

# Official Caution

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Licence - 597

CITY OF LITHGOW COUNCIL  
Trading as  
59 986 092 492  
PO BOX 19  
LITHGOW NSW 2790

Attention: MATTHEW TRAPP

Notice Number           3500750  
Reference Number        REG-623  
Date                        14-07-2021

## OFFICIAL CAUTION

I am writing to advise you of the outcome of the investigation undertaken by the NSW Environment Protection Authority (**EPA**) relating to an alleged offence in contravention of the *Protection of the Environment Operations Act 1997* (**POEO Act**). This contravention relates to Environment Protection Licence 597 (**the Licence**) held by City of Lithgow Council (ABN: 59 986 082 492; **Council**) for the Portland Sewage Treatment Plant located at Albion Road, Portland, NSW 2847 (**the Premises**).

### Background

1. The EPA has responsibility for the administration and enforcement of the POEO Act
2. Council is the holder of Environment Protection Licence 597 issued under the POEO Act. The Licence authorises sewage treatment processing by small plants
3. Council is the occupier of the Premises in that they have management and control of the sewage treatment plant
4. Under the POEO Act any person who pollutes waters is guilty of an offence
5. The Licence does not authorise the discharge of any pollutants from the Premises except in accordance with Licence Condition L3 and the prescribed limited set out in L3.4 (**Licence Limits**)

### The Incident

Phone 131 555  
Phone 02 9995 5555  
(from outside NSW)

TTY 133 677, then  
ask for 131 155

Locked Bag 5022,  
PARRAMATTA  
NSW 2124

4 Parramatta Square  
12 Darcy Street  
Parramatta NSW 2150

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On or about 11 November to 15 November 2020 Council carried out sludge maintenance activities including dewatering at the Premises. As a result of these activities, elevated Nitrogen (ammonia) concentration was carried through the treatment process. This led to the discharge of effluent with levels of Nitrogen (ammonia) and Total Nitrogen in excess of Licence Limits from the Premises into Limestone Creek (**the Incident**).

Council notified the EPA of the Incident on 12 November 2020 and provided a summary report of the Incident on 27 November 2020.

On 15 March 2021 the EPA issued Council with section 193 Notice 1606934 to provide information and/or records regarding the incident (**the Notice**). Council responded to the Notice on 9 April 2021.

On 4 June 2021 the EPA provided Council with an *Invitation to Show Cause* to invite Council to provide any reasons why the EPA should not take regulatory action in response to the alleged offence/offences. On 17 June 2021 the EPA received a response from Council.

## Findings

The EPA has now finalised its investigation into this matter. Having assessed all the available evidence, the EPA has reasonable grounds to believe Council committed an offence under section 120 of the POEO Act, by causing or permitting the pollution of waters through the discharge of effluent with elevated levels of Nitrogen (ammonia) and Total Nitrogen from the Premises into Limestone Creek from about 11 November 2020 to 15 November 2020 (**alleged offence**).

Pollution of waters is defined in the POEO Act as:

*'Placing in or on, or otherwise introducing into or onto, water (whether through act or omission) any matter, whether solid, liquid or gaseous, so that the physical, chemical or biological condition of the waters is changed.'*

The maximum penalty for a corporation contravening section 120 of the POEO Act is \$1,000,000 with an additional penalty of \$120,000 for each day the offence continues. The EPA may prosecute a corporation for committing this offence. Alternatively, the EPA may issue a corporation that commits this offence with a penalty infringement notice, which carries a fine of \$15,000.

## Appropriate Action

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In accordance with its *Compliance Policy* and the *Attorney General's Caution Guidelines under the Fines Act 1996*, the EPA can exercise its discretion in deciding what regulatory action to take in relation to breaches of the POEO Act. In determining the appropriate action to take in response to this matter the EPA has considered the following relevant factors:

1. The immediate receiving environment of Limestone Creek is part of the Macquarie Catchment. Limestone Creek is an ephemeral creek with low flows
2. The EPA considers that there were reasonable and feasible measures available that could have not been taken to eliminate the risk or minimise the impacts of discharging effluent with elevated Total Nitrogen and Nitrogen (Ammonia) into Limestone Creek
3. Council consulted with DPIE for advice during the incident and later engaged a consultant to review STP operations and identify risks, gaps and actions to improve outcomes
4. Council agreed with capture three Pollution Reduction Programs/Studies on the Licence. These programs require Council to complete work which targets sludge management, incident response, robustness and discharge and monitoring arrangements.
5. The incident was isolated and likely resulted in minimal environmental harm
6. Council have fully and willingly cooperated with the EPA's investigation into the matter

In these circumstances and having regard to the *Attorney General's Caution Guidelines under the Fines Act 1996*, the EPA considers it appropriate to issue Council with this Official Caution for the alleged offence.

The EPA will retain a copy of this Official Caution on file. If Council commits an offence in future, the EPA may take this Official Caution into account in determining the most appropriate enforcement action. Such action may involve the issue of a penalty notice or the commencement of a prosecution.

The EPA reiterates that all activities must be carried out with due diligence, duty of care and in order to meet or exceed best management practices. It is essential that environmental management systems and practices are continually reviewed and refined to appropriately manage environmental protection needs.

Thank you for your cooperation in this matter. If you have any questions, or wish to discuss this matter further, please contact me on (02) 6229 7002.

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**Carlie Armstrong**  
**Acting Unit Head**  
**Environment Protection Authority**