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1. PURPOSE

This policy has been developed to provide a framework for the City of Botany Bay’s regulation and enforcement of laws relating to the parking of motor vehicles.

2. SCOPE

This Policy applies to all Council Officials in accordance with the Code of Conduct definition of a Council Official.

3. OBJECTIVES

   3.1 To provide a comprehensive and publicly available parking enforcement policy aimed at achieving an appropriate balance between public safety, traffic flow and equitable access to available parking within the City of Botany Bay;

   3.2 To detail the approach to be taken by Council’s authorised officers in the carrying out of enforcement duties; and

   3.3 To outline the processes for the consideration of representations made concerning penalty notices issued for parking related offences.

4. POLICY STATEMENT

   4.1 Statutory Obligations

   Council has a regulatory obligation to enforce parking-related legislation to manage public safety and traffic flow.

   Council will exercise their enforcement powers in a fair, transparent, consistent and accountable manner.
4.2 Community Education

Council is committed to developing and implementing strategies to increase awareness among the community about parking related matters, particularly those involving public safety such as school zones.

4.3 Parking Programs

In addition to the regular patrols of on-street and off-street parking areas, Council undertakes to target specific illegal parking behaviour and the methods of monitoring compliance. These programs include:

Mobility Parking Scheme

This program concerns the enforcement of the Mobility Parking Scheme (MPS), administered by the Roads and Maritime Services (RMS), to provide parking concessions for persons with a disability. This includes carrying out patrols of parking spaces specifically designated for people with a disability to ensure legitimate use through the display of an appropriate permit.

MPS permits should be displayed on the front windscreen of the vehicle in order to substantiate an entitlement to park in a designated Disability Parking Bay. If the permit is not displayed, authorised officers are entitled to request to view the permit. If the driver is not the person to whom the permit has been issued, and the person to whom the permit has been issued is not in the immediate area in which the vehicle is parked, the officer may issue a penalty notice and complete and submit a report to the RMS fraud unit.

School Zones

This program seeks to discourage illegal parking in and around school zones to ensure the safety of children.

Motorists who disregard parking regulations in School Zones can create a dangerous situation that may result in the injury or death of a child. Council applies a zero tolerance approach to illegal parking offences in School Zones.
Resident Parking Scheme

This program is aimed at improving residents’ ability to park in their streets and seeks to discourage the parking of vehicles, without a resident parking sticker, in excess of the time period allowed.

A resident who has been issued with a MPS permit, and displays this permit on their vehicle, is exempt from the restrictions under this Scheme.

Complaint-Based Program

This program seeks to address the investigation of parking related complaints.

Parking related complaints are generally received in relation to driveway and footpath obstructions by motor vehicles in addition to general parking issues in residential areas.

4.4 Parking Enforcement Practices

General

Efficient and effective parking regulation relies heavily on the systematic presence and visibility of authorised officers. Consistency in enforcement is a key component in effective service.

Subject to the provisions of this policy, authorised officers may use a number of methods to manage parking and apply the related legislation including taking action in the form of education, warnings, cautions, issuing of penalty notices and the submission of reports to the RMS.

Where an authorised officer observes a motor vehicle parked in an illegal or dangerous position or both, they may issue a penalty notice and, if possible, find the driver and instruct them to move the motor vehicle immediately.

Motor vehicles parked illegally in a School Zone or in No Stopping, No Parking and Bus Zones will not be afforded any discretion as illegal parking in these high-risk areas may place a member of the public in danger and/or adversely affect the flow of traffic.
Authorised officers are NOT permitted to cancel a penalty notice if they have commenced recording details on the notice.

The onus to comply with current parking rules and regulations lies solely with each driver of a motor vehicle in NSW.

**Discretion**

The disregard of parking restrictions and regulations by motorists (particularly in problem areas) should attract a penalty notice so as to operate as a deterrent. However, in some circumstances, it may be prudent for an authorised officer to exercise discretion by issuing a printed caution or verbal caution and direct the driver to move on rather than issue a penalty notice.

Examples of where the exercising discretion by an authorised officer may be considered reasonable and proper are:

- A driver returns to their motor vehicle as an authorised officer is about to issue a penalty notice for overstaying the sign posted time limit. The authorised officer may use their discretion to issue a caution and instruct the person to move the motor vehicle;

- An authorised officer observes a motor vehicle double-parked not in a dangerous position or not obstructing traffic. The authorised officer may use their discretion to issue a caution and instruct the drive to move on; or

- A driver returns to their motor vehicle before the authorised officer has issued a penalty notice for parking on a path/strip. The authorised officer may issue a caution and instruct the person to move the motor vehicle.

The application of discretion requires the authorised officer to exercise and demonstrate good judgement in regard to educating the community about parking regulations.

Where a caution has been issued, the authorised officer is required to record the registration number of the motor vehicle and the details of the offence committed. These details will be entered into Council’s database of ‘cautions issued’. If the motor vehicle is illegally parked again within any one financial year (July – June), a penalty notice will be issued and posted to the registered owner.
Conflict of Interest

Council and the community has a right to expect that Council officers will exercise their enforcement powers in a fair, transparent, consistent and accountable manner.

Any real or perceived conflicts of interest shall be managed in accordance with the Council’s Code of Conduct.

After-Hours Parking Complaints

Whilst on street parking enforcement was transferred from the NSW Police Service to Local Government in 2002, NSW Police Officers remain authorised to issue penalty notices for contravention of the laws relating to parking of motor vehicles. Accordingly, complaints about motor vehicle parking enforcement outside of Council’s hours of operation may be referred to the Police Local Area Command for investigation/action.

NSW Police

Council officers may seek the assistance of the NSW Police in respect of the following matters:

- General parking offences
- The removal of vehicles parked in a manner that creates a safety concern
- Drivers suspected to be under the influence of alcohol or drugs
- Abandoned vehicles
- Individuals who breach the standard of behaviour of members of the public

4.5 Operational Types

Authorised officers undertake surveillance to ensure compliance with the laws relating to motor vehicle parking. This surveillance may take the following forms:
High Visibility Surveillance

This kind of surveillance involves activities where authorised officers are clearly visible in full uniform for all motorists and members of the public to observe.

Low Visibility Surveillance

This kind of surveillance involves activities where authorised officers may not be clearly visible and this includes use of a Council Motor vehicle that bears Council identification.

Covert Surveillance

Covert surveillance operations may be undertaken where specific circumstances warrant such action. This type of operation will only be conducted with the prior approval of the Council, by way of a Council resolution or direction of the Mayor, and will be for a specific purpose with a defined time period.

4.6 Standard Operating Procedures

Authorised officers are to observe the following in the performance of their duties: -

- Be appropriately attired in full uniform when conducting parking patrols;

- Penalty notices should be placed on the vehicle if the circumstances permit, otherwise the penalty notice should be posted;

- Chalk markings should be made on the tread of a tyre only not on the wall of the tyre;

- Penalty notices are not issued unless all signs are clear and visible and all motor vehicles tyres are inflated;

- A period of ten minutes may be allowed as a courtesy in circumstances where the relevant parking time restriction is greater than 15 minutes;
• A period of five minutes may be allowed as a courtesy in circumstances where the relevant parking time restriction is greater than five minutes but not greater than 15 minutes;

• Private property should not be entered to issue a penalty notice where a vehicle is parked with its rear/front end blocking the footpath. The penalty notice should be posted in this instance;

• A penalty notice may be issued when a vehicle is partially in a restricted parking zone. (The benchmark for cars in this situation will be that an overhang is allowed to the centre of the wheel hub/axle perpendicular to the sign post - see Figure A below). If a vehicle is parked any further into a restricted zone a penalty notice will be issued. The authorised officer may use discretion in relation to shape and size of vehicles, sight lines, if in a school zone, if the vehicle poses a danger to pedestrians or drivers and sight distance for overhang of signpost;

• Council vehicles must always be parked legally and in accordance with the Road Rules Legislation;

Figure A – A vehicle will be permitted to overhang to the centre of the wheel / hub/axle perpendicular to the signpost.
4.7 Mobile Pullovers (stops) of Heavy Vehicles

Authorised officers are to observe the following in the performance of their duties:

- Not engage a mobile pullover (stop) within a school zone or shopping strip area;
- Not engage a mobile pullover (stop) if there is a lot of traffic on the road or in the area, or if there is a high pedestrian presence in the area;
- Compliance with OH&S policies and procedures;
- If appropriate, do not engage in a mobile pullover (stop) but follow the truck to its destination within the City of Botany Bay local government area only;
- Must ensure that there is an area ahead where the truck driver can pullover, stop and park his heavy vehicle safely;
- Turn magenta lights on, turn headlights on, flash headlights and sound car horn once or twice only so as to try and attract the driver’s attention;
- Drive safely within the bounds of the road rules;
- If the truck driver does not pullover and stop within a distance of approximately 300 metres, than disengage from mobile pullover (stop) and follow truck to its destination if within Council’s LGA. If the truck leaves Council’s LGA then disengage totally.

4.8 Photographs

To ensure that appropriate evidence is collected, authorised officers are permitted to take photographs of vehicles where they intend to issue a penalty notice.

Photographs should be taken prior to the details of the offence and vehicle being recorded to issue the Penalty Notice.

The person to whom the penalty notice is issued, subject to payment of the relevant fee, may obtain copies of photographs.

Where possible, the authorised officer should attempt to issue the penalty by placing the notice on the motor vehicle or handing the penalty notice to the person who the authorised officer reasonably considers to be the owner or
driver of the motor vehicle. The penalty notice may be sent via the post to the motor vehicle owner when the authorised officer:

- Observes a motor vehicle stop and illegally park in a school zone, No Stopping, No Standing or Bus Zone and then drives away;
- Cannot stop and park legally to issue the penalty notice;
- Forms the opinion that it would be unsafe to issue the penalty notice in the normal manner; or
- Forms the opinion that it would be inappropriate to issue the penalty notice in the normal manner because of the prevailing weather conditions.

4.9 Behaviour Standards of Authorised Officers

Council has an expectation that all authorised officers will:

- Be courteous, polite and demonstrate behaviour above reproach at all times;
- Carry out their duties in a diligent, fair and consistent manner;
- Be open, honest and efficient when undertaking all duties;
- Apply the “benefit of the doubt” principle. This involves not issuing a penalty notice if there is any doubt as to whether an offence has been committed;
- Observe and obey the Road Rules at all times; except in the case of an emergency or where non compliance was necessary in the interests of public safety;
- Recognise that people may become upset when issued with a penalty notice for an illegal parking offence. Authorised officers must not verbally abuse, threaten or assault any member of the public;
- Report to their supervisor (and if they consider appropriate the Police) all verbal abuse directed at them, threats they receive or assault they suffer; and
- Retreat from any confrontational situations (including to the vehicle if necessary) and advise the Team Leader of Regulation as soon as practical and make a report of the incident.
4.10 Behaviour Standards of the Public

Council has an expectation that members of the public will: -

- Treat authorised officers with courtesy and respect;
- Comply with a lawful instruction issued by an authorised officer; and
- Observe and obey the road rules and parking regulations.

Council may take action against any person who verbally abuses, threatens or intimidates an authorised officer. This action may include:

- A written caution on Council letterhead indicating that the type of behaviour displayed is unacceptable;
- Referral to the NSW Police for action against the individual; and/or
- Legal proceedings including the issuing of a Court Attendance Notice and/or the seeking of an Apprehended Violence Order.

4.11 Options Available to Persons in Receipt of a Penalty Notice

The following options are available to persons who receive a penalty notice: -

- Pay the penalty notice;
- If the person who receives the penalty notice was not the person responsible for the vehicle at that time the notice was issued, they should complete the form nominating the responsible person;
- Request a review, seeking leniency based on special circumstances that may have contributed to the offence, or if they believe an error was made in issuing the penalty notice;
- Elect to have the matter determined by a Court.

Representations and enquiries in respect of the options available must be directed to the State Debt Recovery Office (SDRO) within 21 days of the date of the penalty notice.

4.12 Penalty Review Process

Write to the State Debt Recovery Office
Representations in regards to Penalty Notices issued by Council Officers must be directed to the State Debt Recovery Office (SDRO). The SDRO is a State Government agency that undertakes debt recovery activities on behalf of Government (State and Local) in NSW. The postal address for the SDRO is:

The Director
State Debt Recovery Office
PO Box 4444
PARRAMATTA NSW 2124

The SDRO has a procedure that governs the consideration of representations made in respect of debts that the SDRO is pursuing.

The SDRO publishes guidelines outlining the manner in which the SDRO will undertake the consideration of representations and review of request received in respect of any debt that the SDRO is pursuing.

In general terms, the SDRO procedure involves:

• An assessment as to whether the relevant penalty notice was lawfully issued;
• Notification to the person making the request of its determination;
• If the SDRO determines that the relevant penalty notice was not lawfully issued, it recommends to the issuing authority that the penalty notice be withdrawn and notifies the person making the request of its determination;
• If the SDRO determines that the relevant penalty infringement notice was lawfully issued, it notifies the person making the determination and that person may elect to either pay the penalty infringement notice or challenge the issue of the penalty infringement notice before court.

The SDRO guidelines can be viewed on line at www.sdro.new.gov.au

4.13 Internal Review by the Adjudication Panel

The Internal Review Adjudication Panel will only consider representations made by:

• The State Debt Recovery Office in respect of a particular penalty notice; or
• A member of the Panel having reason to believe a penalty notice was issued in error.
The Adjudication Panel will determine whether in the circumstances it is reasonable and proper:

- For a penalty notice to be withdrawn or
- That the penalty notice should stand

If the Adjudication Panel determines that in the circumstances it is not reasonable and proper for the penalty notice to be withdrawn, Council will inform the SDRO that the person who was given the penalty notice may either pay the penalty notice or challenge the penalty notice before the Court.

If the Adjudication Panel determines that in the circumstances it is reasonable and proper for the penalty notice to be withdrawn, Council will inform the SDRO to take no further action in relation to that penalty notice.

The Adjudication Panel is comprised of the:

- Mayor or his nominee
- General Manager
- Deputy General Manager
- Director of Assets and Environment
- Manager of Human Resources and Governance
- Team Leader of Regulations

In considering a request for the review of a penalty notice, the Adjudication Panel will have regard to the following matters:

- The nature of the offence to which the penalty notice relates;
- Whether the penalty notice was lawfully issued;
- Whether the penalty notice was issued in a manner consistent with this Policy;
- Whether there are any extenuating personal circumstances (which may include financial hardship, disability or a medical condition) that should be taken into consideration.

Each member of the Adjudication Panel must participate in the consideration of the representations in an impartial, professional and ethical manner. At all times they must comply with all laws relevant to the performance of their duties and all relevant Council policies.
The Adjudication Panel must ensure reasons for its determination are recorded in Council’s records in accordance with the record keeping procedures. Minutes of meetings of the Adjudication Panel shall be maintained and submitted to the next available meeting of the Policies and Priorities Committee for the information of the Council.

A quorum for meetings of the Panel is three (3) members.

The Adjudication Panel will meet on, as required basis, the second Monday of each month.

The SDRO will be advised of the Adjudication Panel’s decision within seven (7) days of the meeting.

4.14 Complaints About Authorised Officers

Complaints made in relation to the conduct of an authorised officer will be dealt with in accordance with the Council’s Complaints Management Policy.

Complaints of this nature may be made via the following: -

- Telephone on 9366 3666
- Writing to the General Manager, City of Botany Bay, 141 Coward Street, Mascot, NSW, 2020 or P O Box 331, Mascot, NSW, 1460
- Email at council@botanybay.nsw.gov.au
- Facsimile on 9366 3777

Council will generally only act on anonymous complaints where the matter is relatively serious and sufficient information is provided to enable an investigation of the matters raised in the complaint.

Council will endeavour to investigate and respond to complaints within 28 days.

Parties dissatisfied with a determination made in respect of a complaint may seek an internal review by the General Manager.

Parties that remain dissatisfied with the General Manager’s review may seek an external review through the Office of the NSW Ombudsman.
4.15 **Access to, and Disclosure of, Information**

Council is committed to the principles of:

- Open and transparent government;

- Consideration of matters where there is an overriding public interest in relation to access and disclosure;

- The proactive release and dissemination of public information;

- Respect of the rights and privacy of individuals;

- Respect of the commercial value of information and copyright provisions.

Council will take all reasonable measures to protect an individual’s personal information i.e. information or an opinion about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion.

Notwithstanding this, Council may be required to disclose this information in a variety of circumstances including the following:

- Compliance with the Government Information (Public Access) Act 2009;

- Legal proceedings are commenced and the information is disclosed in evidence presented; or

- If the nature of the allegation otherwise makes it a necessity.

Further information regarding the access and disclosure of information may be obtained by contacting Council’s Right to Information Officer or Public Officer.

4.16 **RMS Drives Database**

Access and security in respect of the RMS DRIVES database shall be in accordance with the Terms of Access Agreement between the RMS and the Council.

The Team Leader Regulations shall be responsible for developing and maintaining adequate procedures and protocols to ensure that Council complies with all obligations under this Agreement.
5. **ROLES AND RESPONSIBILITIES**

All persons have a responsibility to:

a. Comply with Council policies and procedures and legislative requirements; and

b. Report any suspicion of fraudulent or corrupt behaviour or breaches of this policy in accordance with Council’s Internal Reporting Policy.

c. The General Manager will ensure that adequate training is provided to relevant staff to ensure that they are aware of their obligations under this policy.

6. **COMPLIANCE WITH POLICY**

a. Sanctions for a breach of this policy will be determined in accordance with the provisions applied under the Council’s Code of Conduct.

b. Staff members in breach of this policy will be subject to disciplinary procedures as provided under the Local Government (State) Award.

7. **REVIEW AND ENDORSEMENT**

a. The Team Leader Regulations is responsible for the review and issue of this policy every two years.

b. The General Manager, or their delegate, is authorised to approve variations to this policy in order to comply with legislative requirements. Any variation made will be reported to Council through the Policies and Priorities Committee and/or Council Meeting.

8. **DEFINITIONS**

- **Authorised Officer**: An officer authorised means a member of Council staff with delegations to carry out enforcement of laws relating to motor vehicles

- **Penalty Notice**: A penalty notice issued for contravention of the laws relating to motor vehicles
Adjudication Panel  A panel established by Council that is responsible for the review of penalty notices issued in respect of parking offences

9. LEGISLATION AND OTHER REFERENCES

Local Government Act 1993
Australian Road Rules
Road Transport (General) Act 2005
Road Transport (General) Regulation 2005
Road Transport (Safety and Traffic Management) Act 1999
Road Transport (Safety and Traffic Management)(Road Rules) Regulation 1999
Transport Administration Act 1988
Fines Act 1996
Crimes Act 1914
Government Information (Public Access) Act 2009
Personal and Privacy Protection Act 1998
State Records Act 1993
State Record Regulation 2005
Work, Health and Safety Act 2011

10. RELATED DOCUMENTS

Code of Conduct
Communication Devices Policy
Communications Policy
Complaints Management Policy
Records Management Policy
Customer and Service Standards Policy

Fees and Charges Policy

Occupational Health and Safety Policy