

# WATER RESTRICTIONS ENFORCEMENT

Policy | Water and Sewer

The purpose of this policy is to establish clear guidelines for the enforcement of water restrictions.

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<b>Responsible Director:</b>	Director Planning & Infrastructure Services Group		
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## Table of Contents

<b>1</b>	<b>Background</b> .....	<b>3</b>
1.1	Title of the Policy and Commencement Date.....	3
1.2	Purpose of the Policy .....	3
<b>2</b>	<b>Objective</b> .....	<b>3</b>
2.1	Objectives and Coverage of the Policy .....	3
<b>3</b>	<b>Application</b> .....	<b>3</b>
3.1	Application of this Policy .....	3
<b>4</b>	<b>Definitions</b> .....	<b>4</b>
<b>5</b>	<b>Enforcement of Water Restrictions</b> .....	<b>4</b>
5.1	Penalties.....	4
5.2	Powers of Council Officers.....	5
5.3	Managing Breaches or Non-Compliances .....	5
5.4	Escalations of Enforcement Options .....	6
5.5	Discretion .....	6
5.6	Rights of Appeal.....	7
5.6.1	<i>Penalty Infringement Notice (PIN)</i> .....	7
5.6.2	<i>Orders</i> .....	7
5.7	Variations .....	7
<b>6</b>	<b>Relevant Legislation</b> .....	<b>7</b>
<b>7</b>	<b>Document Information</b> .....	<b>7</b>
7.1	Related Documents.....	7
<b>8</b>	<b>Responsible Officer / Policy Owner</b> .....	<b>8</b>
<b>9</b>	<b>Responsibilities</b> .....	<b>8</b>
<b>10</b>	<b>Approval</b> .....	<b>8</b>
<b>11</b>	<b>Monitoring</b> .....	<b>8</b>
<b>12</b>	<b>Review Date</b> .....	<b>8</b>
<b>13</b>	<b>Record Keeping, Confidentiality and Privacy</b> .....	<b>9</b>
<b>14</b>	<b>Breaches and Sanctions</b> .....	<b>9</b>



# 1 Background

## 1.1 Title of the Policy and Commencement Date

The Water Restrictions Enforcement Policy takes effect following adoption by Council.

## 1.2 Purpose of the Policy

The purpose of this policy is to establish clear guidelines for the enforcement of water restrictions.

This policy sets out how Singleton Council (Council) will deal with compliance and enforcement of water restrictions of water supplied by Council during times of drought in a manner that is:

- authorised by law;
- procedurally fair;
- accountable and transparent; and
- proportionate.

# 2 Objective

## 2.1 Objectives and Coverage of the Policy

The objectives of this policy are to:

- provide transparency on how Council will make decisions of enforcement action relating to water restrictions;
- guide decision making and action by Council staff in the use of enforcement options;
- ensure that regulatory powers are carried out in a consistent manner without bias;
- enhance consistency of enforcement actions between Council Officers; and
- use regulatory tools in such a way as to best achieve a reduction in Council's water usage during times of drought.

# 3 Application

## 3.1 Application of this Policy

The policy applies to all compliance and enforcement action relating to water restrictions of water supplies reticulated by Council, where Council has regulatory responsibility under NSW legislation.



## 4 Definitions

For the purposes of this policy:

Term	Meaning
Compliance	The act of adhering to, and demonstrating adherence to, laws, regulations, conditions, standards and policies
Council	The elected council or staff under delegation of the Singleton Council (Local Government Area)
Enforcement	The act of to put or keep force, to enforce laws or rules, to impose a course of action upon a person
Escalation	Increase in intensity of the enforcement action chosen
Orifice plate	Plate installed in the water service pipe at the water meter to restrict the flow of water supply
PIN	Penalty Infringement Notice
SDRO	State Debit Recovery Office
Water restrictions	Levels of restrictions on water used by customers imposed by Council as detailed in the <i>Singleton Council Drought and Emergency Response Management Plan</i>

## 5 Enforcement of Water Restrictions

Part 6 Division 1 Clause 137 of the *Local Government (General) Regulation, 2005* permits Council to restrict water supply (by public notice published in a newspaper circulating within the council's area) if Council considers that the available stored water is insufficient to allow unrestricted consumption.

Council undertakes these restrictions as outlined in the *Singleton Council Drought and Emergency Response Management Plan, 2010*.

### 5.1 Penalties

Section 637 of the *Local Government Act, 1993* permits Council to apply a penalty to a person who wilfully or negligently wastes or misuses water from a public water supply.

From s637, the maximum penalty for a *person who wilfully or negligently wastes or misuses water from a public water supply, or causes any such water to be wasted is 20 penalty units*. At the time of adoption of this policy, one penalty unit is equivalent to \$110.

*If an offence ... is committed, the occupier of the premises on which the offence was committed is guilty of the offence as if the occupier were the actual offender unless the occupier proves that the waste or misuse constituting the offence:*

- (a) was not reasonably within the occupier's knowledge, and*
- (b) was caused by the act of the person other than a member of the occupier's household or other than a person employed on the premises by the occupier.*



*If a penalty has been imposed on or recovered from any person in relation to the offence, no further penalty in respect of the offence may be imposed on or recovered from any other person. This does not affect the liability of the actual offender.*

## 5.2 Powers of Council Officers

Council Officers have various powers to conduct inspections or to investigate potential non-compliances or breaches of the water restrictions following a complaint, observation or other notification process. Officers have the power to enter and search premises, conduct interviews, obtain information and records, and require persons to answer questions.

The tools that investigation officers use to monitor compliance and detect non-compliances include:

- Spot checks without warning;
- Specific inspections;
- Notified site inspections;
- Community feedback; and
- Investigations and reports from other agencies or regulatory authorities.

Where a potential breach or non-compliance is identified, the Council will conduct an investigation to obtain the necessary evidence to establish whether a breach has occurred and the facts surrounding the non-compliance.

## 5.3 Managing Breaches or Non-Compliances

A number of elements are required to be taken into consideration when determining the appropriate course of action for the non-compliance and any enforcement of the water restrictions, including:

- The severity of the offence or breach (including the extent, nature duration magnitude of the breach and whether the breach is continuing);
- The openness, honesty and cooperation demonstrated by the alleged offender;
- The difficulty and resources expended by the Council in investigating and proving the elements of the particular offence or the type of offence;
- The enforcement action required to achieve the objectives of the *Singleton Council Drought and Emergency Response Management Plan, 2010*;
- Whether the person/s who committed the breach should have been aware of their obligations because they have:
  - Received a previous warning; or
  - Been subject to previous formal legal action.
- What would be in the public interest;
- Whether sufficient evidence has been taken;
- The proportionality of the selected enforcement action so that the action will not be unduly harsh or oppressive;
- Any previous precedents or the setting of a precedent by not taking enforcement action; and



- The time period elapsed since the offence or breach took place, statutes of limitations.

On completion of an investigation, the facts and evidence collected are analysed, evaluated and used to determine the appropriate regulatory response or action. The responses for the significance of the breach available to Council are provided in **Table 5-1**.

#### 5.4 Escalations of Enforcement Options

Escalation of enforcement options can occur when:

- The previous enforcement action has failed to cease the offence or rectify the matter; or
- A person reoffends.

For example if providing an educational water restrictions information flyer or warning letter does not achieve the desired response, it may be appropriate to issue a Penalty Infringement Notice (PIN) or install an orifice plate to restrict the customer’s water supply.

The escalation of enforcement relating to water restrictions is shown below in **Table 5-1**.

Offence	Action
First	Issue water restrictions information flyer
Second	Issue warning letter accompanied by water restrictions information flyer
Third	Issue PIN accompanied by water restrictions information flyer
Fourth	Restrict water supply through installation of orifice plate in the water service pipe at the meter. The orifice plate will be removed following payment of water service connection fee (refer Council’s Fees & Charges)
Subsequent	PIN, Court Order and/or Prosecution

Table 5-1 – Escalation of enforcement options

#### 5.5 Discretion

Council has discretion in determining whether or not enforcement action or the type of enforcement action should be taken in relation to a particular matter having consideration to the matters outlined in **Section 5.3**.

The NSW Ombudsman’s publication, *Good conduct and administrative practice. Guidelines for state and local government, 2017*, assists public officials to understand the standards of good conduct and administrative practice that are expected of them. It guides the implementation of discretionary powers appropriately and *implementing the decision properly, which is to say:*

- *in compliance with legal and ethical obligations;*
- *by asking the right questions;*
- *by using a fair process;*



- *based on evidence (including an analysis of the evidence);*
- *based on the merits;*
- *in good faith; and*
- *with adequate documentation.*

Reference to the principles of this publication will be made when exercising discretionary powers.

## 5.6 Rights of Appeal

In line with the principles of procedural fairness, several opportunities are available to seek review of enforcement actions and/or the decisions leading to them.

### 5.6.1 Penalty Infringement Notice (PIN)

If the person chooses they can make representations against a PIN directly to the State Debt Recovery Office (SDRO). A person may wish to elect to have the matter heard in Court.

Representations seeking a review of a PIN may be made to the Council Officer who issued the PIN. The review decision will be made by a more senior officer than the officer who issued the PIN. Council will only withdraw a PIN directly if subsequent evidence identifies that the PIN was issued unlawfully.

### 5.6.2 Orders

The legislation in which an order is made contains provisions for a person to lodge a formal appeal against the order in the Local Court, the Land & Environment Court or Administrative Tribunal within a specified timeframe. The appeal provisions are specified in the order.

## 5.7 Variations

Special variations to the standard water restrictions may be considered on a case-by-case basis and must be applied for in writing to Council.

## 6 Relevant Legislation

*Local Government Act, 1993*

*Local Government (General) Regulations, 2005*

## 7 Document Information

Related documents and reference information in this section provides a single reference point to develop and maintain site compliance information.

### 7.1 Related Documents

Related documents, listed in **Table 7-1** below, are internal documents directly related to or referenced from this document.



Number	Title
POL/40007	Complaint Handling Policy
POL/40008	Unreasonable Complainant Conduct Policy
POL/10065	Enforcement and Compliance Policy
POL/6013	Legislative Compliance Policy
POL/26030	Water Supply Services Policy
18/43331 & 18/42705	Water and Sewer Group Customer Service Plan, 2018
13/15800	Singleton Council Drought and Emergency Response Management Plan, 2010
18/22755	2018/19 Fees and Charges (updated annually)

Table 7-1 – Related documents

## 8 Responsible Officer / Policy Owner

Ownership of this policy rests with the Manager Water & Sewer.

## 9 Responsibilities

Parties or Persons	Responsibilities
Manager Water & Sewer	<ul style="list-style-type: none"> <li>Ensuring the document is maintained and reviewed according to the documents requirements. Ensuring the resources are allocated to effectively undertake all aspects of this document</li> </ul>
Water & Sewer Team	<ul style="list-style-type: none"> <li>Conduct compliance activities and enforcement actions in accordance with the requirements of this document and their delegations</li> </ul>

## 10 Approval

As per cover sheet.

## 11 Monitoring

This policy will be monitored by the Manager Water & Sewer to ensure compliance.

## 12 Review Date

This policy, once adopted, is to remain in force until it is reviewed by Council. This policy is to be reviewed approximately every two (2) years to ensure that it meets legislative requirements.





### **13 Record Keeping, Confidentiality and Privacy**

All records received, created or supporting this policy will be kept on Council's Corporate Computer Systems in accordance with *State Records Act 1998, NSW* and will retain confidentiality and privacy in accordance with *Privacy and Personal Information Protection Act 1998, NSW* and Council Policy. Council is required to release certain information in accordance with *Government Information (Public Access) 2009, NSW*.

### **14 Breaches and Sanctions**

Any breaches of this Policy will be referred to the General Manager for appropriate action.

