



# CONFIDENTIAL MEETING OF THE PORT PHILLIP CITY COUNCIL

## AGENDA

**15 SEPTEMBER 2021**



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## CONFIDENTIAL MEETING OF THE PORT PHILLIP CITY COUNCIL

### Confidential Meeting of the Port Phillip City Council

Wednesday, 15 September 2021

Section 66 of the Local Government Act 2020, provides that a Council may resolve to close a meeting to members of the public if:

- (a) *the meeting is to consider confidential information; or*
- (b) *security reasons; or*
- (c) *it is necessary to do so to enable the meeting to proceed in an orderly manner.*

*Confidential information means the following information—*

- (a) *Council business information;*
- (b) *security information;*
- (c) *land use planning information;*
- (d) *law enforcement information;*
- (e) *legal privileged information;*
- (f) *personal information;*
- (g) *private commercial information;*
- (h) *confidential meeting information;*
- (i) *internal arbitration information;*
- (j) *Councillor Conduct Panel confidential information;*
- (k) *information prescribed by the regulations to be confidential information;*
- (l) *information that was confidential information for the purposes of section 77 of the Local Government Act 1989.*

#### 17. CONFIDENTIAL MATTERS

*The information contained in the following Council reports is considered to be Confidential Information in accordance with Section 3 of the Local Government Act 2020.*

Report no	Report Title	Confidential reasons
17.1	<i>Urgent Business - Confidential Parking Administration Matter</i>	<i>(e) legal privileged information, being information to which legal professional privilege or client legal privilege applies.</i>

# CONFIDENTIAL MEETING OF THE PORT PHILLIP CITY COUNCIL - 15 SEPTEMBER 2021



## URGENT BUSINESS - CONFIDENTIAL PARKING ADMINISTRATION MATTER

**EXECUTIVE MEMBER:** BRIAN TEE, ACTING GENERAL MANAGER, DEVELOPMENT, TRANSPORT AND CITY AMENITY

**PREPARED BY:** LISA DAVIS, MANAGER SAFETY AND AMENITY

### 1 PURPOSE

- 1.1 To report on a recent incident in which Council-issued parking Penalty Infringement Notices (PINs) contained a code error; and seek Council's approval on a response plan.

### 2. EXECUTIVE SUMMARY

- 2.1 The incorrect Road Rule code has been printed on 16,158 PINs issued by Council's Authorised Officers between 29 June and 30 August 2021.
- 2.2 The error occurred on 29 June 2021 when Council's contractor for parking technology and software, DCA Pty Ltd was updating their data files to reflect increases to the penalty amounts coming into effect in the 2021/22 Financial Year. The error was corrected on 31 August 2021.
- 2.3 Legal advice provided to Council is that the infringements are valid.
- 2.4 Options available to Council to respond to this incident are outlined in section 4.4 of the report, with the recommended option being to leave existing PINs in place and provide information to concerned recipients via a dedicated website and phone number to handle any enquiries from any concerned PIN recipients.

### 3. RECOMMENDATION

That Council:

- 3.1 Notes that Council's contractor DCA Pty Ltd caused an incorrect Road Rule code to be printed on Penalty Infringement Notices (PINs) issued by Council Authorised Officers between 29 June 2021 and 30 August 2021.
- 3.2 Notes that the issue has been addressed and that DCA has put into place actions to mitigate such an error recurring.
- 3.3 Notes the legal advice that the PINs are valid despite the Road Rule code error.
- 3.4 Approves the establishment of a website accessed via the CoPP website portal providing supporting information to respond to any concerns about the incorrect Road Rule code.
- 3.5 Authorises Council Officers to write to the Victorian Ombudsman to explain the error and Council's response.

### 4. KEY POINTS/ISSUES

#### 4.1 BACKGROUND

- 4.1.1 CoPP has a Contract (2119) with DCA Pty Ltd pursuant to which DCA is responsible for the supply, management and maintenance of parking



technology systems and software used by CoPP. The Contract commenced May 2018 and ends in May 2023.

- 4.1.2 Information supplied by DCA technology is used on Council-issued Penalty Infringement Notices (PINs) including the nature of the alleged Offence, the Road Rule that has allegedly been breached and the quantum of the Penalty.

#### **Incident Details**

- 4.1.3 On Monday 30 August Council was advised that the incorrect Road Rule code had been printed on 16,158 PINs issued by Council's Authorised Officers between 29 June and 30 August 2021.
- 4.1.4 The error was noticed by a driver who has submitted a parking infringement appeal to Council's Appeals Administration team.
- 4.1.5 The approximate total value of the PINs and the Penalty Reminder Notices that have accumulated since the PINS were issued is \$1.88M. As at 14 September 2021, forty five percent (7348) of these fines have been closed (i.e. paid, withdrawn, or an alternate driver nominated – when the latter happens a new PIN is issued, without the code error).

#### **4.2 Incident Response**

- 4.2.1 In response to Council's alert, DCA corrected the error on 30 August 2021 (effective for PINs issued on and after 31 August).
- 4.2.2 The error occurred on 28 June 2021 when DCA was updating their data files to reflect increases to the penalty amounts coming into effect in the 2021/22 FY. The input of the penalty increase resulted in a misalignment of the Offences with the relevant Road Rule.
- 4.2.3 The error only relates to the Road Rule printed on the PIN. The substantive issue is that we are advised the PIN is valid and has an Offence has been committed, has not been impacted by the error.
- 4.2.4 DCA's Incident Report (Attachment 1) acknowledges that, after DCA inputted the necessary penalty information, their checking procedure only checked the accuracy of the fields being updated and did not review the other fields in the table.
- 4.2.5 DCA has implemented changes to its processes to minimise the risk of errors like this occurring in future. These are detailed in Attachment 1.
- 4.2.6 Officers reviewed a random sample of infringements issued prior to 29 June and after 30 August and no other affected infringements have been found.
- 4.2.7 Legal advice from Sherwell Harrison Munrow (SHM) Lawyers and Maddocks dealing with the validity of the PINs and other matters is summarised in Section 6 and are included as Attachments 2, 3, and 4.
- 4.2.8 Councillors were verbally briefed on 8 September and a report to Council's Audit and Risk Committee (ARCO) on 9 September was circulated to Councillors on 10 September.

#### **4.3 Options**

- 4.3.1 Officers have identified three suitable options to respond to the incident. These are presented in Table 1 below.



Table 1: Response Options

Option	Risks	Estimated Total Cost
<p><b>Option 1</b></p> <p>Withdraw all PINs and refund those paid</p>	<p>Loss of income</p> <p>Unbudgeted administration costs</p> <p>Unable to contact 500 of the PIN recipients who have paid (they may be interstate etc.)</p> <p>Under the DCA contract, DCA may not be required to provide support or reimburse CoPP</p> <p>Providing refunds when there is no challenge to the substantive allegation of whether an offence has been committed.</p>	\$2.015M
<p><b>Option 2</b></p> <p>Withdraw all PINs and refund; then re-serve corrected PINs with explanatory letter</p>	<p>Creation of confusion and complaints, with impacts on BAU.</p> <p>Unbudgeted administration costs</p> <p>Spike in complaints to CoPP</p> <p>Spike in Infringement Appeals to be processed</p> <p>Unable to contact 500 of the PIN recipients</p> <p>Under the DCA contract, DCA may not be required to participate or reimburse CoPP costs</p> <p>The legislation does not explicitly provide CoPP with a power to “re-issue correct PINs”. The legal advice is that, notwithstanding this omission, it is likely that COPP does have the power.</p>	\$1.34M
<p><b>Option 3 (Recommended)</b></p> <p>Leave existing PINs in place and provide information to recipients to clear up any confusion.</p> <p>This would involve:</p> <ul style="list-style-type: none"> <li>• Establishment of website for those with queries about the Road Rule error. (Website created and administered by DCA under direction from CoPP and via CoPP website portal)</li> <li>• Advise Ombudsman of Council’s response.</li> <li>• Monitoring incoming queries, Appeals and complaints to see if any further action is warranted.</li> </ul>	<p>Unbudgeted Council resourcing costs.</p> <p>Potential legal challenge to validity of the PINs or that they are misleading. Noting that Council’s legal advice from two separate law firms is that the PINs are valid.</p>	\$40,000



## 5. CONSULTATION AND STAKEHOLDERS

- 5.1 Discussions have been held with DCA regarding the options, and specifically, how the recommended option could be administered and managed. DCA will support Council in establishing the website and phone line, and work with Council Officers on content, FAQs etc. Website monitoring reports will be provided to Council.

## 6. LEGAL AND RISK IMPLICATIONS

- 6.1 In summary the legal advice and risks to Council are as follows:

### Infringement Validity

- 6.1.1 The infringements are valid, in that they include the matters prescribed in the relevant legislation and regulations so that the recipient can understand what it is they are alleged of contravening. (SHM Lawyers and Maddocks).
- 6.1.2 There is a risk that if the recipient of an infringement notice believed that the valid notice was nevertheless misleading, they could challenge the notice in Court.
- 6.1.3 There is a risk of an investigation and finding by the Ombudsman that Council acted unfairly. However, Council will argue that Council's response has been proportionate and fair noting that the Council's advice is that the tickets are valid, there is no challenge to the substantive allegations (that an Offence was committed) and that Council, working with its contractor, has ensured information is available to address any confusion. It is recommended that Council write to the Ombudsman and detail the issues and Council's response.
- 6.1.4 On the contract, Maddocks notes that, if the PINs were invalid, DCA may be liable for Council's losses (to a maximum of \$2M). However, noting the PINs are valid, if Council decides to nevertheless refund the penalties, Maddocks suggests that DCA is likely to resist any attempt from Council for compensation.

### Withdrawal and re-serving correct Infringement Notices

- 6.1.5 CoPP (and not DCA) can withdraw, and / or re-serve the Infringement Notices if the PINs are invalid. However, the Infringements Act (2006) does not envisage the withdrawal and reissuing of a valid PIN and there is no express power to do so. Maddocks advises that, while it is not free from doubt, it is likely that a Court will find that Council does have the power to withdraw a valid PIN and issue new PINs.
- 6.1.6 Maddocks notes that, in addition, withdrawing and reissuing a valid PIN may create considerable confusion and reputational risks for Council.

## 7. FINANCIAL IMPACT

- 7.1 The total value of the 16,158 PINS affected by the error is approximately \$1.88M. Of these, 7348 have been paid or closed out for another reason.
- 7.2 The estimated costs of Options 1 and 2 presented in Section 4 include the potential lost income; VicRoads look-up fees to trace drivers; stationery and postage; legal fees;



staff time; administration costs, and costs to manage the program that would require careful oversight to ensure accuracy and accountability.

7.3 The estimated costs of Option 3 (recommended) includes legal fees and provision for incoming Appeals and other staff time.

7.4 In summary the estimated costs of the options are:

Option1.	Withdraw all PINs and refund those paid:	\$2.015M
Option 2:	Withdraw all PINs, refund those paid; then re-serve corrected PINs	\$1.34M
Option 3:	Leave existing PINs in place and provide information to concerned recipients	\$ 40,000

## 8. ENVIRONMENTAL IMPACT

8.1 There is no direct environmental impact arising from the content and recommendation of this report.

## 9. COMMUNITY IMPACT

9.1 There is minimal impact on the broader community arising from this report.

9.2 Council's reputation for its management of infringements could be questioned by the community including if, for example, there is adverse Ombudsman findings or media coverage.

## 10. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

10.1 This report relates to Strategic Direction 4 – *Liveable Port Phillip* and Strategic Direction 5 – *Well Governed Port Phillip*.

## 11. IMPLEMENTATION STRATEGY

### 11.1 TIMELINE

11.1.1 It is anticipated that Option 3 can be implemented within two weeks.

11.1.2 Other options will take longer to prepare, resource and implement:

- Option 1 is estimated to take 3-4 weeks to set up and 3 months to implement.
- Option 2 will take 3-4 weeks to set up and 6 months to implement, based on the volumes to be managed.

### 11.2 COMMUNICATION

11.2.1 Holding lines have been prepared in the event of any media or other enquiries.

11.2.2 Council Officers will work with DCA to prepare content for the proposed website, and to respond to any inbound calls, emails or complaints.



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### 12. OFFICER DIRECT OR INDIRECT INTEREST

12.1 No officers involved in the preparation of this report have any material or general interest in the matter.

#### ATTACHMENTS

1. *Confidential*- SMH Lawyers advice - 31 Aug 2021
2. *Confidential*- DCA Incident Report 3 Sept 2021
3. *Confidential*- Maddocks advice #1 - 3 Sept 2021
4. *Confidential*- Maddocks advice #2 - 10 Sept 2021