorded and the reasons for that decision clearly stated.
When deciding whether a complaint requires investigation, you need to consider a range of factors.

- Is the matter within the jurisdiction of the council?
- Is the matter premature e.g. does the complaint relate to some unfinished aspect of works that are still in progress?
- Is the activity or work permissible with or without consent?
- If the work is permissible with consent, is there a consent in place?
- Is it possible to determine from the information available to council whether the activity or work is permissible without consent and/or whether all conditions of consent are being complied with?
- Is the complaint trivial, frivolous or vexatious?
- Has too much time elapsed since the events the subject of the complaint took place?
- Is there another body that is a more appropriate agency to investigate or deal with the matter?
- Is the activity having a significant detrimental effect on the environment or does it constitute a risk to public safety?
- Does the complaint indicate the existence of a systemic problem e.g. if a complaint is one of a series, could there be a pattern of conduct or a more widespread problem?
- Has the person or organisation complained of been the subject of previous complaints?
- Does the complaint have special significance in terms of the council's existing priorities?
- Are there significant resource implications in relation to an investigation and any subsequent enforcement action?
- How is the public interest affected?
It is not open to councils to decide not to conduct an investigation on the basis that they can rely on the results of an investigation conducted by some other body. Councils must satisfy themselves about the facts of the case and independently assess the need for action. There may be procedural fairness implications if decisions are based only on the findings of an inquiry by another tribunal or investigative agency.


Complaints that seem to involve ill will, vengeance or vindictiveness should not be immediately dismissed. Although a complainant's motive may cloud their judgment and flavour the complaint, the complaint may still be well founded.

If the council receives an anonymous complaint, or the complainant subsequently withdraws the complaint, the allegations should still be investigated if the subject matter of the complaint is sufficiently serious and there are other avenues of inquiry reasonably available. However, you need to remember that evidence will not be available from the complainant.

2.4 Risk categorisation in initial assessments

Answering the set of initial assessment questions will also assist council staff to assign appropriate risk categories to individual matters. A triage or rating system for common non-compliance incidents, such as, critical, high, medium and low will help with prioritising action. This will assist with managing people’s expectations and allocating resources.

The following table of risk categories and examples is reproduced from HCCREMS' *Guideline Managing Reports of Non-compliance* (2012).
Table 1. Example Risk Categories

<table>
<thead>
<tr>
<th>FEATURES OF CATEGORY</th>
<th>RISK CATEGORY</th>
<th>INDICATIVE TIMEFRAME OF INITIAL RESPONSE</th>
<th>EXAMPLE REPORT TYPES/ISSUES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Matters likely to cause significant risk or harm to the environment and/or public safety (i.e. likely to cause serious and irreversible impacts).</td>
<td>High</td>
<td>Immediately or within 48 hours</td>
<td>Roaming dogs, animal registration and general companionship animal enquiries, Abandoned motor vehicles, Minor pollution incidents, noise, odour and water quality, Breaches of Vegetation Permits, Swimming pool with non-compliant fence or barrier, Commercial or industrial air and noise complaints, Food premises complaints e.g. health and hygiene, condition of premises, suspected food poisoning, Public Health complaints e.g. condition of swimming pools and spas, skin penetration premises, cooling towers, Significant unauthorised non-complying building and land use matters, Unauthorised building works where a Private Certifier is appointed, Minor landfilling, or rubbish dumping, Footpath obstructions, On-site Sewage Management Systems failures, Reserve encroachments, Boarding houses, Overland stormwater flow caused by non-compliant works,</td>
</tr>
<tr>
<td>Matters likely to cause moderate risk of harm to the environment and/or public health and safety (i.e. impacts of concern that need to be controlled or mitigated).</td>
<td>Medium</td>
<td>Response within 15 working days</td>
<td>Daking dogs, All other animal related enquiries, Domestic noise complaints (power tools, air conditioners, pool pumps, amplified music), Overgrown land, Accumulation of rubbish or material on land, Home business/home occupation, Minor unauthorised non-complying building works (criteria), Smoke nuisance from domestic wood heaters, outdoor BBQ’s, burning prohibited items, Illegal Parking,</td>
</tr>
<tr>
<td>Matters likely to cause minimal risk of harm to the environment and/or public health and safety (i.e. low impact, reversible and easily mitigated).</td>
<td>Low</td>
<td>Response within 20 working days</td>
<td></td>
</tr>
</tbody>
</table>
2.5 Deciding if you need more information

Before deciding how a complaint should be dealt with, you may need to question the complainant more closely about their allegations and any evidence they have or can point to which supports their allegations.

It is important to remember that a complainant may be under considerable strain. They may react badly to a line of questioning that gives the impression that you are sceptical about their initial complaint.

Some complainants may prefer you to contact them on a home or other telephone number. This will depend on the nature of the matters alleged and the preference of the individual complainant.

2.6 The role of the investigating officer

The investigator is responsible for finding out all the relevant facts about a complaint. This task must be done in an impartial, independent and objective manner. The role and functions of an investigator are quite distinct from those of a mediator, conciliator or adviser. However, a good investigator will be able to adopt these roles when appropriate to satisfactorily respond to certain complaints.

In certain circumstances, matters should be referred to an appropriate external agency or other third party for investigation or action. For example, you should refer a complaint if:

- it concerns possible criminal conduct or serious corruption and the council is unlikely to have adequate powers or expertise to investigate
- it is particularly complex or sensitive and there is an appropriate alternative agency (such as the Environment Protection Authority) with jurisdiction to investigate the matter
- the subject of the complaint is the council itself or a senior manager of the council and the investigation therefore needs to be impartial.

For more detailed information about conducting enforcement investigations, please see Part 2 of these guidelines.

3. Choosing options after an investigation

There are a range of possible outcomes at the end of an investigation.

Most commonly, Council itself will decide whether or not to pursue formal legal action. Another possible outcome may be for the complaint to be referred to an external agency for further investigation or prosecution. There are also a number of alternative approaches that should be considered. For example, you could decide to:

- take no action on the basis of a lack of evidence or some other appropriate reason
- counsel the person investigated to educate them on the relevant council requirements
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- negotiate with the subject of the investigation and obtain some undertakings to address the issues of concern arising from the investigation e.g. lodgement of a development application or an application for modification of development consent
- issue a letter requiring work to be done or activity to cease in lieu of more formal action
- issue a notice of intention to serve an order or notice under relevant legislation, and then serve an appropriate order or notice (Local Government Act (LG Act) ss.124-128, Environmental Planning and Assessment Act (EPA Act) s.121B)
- issue a notice requiring work to be done under various legislation
- take proceedings in the Land and Environment Court for an order to remedy or restrain a breach of the relevant Act or Regulation (s.673 LG Act, s.123 EPA Act)
- seek injunctions from the Land and Environment Court or the Supreme Court
- issue a summons in the local court
- take proceedings for an offence against the relevant Act or Regulation (s.691 LG Act, s.125 EPA Act, Ch 5 PoEO Act)
- carry out the works specified in an order under the LG Act at the cost of the person served with the order (s.678 LG Act)
- issue a penalty notice (s. 679 LG Act, s127A EPA Act, Ch 8 PoEO Act).

4. Using discretion

Councils have discretion in deciding whether to take enforcement action in response to evidence of unlawful activity. Councils exercise this discretion in the context of their broad regulatory responsibilities for the administration of justice and the enforcement of the law.

The use of discretion was covered in the judgement of the NSW Court of Appeal in Ryde City Council v Echt and Anor [2000] NSWCA 108. The following is a summary of some of the key issues:

- While the council in question had a responsibility to enforce the law, this does not mean that there is a legal obligation to act or a statutory power which is enforceable at the insistence of a third party.
- Statutory bodies, and those exercising the prerogatives of the Crown, which have responsibility for the administration of justice and the enforcement of the law may choose not to enforce the law in particular circumstances or at all.
- A repository of a statutory power may commit a relevant legal error by failing to turn his or her mind to the exercise of that power.

The issue was also considered by McHugh J in the judgement of the High Court in Bateman’s Bay Local Aboriginal Land Council v The Aboriginal Community Benefit Fund Pty Limited [1998] HCA 49. McHugh J noted that:

There are sometimes very good reasons why the public interest of a society is best served by not attempting to enforce a particular law. (para 83)
Attorneys-General have long taken the view that the institution of legal proceedings is not justified simply because there is prima facie evidence of a breach of the law. (para 85)

The decision when and in what circumstances to enforce public law frequently calls for a fine judgement as to what the public interest truly requires. (para 86)

The NSW Director of Public Prosecutions (DPP) states in its Prosecution Guidelines (section 4 The Decision to Prosecute) that the question of whether or not the public interest requires that a matter be prosecuted is resolved by determining:

- whether or not the admissible evidence available is capable of establishing each element of the offence
- whether or not it can be said that there is no reasonable prospect of conviction by a reasonable jury (or other tribunal of fact) properly instructed, and if not
- whether or not discretionary factors nevertheless dictate that the matter should not proceed in the public interest.

4.1 Requirements for discretionary decisions

Like any discretionary decision, there are several important requirements that councils must observe for the decision to be lawful.

- The power must be used for a proper purpose i.e. within the scope and purpose for which the power was given.
- The decision-maker must give proper, genuine and realistic consideration to the merits of the particular case.
- The decision-maker must consider only relevant considerations and must not consider irrelevant considerations in reaching a decision i.e. the decision must not be manifestly unreasonable.
- The decision-maker must give adequate weight to a matter of great importance but not give excessive weight to a relevant factor of no great importance.
- The decision-maker must not exercise a discretion in a way that is so unreasonable that no reasonable person could have exercised the power.
- The decision-maker must not make a decision that is arbitrary, vague or fanciful.
- The decision-maker must exercise a discretion independently and not act under the dictation or at the behest of any third person or body.
- The decision-maker must not fetter its discretion by, for example, adopting a policy that prescribes its decision-making in certain circumstances.
- The decision-maker must observe the basic rules of procedural fairness i.e. natural justice.
- The decision-maker must not act in a way that is biased or conveys a reasonable perception of bias.
5. Taking Enforcement Action

There are a range of considerations that councils need to take into account when deciding whether or not to take enforcement action.

5.1 Is there an estoppel?

Estoppel is a legal rule which prevents a person from later denying conduct or words which have been relied, and acted, upon by another person to their detriment.

The issue is whether the conduct of the council could lead to an expectation that it will not take action in a particular circumstance or that it is not concerned about the conduct in question. For example:

- Has the owner/occupier previously been notified that the council would not be taking action?
- Has the matter previously been brought to the attention of the council yet no action taken?
- Has the council contributed to the owner/occupier acting upon a reasonable expectation that no action would be taken?

5.2 Is the breach a technical breach only?

A breach of a technical condition or inconsequential changes to approved plans during construction, in the absence of any other aggravating factor, will generally not warrant a decision to take action to remedy or restrain the breach.

You need to consider whether there are any material implications to the interests of any party or any detrimental affect on the amenity of the area or the environment generally.

5.3 When was the unlawful activity carried out and for how long?

Time limits frequently apply and sometimes prosecution will be statute barred despite good evidence that unlawful activity has taken place.

Courts generally look unkindly on delays in taking action to prevent or prohibit unlawful activity, so evidence of a council's failure to take action in the required time may be an obstacle to successful prosecution.

Whether the offending activity is ongoing or has ceased will also be a relevant consideration.

5.4 How has the unlawful activity affected the natural or built environment and the health, safety and amenity of the area?

If there is actual or potential detriment to the natural or built environment, to the health or safety of residents or the amenity of an area, this would normally warrant a decision to take action to remedy or restrain the breach.

Examples of situations where there is a significant risk of detriment include serious noise, air or water pollution, unsafe building work (especially occupied buildings), dangerous dogs, seriously unhealthy food premises and detriment existing in or threatening any public place.
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examples will be matters which are specifically negotiated by a council at DA stage to address neighbourhood amenity issues and community concerns. The issue you need to consider is the degree of detriment or risk to the environment.

There may also be cases where the unlawful activity will have a positive or beneficial impact on the environment or amenity of the locality.

5.5 Would consent have been given if it had been sought?

In the absence of aggravating circumstances, a council should be less inclined to proceed with legal action if the unlawful activity could be carried out lawfully if consent had been sought. In these circumstances, you might consider deferring action to allow the owner time to lodge an application for assessment.

Similarly, if an unauthorised use comes to the council's attention only because the owner has sought approval, it is reasonable to defer action until the application is determined. If an owner actively and positively attempts to regularise an unauthorised use by lodging an application, you should take this conduct into account in determining whether to take action against them.

However, if there has been a blatant attempt to flout the law or the person is just using the application process as a delaying action, deferral would not be appropriate.

The following cases support the proposition that carrying out unauthorised work generally does not prevent a council from considering a subsequent application for a building certificate on its merits. The cases are *Koutlidis & Ors v City of Salisbury* (1982) 29 SASR 321; 49 LGRA 17; *Longa v Blacktown City Council* (1985) 54 LGRA 422; *Ireland v Cessnock City Council* (1999) 103 LGERA 285.

Also in *Windy Dropdown Pty Ltd v Warringah Council* (2000) 111 LGERA 299, the court held that it was open to a council to modify an existing development consent to grant consent to works that had already been carried out. This case, however, remains untested on appeal.

Section 96(2) of the EPA Act restricts modification to circumstances where the development is essentially the same development as the development for which consent was originally granted.

5.6 Can any unauthorised works or failure to comply with conditions be easily remedied?

If there is evidence of a significant issue of non-compliance and that matter can be easily remedied by some action on the part of the person the subject of the complaint, there is a less compelling case for enforcement action.

An example would be if, because of a measurement error, the parking spaces available in a development are insufficient to comply with the approval. Strict compliance might involve further excavation or be impossible due to site constraints and subsequent works. In such a case, other options might be considered to remedy the breach such as a monetary contribution or the provision of off-site spaces to make up the shortfall. These options would achieve the council's objective in imposing the condition while still permitting the development to proceed without prejudicial expense and delay.
There is a need to balance the public interest in enforcing the law with whether it is possible to remedy a breach and, if so, how expensive and inconvenient this would be. Discretion may be more readily used in the case of a static development (such as when a building has already been erected) rather than when there is a continuing, easily remedied breach. However there are no hard and fast rules and it is important that discretion is exercised on a case by case basis.

### 5.7 Does the person the subject of the complaint show due contrition?

In some cases, the person the subject of the complaint will have acted appropriately by acknowledging their wrongdoing and submitting to the rule of law. In such cases, it may be that the public interest would not be best served by prosecuting the offender, especially if the offending conduct or work has been remedied.

### 5.8 Are there any particular circumstances of hardship affecting the complainant or the person the subject of the complaint?

If the offending activity is minor and primarily offends a private interest rather than the general amenity of the area, a council should not take action where an appropriate alternative remedy, such as civil action, is available to the complainant. However, if the matter falls within the council's jurisdiction and there are particular hardship factors that make it unreasonable to expect the complainant to pursue alternative redress, it may be appropriate for the council to intervene.

Similarly, if enforcement action would cause particular hardship to a person the subject of the complaint and the impact of the unlawful activity is not otherwise severe, the council may consider taking informal action or taking no action. For example, if action in relation to a particular breach would impede progress of a major development and seriously prejudice the rights of the developer in terms of delays and costs, you should consider whether there are acceptable alternatives to enforcement action.

### 5.9 Are there existing use rights?

Hardship may also be caused to the person the subject of the complaint if the onus of proof is difficult or impossible to discharge. For example, the onus at law to prove existing use rights falls upon the person asserting that right. If an existing use is long established, say over 20 years, it may not be reasonable to require the owner to produce documentary evidence of the use at a particular date if, for example, the business has changed hands several times or fire/flood has destroyed documents.

A heavier responsibility may fall upon the person asserting an existing use right to prove the existence of that right in relation to larger scale developments and those with significant environmental impacts such as sand mining.

### 5.10 Has the person the subject of the complaint received a previous warning or other non-coercive approach or been previously the subject of formal legal action?

It is essential that councils continue to monitor situations where they decide not to take formal enforcement action despite evidence of unlawful activity. If monitoring reveals that the unlawful activity is not resolved or you receive fresh complaints, then a more formal and coercive approach would appear more appropriate.
5.11 Would an educative approach be more appropriate than a coercive approach?

When deciding to take an educative rather than a coercive approach, you need to consider issues such as the level of contrition shown by the subject of the complaint, whether they have previously been warned or dealt with as a result of this or similar behaviour, and the level of intent shown.

5.12 What are the chances of success if challenged?

A council can validly take into consideration the likelihood that a court challenge to the contemplated action would be successful. In such situations, you would need to identify the causes of that likelihood and address them in the particular case or as a general issue.

5.13 What are the relative costs and benefits of taking formal enforcement action as opposed to taking no action or taking informal action?

Legal proceedings can be expensive and cost prohibitive. When doing a cost/benefit analysis, you should assess costs and benefits broadly and remember to consider indirect costs and benefits. For example, the indirect cost of taking no action is that broader levels of compliance may fall and there may be a general increase in the demands on the council to intervene. Conversely, the indirect benefit of formal proceedings is the educative and deterrent effect of a successful prosecution.

5.14 Would a draft local environmental plan make an unauthorised use legal?

If there is a draft local environment plan (LEP) on exhibition that would make the unauthorised use legal, you could consider deferring any enforcement action until after the LEP is made and the owner given time to apply for approval.

5.15 What about reasonableness and proportionality?

You should always act in ways that are reasonable in the particular circumstances that apply. This includes a reasonable proportionality between the ends to be achieved and the means used to achieve them.

Where decisions are based on technical advice (e.g. engineering or legal advice), you should also make sure that non-technical issues, such as the reasonableness of the conduct and the effect of possible decisions, are not ignored.

The obligation to comply with the law does not relieve you of the moral obligation to take lawful steps to mitigate the effects of rigid adherence to the letter of the law if that results in, or is likely to result in, manifestly inequitable or unreasonable treatment of an individual or organisation.

For example, sometimes the result of enforcing one aspect of a large development may be disproportionate to the harm or damage arising from the breach. In these circumstances, you should weigh up the costs and benefits of taking enforcement action.
Considerations such as the impact of the breach on other people, whether there are other acceptable options available to address the breach, and the attitude of the developer should be assessed. If the breach is not a structural breach likely to result in an unsafe development, you might consider negotiating a settlement with the developer and resolving variations through, for example, the use of building certificates.

5.16 What would be in the public interest?

While decisions to take enforcement action are discretionary and councils are generally under no legal obligation to act in any particular case, councils do have obligations to uphold the planning laws and to act in the public interest.

If planning laws are not upheld, equal justice may not be secured. Particular individuals may gain private advantages that others cannot enjoy and the environment may be damaged.

In *Parramatta City Council v Lutz* (1988) 12 NSWLR 293, Kirby P (as he then was) found that a duty of care was owed by the council to a complainant who had reported the dangerous state of a neighbouring building and relied upon the council to exercise its powers to remedy the situation.

Section 8 of the LG Act sets out guiding principles in a council's charter. These principles include:

- to properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development.
- to ensure that, in the exercise of its regulatory functions, it acts consistently and without bias, particularly where an activity of the council is affected.

While there is no concise definition of the 'public interest', some of the issues you should consider are:

- Are the circumstances outlined in the complaint of unlawful activity likely to affect a significant number of people?
- Will the circumstances impact on certain population groups, particularly disadvantaged or marginalised groups e.g. elderly residents?
- Is the activity indicative of a systemic flaw — possibly the result of a deficiency in policy or procedures?
- Does the activity raise an issue that is individual in nature but occurs unreasonably often?
- Has the activity attracted sustained public controversy and no alternative resolution has been proposed or is likely?

6. Deciding on prosecution action

Regardless of any other enforcement action contemplated by the council, there will be matters where you will need to consider prosecuting an offender.

You need to ask the following key questions:
6.1 Is there admissible evidence that establishes each element of the offence beyond reasonable doubt?

This is the *prime facie case* test.

Is there a reasonable prospect of conviction?

This decision will be based on an evaluation of the weight of the available evidence and the persuasive strength of the Crown case, including the circumstances in which the case will be heard. It is a test appropriate for both indictable and summary charges.

6.2 Are there discretionary factors to be considered?

These factors may include:

- How serious or trivial is the alleged offence?
- Is the applicable law obsolete or obscure?
- Would the prosecution be perceived as counter-productive, for example by bringing the law into disrepute?
- Is the alleged offence of considerable public concern?
- How ‘stale’ is the alleged offence?
- How prevalent is the alleged offence and is there any need for deterrence, both personal and general?
- Are there any effective alternatives to prosecution?
- How long and expensive would a trial be?
- What are the sentencing options available to the court if there is a guilty finding?
- Would the proceedings or the consequences of any resulting conviction be unduly harsh or oppressive?
- What is the alleged offender’s degree of culpability in connection with the offence?
- Are there any mitigating or aggravating circumstances?
- Does the youth, age, maturity, intelligence, physical health, mental health or special disability or infirmity of the alleged offender, a witness or a victim need to be considered?
- Is the alleged offender willing to cooperate in the investigation and prosecution of others?
- What is the attitude of the victim and possibly the material witnesses to a prosecution?

The applicability of these factors and the weight you give them will vary widely depending on the particular circumstances of each case.

There are also several factors that should not influence a decision about prosecution action. These include:

- the race, religion, sex, national origin or political associations, activities or beliefs of the alleged offender or any other person involved
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- the personal feelings of the prosecutor concerning the alleged offence, the alleged offender or a victim
- any possible political advantage or disadvantage to the government or any political party, group or individual
- the possible effect of the decision on the personal or professional circumstances of those involved.

Councils should always seek legal advice to help them decide whether or not to prosecute a matter. However ultimately the decision is one for the Council to make and will involve the consideration of both legal and non-legal factors. A record must always be made of the decision reached and the reasons for that decision.

7. Preventing unlawful activity

There are several strategies that councils can use to help prevent unlawful activity or deal with it in a more positive and cost effective way.

7.1 Imposing sensible and enforceable conditions

Unlawful activity can often be traced back to the imposition of unenforceable or ineffective conditions, consents, approvals, permits or licences.

Councils can avoid or prevent the creation of all sorts of problems if they ensure that proper care and consideration is given to the development and imposition of conditions. All too often problems are caused by conditions being drafted with some overall objective in mind with little thought being given to whether the conditions are enforceable or effective. Councils need to avoid exposing themselves to the suggestion that poorly conceived conditions have been attached to a consent in an attempt to appease opposition to controversial development. This approach rarely works as it is these conditions that prove unworkable in practice and are most likely to be the subject of ongoing complaints.

To properly regulate work or activity, you must be clear about what sorts of objectives the council is trying to achieve, what aspects of the work or activity must be subject to conditions to meet those objectives, and how the attainment of those objectives can be measured. Also, applicants are more likely to comply with conditions that are sensible and workable.

When drafting conditions of consent, you should always assume that at some stage the council or an accredited certifier will be called on to enforce the conditions. This could be as part of a program of inspections or compliance audits or after complaints from members of the public.

The conditions imposed on a consent, approval, permit or licence should be enforceable, effective and timely.

Enforceable

- legal: in accordance with the provisions of the relevant Act or Regulation
- for the proper purpose: the purpose for which the power to impose the condition was conferred
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- certain: free from ambiguity or other uncertainty
- clear: simple, understandable and free from confusion
- measurable: possible, and preferably easy, to find out whether the requirements of the condition have or are being met or breached

Effective
- necessary: the condition serves a good and proper purpose to achieve a reasonable objective
- applicable: the condition has been drafted to apply to the particular circumstances of the activity or work in question
- workable: the requirements of the condition are practical and can be readily implemented
- reasonable: compliance with the condition should not impose unreasonable burdens on the applicant
- clear and simple: easily understandable by members of the public.

Timely
- the conditions should set time limits for compliance, where appropriate.

7.2 Avoiding delays

Delays in responding to complaints about unauthorised activity can result in difficulties for the council. For example, the passage of time may result in unauthorised works being further advanced and therefore more difficult to remedy or rectify.

Councils should encourage their staff (from all areas of the council’s administration) to report suspicions or concerns. This will help the council respond to unauthorised activity at the earliest opportunity and therefore reduce the magnitude of the problem.

7.3 Keeping records of existing use rights

Existing use rights that have been ongoing for significant periods of time may pose problems for the person asserting the existing use in satisfying the onus of proof.

Council could consider establishing and maintaining a register of existing uses to centrally record the information held by council.

7.4 Educating the community

A proactive approach to preventing unauthorised uses and works should include providing information to the public about planning and building obligations, the restrictions which apply to the development of land, and when consent is required.

Think about ways to make this information more accessible to the community. For example, you could provide downloadable information on the internet such as maps, instruments and brochures, set up an advisory service or publish advice on common issues. A number of councils use recorded voice messages to give information on a range of issues to callers on hold.
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It is also important to avoid unnecessary complexity in council plans and policies.

7.5 Taking a reasonable approach

The rational and reasonable exercise of discretion by council will encourage people to try to resolve problems as they arise or come to notice. The blanket application of policy or law, without regard to individual circumstances, discourages the community from approaching council as they may feel the council will not act reasonably and try to resolve the matter.

7.6 Doing regular inspections

Where possible schedule regular inspections of premises with a high potential for pollution, noise etc. as a means of early detection and prevention of potential problems.

7.7 Monitoring compliance

Council routinely inspects premises such as food outlets, public pools, private swimming pools, skin penetration premises and regulated systems (e.g. cooling towers) to check for Legionella. Target auditing of commercial and industrial premises is also conducted from time to time.

Depending on resourcing it can be a challenge to monitor compliance with, for example, conditions of development consents. A risk assessment approach is typically used to identify which premises should be included in a program of compliance inspections. This should include a careful assessment of the key risk factors arising from the nature of activities and works carried out in the council area.
PART 2
Conducting Enforcement Investigations

This section covers the key issues you need to consider when conducting an enforcement investigation.

8. Recognising and avoiding conflicts of interest and bias

8.1 Introduction

All investigations must be conducted in an impartial and objective manner. The investigator must not have, and must not be perceived to have, any conflicts of interest in relation to the complaint, the complainant, or the people or conduct being investigated.

There can be no confidence in the outcome of an investigation or the decision on enforcement action if the process is tainted by bias or an actual or perceived conflict of interest.

8.2 Conflicts of interest

It is no answer to an allegation of conflict of interest to say that the investigator is not the ultimate decision-maker. The allegation may be that, because of a conflict of interest, the investigator did not collect all the relevant facts or ask the necessary questions. They therefore did not carry out a proper investigation on which the ultimate decision was based.

It is not always easy to identify a conflict of interest. Although the investigation must be conducted impartially, it is sometimes unrealistic to expect that the investigator will be someone having no previous connection with the person or issues being investigated. Complaints of alleged unlawful conduct often have significant histories that involve the same complainants, the same people being investigated and the same council staff.

Simply knowing the complainant or the person being investigated, or previously having investigated that person, is not enough in itself to form a conflict of interest allegation. An allegation must be based on something more or something particular to the current investigation.

8.3 Bias

There are several factors that should not influence the conduct of an investigation or any subsequent decision on enforcement action. These include:

- the race, religion, sex, national origins or political associations of the complainant or person being investigated
- the personal feelings of the investigator towards the subject matter of the investigation or the person being investigated
- any possible political advantage or disadvantage to any individual or group on or off the council
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- the possible effect of the outcome of the investigation on the personal or professional circumstances of those involved in the investigation.

9. Determining powers of investigation

9.1 Do I have the powers to investigate effectively?

The four chief sources of information in nearly all investigations are:

- witnesses, including complainants and independent witnesses
- experts or other people with relevant knowledge or information
- documents
- physical evidence.

At the outset you need to ask yourself what powers you have to investigate. In particular, do you have the necessary power to get any witnesses to talk to you about relevant events, to inspect premises, to obtain or view documents and to obtain information from other sources?

The powers council staff have to enter and inspect premises are detailed in the delegations and certificates of authority relevant to their position.

9.2 What if I encounter resistance from witnesses?

When deciding whether you have the authority to get access to relevant documents and to question witnesses, it is important to distinguish between the right to ask and the power to demand.

You may have the right to ask people to answer questions and to provide you with relevant documents. However if witnesses refuse to be interviewed or refuse you access to documents, you may not have the legal power to compel non-council witnesses to be interviewed or to provide information or records.

If the relevant records are all available within the council, then the investigation should be untroubled. However, records may be held by other people or organisations that may be reluctant to produce them. If so, the investigation may stall.

If you believe lack of powers may prevent you from properly conducting an effective investigation into a complaint, you may need to seek legal advice or ask the general manager about possible alternative strategies.

10. Establish a framework for the investigation

10.1 What authorisation do I need to begin an investigation?

The level of authorisation required will depend on the nature of the investigation. In most circumstances where there are adequate and appropriate delegations of authority, all you should
need is a decision from the relevant member of staff. If the matter is more complex or sensitive, or not covered by a delegation or council policy, you may need to obtain authorisation from a relevant manager. If you have any doubts, you should refer the matter to the Legal and Governance Department for advice.

10.2 Preparing an investigation plan

Before beginning a major investigation, you should prepare an investigation plan. The plan should be completed before conducting any inquiries because the ‘planning process’ will help you clarify the approach you should take. The plan will become the road map of your investigation. It allows you to stay focused on the job and alerts you to potential problems before you encounter them.

The first step in preparing an investigation plan is to clarify exactly what is being alleged in the complaint. A single complaint may contain a number of separate allegations. Write each allegation down so it can be individually dealt with.

The investigation plan or matrix should deal with each allegation under the following headings — Allegation, Possible offence/order, Proofs/facts in issue, and Avenues of inquiry (primary tasks).

Possible offence/order

Under ‘Possible offence/order’ you should list the practical implications of the allegation, if proved. For example, is the conduct complained of grounds for issuing an order or grounds for a prosecution? Try to be specific about this to save wasting resources on investigating a matter where the council has no power to act or is unlikely to take further action.

Proofs/facts in issue

Under ‘Proofs/facts in issue’ you should list the facts that need to be established to determine whether the allegations are true or false. If the complaint is about the conduct of an individual, the facts in issue will usually involve you finding out:

- the identity of the person alleged to have engaged in or carried out the unlawful activity
- the place and the date that the alleged unlawful activity occurred
- whether the conduct itself is an unlawful activity
- whether the person the subject of the allegation did the thing alleged
- whether the person concerned had authority to engage in or carry out the unlawful activity or had some other lawful basis for avoiding liability.

The relevant legislation, regulation, instrument or consent alleged to have been breached may also contain specific elements or requirements which must all be proven in order for a breach to be made out. The standard of proof to be met will depend on whether the allegation concerns a breach of the law or a criminal offence. In proceedings to remedy a breach of the law, the relevant standard is the ‘balance of probabilities’. In criminal proceedings, the relevant standard is ‘beyond reasonable doubt’.
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Avenues of inquiry

Under 'Avenues of inquiry' you should identify the methodology to be used, the procedures to be followed and the primary tasks to be undertaken to gather the necessary evidence. This may include site inspections, expert reports, physical evidence such as soil samples, interviews with specific witnesses and examining documents.

The right to take legal action against unlawful activity is subject to a time limit. For example, action taken in the local court for an offence is subject to a six month time limit from the point at which the matter arose. Make sure your investigation plan identifies and accommodates these limitations. The investigation must be completed within the actionable deadline so that there is time to assess evidence and make a final decision on what, if any, enforcement action is required.

It is important to start with a plan, but investigations rarely proceed as originally predicted. You should therefore be ready to revise your plan as new situations emerge during the course of the investigation. Make sure you follow the facts - never try to make the facts fit into your plan.

11. Complying with confidentiality and privacy requirements

There are various statutory and contractual confidentiality requirements that may apply to the conduct of investigations in local government.

The Privacy and Personal Information Protection Act 1998 (the PPIP Act) makes it an offence for a public official to intentionally disclose any personal information about another person to which the official has or had access in the exercise of his or her official functions, otherwise than in connection with the lawful exercise of his or her official functions (s.62). Unauthorised disclosure of confidential information will also generally be covered by a council's code of conduct. The PPIP Act also contains various information protection principles that are relevant to the actions that may be taken by a council in response to allegations of unlawful activity.

Confidentiality serves a number of important functions. Preserving the confidentiality of the identity of the person making the complaint and the person the subject of the complaint minimises the risk of harm to these parties.

Confidentiality also helps to ensure the integrity of the investigation. If a potential witness feels that they are unable to trust the discretion of the investigator, they will be more reluctant to come forward with relevant information. If material uncovered in an investigation is kept confidential, there is less risk of contamination of evidence. Any witnesses interviewed in the course of an investigation should be advised not to discuss the matter with other witnesses or other third parties. Before interviewing a witness, you should ask them whether they have discussed the matter with anyone else.

Council staff investigating alleged unlawful activity do not have absolute privilege against defamation. Failing to maintain confidentiality - by improperly or unnecessarily 'publishing' details of the complaint or any material uncovered in the course of an investigation - might expose you to defamation proceedings. However, you should be able to claim the defence of qualified privilege in any such proceedings provided the publication was for a proper purpose and made in good faith.

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Effectively the requirements of the information protection principles set out in the PPIP Act do not prevent or hinder a council from investigating allegations of unlawful activity.

12. Providing procedural fairness

12.1 What does procedural fairness mean?

Depending on the circumstances, procedural fairness may mean you need to:

- inform people against whose rights or interests a decision may be made of the substance of any allegations against them or grounds for adverse comment about them - this need not be done until an appropriate stage in an investigation has been reached
- inform people of the substance of any adverse comment proposed to be made about them and provide them with a reasonable opportunity to put their case - this may not be necessary if a formal order is to be made under the Local Government Act or criminal or other court proceedings are to be taken
- consider any submissions put forward by the parties to a matter
- make reasonable inquiries or investigations before making a decision
- ensure that no person decides a case in which they have a direct interest
- act fairly and without bias
- conduct the investigation without undue delay.

The obligation to inform people of the substance of the allegations made against them does not apply if you are not directly involved in proceedings that will affect a person’s rights or interests. However if you are responsible for conducting an investigation that will lead to recommendations about the matter, you should provide procedural fairness to the person against whom allegations have been made.

In most cases it will be sufficient to offer the person an opportunity to put their case in writing. However there may be occasions where natural justice requires that the person be able to make oral representations.

In some other cases there may be an overriding public interest in short-circuiting certain procedural fairness requirements. This will normally be in situations that involve serious risks to personal safety or where substantial amounts of public funds may be at risk. You should always seek and document expert external advice if you believe you have such a case on your hands.

Always record your reasons for any decision involving procedural fairness considerations in case your investigation later becomes the subject of a complaint to an accountability agency or an appeal to a tribunal or court.

For further information on procedural fairness requirements, please refer to the Ombudsman’s Investigating Complaints - A Manual for Investigators (published June 2004).
13. Gathering evidence

13.1 The principal forms of evidence

The three main types of evidence are:

- oral evidence (recollections)
- documentary evidence (records)
- expert evidence (technical advice).

In most investigations into unlawful activity the main type of evidence is the physical evidence of the activity or work supported, if necessary, by oral evidence of witnesses and documentary evidence. In many cases, however, you may need to obtain expert evidence.

When you are conducting an investigation you will often obtain a substantial amount of extraneous information. Make sure you refer constantly to your investigation plan so that you focus your efforts on obtaining the relevant information to establish the proofs or resolve the facts in issue.

As an investigator, you must always conduct yourself with probity. You must never resort to trickery, deception or unlawful means to obtain evidence. However withholding information from witnesses or people being investigated does not necessarily amount to trickery or deception.

13.2 Forensic evidence

The word forensic means 'used in, or connected with, a court of law'. The implications for an investigator of evidence being or becoming forensic are significant. If investigations of unlawful activity or work are likely to end up being the subject of legal proceedings, the task of preparing evidence will be much more onerous and you will have to take considerably more care in the way it is obtained and recorded.

If the possible legal proceedings are criminal, the general rule should be that you do not conduct the investigation at all unless:

- you are an experienced or trained investigator
- you are obtaining information at the request or suggestion of, and being guided by, suitably experienced lawyers.

Perhaps the most important consequence of evidence being forensic is the application of the rules of evidence. If these rules apply, you may need to get professional advice. A good investigator will always ask for this help.

14. Understanding the rules of evidence

It is useful for investigators to have a basic understanding of the rules of evidence. Even if allegations made in a complaint are unlikely to or do not become the subject of legal proceedings, the rules of evidence are based on solid and sound principles that can help your investigation by directing you to the best evidence.
The most fundamental consideration applying to any evidence is relevance. There must be a minimal logical connection between the evidence and the facts in issue.

However, if the rules of evidence apply, even evidence that is relevant may be inadmissible in proceedings.

14.1 Hearsay

Hearsay evidence is evidence based on what has been reported to a witness by others, rather than what the witness has heard or witnessed themselves. Hearsay is not admissible in a court as evidence as to the truth of what the witness has heard.

When investigating allegations of unlawful activity, hearsay can be a useful source of leads to other relevant evidence or witnesses. However whenever the primary source is available, they should be used in preference to relying on hearsay evidence.

An important exception to the rule against hearsay is any statement made by an alleged wrongdoer where they admit their wrongdoing. Damaging confessions are treated as inherently likely to be true.

14.2 Opinion evidence

As a general rule, a witness statement should not contain expressions of opinion about something or someone unless the witness is an expert who is asked to provide an expert opinion.

Opinion evidence from a witness other than an expert may be admissible if it is based on what a person saw, heard or perceived about a matter, and the opinion is necessary to obtain an adequate understanding of the witness’ perception of the matter. Similarly if the witness has acquired considerable practical experience about a matter through life experience, they may be able to express an opinion about something even if they are not an expert.

14.3 Cautioning

If, during the course of an investigation, you obtain evidence which establishes a prima facie case against the person being interviewed of a criminal offence, then a caution should be administered. This means advising the person that they do not have to say or do anything, but anything that they say or do may be used in evidence.

Evidence obtained in the absence of a caution is taken to be evidence that has been improperly obtained. Such evidence will, as a general rule, be excluded from proceedings in a court of law.

If you are proceeding with an investigation where the issue of cautioning a witness comes up, you should stop and think whether you should be continuing your investigation. Is it really appropriate that you conduct what is potentially a criminal investigation? The Ombudsman guidelines suggest not unless it is cleared with the police beforehand.
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15. Doing site inspections

15.1 Good preparation

The site inspection is the key investigative step for most council investigations of unlawful conduct complaints. It is the physical evidence of what is or is not occurring or has or has not been built that will prove crucial in deciding what enforcement action is required.

Good preparation is very important. Consider carefully what you need to know before you visit the site. For example, you should be familiar with any relevant conditions of consent or licence conditions, the relevant legislation that may have been breached and the legislation under which any formal enforcement action may be taken.

On many occasions, the site will be able to be inspected from a public place or from the complainant’s property. Otherwise, you will need to approach the owner or occupier of the premises and ask for permission to inspect the site.

If permission is refused, you will need to decide whether to use the formal inspection provisions of the legislation.

Other issues that should be considered include the need for photographic equipment, tape recorders and other measurement devices. You will need to make notes to support judgements on key issues like impact on amenity.

Matters that should be covered during site inspections to investigate complaints of unlawful activity include:

- the need to identify yourself and carry proof of identity and authority
- key questions about the work or activity
- key questions to identify the subject of the complaint and the state of knowledge of that person about the unlawful activity
- key questions to identify who was responsible for the unlawful activity.

15.2 Good record keeping

It is extremely important to keep good clear records of site inspections. Your notes should include:

- the time and date of the inspection
- precise details of where you went, what you saw and who you spoke to
- what other information you obtained, including a record of any photographs taken, documents or other physical evidence obtained.

Do not take too long to make this record. Accuracy is very important and the longer you leave it, the more scope there is for inaccuracy.
15.3 Some common problems with site inspections

There are several situations where special considerations apply to site inspections.

Serious persistent complaints

Serious and persistent complaints may require alternative evidence gathering strategies. One example is persistent complaints about noise from barking dogs. Evidence can be gathered by surveying surrounding premises or encouraging complainants to maintain a diary of incidents.

Surveys give councils a basis to judge whether there is evidence that the problem is sufficiently serious to warrant action. Diaries can highlight patterns of behaviour that help you judge the seriousness of the problem and enable you to identify the best time and place to gather further evidence.

Another option may be the use of a digital recorder which can record the level, persistence and duration of noise at any time of the day or night.

After hours operations

Unlawful activity can occur at any time of the day or night, on weekdays or at weekends. Nights and weekends are particularly relevant for complaints about offensive noise and failure to comply with limitations on hours of operation which are detrimentally impacting on neighbours.

Council may need to respond to after-hours complaints and make after hours inspections of compliance e.g. with terms and conditions of consent, or with notice and orders if this is an issue.

Using surveillance

Councils have the ability, at common law, to investigate alleged breaches of the law or the terms and conditions of consents, approvals and licences. However, this common law right does not give councils any power to use compulsion or infringe a person’s legal rights.

Councils do have certain powers of compulsion which are particularly relevant for conducting investigations. The main ones relate to powers of entry and inspection.

When conducting surveillance or any other method of investigation, councils must of course comply with any legal requirements such as the privacy protection principles in the Privacy and Personal Information Protection Act 1998.

Using private inquiry agents

Councils can carry out investigations using their own staff acting under delegation or direction or use private inquiry agents.

It is preferable for a council to use its own staff when there are technical issues which require the particular expertise of its specialist staff. However, in many cases it may be better to use private inquiry agents if the primary issue is whether or not a particular activity is occurring at a particular place or time.
Inspecting brothels

Inspecting illegal brothels may be problematic if the operator denies entry or will not provide information to inspectors. Obtaining evidence of an unauthorised use as a brothel may also prove difficult.

The Restricted Premises Act 1943 contains provisions in relation to establishing that an unauthorised brothel is operating. Section 17A of the Act states the court may rely upon circumstantial evidence to find that particular premises are used as a brothel. Examples of circumstantial evidence include, but is not limited to the following:

- evidence relating to persons entering and leaving the premises (including number, gender and frequency) that is consistent with the use of the premises for prostitution,
- evidence of appointments with persons at the premises for the purposes of prostitution that are made through the use of telephone numbers and other contact details that are publicly advertised,
- evidence of information in books of accounts that is consistent with the use of the premises for prostitution,
- evidence of the arrangement of the premises, or of the furniture, equipment or articles in the premises, that is consistent with the use of the premises for prostitution.

16. Obtaining oral evidence

16.1 Witness responses

The oral evidence of witnesses is usually the most difficult evidence to obtain. Memories are imperfect and witnesses often recall events unclearly.

An interview is the way an investigator will usually gather oral evidence. The skills of the interviewer and the manner in which the interview is conducted influence the extent and quality of information obtained. Different witnesses will respond in different ways to particular forms and styles of questioning.

Other variables are the degree of cooperation that you can expect from witnesses and their emotional reaction to the interview. Some witnesses will be forthcoming in their responses, while others will be more reticent. Some will deliberately withhold information. Some witnesses will feel confident giving their evidence, but others may feel intimidated and need support.

Some specific types of responses that you may encounter include:

Non-cooperative

These are witnesses who do not remain silent but who do not cooperate e.g. by refusing to answer some or all questions. This may be because they do not wish to incriminate themselves, they may want to avoid the embarrassment that an answer may cause, they may fear becoming personally involved in the matter, or they may distrust authority.
Partial
These are witnesses who are basically, or at least partly truthful, but will withhold certain items of information for varying reasons. They do not lie, they simply do not tell the whole truth.

Distorted
Witnesses who alter some or all of the information recounted so that it presents a better version, in their eyes, of events. They may still be truthful about most of their evidence.

Exaggerated
Witnesses who embellish or exaggerate their account of events either for a definite purpose or just to make the story sound impressive.

Minimise
Witnesses involved in some wrongdoing or who believe they may be seen as being so involved, may actively minimise their own involvement in the matter and this will be reflected in their account.

Maximise
These witnesses maximise their part in a situation to boost their own feeling of importance.

Complete lies
These witnesses are untruthful when questioned and intentionally tell lies. This may be to hide facts, to divert the focus of an investigation, or simply because they enjoy lying.

One of the key concerns for an investigator obtaining oral evidence should be to minimise the possibility of the witness subsequently denying, changing or contradicting their evidence.

You are more likely to obtain evidence from a witness who is at ease. Before the interview, decide if you might need an interpreter and, if necessary, arrange for one to be present.

To help create a comfortable environment for the witness, start by setting the scene.

- introduce yourself
- explain the purpose of the interview
- let the witness know what is going to happen - how you will be conducting the interview
- and, if appropriate, how the interview fits into the investigation process as a whole
- advise the witness how you will be recording their evidence - if you are planning to tape record the interview, inform the witness that this is to occur
- confirm with the witness that they have been given the opportunity to bring a support person or observer with them to the interview
- assure the witness of your impartiality
- consider and deal appropriately with any objections that the witness may raise
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- ask the witness whether they have any questions at the beginning, and again at the end, of the interview.

16.2 Interview techniques

You will not always be able to overcome witnesses who are determined to be uncooperative and you may sometimes have to look elsewhere for evidence. If a witness refuses to cooperate with your inquiries, advise them that you will need to reach some decision on the issues under investigation whether they choose to cooperate or not. Witness statements are useful but often not essential.

Questioning skills

Prepare the questions you are going to ask a witness before the interview. This may involve drafting a set of questions or writing down one or more lines of inquiry. You may need to deviate from your list of questions to ask follow-up questions. Be prepared to follow a useful and relevant line of inquiry that may arise or come to light during an interview. As part of your planning, you should anticipate the possible responses you are likely to be given and think about further questions to test these responses. Remember your objective is to gather information which will be proof or which will resolve the facts in issue identified in your investigation plan.

Questions form part of the listening process. With appropriate questions, the witness will be more confident they are being listened to.

There are several different approaches that you can adopt.

Open questions

Open questions use language designed to explore the subject, using words like 'who', 'what', 'where', 'when', 'how' and 'why'. These questions do not lead the witness in any particular direction. They are particularly useful for avoiding contamination of answers by facts or other matters that are not known to the witness.

Closed questions

Closed questions are questions to which the answer can only be 'yes' or 'no'. They are useful to confirm matters once information has been obtained but tend to foreclose the opportunity for witnesses to articulate positions for themselves.

Strategic questions

Strategic questions are those which take the interview away from information gathering to solution finding. They ask the witness to have some input into how the matter could be resolved. They are particularly useful if the council is anxious to facilitate a negotiated outcome to a complaint. For example, "How do you think this can be resolved?" or "What do you want to get out of this at the end of the day?"

Hypothetical questions

Hypothetical questions allow ideas to be discussed with the witness in a non-threatening manner. They are also useful in facilitating a negotiated outcome. For example, rather than the
closed and challenging ‘Don’t you think your neighbour will reject that proposal’, try ‘What would you think/feel/do if your neighbour did not accept that proposal?’

17. Recording oral evidence

17.1 Ensuring accuracy

There are three main ways to record oral evidence.

- by tape or digital recording
- by preparing a record of interview
- by creating a witness statement.

The main objective of recording oral evidence is to ensure accuracy. The best way to do this is to tape record the interview. Sometimes, you will not have the necessary equipment or the witness will refuse to allow the interview to be recorded. You will then have to keep meticulous notes of the questions asked and their answers which can be very time consuming. It is a good idea to check your notes and read them back to the witness. If possible, get the witness to sign off on the notes to indicate they are accurate. If resources allow, you should interview witnesses in the presence of a colleague who should take notes.

If it is impractical to take contemporaneous notes during an interview, it is important that a written record is made as soon as possible. The longer the delay, the less evidentiary value that record will have.

Witnesses will often ask for a copy of the tape or your notes. You need to consider how important it is to maintain the confidentiality of the investigation. If confidentiality is important, you could make copies of the tape or notes available to witnesses only after you have interviewed any alleged wrongdoer or all other witnesses who are to corroborate the evidence of the first witness.

17.2 Tape or digital recording

If you are going to record an interview, you must inform all the people involved beforehand. You should also fully identify on the recording the time, date and place of the interview, the names of every person who is present in the room and in what capacity, any third parties who are present, and the purpose of the interview.

At the beginning of a recorded interview, you may find it useful to state your name (as the interviewer) and the names of anyone else in the room with you and the time, date and location of the interview.

You could also ask the witness to confirm that they are aware of the recording of the interview e.g. ‘This is Jane Green at 1.00pm on Friday 27 March 1998 in the Blue Hills Council offices. With me is Belinda Smith. Belinda do you understand that I want to record this interview today?’
17.3 Records of interview

A record of interview is a verbatim record of the interview. It should include information about the date, place and people present at the interview. Records of interview are most commonly used in serious or formal cases or if there is likely to be a dispute about certain elements of the conversation.

You need to carefully consider issuing a caution to the interviewee depending on the circumstances of the interview.

17.4 Witness statements

The third way of recording oral evidence is a witness statement.

The following guidelines for preparing a witness statement are particularly important if the statement may need to be used as evidence in any subsequent legal proceedings.

- Start by giving the name, address and occupation of the witness.
- At the end of the interview, the witness should sign and date the statement (with both time and date) and the investigator should witness this signature.
- If the matter being investigated could end up in court, you may need to seek legal advice and prepare a sworn statement.
- Witness statements should contain only relevant and admissible information.
- This can be quite difficult to judge. If you are unsure of the relevance or admissibility of a piece of information, the safest approach is to include it. Inadmissible material can always be excluded later but it is more difficult to try and introduce what appears to be new evidence at some later stage.
- Witness statements should 'tell it like it is'. Avoid the temptation to improve a witness' grammar, syntax or use of the vernacular. If a witness is recounting a conversation with another person, the statement should quote the exact words used.
- Use the first person 'I' and the third person 'she/he'.
- If a witness is offering an opinion such as 'I believe she was angry', ask the witness the basis for that opinion if it is not otherwise volunteered. The witness statement should set out the basis for that opinion before stating the opinion.
- Ask the witness to read the statement before they sign it. Getting the witness to read the statement aloud is one way to ensure that they actually understand the statement and agree with it.
- Number the pages of the statement and ask the witness to initial all pages and fully sign on the last page.
- If the witness refuses to sign the statement, you should make a clear file note that you went through the statement with them and offered them a copy. Make sure you note the reason given by the witness for refusing to sign.
- If the witness wants to alter their statement or add something else to it after they have signed it, get them to do another statement rather than amend the first one. If in the second statement the witness contradicts something in the first statement, make sure that the reasons for this contradiction are explained in the second statement.
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- Carefully preserve all notes connected with the interview.

17.5 Third parties

Witnesses will sometimes ask if they can have another person present during their interview. If you approve such a request, you should make it clear to the third party that their role is simply one of observer and they must not take part in the discussion or interview.

If the third party is a person likely to be called or asked to give evidence, they should not be allowed to be present during the interview of another witness. You also need to address the issue of confidentiality with both the witness and the third party.

17.6 Securing documentary evidence

Some of the most reliable evidence in an investigation is documentary evidence. Documents don’t tend to tell lies, except if they are forged, improperly altered or manufactured after the event to mislead. One of the first steps you should take at the start of your investigation is to secure any relevant documentary evidence. Make a record of when, where and how you obtained the documents and how you have stored them.

Where possible you should take original documents rather than accept photocopies. If this is impractical, at least view all originals before or at the time of accepting photocopies. Useful information is often written in pencil in the margins of documents or on yellow ‘Post-it’ notes. By taking, or at least viewing, the originals you will have access to this additional information. If you take the originals, have them photocopied yourself and use another copy during the course of your investigation. The original documents should be kept securely under lock and key.

Whenever you take possession of any documents, always leave behind a receipt or other record and your contact details in case anyone needs to access the documents or have a copy of them.

17.7 Using expert evidence

Your investigation will often need to include the use of professional experts such as town planners, building surveyors, acoustic experts, engineers, accountants and valuers.

If you are going to get an expert to produce a statement, you must remember to ‘qualify’ the expert in the statement. The first paragraph of the statement should specify the things that make the expert an expert, such as their qualifications and training.

There is no foolproof formula for selecting an expert. Professional associations, universities and TAFE colleges can be useful sources of relatively affordable and independent expertise.

17.8 Recording and storing information obtained during an investigation

It is essential that you make contemporaneous notes of all discussions, phone calls and interviews that take place during the course of an investigation. All information, including original documents and records of other evidence examined during the investigation, should be promptly placed on a central file.
Investigators often find it useful to keep a 'running sheet' for the investigation on the inside cover of the investigation file. This running sheet is essentially a chronology of events that have taken place in the investigation. It provides a ready record of who did what and when and is particularly useful if:

- an investigation is complicated or involves a range of issues
- there is more than one investigator
- there is a change in staff during the investigation and a new investigator has to take over.

The State Records Act 2015 reinforces the importance of keeping a full and proper record of information obtained during an investigation. The Act requires that councils:

- make and keep full and accurate records of their activities
- provide for the safe custody and proper preservation of records made and kept, or received and kept, by any person in the course of the exercise of official functions.

As an investigator, it is crucial that you create a paper trail of your actions in an investigation. This will protect you at a later stage if your methodology or conclusions become the subject of a complaint to an outside agency. You should:

- keep an accurate and up to date paper trail of your steps, decisions and conclusions
- take contemporaneous notes of all discussions and interviews (telephone and in person) connected with the investigation
- place all relevant information on a central and secure case file
- obtain, or at least view and copy, all original documents relevant to the investigation
- only use copies of documents during the investigation.

17.9 Does the person being investigated have the right to inspect documents related to the investigation?

Access to documents relating to a complaint or an investigation involves balancing two competing principles. On the one hand, any person under investigation should be informed at an appropriate time of the allegations made against them and the nature of the evidence gathered that both supports and contradicts those allegations. On the other hand, there is the need to preserve the integrity of the investigation. By prematurely revealing critical evidence the investigation might be prejudiced. There may also be circumstances where it may be a breach of statutory obligations, or not in the best of interests of the investigation, for information to be disclosed that may identify or tend to identify the person who made the complaint.

The person who is the subject of the complaint has some statutory rights of access.

- The Local Government Act 1993 gives every person the right to inspect the 'other documents' of an agency, subject to certain exemptions such as if inspection would be contrary to the public interest.
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- The Government Information (Public Access) Act 2009 (NSW) authorises and encourages the proactive release of information by NSW public sector agencies; gives members of the public a legally enforceable right to access government information; and ensures that access to government information is restricted only when there is an overriding public interest against releasing that information.

- There is a statutory right of access to personal information under the provisions of the Privacy and Personal Information Protection Act 1998. Section 14 of the Act provides that 'a public sector agency that holds personal information must, at the request of the individual to whom the information relates and without excessive delay or expense, provide the individual with access to the information.'

Different considerations apply if documents are subpoenaed by a court. There are only limited grounds for objecting to producing documents that are subpoenaed and you would need to obtain legal advice.