

## HOMELESS PERSONS PROTOCOL

Revised April 2021

### PREAMBLE

Northern Beaches Council acknowledges the rights of all members of the community, including those who are homeless, to use public spaces, whilst also recognising their responsibility towards other members of the community who have the right to live in a safe and peaceful environment. This Protocol seeks to control and regulate that matter.

### INTRODUCTION

This Protocol is intended as a procedural guide to ethical administrative action by Council in respect to the subject-matter of the Protocol. As such, the document is not a Council policy nor a 'local policy' of Council within the meaning of Part 3 of Chapter 7 of the *Local Government Act 1993* (NSW).

The prospect of people living without safe and secure shelter and limited access to health care or social supports within a modern and affluent area like the Northern Beaches is unacceptable. Yet the reality is that homelessness is an issue that affects most urban areas. There are no easy solutions to the complex issues that lead to homelessness or the problems of people who experience homelessness, but there are actions that can help ease the issue for all concerned.

The circumstances and experiences of homeless people are different from each other and responses to homelessness must be flexible enough to meet diverse and complex needs.

However, many homeless people share:

- Poverty and a history of social exclusion;
- Greater likelihood of multiple disadvantage, such as mental illness, substance or gambling addiction, disability and a history of trauma and abuse;
- Lack of belonging and community connectedness;
- Lack of control over the space where they live;
- Stigma and a sense of not being accepted by the broader community.

There are varying degrees of homelessness – tertiary, secondary and primary. The most vulnerable of these are the primary homeless who are people without any conventional accommodation, who sleep rough mostly outdoors. This Protocol is intended for Council staff in providing support to primary homeless persons including those commonly referred to as 'rough sleepers' (being persons who sleep or live outside because they have no home), to increase their access to services and to minimise the negative impacts homelessness has on their lives.

The Northern Beaches Community Strategic Plan 2017-2028 Goal 11 states "Our community feels safe and supported." A strong community is one where our most vulnerable are supported. The NSW Government Protocol for Homeless People in Public Places is also supported and referenced in this document.

## AIM

The primary aims of this Protocol are to clarify the roles, responsibilities and obligations of Council staff in their dealings with people experiencing homelessness, and to facilitate appropriate responses that reflect Council's approach when responding to community concerns regarding homeless people in public spaces.

## OBJECTIVES

1. Ensure the rights of homeless people are respected by Council and the broader community
2. Improve the co-ordination of welfare support and service provision to homeless people
3. Ensure homeless people have access to information and support and to relevant protective and referral services
4. Ensure the safety of homeless people, staff, community, local residents and visitors
5. Protect the rights of all members of the general community to enjoy public amenity
6. Provide clear systems and processes for addressing problematic issues including issuing or orders, addressing hoarding and squalor and other issues

## GUIDING PRINCIPLES OF THE PROTOCOL

### **Meeting the Needs of Vulnerable People**

Council recognises that the homeless are amongst the most vulnerable and disadvantaged people in our society. Council supports an approach of social inclusiveness and is committed to reducing the impact of homelessness on our most vulnerable populations.

### **Right of Access to Public Space**

Council recognises the NSW State Government Protocol for Homeless People in Public Places. Council acknowledges the rights of all members of the community to use public spaces, whilst also recognising their responsibility towards other members of the community who all have the right to live in a safe and peaceful environment.

### **Addressing Negative Impacts**

Council is committed to responding when required to the issue of rough sleeping in order to improve actual and perceived safety and public amenity for homeless people, residents, businesses and visitors.

### **Providing for Healthy Communities**

Council is committed to improving economic, social and health standards by managing and facilitating programs and activities that contribute to physical and mental wellbeing. Council will advocate for improving access to health, mental health and drug and alcohol services for all people including those who are homeless and other vulnerable members of the community.

### **Integrated, Multi-faceted Approaches**

Council recognises the need for integrated and multi-faceted responses to complex issues. The notion of working in partnership is implicit at each stage of the Homelessness Protocol. Council acknowledges that singular, stand-alone responses do not generally solve complex social issues. We must engage simultaneously at many stages of the cycle including looking to retain and gain affordable housing options in the area.

## LIMITATIONS OF THE PROTOCOL

The Commonwealth and State Governments have the primary role of funding and providing services to assist people who are homeless, people with mental health and/or drug and alcohol problems, people with disabilities and all other disadvantaged groups who are over-represented in the homeless population. However, Council acknowledges that the entire community shares a moral responsibility to act on preventing, reducing, and managing these issues.

Some actions that Council can undertake and influence are included in the Protocol which embraces social justice principles of Equity, Access, Participation and Rights. Council also offers a degree of research, advocacy and support for affordable housing, crisis accommodation and relevant non-government organisations. Other actions and policy development in homelessness, health and welfare services remain the primary responsibility of other levels of government.

## LEGAL ASPECTS OF THE PROTOCOL

The Protocol does not override existing laws, statutory requirements or regulations. However it is intended that the Protocol be taken into consideration when enforcing laws and regulations and to use discretion as is appropriate.

Council powers to intervene are defined by the Local Government Act and the Environmental Planning and Assessment Act. Where homeless people are concerned, the following clauses are the most relevant:

*Local Government Act 1993 (NSW), S124 (Giving of orders)*

*Local Government Act 1993 (NSW), S624 (Control of activities in public places)*

Due to the complex nature of issuing orders, particularly in relation to homeless people, this Protocol obliges Council Officers to consider the implications and practicalities of issuing Notices to homeless people. That Act contains provisions that ordinarily must be followed before any order is given in order to accord procedural fairness to the person who would be affected by the proposed order in the event that the order were to be given.

## WHERE THE PROTOCOL APPLIES

The Protocol applies to outdoor and indoor public places managed by Council which are ordinarily accessible to the public. Such places include parks, beaches, open spaces, libraries, council facilities and customer service areas. It does not apply to private property or property which is not accessible to the general public.

## WHO NEEDS TO USE THE PROTOCOL

The Protocol will assist all Council staff whose work brings them directly or indirectly into contact with those experiencing homelessness, such as customer service officers, library staff, rangers, lifeguards, facilities, cleansing, parks and reserves staff and any others who may have contact on a less frequent basis.

## SUMMARY OF THE PROTOCOL

Except as otherwise provided in this Protocol, Council Staff will only approach a homeless person when:

- The health, welfare or safety of a homeless person is at risk,
- They appear to be distressed or in need of assistance,
- They request assistance or assistance is being offered,
- There have been a considerable number of complaints by members of the public in relation to the occupation by the homeless person and the concerns expressed by the complainants about public health or safety have been verified to the reasonable satisfaction of Council staff,
- A breach of the peace or an unlawful act is occurring,
- Their behaviour is interfering with the provision and maintenance of council services and equipment/facilities, or
- They are a child accompanying an adult or appear under the age of 16.

## Disentitling Conduct and Exceptional Circumstances

Despite any other provision in this Protocol, Council should take into consideration in the context of the giving of an order under section 124 of the *Local Government Act 1993* (NSW) as respects the subject-matter of the Protocol, where a person adjudged by Council staff to be a 'rough sleeper' is found to have:

- Entrenched themselves in a highly utilised public space
- Stayed for more than 6 months or such other period of time as may be determined by Council staff in the public space in question
- Utilised the public space to the exclusion or at the expense of others, this matter being of paramount importance as respects the making of any decision by authorised Council staff to move the person in question on,
- Accumulated around them in the public space personal items such as beds, cooking equipment, furniture, clothing and bags,
- Rejected all offers of intervention or assistance by accredited non-government organisations or government agencies to improve or otherwise ameliorate their situation, or
- Chosen to live in the public space in preference to other options offered or otherwise reasonably available and accessible to the person in question.

The police will ordinarily respond when:

- A person is behaving in a manner dangerous to themselves or others,
- A breach of the peace is occurring, or
- An unlawful act is occurring or has occurred.

Nothing in this Protocol is intended to derogate from the duties and discretions of officers or members of NSW Police.

## PRINCIPLES AND ACTIONS

This section of the Protocol, entitled 'Principles and Actions', specifies certain matters for consideration which Council should take into consideration in the context of the giving of an order under section 124 of the *Local Government Act 1993* (NSW) as respects the subject-matter of the Protocol.

### **Principle 1**

All people, including those experiencing homelessness, have the right to responsibly and reasonably enjoy the benefits of public space and participation in activities and events whilst respecting the rights of other members of the public to do likewise.

#### **Actions**

Where a homeless person is in a public space they will be left free to enjoy it and not be asked to move on unless they are creating a disturbance or they otherwise have acted or are acting in a manner that entitles Council to take action under this Protocol to move them on.

### **Principle 2**

A homeless person's right to privacy will be respected and ordinarily they will be left undisturbed, unless they appear to be distressed or in need of assistance or they otherwise have acted or are acting in a manner that entitles Council to take action under this Protocol to move them on.

#### **Actions**

- When a homeless person appears to be in distress or in need of assistance, staff will approach them with appropriate care and respect, inquire as to their needs, assess the situation, and decide a course of action.
- Always ring 000 for an ambulance if first aid is needed immediately.
- If concerned about mental health problems call Northern Beaches Hospital on 9105 5000 for the Mental Health Crisis Team. Call the police if behaviour is of a threatening nature.
- If concerned about physical health problems that aren't urgent, a health assessment may be needed. CNB can arrange for a community nurse to make an assessment.
- In most instances staff are to contact CNB as the first point of contact for advice and referral.
- Refer to the contact sheet for suitable, alternate referrals if the CNB is unavailable for advice.
- If the above are unavailable (out of hours or weekend), staff should contact the Police who will ensure client follow-up from a local agency if necessary.

### **Principle 3**

A homeless person is entitled to carry with them and store their own belongings.

#### **Actions**

Unless the belongings of a homeless person impede access or are a threat to public health and safety or the accumulation of those belongings results in the homeless person dominating the public space at the expense of others, their ownership rights will be respected as would be the case with all other citizens.,.

In the event that the storage of a homeless person's personal items infringe upon community enjoyment of, or access to a public space, Council staff will courteously

ask them to relocate their belongings. Council staff will advise them of the availability of lockers at the Community Northern Beaches office, 10.00am to 4.00pm Monday to Friday. Staff may also consider loaning the purpose bought wheelie bins. These are intended for storing of possessions during the day in an agreed location. They are kept in the Whistler Street Carpark. The Community Safety Co-ordinator or MCC Outreach Worker should be advised when these are utilised.

#### **Principle 4**

Homeless people shall not be asked to move on unless there is a threat to general security or safety, they are causing a disturbance which constitutes a breach of the peace, or they otherwise have acted or are acting in a manner that entitles Council to take action under this Protocol to move them on.

#### **Actions**

If a person is seriously disturbed or behaving in a manner that is a threat to themselves or others, Council officers will call the Police (9976 8099 or 000 in an emergency)

In instances where Officers consider a homeless person to be in breach of the peace they shall be treated as any other member of the community and call Police

A breach of the peace is when:

- Harm is actually done to a person
- Harm is likely to be done to a person
- In a person's presence, harm is done to that person's property
- A person is in fear of being harmed through an assault, affray, a riot, an unlawful assembly or other disturbance.

In the case of a threat to general security or safety, a homeless person will be asked to move on, as will all other members of the general community. This would normally be the responsibility of Council Rangers or the Police.

#### **Principle 5**

A homeless person's right to privacy will be respected unless, as with any other member of the community, they are suspected of committing a crime or seen engaging in an illegal activity.

#### **Actions**

In instances where a homeless person is reported as, or seen to be committing a crime, they will be treated as any other person and staff will contact Police on 000.

#### **Principle 6**

It is recognised that in applying these principles, concerns about safety of other members of the community and the individual staff, as well as the individual homeless person will be taken into account.

#### **Actions**

In instances where Council Officers assess that community safety is potentially threatened by a disturbance created by a homeless person, they will advise any nearby community to vacate the area and advise a Senior Ranger of the incident.

When a Council Officer feels their personal safety is threatened they will adhere to OHS practices at all times, monitor the situation and contact their supervisor.

## **Principle 7**

It is recognised that community concerns about public health and public amenity will be considered.

### **Actions**

When it is possible that a homeless person is creating a health or amenity problem in a public space the Manager Ranger Services or the Manager Compliance and Regulatory Services will be requested to respond by organising an assessment of the situation.

If a risk to health or amenity is determined, the Senior Ranger will advise the homeless person of the implications of their actions and request they desist from the practice. The Officer will seek assistance from appropriate agencies to resolve the issue. Refer the matter to the Community Northern Beaches (9977 1066) to arrange appropriate case management. If out-of-hours or on the weekend, please refer to the contacts list for interim options and crisis accommodation.

In the event a homeless person has set up a temporary shelter that Senior Rangers determine as unsafe or infringing upon public access, they will request removal of the shelter.

For people who do not speak English well, to get help contacting the above numbers, phone Translating and Interpreting Services (TIS) 131 450. For people with hearing impairment TTY 1800 628 310 (free call). A TTY phone is required for this service.

## **Principle 8**

To ensure the rights of homeless people are protected, in the case of a dispute they should have ready access to external legal assistance.

### **Actions**

In the case of a dispute, Council staff will inform the homeless person of the Homeless Persons Legal Service. Where the homeless person consents to legal advice/support, or if the Council Officer determines the need to assist, they will contact the Homeless Persons Legal Service (8898 6545) on their behalf. If the dispute is involving Council then the matter should be referred to the Manager, Community Services for any necessary follow up.

## **Principle 9**

Council Officers working in areas that bring them in contact with homeless are expected to be competent in responding to the rights, needs and safety of homeless people.

### **Actions**

Council's Community Safety team will provide an up to date, detailed list of useful and relevant Contacts list of local services and other information to assist staff responding to the various concerns and issues of homeless people. This material will be updated as required and distributed to all relevant sections.

Training around homelessness and a copy of the Protocol will be provided for identified staff. Managers whose staff come into contact with homeless people will inform new staff of the Protocol and provide orientation to staff as necessary.

Training will include information on:

- Facts and statistics about homelessness generally and specific to Northern Beaches local government area.
- Issues that create and contribute to homelessness
- The legal powers of Police and obligations of Council in relation to homelessness
- Dealing with public concerns and complaints
- Approaching homeless people with care, safety and respect
- Local services and agencies that can assist
- Identifying the level of assistance needed and initiating the referral process to ensure appropriate follow up occurs

### **Not Sure What To Do?**

Contact the Youth & Community Development team on 8495 6612 or email  
[communitydevelopment@northernbeaches.nsw.gov.au](mailto:communitydevelopment@northernbeaches.nsw.gov.au)

## **APPENDIX**

### **RELEVANTLY APPLICABLE LEGISLATION**

**Important note.** What follows is not to be taken to be an exhaustive statement of Council's powers whether in relation to the subject-matter of this Protocol or otherwise. In addition, some of what is set out in this Appendix may be qualified, restricted, expanded or amplified by other provisions in the legislation or by the common law.

#### **Local Government Act 1993 (NSW) [the 'LG Act']:-**

1. Section 124 of the LG Act states (**note:** in part only):

##### **124. Orders**

A council may order a person to do or to refrain from doing a thing specified in Column 1 of the following Table if the circumstances specified opposite it in Column 2 of the Table exist and the person comes within the description opposite it in Column 3 of the Table.

...      ...      ...

A person who fails to comply with an order is guilty of an offence-see sec 628.

Table Orders

	Column 1	Column 2	Column 3
	To do what?	In what circumstances?	To whom?

#### **Orders requiring that premises be used or not used in specified ways**

	Column 1	Column 2	Column 3
	To do what?	In what circumstances?	To whom?
15	Not to conduct, or to cease conducting, an activity on premises (whether or not the activity is approved under this Act)	The activity constitutes or is likely to constitute:(a) a life threatening hazard, or(b) a threat to public health or public safety and is not regulated or controlled under any other Act by a public authority	Any person apparently engaged in promoting, conducting or carrying out the activity
16	To cease the use of premises or to evacuate premises	A person to whom order No 15 is given has failed to comply with the order	The person to whom order No 15 is given

17	To leave premises or not to enter premises	A person to whom order No 15 is given has failed to comply with the order	Any person
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#### Orders requiring the preservation of healthy conditions

	Column 1	Column 2	Column 3
	To do what?	In what circumstances?	To whom?
21	To do or refrain from doing such things as are specified in the order to ensure that land is, or premises are, placed or kept in a safe or healthy condition	The land or premises are not in a safe or healthy condition	Owner or occupier of land or premises
22	To store, treat, process, collect, remove, dispose of or destroy waste which is on land or premises in the manner specified in the order, provided that it is not inconsistent with regulations made under the <a href="#"><u>Protection of the Environment Operations Act 1997</u></a>	Waste is present or generated on the land or premises and is not being dealt with satisfactorily, and is not regulated or controlled by, or subject to, a licence or notice granted or issued under the <a href="#"><u>Protection of the Environment Operations Act 1997</u></a>	Owner or occupier of land or premises, owner of or person responsible for the waste or for any receptacle or container in which the waste is contained
22A	To remove or dispose of waste that is on any residential premises or to refrain from keeping waste on those premises	The waste is causing or is likely to cause a threat to public health or the health of any individual	Owner or occupier of the premises

#### Orders requiring the protection or repair of public places

	Column 1	Column 2	Column 3
	To do what?	In what circumstances?	To whom?

26			
27	To remove an object or matter from a public place or prevent any object or matter being deposited there	The object or matter: (a) is causing or is likely to cause an obstruction or encroachment of or on the public place and the obstruction or encroachment is not authorised by or under any Act, or (b) is causing or is likely to cause danger, annoyance or inconvenience to the public	Person causing obstruction or encroachment or owner or occupier of land from which the object or matter emanates or is likely to emanate

**Important note.** What is set out above is not the entire Table to s 124 of the LG Act but only some of the order-making powers which may be most directly relevant to the subject-matter of this Protocol. The Table to s 124 contains numerous other order-making powers. Council may be entitled to serve other orders under s 124 of the LG Act or under other sections of that Act or other Acts depending upon the circumstances of a particular case.

2. Section 131A of the LG Act states:

**131A. Orders that make or are likely to make residents homeless**

- (1) If an order will or is likely to have the effect of making a resident homeless, the council must consider whether the resident is able to arrange satisfactory alternative accommodation in the locality.
- (2) If the person is not able to arrange satisfactory alternative accommodation in the locality, the council must provide the person with:
  - (a) information as to the availability of satisfactory alternative accommodation in the locality, and
  - (b) any other assistance that the council considers appropriate.

This section may apply where a person who is homeless has been ordered to remove or demolish a (temporary) structure for housing made on public land (their 'home')

3. Section 628 of the LG Act states:

**628. Failure to comply with order**

- (1) A person who fails to comply with an order given to the person under Part 2 of Chapter 7 that is an order in the terms of any of orders Nos 1, 3, 5 and 7-12 in the Table to section 124 is guilty of an offence.  
Maximum penalty: 50 penalty units (in the case of an individual) or 100 penalty units (in the case of a corporation).

- (1A) A person who fails to comply with an order given to the person under Part 2 of Chapter 7 that is an order in the terms of any of orders Nos 15, 16 or 17 in the Table to section 124 is guilty of an offence.  
Maximum penalty: 100 penalty units (in the case of an individual) or 200 penalty units (in the case of a corporation).

(2) A person who fails to comply with an order given to the person under Part 2 of Chapter 7 that is an order in the terms of any of orders Nos 18-25 or 27-29 of the Table to section 124 is guilty of an offence.

Maximum penalty: 20 penalty units.

(3) A person who fails to comply with an order given to the person under Part 2 of Chapter 7 that is an order in the terms of order No 30 in the Table to section 124 is guilty of an offence. Maximum penalty: The same penalty as the penalty imposed for carrying out the activity the subject of the approval otherwise than in accordance with the approval.

(4) A person who fails to comply with an order given to the person under section 125 to abate a public nuisance is guilty of an offence.

Maximum penalty: 20 penalty units.

(5) It is a sufficient defence to a prosecution for an offence to which this section applies if the defendant satisfies the court that the defendant was unaware of the fact that the activity in respect of which the offence arose was the subject of an order under Part 2 of Chapter 7.

**[Note. One penalty unit in New South Wales is \$110.]**

4. Section 632 of the LG Act states:

### **632. Acting contrary to notices erected by councils**

(1) A person who, in a public place within the area of a council, fails to comply with the terms of a notice erected by the council is guilty of an offence.

Maximum penalty: 10 penalty units.

(2) The terms of any such notice may relate to any one or more of the following:

- (a) the payment of a fee for entry to or the use of the place,
- (b) the taking of a vehicle into the place,
- (b1) the driving, parking or use of a vehicle in the place,
- (c) the taking of any animal or thing into the place,
- (d) the use of any animal or thing in the place,
- (e) the doing of any thing in the place,
- (f) the use of the place or any part of the place.

(2A) However, a notice:

- (a) must not prohibit the drinking of alcohol in any public place, including any public road or car park, and accordingly a sign under section 632A or 644C is not a notice under this section, and
- (b) must not, except as provided by subsection (2B), prohibit or regulate the taking of a vehicle into, or the driving, parking or use of any vehicle in, any public place that is a road or road related area within the meaning of section 4 (1) of the Road Transport Act 2013.

**Note :** A council may establish alcohol prohibited areas under section 632A (relating to public places such as parks and beaches) and alcohol-free zones under Part 4 of this Chapter (relating to street drinking).

(2B) A notice may prohibit the parking of a vehicle, for the purpose of offering the vehicle for sale, in a public place that is:

- (a) a road or road related area within the meaning of section 4 (1) of the Road Transport Act 2013, and
- (b) in the City of Sydney area or other area (or part of an area) prescribed by the regulations.

(3) The terms of a notice referred to in this section may:

- (a) apply generally or be limited in their application by reference to specified exceptions or factors, or

(b) apply differently according to different factors of a specified kind, or may do any combination of those things.

5. Section 678 of the LG Act states:

**678. Failure to comply with order-carrying out of work by the council**

(1) If a person fails to comply with the terms of an order given to the person under Part 2 of Chapter 7, the council may do all such things as are necessary or convenient to give effect to the terms of the order, including the carrying out of any work required by the order.

(2) If the council gives effect to an order by demolishing a building, the council:

- (a) may remove any materials concerned, and
- (b) may sell the materials, unless the expenses of the council in giving effect to the terms of the order are paid to it within 14 days after removal of the materials.

(3) If the proceeds of such a sale exceed the expenses incurred by the council in relation to the demolition and the sale, the council:

- (a) may deduct out of the proceeds of the sale an amount equal to those expenses, and
- (b) must pay the surplus to the owner on demand.

(4) If the proceeds of sale do not exceed those expenses, the council:

- (a) may retain the proceeds, and
- (b) may recover the deficiency (if any) together with its costs of recovery from the owner as a debt.

(5) Materials removed that are not saleable may be destroyed or otherwise disposed of.

(6) Any expenses incurred by the council under this section (less the proceeds, if any, of any sale under this section) together with all its associated costs may be recovered by the council in any court of competent jurisdiction as a debt due to the council by the person concerned.

(7) Nothing in subsection (3), (4) or (6) affects the owner's right to recover any amount from any lessee or other person liable for the expenses of repairs.

(8) A reference in subsection (4) or (6) to costs is a reference to costs incurred by the council in seeking to recover the deficiency or expenses otherwise than by proceedings in a court, but nothing in this section prevents the council from receiving costs as between party and party in respect of those proceedings.

(9) A council may exercise its functions under this section irrespective of whether the person concerned has been prosecuted for an offence under section 628.

(10) In any proceedings before the Land and Environment Court that are brought by a council against a person as a result of the person's failure to comply with an order under Part 2 of Chapter 7, the Court may, at any stage of the proceedings, order the council to exercise the council's functions under this section. Having made such an order, the Court may continue to hear and determine the proceedings or may dismiss the proceedings.

**Note :** Section 193 requires the council to give the owner or occupier of premises written notice before a person authorised to enter premises under Part 2 of Chapter 8 of the Act does so.