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**NARROMINE SHIRE COUNCIL**  
**ORDINARY MEETING BUSINESS PAPER – 13 JULY 2022**  
**REPORTS TO COUNCIL – GENERAL MANAGER**

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**1. LOCAL EMERGENCY MANAGEMENT COMMITTEE ALTERNATE DELEGATE**

<b>Author</b>	Director Governance
<b>Responsible Officer</b>	General Manager
<b>Link to Strategic Plans</b>	CSP – 4.1.3 Provide opportunities for community members to participate in Council's decision making DP – 4.3.1.3 Continue to facilitate section 355 Advisory Committees

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**Executive Summary**

This report is provided to Council to consider appointing a new alternate delegate to the Local Emergency Management Committee.

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**Report**

Council at its Ordinary Meeting held on 8 December 2021 resolved to appoint the Mayor as Council's Delegate to the Local Emergency Management Committee and Cr Jones as an Alternate Delegate to the committee (**Resolution No 2021/245**).

It is noted that Cr Jones is the appointed delegate of the NSW Rural Fire Service and therefore represents this Emergency Service Organisation on the Committee in the role of Fire Captain. Council will therefore need to consider replacing Cr Jones as Council's Alternate Delegate.

**Financial Implications**

There are no financial implications associated with this report.

**Legal and Regulatory Compliance**

Council should not have a delegate representing two organisations on this Committee. Council's appointed delegate or alternate delegate must represent the interest of Council.

**Risk Management Issues**

Management of conflicts of interest

**Internal/External Consultation**

Nil

Attachments

Nil

**RECOMMENDATION**

That Council appoints an Alternate Delegate to the Local Emergency Management Committee to replace Cr Jones who represents the NSW Rural Fire Service.

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**NARROMINE SHIRE COUNCIL**  
**ORDINARY MEETING BUSINESS PAPER – 13 JULY 2022**  
**REPORTS TO COUNCIL – GENERAL MANAGER**

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## **2. FLYING OF FLAGS POLICY**

<b>Author</b>	Director Governance
<b>Responsible Officer</b>	General Manager
<b>Link to Strategic Plans</b>	CSP – 4.3.1 Operate and manage Council in a financially sustainable manner that meets all statutory and regulatory compliance and Council policies

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### **Executive Summary**

This report is provided to Council to consider Council's Flying of Flags Policy which is due for review.

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### **Report**

Council adopted its Flying of Flags Policy at its Ordinary Meeting held on 14 February 2018 (**Resolution No. 2018/104**).

The policy communicates Council's decision of when and how it will fly the Australian National Flag and the Australian Aboriginal Flag.

This policy is now due for review. There are no substantial amendments suggested.

### **Financial Implications**

There are no financial implications associated with this report.

### **Legal and Regulatory Compliance**

Flags Act 1953  
Department of the Prime Minister and Cabinet – Australian National Flag Protocols (2022)

### **Risk Management Issues**

Council will observe relevant flag protocols regarding flying, handling, lowering, disposal etc.

### **Internal/External Consultation**

There is no legislative requirement to place this policy on public exhibition.

### **Attachments**

- Revised Flag Handling Policy (**Attachment No. 1**)

## **RECOMMENDATION**

That Council endorses the revised Flag Handling Policy.

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**NARROMINE SHIRE COUNCIL  
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REPORTS TO COUNCIL – GENERAL MANAGER**

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### **3. MEDIA RELATIONS POLICY**

<b>Author</b>	Director Governance
<b>Responsible Officer</b>	General Manager
<b>Link to Strategic Plans</b>	CSP – 4.3.1 Operate and manage Council in a financially sustainable manner that meets all statutory and regulatory compliance and Council policies

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#### **Executive Summary**

This report is provided to Council to consider Council's Media Relations Policy which is due for review.

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#### **Report**

Council adopted its Media Relations Policy at its Ordinary Meeting held on 14 December 2016 and revised it again at its Ordinary Meeting held 14 June 2017 (**Resolution No 2017/134**).

The policy provides the framework for Councillors and staff to promote positive coverage of Council affairs that is fair, correct and consistent.

The policy is due for revision. There are no substantial changes recommended.

#### **Financial Implications**

There are no financial implications associated with this report.

#### **Legal and Regulatory Compliance**

Local Government Act 1993 and Local Government (General) Regulations 2021  
Narromine Shire Council Code of Conduct  
State Records Act 1993  
Privacy Act 1998

#### **Risk Management Issues**

It is important that Council clearly determines its authorised spokespersons with a view to limit the possibility of inaccurate information, miscommunication and reputational risk.

#### **Internal/External Consultation**

There is no legislative requirement to place this policy on public exhibition.

#### Attachments

- Revised Media Relations Policy (**Attachment No. 2**)

#### **RECOMMENDATION**

That Council endorses the revised Media Relations Policy.

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#### **4. COMPLIANCE AND ENFORCEMENT POLICY**

<b>Author</b>	Director Governance
<b>Responsible Officer</b>	General Manager
<b>Link to Strategic Plans</b>	CSP – 4.3.1 Operate and manage Council in a financially sustainable manner that meets all statutory and regulatory compliance and Council policies

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##### **Executive Summary**

This report is provided to Council to consider Council's Compliance and Enforcement Policy which is due for review.

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##### **Report**

Council adopted its Compliance and Enforcement Policy on 12 September 2018, Resolution No 2018/181.

The policy provides information for all internal and external stakeholders about Council's position on compliance and enforcement matters in the Narromine Local Government area. The policy provides structure for consistency and transparency in decision making, and to facilitate a proportional approach to compliance and enforcement. The policy outlines the matters to be considered at the various stages of the enforcement process from receipt and investigation of reports alleging unlawful activity, through to what enforcement action Council will choose and whether to commence criminal or civil proceedings.

The policy is due for revision. There are no substantial changes recommended.

##### **Financial Implications**

Expense of commencing legal action – Council will need to consider 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, and whether the public interest warrants legal action being pursued.

##### **Legal and Regulatory Compliance**

Local Government Act 1993 and Local Government (General) Regulations 2021

NSW Ombudsman Enforcement Guidelines for Councils

Council's Compliance and Enforcement Policy is based on the model policy issued by the NSW Ombudsman (2015)

##### **Risk Management Issues**

Decisions about what action to take are at Council's discretion. 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.

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#### **4. COMPLIANCE AND ENFORCEMENT POLICY (Cont'd)**

Council's key concerns are to prevent or minimise harm to health, welfare, safety, property or the environment and to influence behaviour change for the common good and on behalf of the community.

##### ***Internal/External Consultation***

There is no legislative requirement to place this policy on public exhibition.

##### **Attachments**

- Revised Compliance and Enforcement Policy (**Attachment No. 3**)

#### **RECOMMENDATION**

That Council endorses the revised Compliance and Enforcement Policy.

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#### **5. SWIMMING POOL BARRIER INSPECTION POLICY**

<b>Author</b>	Director Governance
<b>Responsible Officer</b>	General Manager
<b>Link to Strategic Plans</b>	CSP – 4.3.1 Operate and manage Council in a financially sustainable manner that meets all statutory and regulatory compliance and Council policies

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##### **Executive Summary**

This report is provided to Council to consider Swimming Pool Barrier Inspection Policy which is due for review.

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##### **Report**

Council adopted its Swimming Pool Barrier Inspection Policy on 11 July 2018 (**Resolution No 2018/151**).

The Swimming Pools Act 1992, Section 22B, requires councils to develop and adopt a program for the inspection of swimming pools in its area to ensure compliance with the requirements of Part 2 – access to swimming pools.

Council is also required to report annually on the number of pool inspections undertaken and the level of compliance with the requirements.

Pools associated with tourist and visitor accommodation should be inspected at three-year intervals.

## **5. SWIMMING POOL BARRIER INSPECTION POLICY (Cont'd)**

Council will inspect pools prior to sale or lease if a Compliance Certificate application is submitted by the pool owner.

Council will issue Compliance Certificates after an inspection that finds a pool barrier is compliant with the requirements of the legislation. Compliance Certificates are valid for three years.

Council may inspect any swimming pool that is the subject of a complaint to Council. Council powers of entry will be consistent with the Local Government Act.

The Swimming Pool Barrier Inspection Policy is due for revision. There are no substantial changes recommended.

### ***Financial Implications***

Section 19 of the Swimming Pool Regulations prescribes the fee for inspection.

### ***Legal and Regulatory Compliance***

Swimming Pool Act 1992  
Swimming Pool Regulations 2018

### ***Risk Management Issues***

Pool owners and councils have a shared legal responsibility to help protect the safety of children around properties with swimming pools. Council's commitment to safety is through its Swimming Pool Barrier Inspection Policy.

### ***Internal/External Consultation***

For the purposes of Section 22B of the Swimming Pools Act, Council must consult with the community for the development of its inspection program, including any review of such a program.

It is therefore recommended that this revised policy be placed on public exhibition for community comment prior to adoption.

### **Attachments**

- Revised Swimming Pool Barrier Inspection Policy (**Attachment No. 4**)

## **RECOMMENDATION**

That Council endorses the revised Swimming Pool Barrier Inspection Policy to be placed on public exhibition for community comment.

## **6. VOLUNTARY PLANNING AGREEMENT ALKANE RESOURCES LTD**

<b>Author</b>	Director Community and Economic Development
<b>Responsible Officer</b>	General Manager
<b>Link to Strategic Plans</b>	CSP – 2.3.1 Support the growth and development of new and existing business and industry. CSP – 3.3.2 Ensure development needs align to utilities infrastructure. CSP – 4.1.2 The Council elected members are representative of the community and provide strong and visionary leadership.

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### **Executive Summary**

Alkane Resources Ltd have lodged a Development Application to the NSW Department of Planning and Environment for development consent to carry out the Tomingley Gold Extension Project. As a result of this application and the works outlined a Voluntary Planning Agreement is proposed between Narromine Shire Council and Alkane Resources Ltd. This draft agreement is now provided to Council for consideration along with a recommendation to seek public comment in regard to the draft agreement.

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### **Report**

On the 7<sup>th</sup> of February 2022, Alkane Resources Ltd lodged a development application to the NSW Department of Planning and Environment for development consent to carry out the Tomingley Gold Extension Project. This project is to be undertaken on the land generally to the South of the Tomingley township and the existing Tomingley Gold Operations.

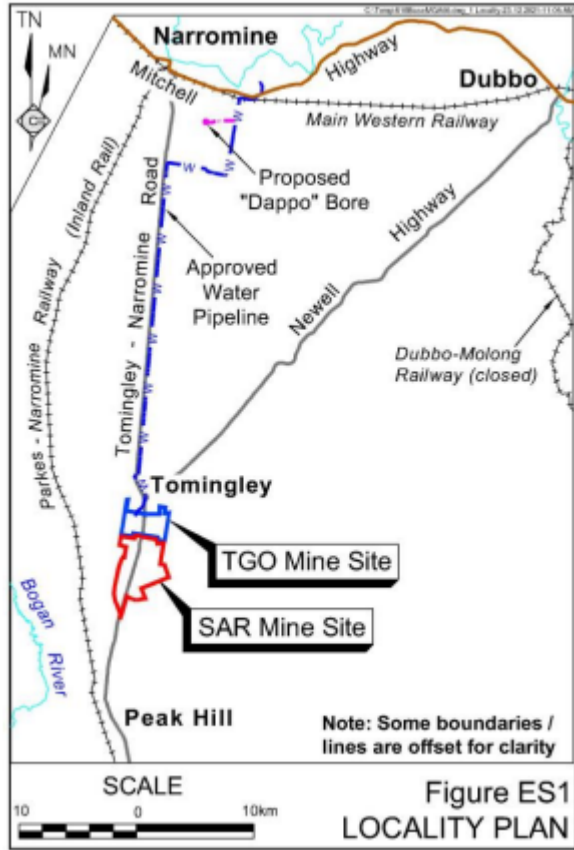
The development is identified by the Department of Planning and Environment as Major Project Application No. SSD-9176045.

Tomingley Gold Operations are extending the existing Tomingley Gold Operations Gold Mine to incorporate mining of the San Antonio and Roswell (SAR) deposits. Core components of the project include:

- The realignment of the Newell Highway and Kyalite Road, including the intersections of the Newell Highway and Kyalite Road, McNivens Lane and Back Tomingley West Road.
- Surface and underground mining at the San Antonio and Roswell sites.
- Continued operation of the Tomingley Gold Operation mine beyond 31 December 2025.
- The connection of an existing bore field to the applicants existing and approved water supply pipeline.

**6. VOLUNTARY PLANNING AGREEMENT ALKANE RESOURCES LTD (Cont'd)**

The project location is seen outlined in the diagram below.



The Economic Assessment undertaken outlines that the project is expected to operate from 2024 to 2031 with rehabilitation expected to be completed by 2035.

*Existing Voluntary Planning Agreement*

The Proponent and Narromine Shire Council are currently parties to a Planning Agreement entered into in May 2012, amended in July 2016 and further amended in June 2021 to expire 31 December 2025. The Parties intend that the new Agreement outlined below shall supersede the existing Planning Agreement.

*New Agreement*

The Planning Agreement to be considered is governed by Part 7, Division 7.1, Subdivision 2 Planning Agreements, sections 7.4-7.10 inclusive of the EP&A Act.

The Proponent commits to make the Development Contributions listed below in Table 1 to Narromine Shire Council, by bank cheque or other cleared funds, in accordance with the manner and timing outlined in the same table.



**NARROMINE SHIRE COUNCIL  
ORDINARY MEETING BUSINESS PAPER – 13 JULY 2022  
REPORTS TO COUNCIL – GENERAL MANAGER**

**6. VOLUNTARY PLANNING AGREEMENT ALKANE RESOURCES LTD (Cont'd)**

Table 1

<b>Number</b>	<b>Summary Description</b>	<b>Manner and Timeframe for Payment of the Contribution</b>
1 (a)	Community Fund	\$75,000/year (base year 2023) paid for 8 years, 50% payable on 1 January and 50% payable on 1 July each year.
(b)	Public art (mining monument) for Tomingley village capital contribution	\$50,000 paid on adoption of Planning Agreement.
2	General council expenses, including road and infrastructure maintenance.	\$85,000/year (base year 2023) paid for 8 years, 50% payable on 1 January and 50% payable on 1 July each year.
3	Road maintenance of the Tomingley West Road from intersection with Tomingley Road to TGO Mine Site entrance (to standard outlined in Roads Asset Management Plan).	At TGO's expense.
4	Road maintenance of the Kyalite Road from Newell Highway to SAR Mine Site entrance (to standard outlined in Roads Asset Management Plan).	At TGO's expense.
5	Removal of the Kyalite Road overpass and restoration of Kyalite Road at the end of the life of the mine, should NSC so direct at that time. (to standard outlined in Roads Asset Management Plan).	At TGO's expense on NSC's direction at the end of the life of the mine.
6	TGO to transfer from the "Woodlands" site the production bore, pumps, power supply and pipeline and up to 50ML of water license to NSC post mine life. In addition, NSC to have first right of refusal to purchase the remaining 950ML of license at market rate.	At TGO's expense.
7	TGO to supply 11ML per annum of water to Tomingley Village until end of mine life, supplied by agreement during off peak periods.	At TGO's expense.
8	In the event that TGO submits a Modification to its Project Approval such that the Capital spent as part of that modification would be greater than \$1,000,000 then item (2) above would be increased by 1% of the value of item (1a) and (2) combined. For clarity note that this increase will be to the value of (1a) and (2) at the time of Modification approval, i.e. increased by CPI.	At TGO's expense (assuming criteria is triggered).
9	Development contributions will continue as per this agreement for the Life of Mine, i.e. if the mine continues beyond the original term of the planning agreement.	At TGO's expense.

## **6. VOLUNTARY PLANNING AGREEMENT ALKANE RESOURCES LTD (Cont'd)**

An Explanatory Note accompanies this report to provide a plain English summary to support the notification of the proposed Planning Agreement. The Explanatory Note has been prepared by Narromine Shire Council as required by clause 25E of the Environmental Planning and Assessment Regulation 2000 (NSW).

### **Legal and Regulatory Compliance**

- Environmental Planning and Assessment Act 1979
- Environmental Planning and Assessment Act 1979, Part 7, Division 7.1, Subdivision 2 Planning Agreements, sections 7.4-7.10 inclusive.
- Environmental Planning and Assessment Regulation 2000, Part 4 Division 1A
- Registration of Voluntary Planning Agreement on the title to the Tomingley Gold Extension Project Land.

### **Risk Management Issues**

There are few risks in entering into the Voluntary Planning Agreement. The Agreement outlines processes for dispute resolution and enforcement of The Agreement.

The existing agreement has operated successfully since May 2012.

Risks in undertaking the agreement have been mitigated through internal and external consultation.

### **Internal/ external Consultation**

- Executive Leadership Team and Senior Planning staff
- Executive Leadership of Alkane Resources Ltd
- Solicitor, Nelson Keane and Hemingway

### **Attachments**

- Draft Voluntary Planning Agreement (V6) July 2022 (**Attachment No. 5**)
- Explanatory Note (**Attachment No. 6**)

As this is a planning decision made in the exercise of a function of a Council under the Environmental Planning and Assessment Act 1979, including a decision relating to a development contribution plan under that Act, a division is required to be called.

## **RECOMMENDATION**

1. That Council place the Draft Voluntary Planning Agreement on Public Exhibition for a period of 28 days in accordance with the requirements of the Environmental Planning and Environment Act.
2. That following the exhibition of the Draft Voluntary Planning Agreement, if there are no submissions received in relation to the Agreement then the General Manager and the Mayor be endorsed to sign the Agreement and affix the common seal.

Jane Redden  
**General Manager**



## **POLICY – FLYING OF FLAGS**

**Created By: -** Governance Department  
**Prepared Date: -** 4 July 2022  
**Version No: -** 4.0  
**Adopted: -** 14 May 2014; Revised and adopted by Council 14.02.18,  
Revised 13 July 2022  
**Review Date:-** 12 July 2026

### **Introduction**

To communicate Council's decision of when and how it will fly the Australian National Flag and the Australian Aboriginal Flag.

### **Scope**

This applies to all flags flown from the Council Chambers flag poles.

### **Policy Statement**

1. The Australian National Flag and the Australian Aboriginal Flag are to be flown on the Council Chambers flag poles from Monday to Friday from 8.30 am until close of business. At close of business the flags are to be taken down for security reasons.
2. The Australian National Flag will be flown on the far-left side of a person facing the Council Chambers.
3. Other flags or ensigns shall be no larger and flown at the same height as the Australian National Flag.
4. The Australian National Flag will be raised first and lowered last when flown with other flags.
5. On Remembrance Day, the Australian National Flag will be flown at peak from 8.30 am and lowered to half mast from 10.30 am until 11.02 am, after the two minutes of silence, and again at the peak from 11.02 am until close of business.
6. Council will fly the flags at half-mast when directed to by the Australian Government. As per the flag flying protocol, all flags in the set will be flown at half-mast.
7. The General Manager may direct the flags be flown at half-mast on the death of a prominent local citizen or on the day of their funeral.

### **Legislation**

*Flags Act 1953*

*Department of the Prime Minister and Cabinet – Australian National Flag Protocols*



## MEDIA RELATIONS POLICY

### DOCUMENT VERSION CONTROL

Version No.	Created by	Adopted By Council	Resolution No	Review Period
No. 2.0	Corporate, Community & Regulatory Services	14 December 2016	2016/382	Four Years
No. 3.0	Corporate, Community & Regulatory Services	14 June 2017	2017/134	Four Years
No 4.0	Governance Department			Four Years

## **PURPOSE**

The policy provides the framework for Councillors and staff to promote positive coverage of Council affairs that is fair, correct and consistent.

## **OBJECTIVES**

- Ensure all communication with the media is reliable, balanced, informed, timely, professional and correct
- Clearly determine Council's authorised spokespersons
- Ensure responsibility for information provided
- Manage and enhance Council's reputation
- Effectively promote Council's services, programs and objectives
- Provide clear information about Council's decisions
- Limit the possibility of inaccurate information, miscommunication and reputational risk

## **SCOPE**

This policy applies to all Elected Members and Council staff, including volunteers and contractors.

This policy applies to all interaction with external news media.

## **DEFINITIONS**

**Media** – refers to all mainstream external news channels, including newspapers, radio, television, online news services and magazines. It does not refer to blogs and social networking tools and forums (refer to Council's Social Media Policy).

**Council** – Narrromine Shire Council

**Elected Members** – refers to Mayor and Councillors

**Caretaker Period** – refers to the 40 days preceding a Local Government election

## **RELEVANT LEGISLATION**

Local Government Act 1993  
Public Interest Disclosures Act 1994  
Privacy Act 1998  
State Records Act 1998

## **RELATED POLICIES/PROCEDURES**

Council's Code of Conduct and Procedures  
Council's Social Media Policy

## **POLICY STATEMENT**

### **1. Council Official Spokespersons**

#### **Mayor**

The Mayor is the official spokesperson for Council on all the decisions of Council.

The role of the Mayor as spokesperson for Council is to:-

- Clearly articulate and explain the deliberations and decisions of Council
- Positively represent Council as a decisive and responsible governing body
- Promote partnerships between Council and key stakeholders
- Promote Council's services, programs and objectives
- Protect Council's reputation from harm caused by negative events or incorrect information to the media

Matters of significant government policy must be referred to Council prior to providing public comment.

The Mayor may nominate another Councillor to speak on a particular matter.

#### **Deputy Mayor**

In the absence of the Mayor or at the request of the Mayor, the Deputy Mayor may be the official spokesperson on all decisions of Council. This applies to any Councillor who may be appointed Acting Mayor in the absence of both the Mayor and Deputy Mayor.

#### **General Manager**

The General Manager is the official spokesperson for Council on all operational or employee related matters.

The General Manager may authorise staff to provide official comment to the media about operational issues on behalf of Council.

Comments are to be limited to factual information, not opinion or supposition.

The General Manager is responsible for releasing any information to the media about an emergency situation.

### **2. Media Management for Councillors**

Individual Councillors are entitled to express independent views through the media, however they must make it clear that any unofficial comment is their personal view and does not represent a position adopted by Council.

When a Councillor is delegated by the Mayor to speak on behalf of Council they must express and support Council's entire policy on the issue at hand and comply with the role of Official Spokesperson as per Item 1.

### **3. Media Communication Standards**

Elected Members, the General Manager, and authorised staff members must ensure that media communication is timely, accurate, and fair, and complies with legislation and Council requirements and policies.

Specifically it must not:-

- bring Council, Councillors or Council staff into disrepute
- be defamatory
- divulge information which is confidential

### **4. Media Communication During Caretaker Period**

Media releases or Council publications during the caretaker period must be of public interest relating to the day to day management of Council and must not be able to reasonably be considered as being for political purposes. Media releases or publications during the caretaker period will not make reference to Councillors or carry their images or statements.

Mayoral columns will not be published during the caretaker period.

Media events may be held during the caretaker period provided they relate to core Council business, or an ongoing project, and are not used for political purposes.

### **5. Recordkeeping**

It is the responsibility of the official spokesperson to ensure that accurate records of any media communication on behalf of Council are retained in Council's electronic document records management system.





# COMPLIANCE & ENFORCEMENT POLICY

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## Contents

1. Introduction.....	3
2. Purpose and scope.....	3
3. Organisational approach .....	4
4. Definitions .....	5
5. Policy objectives.....	6
6. Application.....	6
7. Compliance and enforcement principles.....	7
8. Responsibility .....	8
9. Responding to concerns about unlawful activity .....	9
10. Investigating alleged unlawful activity.....	12
11. Taking enforcement action .....	14
12. Options for dealing with confirmed cases of unlawful activity .....	16
13. Taking legal action.....	17
14. Shared enforcement responsibilities .....	18
15. Role of Council where there is a private certifier.....	18
16. Role of Councillors in enforcement .....	19
17. Delegations .....	19
18. Approval & Review .....	20
20. Other resources.....	20
APPENDIX 1 .....	21
Taking enforcement action.....	21
APPENDIX 2.....	25
Risk Category Investigating alleged unlawful activity.....	25

## 1. Introduction

Council's regulatory responsibilities are applicable to *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'.

This policy distinguishes between a 'report of alleging unlawful **activity**' and a 'complaint'.

For the purposes of this policy, a report alleging unlawful activity is where an individual expresses concern in relation to alleged unlawful activity, or they request service from Council about such matters. Council considers that a response or resolution to a report alleging unlawful activity is explicitly or implicitly expected by the individual, or may be legally required.

A complaint is where an individual expresses dissatisfaction about Council services, staff or the handling of a complaint. Therefore, a complaint may arise where an individual claims that Council staff have failed to take action in relation to a report alleging unlawful activity. A complaint will be recorded separately and responded to in accordance with Council's Complaints **Handling** Policy and procedures.

## 2. Purpose and scope

This policy provides information for all internal and external stakeholders and interested parties about Council's position on compliance and enforcement matters in the local government area.

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 options Council will choose and whether to commence criminal or civil proceedings.

In certain circumstances Council will have shared enforcement responsibilities with other regulatory authorities. This policy sets out a collaborative and cooperative approach to such matters. Advice and guidance are 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.

### 3. Organisational approach

1. Why compliance and enforcement is important. Some things to consider include:
  - to prevent or minimise harm to health, welfare, safety, property or the environment
  - to improve the safety and amenity of residents and visitors to the area
  - for the collective good, the welfare of the community or the public interest
  - to promote social policies (e.g.: to preserve or protect the environment)
  - to manage risks
  - to uphold social order
  - to meet the expectations of the community
  - to encourage reports about possible unlawful activity from the community
  - to make the regulated community aware of their legal obligations and how to comply
  - details of any other relevant strategic planning

The objects section of an Act will often list the specific nature of the harm that is being addressed and explicitly state the regulatory purposes of the legislation. For example, under **Chapter 7** of the *Local Government Act 1993* Councils are obliged to ensure that regulatory functions are exercised consistently and without bias.

2. What activities does Council regulate:

The following activities, but not limited to, are regulated by Council through various forms of legislation:

- development and building control
- pollution control
- environmental health
- public health and safety
- biosecurity weed control
- water and sewer
- on-site sewer management waste water (septic) systems
- companion animals
- food safety compliance
- fire safety compliance
- tree preservation
- noise pollution
- air pollution
- water pollution
- erosion & sedimentation control
- illegal dumping
- littering
- swimming pool compliance
- unauthorised Works within Road Reserves

3. What proactive and reactive compliance and enforcement activities does Council undertake?

**Proactive**

- a) The waiving of certain fees and the granting of an extension of time for compliance;
- b) Media Releases;
- c) Website information;
- d) Community Notice boards;
- e) Community Newsletters

**Reactive**

- a) The issuing of a verbal warning;
- b) The issuing of a written warning/Caution;
- c) The issuing of a "show cause" letter;
- d) The service of a Notice of Intention to issue an Order;
- e) The service of written or oral Notices/Orders/Directions;
- f) The issuing of Penalty Infringement Notice/s;
- g) The recommendation to instigate legal action;
- h) The revocation of an approval;
- i) The removal/impounding of goods or items;
- j) The refusal of an application.

**4. 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 following)
- 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.
- 

## 5. Policy objectives

The intent of this policy is to establish clear guidelines and protocols for Council staff in the management of Council's regulatory activities.

It provides working guidelines on:

- responding to reports alleging unlawful activity
- assessing whether reports alleging unlawful activity require investigation
- deciding on whether enforcement action is warranted
- options for dealing with confirmed cases of unlawful activity
- taking legal action
- implementing shared enforcement responsibilities.

The policy also provides advice and guidance on:

- the role of the Principal Certifying Authority and
- the role of Councillors in enforcement

## 6. Application

This policy applies to regulatory issues within Council's area of responsibility including, but not limited to:

- development and building control
- pollution control
- environmental health
- public health and safety
- biosecurity weeds
- water and sewer
- septic systems

- control over animals
- food safety
- fire safety
- tree preservation
- noise pollution
- air pollution
- water pollution
- erosion & sedimentation control
- illegal dumping
- littering
- swimming pool
- unauthorised Works within Road Reserves

## 7. Compliance and enforcement principles

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

### **Accountable and transparent:**

- acting in the best interests of public health and safety and in the best interests of the environment
- ensuring accountability for decisions to take or not take action
- acting fairly and impartially and without bias or unlawful discrimination
- providing information about compliance and enforcement priorities and reasons for decisions to improve understanding and certainty and promote trust by the regulated community
- ensuring meaningful reasons for decisions are given to all relevant parties, particularly when there is a departure from this policy
- acting on any complaints or concerns about the conduct of compliance officers in accordance with Council's **Complaints Handling** Policy and procedures
- advising people and organisations subject to enforcement actions of any avenues available to seek an internal or external review of a decision.

### **Consistent**

- ensuring all compliance and enforcement action is implemented consistently
- encouraging reports about possible unlawful activity by acting reasonably in response to the circumstances and facts of each matter.

### **Proportional**

- ensuring the level of enforcement action is proportionate to the level of risk and seriousness of the breach
- making cost-effective decisions about enforcement action
- taking action to address harm and deter future unlawful activity.

### **Timely**

- ensuring responses to reports alleging unlawful activity and decision making in relation to those is timely.

## 8. 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.

All Council staff who deal with reports alleging unlawful activity are responsible for implementing this policy. Council staff are also responsible for ensuring that any other possible unlawful activity identified as a result of an inspection, proactive enforcement or other activity is brought to the attention of the appropriate business unit of Council.

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 reason for the 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 decision
- 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 Electronic Document and Records Management System (EDRMS) and actioned in a timely manner by the appropriate departments.

Council utilises a Customer Request Management system for all requests entered into the system in accordance with Council's Customer Service Policy, Complaints Handling Policy and Council's Managing Unreasonable Complainant Conduct Policy.

- *responsibilities of those recording reports e.g. level of detail to be entered on customer request management system, who is responsible for acknowledging/forwarding report to relevant department*
- *reasonable response time requirements and type of response e.g. an acknowledgement letter will be issued within five days*
- *reasonable time frames in which actions need to be completed e.g. assessment/inspection/inquiries/investigation will be conducted in accordance with the Customer Service Policy.*
- *what information should be provided to the individual e.g. updates, Council decisions*
- *how information should be provided to the individual e.g. over the phone or in writing, with approval of General Manager or team leader*



- *when such information should be provided to the individual e.g. after a preliminary assessment, after an inspection, at the conclusion of the matter.*

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

## **9. Responding to concerns about unlawful activity**

How reports alleging unlawful activity will be dealt with by Council

Council will record and assess every report alleging unlawful activity.

Council will respond to every such report unless the person raising the matter has indicated they do not wish to receive a response about Council's handling of the matter, or the report is anonymous.

Generally speaking, Council's objectives when dealing with reports alleging unlawful activity are to:

- maintain the collective good and welfare of the community
- prevent or minimise harm to health, welfare, safety, property or the environment
- consider the broader public interest having regard to Council's priorities and any resource limitations
- consider the report fairly and impartially.

Not all reports will 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 reason 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. They will also explain that Council does not have unlimited resources and powers to deal with reports alleging

unlawful activity. If Council is unable to fully investigate or take action on a matter because it is restricted by any legal or resource limitations this will be explained to the individual.

While there are certain statutory requirements that must be met in relation to notices and orders Council staff will ensure that all explanatory communications are made in plain English and explain any technical language the law requires to be used.

#### Confidentiality of people who report allegations of unlawful activity

People who report allegations of unlawful activity should not expect that their identities will remain confidential from the subject of their reports in all circumstances. Council may have to disclose information that identifies them in the following cases:

- the disclosure is necessary to investigate the matter
- their identity has already been disclosed to the subject of their report directly or in a publicly available document
- the individual was consulted following receipt of a *Government Information (Public Access) Act 2009* application and did not object to the disclosure
- the individual consents in writing to their identity being disclosed
- the disclosure is required to comply with principles of procedural fairness
- the matter proceeds to court.

Council will take seriously any concerns an individual may have about their physical safety being endangered as a result of making a report. However, this may limit Council's ability to investigate the matter.

#### 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)
- 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 the 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
- allowing the investigation to be completed without prematurely taking the matter to other agencies unless referred to by Council.

If these expectations of the individual are not met, Council may need to set limits or conditions on the continuation of the investigation or may need to restrict any further communications with the individual.

Any unreasonable conduct will be dealt with in accordance with the principles of the NSW Ombudsman's *Managing Unreasonable Complainant Conduct Manual 2012* and any applicable Council policy.

#### What parties can expect from Council staff

People who report alleged unlawful activity, as well as individuals or businesses that are subject to investigation and any enforcement action, can expect that Council staff will:

- treat them with courtesy and respect
- advise them of the outcome of the allegation reported, including a full explanation of the reasons why that outcome was considered to be reasonable in the circumstances
- clearly explain decisions in plain English
- provide information about any relevant internal and external appeal processes that may be available
- carefully assess any new information provided by any party after a decision has been made and advise whether further action will be taken.

#### Complaints about Council's enforcement action

Any complaints about Council's handling of reports alleging unlawful activity will be recorded separately and handled in accordance with Council's Complaints **Handling** Policy and procedures.

Where a person or organisation subject to enforcement action merely disputes Council's decision to take enforcement against them, they will be directed to make representations in accordance with any relevant internal and external appeal processes.

Council staff will act on any complaints about the conduct of compliance officers in accordance with Council's Complaints **Handling** Policy and procedures and the Code of Conduct.

#### 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.

#### Unlawful activity outside business hours

Unlawful activity can occur outside business hours. In particular, Council may receive reports about matters such as offensive noise and failure to comply with limitations on hours of operation during nights and weekends.

Due to resource and operational capability restraints on Council, investigations into alleged unlawful activity outside business hours will be assessed on the basis of risk of *harm to health, welfare, safety, property or the environment* or it is otherwise in the public interest to take such action.

### Neighbour disputes

Council will at times receive reports from parties involved in neighbour disputes seeking Council involvement. When a dispute between two neighbours is a civil matter, Council will often not have the authority to resolve the issue in dispute. Some reports will raise several matters, some of which will require Council's involvement and some of which will be personal to the parties.

Council staff will thoroughly assess such reports to determine whether there is evidence of any possible unlawful activity requiring action by Council. Care will be taken to explain which aspects of a report Council can deal with and which cannot be dealt with and why. Where possible, individuals will be provided with information about how to resolve neighbour disputes including referral resources such as LawAccess NSW and Community Justice Centres.

It is possible that one party will provide further information about a matter which changes Council's decision about whether it will become involved. In such circumstances, Council staff will carefully consider the matter before taking action and document reasons for the new decision. Relevant parties will be advised about the reasons Council has changed its position on a matter. Council staff will not change a decision about whether or not Council should be involved purely as a response to the conduct of an individual such as persistent demands or threats.

## **10. Investigating alleged unlawful activity**

Not all reports alleging unlawful activity will warrant investigation. A preliminary assessment of all matters will be made to determine whether investigation or other action is required. Council will prioritise matters on the basis of risk to public safety, human health and environment.

Risk categories of common unlawful activities can be found within Appendix 2 - Risk Category Investigating alleged unlawful activity

If there is insufficient information in the report to undertake a preliminary assessment, further information may need to be sought from the person who made the report or an inspection undertaken. Staff may also need to consult Council records and other internal business units to understand the relevant history and context of a matter.

Circumstances where no action will be taken:

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

- Council does not have jurisdiction to investigate or is not the appropriate authority to take action in 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 SafeWork NSW for workplace safety matters, the NSW Environment Protection Authority 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 (eg: where there is an existing approval or the activity is permissible without Council approval or consent being required)
- the report is not supported with evidence or appears to have no substance
- 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.

Relevant 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 events 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 wide spread 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 reoccurrence of similar incidents.

Any decision not to investigate an allegation of unlawful activity will be recorded and the reasons for that decision clearly stated.

## **11. Taking 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 common considerations will assist Council staff in determining the most appropriate response in the public interest:

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.

Considerations about the alleged offender:

- any prior warnings, 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.

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 actions would be proportionate and reasonable in response to the unlawful activity
- whether Council is prevented from taking action based on earlier advice given, ie: whether an estoppel situation has been created.

#### 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. A further explanation of the above considerations is provided in Appendix 1.

#### Legal or technical issues

Where legal and/or technical issues are in question, Council staff will consider whether legal advice or professional advice from duly qualified staff or other experts should be obtained and considered. Council may also require a person subject to possible enforcement action to obtain professional advice in relation to issues of concern to Council for assessment as to whether further action is required.

#### Requirements of Council staff considering enforcement action

Prior to taking enforcement action, Council staff will take into account the above considerations as well as the evidence gathered during their investigation. Council staff must act impartially, be mindful of their obligations under Council's code of conduct and not act as a decision-maker in relation to any matter in which they have a personal interest. Enforcement action will not be taken purely as a response to the conduct of an individual such as persistent demands or threats.

Council staff are required to maintain records about critical thinking and decision-making processes in relation to reports alleging unlawful activity and any enforcement action, as well as records of interactions with relevant parties. Council staff will at all times adhere to Council's internal approval processes prior to the commencement of any enforcement action.

Council staff will take steps to ensure that any enforcement action is taken against the correct person or organisation. Where there are multiple possible parties to an alleged unlawful activity, it will generally not be appropriate to take enforcement action against every person who may be liable for the alleged unlawful activity. In such circumstances,

Council staff will be guided by legal advice in determining the appropriate persons to pursue.

## 12. Options for dealing with confirmed cases of unlawful activity

Council will try to use the quickest and most informal option to deal with unlawful activity wherever 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.

At all times, Council's key concerns are:

- to prevent or minimise harm to health, welfare, safety, property or the environment
- to influence behaviour change for the common good and on behalf of the community.

The following enforcement options to be considered by Council are ordered to reflect an escalation in response that is proportionate to the level of risk, the seriousness of the confirmed breach or the need for a deterrent:

### **Very Low:**

- take no action on the basis of a lack of evidence or some other appropriate reason
- provision of information/advice on how to be compliant

### **Low:**

- negotiating with the person to obtain voluntary undertakings or an agreement to address the issues of concern
- issuing a warning or a formal caution

### **Medium:**

- issuing a letter requiring work to be done or activity to cease in lieu of more formal action
- issuing a notice of intention to serve an order or notice under relevant legislation, and then serving an order or notice if appropriate

### **High:**

- issuing a penalty notice
- carrying out the works specified in an order at the cost of the person served with the order

### **Very High:**

- seeking an injunction through the courts to prevent future or continuing unlawful activity
- commence legal proceedings for an offence against the relevant Act or Regulation.



## 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.

### 13. Taking legal action

The Council and its 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.

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 to 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 *prime 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.

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.

Whether the public interest requires legal action 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. (See Section 11, Taking enforcement action).

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
- any possible counter-productive outcomes of prosecution
- what the effective sentencing options are available to the court in the event of conviction
- whether the proceedings or the consequences of any resulting conviction would be unduly harsh or oppressive.

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.

#### **14. Shared enforcement responsibilities**

Some reports will raise matters involving shared regulatory responsibilities between Council and other authorities including the Environment Protection Authority, the NSW Police Force, the Office of 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 liaise with relevant authorities to establish:

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

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

#### **15. Role of Council where there is a private certifier**

Council retains its regulatory role and enforcement powers where a private certifier has been appointed the Principal Certifying Authority (PCA). However, if a private certifier is appointed the PCA, it is not Council's responsibility to ensure building and construction compliance.

Private certifiers have limited enforcement powers as the PCA. They have the power 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 provided to Council for assessment as to whether Council will enforce the notice by issuing an order.

Council and private certifiers will work together 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.

## **16. Role of Councillors in enforcement**

Decision making relating to the investigation of reports alleging unlawful activity and taking enforcement action is the responsibility of appropriately authorised Council staff or the Council itself.

Individual Councillors do not have the right to direct Council staff in their day-to-day activities. Councillors can help individuals who raise concerns with them by satisfying themselves that their Council's policies are being carried out correctly, however they cannot ignore or alter a policy in order to satisfy the demands of special groups.

The General Manager may present certain decisions to be ratified by the elected Council if this is necessary or desirable, and the Councillors may also have the right to call for a report about particular issues to a Council Meeting.

## **17. Delegations**

Council staff delegations for taking action under this policy are included in Council's Delegation Register.

## 18. Approval & Review

Date of Adoption/ Amendment	Revision Number	Minute Number	Review Date
14 May 2014	-	2014/139	2016
12 September 2018	1	2018/181	2020
13 July 2022	2		2026

## 19. Other resources

The NSW Ombudsman website has the following helpful resources at [www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au):

- Managing Unreasonable Conduct by a Complainant Model Policy
- Managing Unreasonable Conduct by a Complainant Manual 2012
- ~~The Rights Stuff – tips for making complaints and solving problems~~
- Effective complaint handling guidelines – 3rd edition
- ~~Managing information arising out of an investigation – Balancing openness and confidentiality~~
- ~~Report on progress and results of investigations~~
- Good Conduct and Administrative Practice - Guidelines for State and Local Governments
- Options for Redress
- Complaint management framework and model policy June 2015
- ~~Investigating Complaints – A manual for investigators~~
- Enforcement guidelines for Councils – December 2015
- Apologies – A practical guide (2<sup>nd</sup> Edition)
- Model guidelines – managing and responding to threats, aggressive behaviour and violence from members of the public
- ~~Better Service and Communication for Council~~

See Also:

- Commonwealth Director of Public Prosecutions (2021), *Prosecution Policy of the Commonwealth: Guidelines for the making of decisions in the prosecution process*
- NSW Planning (2021), *Prosecution Guidelines*.

## APPENDIX 1

### Taking enforcement action

When deciding whether to take enforcement action in relation to a confirmed case of unlawful activity, Council will consider all the circumstances of the matter. The section below is intended to assist staff by providing a further explanation of matters to be taken into consideration when deciding whether to take enforcement action.

Considerations about the alleged offence and impact	
<ul style="list-style-type: none"> <li>the nature and severity of the unlawful activity including whether the activity continued</li> <li>the harm or potential harm to the environment or public health, safety or amenity caused by the unlawful activity</li> <li>the seriousness of the breach, including whether the breach is merely technical, inconsequential or minor in nature</li> <li>the costs and benefits of taking formal enforcement action as opposed to taking informal or no action</li> <li>the time period that has lapsed since the date of the unlawful activity.</li> </ul>	<p>Consideration should be given to the nature, extent and severity of any actual or potential impact of the unlawful activity. 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. It is also important to consider whether the unlawful activity is ongoing or has ceased.</p> <p>Consideration should be given to whether the likely costs and benefits of any enforcement action is justifiable where breaches result in no material impacts upon any other party or the health, safety and amenity of the environment and community. A breach of a technical, inconsequential or minor nature, in the absence of any other aggravating factor, will generally not warrant a decision to take action to remedy or restrain the breach.</p> <p>Legislation may provide time limits in which to commence proceedings and take enforcement action, and sometimes prosecution will be statute barred despite good evidence that unlawful activity has taken place.</p> <p>In addition, consideration should be given to the time which the offence or breach occurred and the "reasonableness" of taking enforcement action if a significant time has lapsed since the time of the offence or breach.</p>

Considerations about the alleged offender	
<ul style="list-style-type: none"> <li>• any prior warnings, instructions, advice that was issued to the person or organisation reported or previous enforcement action taken against them</li> <li>• whether the offence was committed with intent</li> <li>• whether the person or organisation reported has been proactive in the resolution of the matter and assisted with any Council requirements and instructions</li> <li>• any mitigating or aggravating circumstances demonstrated by the subject of the report</li> <li>• any particular circumstances of hardship affecting the person or organisation reported</li> </ul>	<p>Consideration should be given to the previous history of the offender. If prior warnings, instructions or advice has been issued to the person or organisation reported which was not followed, a more formal and coercive enforcement approach would appear more appropriate.</p> <p>Consideration should be given to whether the offence was committed deliberately, recklessly or with gross negligence. It may be appropriate that cases of this nature are more likely to result in prosecution. Where an offence was committed as result of an accident or genuine mistake, providing education and guidance or a formal warning may be more suitable in achieving desired outcomes.</p> <p>Where the offender has been proactive in the resolution of the matter and has assisted Council in the resolution of the matter, 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 rectified. If the offender has demonstrated a lack of contrition and is uncooperative with the investigation or remediation a prosecution or monetary penalty would appear more appropriate.</p> <p>Consideration should be given to any genuine mitigating circumstances of the offender such as age, physical or mental health, disability and any financial hardship of the offender resulting in an inability to pay.</p>

### Considerations about the impact of the enforcement action

<ul style="list-style-type: none"> <li>• the need to deter any future unlawful activity</li> <li>• whether an educative approach <b>would</b> be more appropriate than a coercive approach in resolving the matter</li> <li>• the prospect of success if the proposed enforcement action was challenged in court</li> <li>• the cost and benefits of taking formal enforcement action as opposed to taking informal or no action</li> <li>• what action would be proportionate and reasonable in response to the unlawful activity</li> <li>• whether the Council has created an estoppel situation</li> </ul>	<p>Consideration should be given to the deterrent effect, both on the offender and others. Prosecutions, because of their great stigma if a conviction is secured, may be appropriate even for minor unlawful activity where they might contribute to a greater level of overall deterrence.</p> <p>When deciding whether to take an educative approach or enforcement approach, consideration should be given to the following matters:</p> <ul style="list-style-type: none"> <li>➤ the reasonable likelihood that the person may have known or should have known the relevant requirements or rules</li> <li>➤ the level of contrition shown by the responsible person</li> <li>➤ whether the parties have previously been advised <b>of</b> the regulatory requirements or provisions</li> <li>➤ whether or not any previous warnings or instructions have been provided</li> <li>➤ the apparent level of intent shown by the responsible person.</li> </ul> <p>It may not be appropriate to take enforcement action if the chances of success, in the event of an appeal or hearing, are unlikely. In such situations, you would need to identify the causes of the likelihood and address them in the particular case or as a general issue.</p> <p>Consideration should be given to what is 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.</p> <p>Consideration is to be given to what is reasonable in the circumstances and ensure the action is not disproportionate to the level of harm or damage arising from the breach.</p> <p>Legal proceedings are expensive. When doing a cost-benefit analysis, costs and benefits should be assessed broadly and indirect costs and benefits should also be considered.</p>
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	<p>Estoppel is a legal rule which prevents a person from later denying something which may have previously been relied on, and acted upon by another person.</p> <p>Consideration should be given to whether the actions of Council have created a reasonable expectation that no enforcement action would be taken.</p>
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**Considerations about the potential for remedy**

<ul style="list-style-type: none"> <li>• whether the breach can be easily remedied</li> <li>• whether it is likely consent would have been given for the activity if it had been sought</li> <li>• whether there is a draft planning instrument on exhibition that would make the unauthorised use legal.</li> </ul>	<p>If there is evidence of a significant issue of unlawful activity and that matter can be easily remedied by some action on the part of the person the subject of the report, there is a less compelling case for enforcement action, depending on the other circumstances of the case such as the conduct of the offender.</p> <p>If retrospective approval is possible, it may be reasonable to allow an opportunity to obtain this prior to taking other enforcement action. In some cases, compliance by informal means may be the most efficient way to resolve the matter and other enforcement action may not be necessary. This needs to be balanced with other considerations such as the public interest in enforcing the law.</p>
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## APPENDIX 2

### Risk Category Investigating alleged unlawful activity

Risk Assessment Matrix		Consequences				
		Negligible No injuries or not requiring first aid	Minor First aid needed	Moderate Medical treatment	Major Serious injury	Severe Death or permanent disability.
Likelihood	<b>Certain to occur</b> Expected to occur in most circumstances	Medium	High	High	Extreme	Extreme
	<b>Very Likely</b> Will probably occur in most circumstances	Medium	Medium	High	Extreme	Extreme
	<b>Possible</b> May occur occasionally	Low	Medium	Medium	Extreme	Extreme
	<b>Unlikely</b> Could happen at some time	Low	Low	Medium	High	High
	<b>Rare</b> May happen only in exceptional circumstances	Low	Low	Medium	Medium	Medium
<b>Risk Level</b>		<b>Recommended Actions</b>				
Extreme		Immediate action required – Activity must not proceed until steps are taken to reduce risk to as low as reasonably practicable using the hierarchy of controls				
High		Risk control measures required to reduce risks to as low as reasonably practicable using the hierarchy of controls				
Medium		Review risk assessment and ensure control measures to reduce risk to as low as reasonably practicable using the hierarchy of controls				
Low		Manage risks by routine procedures and monitor				

Common Unlawful Activity				
Severe	Major	Moderate	Minor	Negligible
Significant Pollution Incidents				
Large Scale clearing				
Food Poisoning				
Dog Attack				

Note: The above is a list of common unlawful activities and does not cover all unlawful activities that Council may take actions against.



# SWIMMING POOL BARRIER INSPECTION POLICY

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Adopted by Council 11 September 2013, Resolution No. 2013/350  
Amended 9 March 2016, Resolution No. 2016/64. Reviewed and adopted by Council  
11 July 2018, Resolution No. 2018/151

**Aim:**

1. To ensure that all swimming pool barriers in the Narromine Local Government Area (LGA) comply with the relevant legislation (*Swimming Pools Act 1992* and *Swimming Pools Regulation 201808*).
2. To ensure Council's obligations under the *Swimming Pools Act* in respect to undertaking swimming pool barrier inspections are satisfied.

**Definitions:**

**Certificate of Compliance** – in respect of swimming pools means a certificate issued under section 22D of the *Swimming Pools Act 1992*.

**Relevant Occupation Certificate** – in respect of a swimming pool, means an occupation certificate issued under the *Environmental Planning and Assessment Act 1979*, that is less than 3 years old and that authorises the use of the swimming pool.

**Swimming Pool** – means an excavation, structure or vessel:

- a) That is capable of being filled with water to a depth greater than 300 millimetres, and
- b) That is solely or principally used, or that is designed, manufactured or adapted to be solely or principally used, for the purpose of swimming, wading, paddling or any other human aquatic activity, and includes a spa pool, but does not include a spa bath, anything that is situated within a bathroom or anything declared by the regulations not to be a swimming pool for the purposes of the Swimming Pools Act.

**Tourist and Visitor Accommodation** – means a building or place that provides temporary or short-term accommodation on a commercial basis and includes backpackers accommodation, bed and breakfast accommodation, farm stay accommodation, hotel or Motel accommodation and serviced apartments.

**Note:** As a result of previous community engagement and consultation this policy is also applicable to swimming pools within Caravan Parks.

**Routine Inspection Program:**

Council will annually conduct inspection of 10 private swimming pools. These pools will be selected randomly from the NSW Government Swimming Pools Register. Swimming pools which have an Occupation Certificate or a Compliance Certificate will be exempt from inspection for three (3) years from the date of the certificate. Compliance Certificates are valid for three (3) years only.

Swimming pools located on tourist/visitor accommodation developments are to be inspected every three (3) years as per the requirement of Section 22B of the *Swimming Pools Act 1992*.

Swimming pools inspected will receive a formal inspection report from Council outlining any non-compliance. Non-compliant swimming pools will be required to comply within a prescribed period set out in the inspection report. Pools will be reinspected once the non-compliances have been addressed. Compliant swimming pools will be issued with a Compliance Certificate.

### **Customer Requested Inspection:**

Owners who are selling or leasing their premises can request Council to undertake a swimming pool barrier inspection. From 29 April 2016 owners are required to obtain a valid swimming pool Compliance Certificate before the sale or lease of a property with a swimming pool. Owners are also able to engage a private certifier accredited under the *Building Professionals Act 2005* to issue a Compliance Certificate.

### **Complaint Inspection:**

If a complaint is made to Council regarding a swimming pool, Council will inspect the premises within 72hrs of receiving the complaint regardless of whether or not a valid compliance certificate or Occupation Certificate has been issued. No fees will be payable for the initial inspection however, if any non-compliances are identified any follow up inspection will attract a reinspection fee outlined in the fees section of this policy.

### **Fees:**

Section ~~1918A~~ of the Regulation prescribes the following fee structure:

#### **~~1918A~~ Fee for inspection**

*(1) For the purposes of section 22F (1) of the Act, the maximum fee that a local authority may charge for carrying out an inspection of a swimming pool is:*

*(a) ~~if it is the in the case of a~~ first inspection since the person became the owner of the swimming pool, \$150, or*

*(b) any or all subsequent in the case of a second inspections since the person became the owner of the swimming pool, \$100, or;*

*(c) If it is the first inspection since a certificate of compliance in relation to the premises ceased to be valid - \$150 or*

*(d) any or all subsequent inspections after the first inspection since a certificate of compliance in relation to the premises ceased to be valid - \$100*

*(2) ~~No fee may be charged by a local authority for carrying out a third or subsequent inspection for the purpose of the issue of the same certificate of compliance.~~*

Fees associated with this junction are within Council's Fees & Charges Policy.

### **Failure to Register**

Should Council become aware that a swimming pool owner has failed to register their swimming pool, that owner shall be given 14 days written notice from Council to register their swimming pool prior to further action being taken.

Owners who then fail to register within this 14-day period, shall be issued with a penalty infringement notice in accordance with clause ~~30B(1)22~~ of the *Swimming Pools ~~Act 1992~~ Regulation 2008* and Council will register the swimming pool.

**References:***Swimming Pool Act 1992**Swimming Pool Regulations 20~~1808~~***Authorisation:**

<b>Date of Adoption/ Amendment</b>	<b>Revision Number</b>	<b>Minute Number</b>	<b>Review Date</b>
<i>11 September 2013</i>	-	<i>2013/350</i>	2016
<i>9 March 2016</i>	1	<i>2016/64</i>	2018
<i>11 July 2018</i>	2	<i>2018/151</i>	2020
<u>2022</u>	<u>3</u>		<u>2026</u>

# Planning Agreement

Between



# Narromine

SHIRE COUNCIL

ABN: 99 352 328 405

and



**ALKANE**  
RESOURCES LTD

**Alkane Resources Ltd**

ABN: 35 000 689 216

DRAFT (v.6) July 2022

**Narromine Shire Council**

**PO Box 115 Narromine NSW 2821**

**Phone 02 6889 9999**

**mail@narromine.nsw.gov.au / [www.narromine.nsw.gov.au](http://www.narromine.nsw.gov.au)**

## 1. PARTIES

- Narromine Shire Council of 124 Dandaloo Street, Narromine, NSW ('Council'); and
- Alkane Resources Ltd of Level 4, 66 Kings Park Road, West Perth, WA ('Proponent').

## 2. BACKGROUND

- 2.1 On 7 February 2022 the Proponent made a Development Application to the NSW Department of Planning and Environment for Development Consent to carry out the Development (Tomingley Gold Extension Project) on the land generally to the south of Tomingley township and Tomingley Gold Operations). This Development is identified by the Department of Planning Environment as Major Project Application No. SSD-9176045
- 2.2 The Proponent and the Council are currently parties to a Planning Agreement (PA) entered into in May 2012, amended in July 2016 and further amended in June 2021 to expire on 31 December 2025. The Parties intend that this Agreement shall supersede the existing PA.
- 2.3 The Proponent has agreed to enter into this Agreement and pay the Development Contributions to the Council on the basis that Development Consent is granted by the NSW Government.

## 3. OPERATIVE PROVISIONS OF THIS AGREEMENT

### 3.1 PLANNING AGREEMENT UNDER THE ACT

The Parties agree that this Agreement is a Planning Agreement governed by Part 7, Division 7.1, Subdivision 2 Planning Agreements, sections 7.4-7.10 inclusive of the Act.

### 3.2 APPLICATION OF THIS AGREEMENT

This Agreement applies to the Development as identified in Attachment A of this Agreement on Land which is identified in Attachment A of this Agreement.

### 3.3 OPERATION OF THIS AGREEMENT

This Agreement shall take effect on the date that it is executed by the parties, namely the date as indicated on the Execution page of this Agreement.

### 3.4 APPLICATION OF SECTIONS 7.11, 7.12 AND 7.24

- (a) This Deed excludes the application of sections 7.11 and 7.12 of the Act to the Development.
- (b) This Deed does not exclude the application of section 7.24 of the Act to the Development.

### 3.5 DEFINITIONS AND INTERPRETATION

In this Agreement, the following definitions apply:

**Act** means the *Environmental Planning and Assessment Act 1979*.

**Approval** means any approvals, consents, certificates, permits, endorsements, licences, conditions or requirements (and any modifications or variations to them) which may be required by Law or by adjoining owners for the commencement and carrying out of the Development generally and includes an approval under Part 3A of the Act (if relevant).

**Council** means Narromine Shire Council.

**CPI** means the published Consumer Price Index (Sydney – All Groups), or, if that index is no longer published, then any other index which, in the opinion of the Council, is a similar index.

**Dealing**, in relation to the Land, means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land.

**Department** means the NSW Department of Planning and Environment.

**Development** means the project known as the 'Tomingley Gold Extension Project' as detailed in Attachment A of this document.

**Development Application** has the same meaning as in the Act.

**Development Consent** has the same meaning as in the Act.

**Development Contribution** means a monetary contribution or the provision of a material public benefit, the schedule of which is listed in Table 1 contained herein.

**Dispute** means a dispute regarding the terms and operation of this Agreement.

**GST** has the same meaning as in the GST Law.

**GST Law** has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or Regulation relating to the imposition or administration of the GST.

**Insolvency Event** means any of the following events:

- a) the Party ceases to (or is unable to) pay its creditors (or any class of them) in the ordinary course of business, or announces its intention to do so;
- b) a receiver, manager, receiver and manager, administrative receiver or similar officer is appointed with respect to that Party or any of its assets;
- c) such Party enters into, or resolves to enter into, a scheme of arrangement, compromise or composition with any class of creditors;
- d) a resolution is passed or an application to a court is taken for the winding up, dissolution, official management or administration of that Party; or
- e) anything having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

**Land** means the land described in Attachment A of this Agreement.

**Party** means a party to this agreement, including their successors and assigns.

**Proponent** means Alkane Resources Ltd.



### 3.6 INTERPRETATION OF THIS AGREEMENT

In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

- a) Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- b) A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- c) If the day in which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.
- d) A reference in this Agreement to 'dollars' or '\$' means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- e) A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- f) A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- g) A reference to a clause, part, schedule or attachment is a reference to a clause, part schedule or attachment to this Agreement.
- h) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- i) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- j) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- k) References to the word 'include' or 'including' are to be construed without limitation.
- l) A reference to this Agreement includes the agreement recorded in this Agreement.
- m) A reference to a party to this Agreement includes a reference to the servants, agents, and contractors of the party, and the party's successors and assigns.
- n) Any schedules, tables and attachments form part of this Agreement.

## 4. DEVELOPMENT CONTRIBUTIONS TO BE MADE UNDER THIS AGREEMENT

- 4.1 The Proponent commits to make the Development Contributions listed in **Table 1** below to Council, by bank cheque or other cleared funds, in accordance with the manner and timing outlined in the same table.

**Table 1: The Development Contributions**

Number	Summary Description	Manner and Timeframe for Payment of the Contribution
1 (a)	Community Fund	\$75,000/year (base year 2023) paid for 8 years, 50% payable on 1 January and 50% payable on 1 July each year.

(b)	Public art (mining monument) for Tomingley village capital contribution	\$50,000 paid on adoption of Planning Agreement.
2	<ul style="list-style-type: none"> <li>General council expenses, including road and infrastructure maintenance.</li> </ul>	\$85,000/year (base year 2023) paid for 8 years, 50% payable on 1 January and 50% payable on 1 July each year.
3	Road maintenance of the Tomingley West Road from intersection with Tomingley Road to TGO Mine Site entrance (to standard outlined in Roads Asset Management Plan).	At TGO's expense.
4	Road maintenance of the Kyalite Road from Newell Highway to SAR Mine Site entrance (to standard outlined in Roads Asset Management Plan).	At TGO's expense.
5	Removal of the Kyalite Road overpass and restoration of Kyalite Road at the end of the life of the mine, should NSC so direct at that time. (to standard outlined in Roads Asset Management Plan).	At TGO's expense on NSC's direction at the end of the life of the mine.
6	TGO to transfer from the "Woodlands" site the production bore, pumps, power supply and pipeline and up to 50ML of water license to NSC post mine life. In addition, NSC to have first right of refusal to purchase the remaining 950ML of license at market rate.	At TGO's expense.
7	TGO to supply 11ML per annum of water to Tomingley Village until end of mine life, supplied by agreement during off peak periods.	At TGO's expense.
8	In the event that TGO submits a Modification to its Project Approval such that the Capital spent as part of that modification would be greater than \$1,000,000 then item (2) above would be increased by 1% of the value of item (1a) and (2) combined. For clarity note that this increase will be to the value of (1a) and (2) at the time of Modification approval, i.e. increased by CPI.	At TGO's expense (assuming criteria is triggered).
9	Development contributions will continue as per this agreement for the Life of Mine, i.e. if the mine continues beyond the original term of the planning agreement.	At TGO's expense.

- 4.2 Contributions which are required in subsequent years to the date of this Agreement are required to be made with an increase in the payment amount in accordance with CPI adjustments which are to be calculated yearly.
- 4.3 The Development Contributions paid pursuant to subclause 4.1 may be pooled with other monies held by Council which have similar and relevant objectives.
- 4.4 If the Development Contribution exceeds the amount required to carry out the purposes identified in subclause 4.1, the surplus may be used and applied by Council for any purpose in its absolute discretion.

## **5. CONFIDENTIALITY**

- 5.1 The Parties agree that the terms of this Agreement are not confidential and this Agreement may be treated as a public document and exhibited or reported without restriction by any party.

## **6. REVIEW OF THIS AGREEMENT**

- 6.1 This Agreement may only be amended by a further Planning Agreement entered into by Council and the Proponent.

## **7. DISPUTE RESOLUTION**

- 7.1 In the event a dispute between the Parties arises in relation to any activity, payment or item as covered in this Agreement, the dispute is to be resolved through the following process (as required):

- a) A Party claiming that a dispute has arisen under or in relation to this Agreement must give written notice to the other Party specifying the nature of the dispute;
- b) Within ten (10) days of receipt of notice of a claim of a dispute, both Parties must endeavour, in good faith, to resolve the dispute swiftly using informal dispute resolution methods such as discussion, mediation, or expert evaluation as agreed by both Parties;
- c) If the Parties fail to resolve the dispute within 21 business days of receipt of notice (or any further period agreed in writing by them) as to:
  - i) the dispute resolution method and procedures to be adopted;
  - ii) the timetable for all steps in those procedures; or
  - iii) the selection and compensation of the independent person required for such technique,

the Parties must mediate the dispute in accordance with the Alternative Dispute Resolution process of the Law Society of NSW. The Parties must request the President of the Law Society of NSW or the President's nominee to select the mediator and determine the mediator's remuneration.

- d) The costs associated with appointing the mediator must be shared equally between the Parties.
- e) If the dispute is not resolved within 60 business days after notice is given then either Party, having exhausted efforts to resolve the dispute in accordance with this section, may, in writing, terminate the dispute resolution process and commence court proceedings in relation to the dispute.

## **8. ENFORCEMENT**

- 8.1 The Proponent commits an “event of default” if it commits, permits or suffers to occur any breach or default in the due and punctual observance and performance of any of the covenants, obligations and provisions to be performed or observed by the Proponent under this Agreement.
- 8.2 Where the Proponent commits an event of default the Council may:
  - a) serve a notice on the Proponent requiring the breach of this Agreement to be rectified within a reasonable period from the date of the notice; and
  - b) claim damages for breach of contract from the Proponent.
- 8.3 The rights vested in Council pursuant to 8.2 above do not prevent the Council from exercising any other rights that it may possess at law.

## **9. TERMINATION**

- 9.1 This Agreement terminates in the following events:
  - a) the parties agree in writing to terminate the operation of this Agreement at any time;
  - b) an Insolvency Event affects a party;
  - c) the Council, acting reasonably, serves notice on the Proponent terminating this Agreement where the Proponent has failed to comply with a notice issued in accordance with clause 8.2 (a); and
  - d) payment by the Proponent of the Developer Contribution to Council in accordance with the terms of this Agreement.
- 9.2 Upon termination of this Agreement:
  - a) all future rights and obligations of the parties under this Agreement are discharged; and
  - b) all pre-existing rights and obligations of the parties under this Agreement continue to subsist.

## **10. NOTICES**

- 10.1 Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:
  - a) delivered or posted to that Party at its address set out below;
  - b) faxed to that Party at its fax number set out below; or
  - c) emailed to that Party at its email address set out below.

**Narromine Shire Council**

Attention: Ms. Jane Redden, General Manager  
Address: 124 Dandaloo Street, Narromine, NSW 2821  
PO Box 115, Narromine, NSW 2821  
Fax Number: (02) 6889 9998  
Email: mail@narromine.nsw.gov.au

**Alkane Resources Ltd**

Attention: Mr. Michael Sutherland, General Manager, NSW  
Address: Level 2, 88 – 90 Macquarie Street, Dubbo, NSW 2830  
PO Box 910, Dubbo, NSW 2830  
Fax Number: (02) 6882 9282  
Email: msutherland@alkane.com.au

- 10.2 If a Party gives the other Party three business days notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.
- 10.3 Any notice, consent, information, application or request is to be treated as given or made at the following time:
- a) if it is delivered, when it was left at the relevant address.
  - b) if it is sent by post, two business days after it is posted.
  - c) if it is sent by fax, as soon as the sender receives from the sender's fax machine, a fax report of an error free transmission to the correct fax number.
- 10.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5 pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

**11. APPROVALS AND CONSENT**

Except as otherwise set out in this Agreement, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Agreement in that Party's absolute discretion and subject to any conditions determined by the Party. A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

## **12. REGISTRATION**

This Deed is to be registered on the title to the Tomingley Gold Extension Project Land as provided for in section 7.6 of the Act.

## **13. COSTS**

The Proponent shall pay all costs in relation to negotiating, preparing and executing this Agreement.

## **14. ENTIRE AGREEMENT**

This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Agreement was executed except as permitted by law.

## **15. FURTHER ACTS**

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it.

## **16. GOVERNING LAW AND JURISDICTION**

This Agreement is governed by the law of New South Wales. The Parties submit to the exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

## **17. JOINT AND INDIVIDUAL LIABILITY AND BENEFITS**

Except as otherwise set out in this Agreement, any agreement, covenant, representation or warranty under this Agreement by two or more persons binds them jointly and each of them individually, and any benefit in favour of two or more persons is for the benefit of them jointly and each of them individually.

## **18. NO FETTER**

Nothing in this Agreement shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

## **19. REPRESENTATIONS AND WARRANTIES**

The Parties represent and warrant that they have power to enter this Agreement and comply with their obligations under the Agreement and that entry into this Agreement will not result in the breach of any law.

Each Party warrants to each other Party that:

- a) this Agreement creates a legal, valid and binding obligation, enforceable against the relevant Party in accordance with its terms; and
- b) unless otherwise stated, it has not entered into this Agreement in the capacity of trustee of any trust.

## **20. SEVERABILITY**

If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of the Agreement is not affected.

## **21. MODIFICATION**

No modification of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

## **22. RENEWAL/REPLACEMENT OF THIS AGREEMENT**

During the term of this current Planning Agreement the Parties agree to review and amend it if:

- a) ownership of the Proponent changes;
- b) a new Development Application is required for the Tomingley Gold Project; or
- c) there is a major change in the scope or intent of the Tomingley Gold Extension Project Environmental Impact Assessment].

## **23. WAIVER**

The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of that obligation or breach in relation to any other occasion.

## **24. GST**

If any Party reasonably decides that it is liable to pay GST on a supply made to the other Party under this Agreement and the supply was not priced to include GST, then the recipient of the supply must pay an additional amount equal to the GST on that supply.

**EXECUTION**

DATED:

EXECUTED AS AN AGREEMENT:

The Common Seal of **Narromine Shire Council** was affixed in the presence of:

-----

Mayor

Name (printed)

-----

General Manager

Name (printed)

Executed by **Alkane Resources Ltd** in accordance with section 127 of the *Corporations Act (Cth)*:

-----

Director:

Name (printed)

-----

Company Secretary

Name (printed)



**ATTACHMENT A****THE DEVELOPMENT**

The proposed Tomingley Gold Extension Project as described in the Environmental Impact Assessment report dated February 2022 and submitted to the NSW Department of Planning and Environment for review and determination.

**DESCRIPTION OF SUBJECT LAND**

The Project Site is the land to which any development consent granted in relation to the Project would apply. As identified in Section 1.2, the Project Site comprises the combined area of the TGO and TGEP Mine Sites. Land associated with the “Woodlands” and “Dappo” bores also form a component of the Project Site. **Table 2** presents the land titles within the Project Site.

**Table 2**  
**Project Site Land Titles**

Lot	DP	Lot	DP	Lot	DP
<b>TGO Mine Site</b>					
156	755093	2	1151198	122	755110
1623	1178801	161	755110	112	755110
1621	1178801	160	755110	95	755110
105	755110	162	755110	94	755110
104	755110	163	755110	111	755110
103	755110	1	1151198		
3*	1151198	1	254193		
Road reserve associated with the Newell Highway					
<b>TGEP Mine Site</b>					
3	1213503	1622	1178801	1	820746
4	1213503	7003	1020605	122	755110
101	1271511	7300	1151814	2	254193
44	755093	176	722842	43	755093
86	755093	157	755093	2	1157935
1	1273565	175	755093	1623	1178801
127	755093	169	755093	2	1281392
3	1281392				
Road reserves associated with the Newell Highway, McNivens Lane, Kyalite Road, Back Tomingley West Road and various unformed paper roads.					
<b>“Woodlands” and “Dappo” bores and pipelines</b>					
“Woodlands” bore		18	755119	7002	1032703
“Dappo” bore		235	755131	1	1181773
Road reserves associated with the Mitchell Highway, Webbs Siding Road, Dappo, Wallaby, Bootles, Pinedean and Tomingley Roads.					
Note 1: * = part lot					

## Explanatory Note

Tomingley Gold Extension Project- Voluntary Planning Agreement  
July 2022

### Introduction

The purpose of this explanatory note is to provide a plain English summary to support the notification of the proposed Planning Agreement (Agreement) prepared under Subdivision 2 of Division 7.1 of Part 7 of the Environmental Planning and Assessment Act 1979 (NSW) (Act).

For the avoidance of doubt, this Explanatory Note does not form part of the Agreement, is not to be used to assist in construing the Agreement and does not bind any of the Parties.

This explanatory note has been prepared by Narromine Shire Council as required by clause 25E of the Environmental Planning and Assessment Regulation 2000 (NSW). It will be exhibited with a copy of the Agreement when the Agreement is made available for inspection by the public in accordance with the Act, as specified by clause 25E of the Regulation.

### Parties to the Agreement

The Parties to the agreement are:

- Narromine Shire Council of 124 Dandaloo Street, Narromine, NSW (**'Council'**); and
- Alkane Resources Ltd of Level 4, 66 Kings Park Road, West Perth, WA (**'Proponent'**).

### Background

On 7 February 2022 the Proponent lodged a Development Application to the NSW Department of Planning and Environment for Development Consent to carry out the Development (Tomingley Gold Extension Project) on the land generally to the south of Tomingley township and Tomingley Gold Operations. This Development is identified by the Department of Planning Environment as Major Project Application No. SSD-9176045

The Proponent and the Council are currently parties to a Planning Agreement entered into in May 2012, amended in July 2016 and further amended in June 2021 to expire on 31 December 2022. The Parties intend that this Agreement shall supersede the existing Planning Agreement.

The Proponent has agreed to enter into this Agreement and pay the Development Contributions to the Council on the basis that Development Consent is granted by the NSW Government.

### Description of the approved Development Application (Proposed Development)

Tomingley Gold Operations Pty Ltd are extending the existing Tomingley Gold Operations Gold Mine located immediately to the south of Tomingley Village in central western NSW to incorporate mining of the San Antonio and Roswell (SAR) deposits. Core components of the project include:

- The realignment of the Newell Highway and Kyalite Road, including the intersections of the Newell Highway and Kyalite Road, McNivens Lane and Back Tomingley West Road.
- Surface and underground mining at the San Antonio and Roswell sites.
- Continued operation of the Tomingley Gold Operation mine beyond 31 December 2025.
- The connection of an existing bore field to the applicants existing and approved water supply pipeline.

**Description of the Subject Land**

The Agreement applies to the land set out and described in Attachment A, Table 2 of the Planning Agreement (**Subject Land**).

**Objective, nature and effect of the Planning Agreement**

The objective, nature and effect of the Planning Agreement is to provide financial contributions to Narromine Shire Council and to enable Narromine Shire Council to use those financial contributions for public purpose.

The Proponent commits to make the development contributions listed in **Table 1** below to Council, by bank cheque or other cleared funds, in accordance with the manner and timing outlined in the same table.

**Table 1: The Development Contributions**

<b>Number</b>	<b>Summary Description</b>	<b>Manner and Timeframe for Payment of the Contribution</b>
1 (a)	Community Fund	\$75,000/year (base year 2023) paid for 8 years, 50% payable on 1 January and 50% payable on 1 July each year.
(b)	Public art (mining monument) for Tomingley village capital contribution	\$50,000 paid on adoption of Planning Agreement.
2	General council expenses, including road and infrastructure maintenance.	\$85,000/year (base year 2023) paid for 8 years, 50% payable on 1 January and 50% payable on 1 July each year.
3	Road maintenance of the Tomingley West Road from intersection with Tomingley Road to TGO Mine Site entrance (to standard outlined in Roads Asset Management Plan).	At TGO's expense.
4	Road maintenance of the Kyalite Road from Newell Highway to SAR Mine Site entrance (to standard outlined in Roads Asset Management Plan).	At TGO's expense.
5	Removal of the Kyalite Road overpass and restoration of Kyalite Road at the end of the life of the mine, should NSC so direct at that time. (to standard outlined in Roads Asset Management Plan).	At TGO's expense on NSC's direction at the end of the life of the mine.
6	TGO to transfer from the "Woodlands" site the production bore, pumps, power supply and pipeline and up to 50ML of water license to NSC post mine life. In addition, NSC to have first right of refusal to purchase the remaining 950ML of license at market rate.	At TGO's expense.

7	TGO to supply 11ML per annum of water to Tomingley Village until end of mine life, supplied by agreement during off peak periods.	At TGO's expense.
8	In the event that TGO submits a Modification to its Project Approval such that the Capital spent as part of that modification would be greater than \$1,000,000 then item (2) above would be increased by 1% of the value of item (1a) and (2) combined. For clarity note that this increase will be to the value of (1a) and (2) at the time of Modification approval, i.e. increased by CPI.	At TGO's expense (assuming criteria is triggered).
9	Development contributions will continue as per this agreement for the Life of Mine, i.e. if the mine continues beyond the original term of the planning agreement.	At TGO's expense.

In summary, the total development contributions paid by Alkane Resources Ltd towards community infrastructure will be \$1.33 million (subject to CPI) over the 8 years of the life of mine. This includes contributions to both the community fund and roads maintenance.

Further development contributions will be paid if the life of the mine extends beyond 8 years.

Further development contributions will also be made should modifications to the project approval be made that are greater than \$1 million in value.

Council will spend any contributions made in line with priorities as set out in the Community Strategic Plan.

The parties agree that Alkane Resources Ltd is required to register the Planning Agreement on the title to the Alkane Resources Ltd owned land under section 7.6 of the EP&A Act.

The Planning Agreement is an enforceable arrangement between Narromine Shire Council and Alkane Resources Ltd under the EP&A Act. The Planning Agreement also contains provisions as to dispute resolution and excludes the application of sections 7.11 and 7.12 of the EP&A Act and does not exclude section 7.24 of the EP&A Act.

### **Assessment of the merits of the Planning Agreement including the impact on the public**

The merits of the Planning Agreement are to enable Narromine Shire Council to operate a Community fund to support the goals and actions of the Community Strategic Plan and to fund road maintenance in the areas affected around the mine site and across the Shire. The agreement allows for the specific maintenance of roads directly effected by the mine operations.

Such development initiatives will have a positive impact on members of the public.

The Planning Agreement requires that Narromine Shire Council use the contributions for public purposes and in doing so promotes the following objectives of the EP&A Act:

- a) The promotion and coordination of the orderly and economic use and development of the land;
- b) The provision and coordination of community services and facilities.

Further to the promotion of the EP&A objectives the Agreement promotes the following guiding principles for Local Government under section 8A of the Local Government Act 1993 in that it enables:

- a) To provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively; and
- b) 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.

The Planning Agreement will lead to the improvement of infrastructure and community amenity in the Narromine Shire Council area. The proposed contributions are assessed to be reasonable to achieve these improvements and maintenance.

Payments made as a result of the Planning Agreement are triggered by the approval and commencement of the development.