

## Planning Law Explanatory Note

### A Council's Power of Entry

There are a number of situations in which property owners (Owners) are required to allow duly authorised council officers (Officers) to enter their premises pursuant to the operation of the *Environmental Planning and Assessment Act 1979* (**EPA Act**).

The EPA Act provides that before an Officer enters premises, the council or the Officer must give the Owner or occupier of the premises written notice of the intention to enter the premises.

Council officers can however enter premises without first giving notice to the Owner if:

- (a) entry to the premises is made with the consent of the owner or occupier of the premises, or
- (b) entry to the premises is required because of the existence or reasonable likelihood of a serious risk to health or safety, or
- (c) entry is required urgently and the case is one in which the general manager of the council has authorised in writing (either generally or in the particular case) entry without notice.

Where a Council officer seeks to gain entry to the premises on an urgent basis then the council officer is required to obtain the written authorisation of the council's General Manager pursuant to s118C(3)(c) of the EPA Act before entering the Premises.

Once entry is gained the Officer has the right to:

- (a) inspect the premises and any article, matter or thing on the premises, and
- (b) for the purpose of an inspection:
  - (i) open any ground and remove any flooring and take such measures as may be necessary to ascertain the character and condition of the premises and of any pipe, sewer, drain, wire or fitting, and
  - (ii) require the opening, cutting into or pulling



down of any work if the person authorised has reason to believe or suspect that anything on the premises has been done in contravention of this Act, the regulations or an environmental planning instrument, and

- (iii) take measurements, make surveys and take levels and, for those purposes, dig trenches, break up the soil and set up any posts, stakes or marks, and
- (iv) require any person at those premises to answer questions or otherwise furnish information in relation to the matter the subject of the inspection or investigation, and
- (v) take samples or photographs in connection with any inspection.

Reasonable force may be used to gain entry to the premises but only if authorised by the council and in doing so the council Officer must do as little damage as possible and as far as practicable should be made through an existing opening in the enclosing fence.

A council must pay compensation for any damage caused by any person authorised by the council under this Division to enter premises, other than damage arising from work done for the purpose of an inspection which reveals that there has been a contravention of the EPA Act, the regulations or an environmental planning instrument.