

## Tree related offences Standard

This document supports Council policy Pxxx 'Tree management'. It provides detailed information on the process and rules we use to respond and investigate complaints, and in determining enforcement action.

### 1 How we respond to tree related offences

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We will take enforcement action in response to tree related offences to punish offenders and deter them and the general community from committing tree related offences in the future.

We may take action by:

- issuing a penalty notice requiring payment of a fine
- seeking criminal prosecution in a court, which may result in the imposition of a penalty.

The choice of enforcement will depend on the circumstances of the offence, particularly the seriousness of the offence and whether a remedial or punitive outcome is sought.

Our Authorised Officers will choose enforcement options that are proportionate to the alleged offence, and which are most likely to deter future offences.

In some cases, a combination of options may be considered necessary to effectively deter the offender against further breaches (for example, a penalty notice (fine) and a Development Control Order issued under Division 9.3 of the *Environmental Planning and Assessment Act 1979*).

### 2 When we will take action

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We will commence action if there is sufficient evidence to prove all the elements of the offence, particularly if a person elects to have the alleged offence dealt with by a court.

Before taking any action, we will investigate and seek to confirm:

- what offence was committed
- where the offence took place
- when the offence took place
- who committed the offence
- the offender's address.

The circumstances of each offence, especially the seriousness, will determine whether it warrants a penalty notice or whether a stronger or more lenient response is appropriate.

### 3 When a penalty notice is warranted

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Generally, penalty notices (fines) are an appropriate response for offences where the breach is:

- relatively minor
- an isolated or one-off incident
- capable of being remedied quickly and easily
- supported by sufficient evidence

- is likely to be an effective deterrent.

We may issue a penalty notice in circumstances including, but not limited to instances where:

- the amount of the fine is commensurate to the level of the damage
- the species of tree is protected under the Development control plan
- the tree cannot recover from the damage easily
- there was intent to cause a breach of the *Environmental Planning and Assessment Act 1979*
- the breach was not considered to be lenient, but it is a 'first offence'.

The amount to issue on a penalty infringement notice is predefined in the Environmental Planning and Assessment Regulation 2000. For development that is prohibited (under Clause 4.3 of the Environmental Planning and Assessment Act) the amount (at the time of writing), per offence is:

- \$3,000 for an individual
- \$6,000 for a corporation.

## **4 When leniency may be warranted**

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A more lenient response, such as a warning letter or negotiation, may be appropriate for less serious offences.

We may take a more lenient approach in circumstances including, but not limited to instances where:

- the amount of the fine far exceeds the level of the damage
- the species of tree damaged is considered to be a weed species
- the tree can recover from the damage easily
- the Investigating Officer determines the damage occurred as a result of an accident.

## **5 When stronger action may be appropriate**

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Penalty notices are not appropriate for more serious offences, that is, where a breach is:

- causing or is likely to cause environmental harm
- ongoing and not within the alleged offender's capacity to remedy quickly
- a continuing non-compliance of repeated orders or notices
- warrants a higher penalty than the fine prescribed. Such cases may warrant criminal prosecution proceedings or civil enforcement proceedings. Officers will refer to Council's Prosecution Guidelines for more information on enforcement options for serious offences.

Penalty notices are also not appropriate in other circumstances, for example where:

- an unreasonably long period has elapsed since the alleged offence (note that, in any event, the statutory limitation within which to take action for an alleged offence is 2 years from when evidence of the alleged offence became known to an Authorised Officer)
- the evidence is insufficient such that if a court heard the matter, it would be unlikely to succeed.

Offences that may be appropriate for prosecution include, but are not limited to instances where:

- the amount of the fine is insubstantial to the level of the damage
- the tree is heritage listed or is of high significance
- the damage is irreparable
- a breach resulting in a penalty notice (fine) has occurred on multiple occasions
- the breach continues after the alleged offender is notified of the offence.

The maximum penalty in court for this type of offence is \$5 million (for a corporation) or \$1 million (in the case of an individual). Continuing offences have further penalties available.

## **6 Advice to alleged offenders**

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We will provide notice to the alleged offender as soon as possible after an offence is identified and investigated, including advice as to whether there is a likelihood of further compliance action and the range of possible compliance actions that may be taken. This also affords the alleged offender the opportunity to defend their actions.

If we decide to issue a penalty notice (fine) or take court action, we will also advise the alleged offender of that decision as soon as possible.