



*Agriculturally rich-Naturally beautiful*

# COUNCIL POLICY

## Enforcement Policy

<b>Policy Number:</b>	PO141		
<b>Strategic Plan Objective</b>	Meet all legislative and compliance responsibilities		
<b>Policy Owner:</b>	Director Development Services	<b>File Number:</b>	16/14835[4]
<b>Responsible Officer:</b>	Senior Compliance Officer	<b>Minute Reference:</b>	149/2018
<b>Date Adopted:</b>	13/06/2018	<b>Next Review Date:</b>	January 2021

### 1. POLICY OBJECTIVES

To outline Council's legislative responsibilities in respect of enforcement activities and provide Council personnel with a consistent approach to undertaking enforcement activities.

To ensure transparency, procedural fairness and the principles of natural justice are applied and that action is proportionate to the offence.

### 2. SCOPE

All Council personnel undertaking enforcement activities will be competent persons and appropriately authorised via Council delegation.

### 3. DEFINITIONS

Enforcement	Council adopts a broad definition of "enforcement" which combines the provision of advice and assisting compliance with formal action where necessary. This is intended to encourage higher levels of voluntary compliance with legal requirements by individuals, businesses and other bodies.
Proportionality	A proportionate response means that actions are scaled to the seriousness of the breach.
Competent person:	A person who is suitably qualified (whether by certification, experience, training, or both) to carry out the enforcement activity.

### 4. POLICY STATEMENT

#### 4.1 Enforcement Principles

Council personnel will carry out enforcement activities in accordance with the following principles:

##### Proportionality

Council recognises that most individuals want to comply with the law and will assist compliance by being open and helpful, offering informal advice and providing the chance to discuss compliance problems.

Attention will be focussed on the high risk activities and controlling hazards. Depending on the seriousness and persistence of the infringement, Council will minimise the costs to the person or body infringing the law by enforcing the minimum action necessary to secure future compliance.

Prosecution will generally be used as a last resort, or for continuous serious offences.

Council personnel will be open to discussing potential and actual compliance failures, before, during and after formal action has been taken.

#### Consistency

Council will take a consistent, best practice approach in similar cases to achieve similar outcomes.

While undertaking enforcement activities, Council personnel will:

- Exercise professional judgement and discretion;
- Follow Council's policies, procedures and processes;
- Ensure fair, equitable and non-discriminatory behaviour;
- Treat others with respect;
- Respect and maintain confidentiality;
- Respect the opinions and privacy of individuals;
- Facilitate constructive and effective communication between Council and members of the community.

Any decision to act other than in accordance with this policy must have approval from the relevant Manager and the reasons for action recorded in accordance with Council's Records Management Policy.

#### Transparency

Council will be open and transparent in undertaking enforcement activities. It will consult on and provide ready access to published standards, the levels of service performance that can be expected and be clear about what is expected from those on whom the law places a duty (duty holders).

When remedial action is needed Council will explain clearly and in plain language why the action is necessary. Where practicable, it will give notice of its intent to commence formal action. It will point out what action is required to achieve compliance and the timeframe for undertaking that action. Advice will be provided on the process for seeking a review of, or how to appeal against that decision.

Where it is not practical to give notice, the reasons why will be recorded in accordance with Council's Records Management Policy.

Complainants will be advised of what action has been taken and why that action has been taken.

### **4.2 Decision Making**

Council's enforcement decisions will be based on best practice standards to facilitate a fair and balanced approach between achieving compliance and ensuring adequate public protection.

Where a decision is made not to investigate a complaint, the decision and reasons will be recorded in accordance with Council's Records Management Policy and the complainant will be advised in writing.

Where a personal association or relationship with the alleged offender or any other person involved exists, details will be recorded in accordance with Council's Record Management Policy and an alternative person will make decisions.

### **4.3 Enforcement Options**

#### No Action

After investigation, it may be appropriate to take no action when:

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- No breaches of the legislation are discovered.
- The complaint is frivolous, vexatious or trivial in nature;
- The alleged offence is outside Council's area of authority; or
- Taking action may prejudice other major investigations.

#### Informal Action

After investigation, it may be appropriate to take informal action.

The circumstances where informal action may be appropriate include:

- Where the act or omission is not serious enough to warrant formal action;
- The consequences of non-compliance will not pose a significant risk; or
- Where informal action may prove more effective than a formal approach.

Informal advice from Council personnel will be recorded in accordance with Council's Records Management Policy.

#### **4.4 Mediation**

Mediation is a possible alternative where, after investigation, an officer determines that a matter cannot be resolved by other formal or informal means. Where practical, Council will make mediation available.

#### **4.5 Formal Action**

##### Service of Orders and Directions

Legislation specifies the procedures Councils are to follow to issue an Order.

Only in circumstances such as a threat to life or immediate threat to public health or safety will an Order be made without giving notice of intention. In these circumstances immediate compliance to resolve a situation can be required.

If an Order is served for which an appeal is possible, Council will advise the recipient in writing of the right to appeal and of the relevant legal provisions.

Where there is evidence that an offence has been committed Council may issue an Expiation Notice or launch a prosecution in addition to serving an Order. This will only be done where it is determined that the conduct of the recipient justifies taking both steps.

##### Default Action

Failure to comply with Orders will incur further enforcement action such as launch of a prosecution.

Where action in regard to a default is provided for by legislation and the necessary work has not been carried out in the time allowed without good reason, Council may undertake the required work if deemed necessary. Council will seek to recover all costs over a fair period.

The decision to carry out action in default will be made by the responsible manager. Council may issue an Expiation Notice or launch a prosecution in addition to taking action to fulfil an Order.

##### Prosecution

A person receiving an Expiation Notice is entitled to elect to be prosecuted for the alleged offence.

Before a prosecution is recommended there must be substantial, reliable and admissible evidence that an offence can be proved beyond reasonable doubt.

The following circumstances are likely to warrant a prosecution:

- A deliberate breach of the law;
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- The alleged breach is too serious or the risks too great to be dealt with by an expiation;
- Failure to rectify a serious problem;
- Failure to comply with the requirements of an Order;
- A history of similar offences;
- Compensation required by Council.

A decision to prosecute must be in the public interest.

## 5. COMPLAINTS

Complaints about this Policy can be made in writing to the Senior Compliance Officer. All complaints will be managed in accordance with Council's Complaints Policy.

## 6. REVIEW

This policy will be reviewed every three years and as necessary in consideration of any changes to legislation and relevant standards, codes and guidelines.

## 7. TRAINING

A training needs analysis will be undertaken for employees and volunteers through the induction, performance review and audit processes to identify training needs and as necessary in response to changes to legislation and relevant standards, codes and guidelines.

## 8. RELATED COUNCIL POLICIES AND DOCUMENTS

Employee Code of Conduct

Process for reviewing an application for withdrawal of an Expiation Notice

## 9. REFERENCES AND LEGISLATION

Acts Interpretation Act

Local Government Act 1999

Development Act

Environmental Protection Act

Environmental Health Act

Expiation of Offences Act

Harbours and Navigation Act

Dog and Cat Management Act

Fire and Emergency Services Act

Native Vegetation Act

Building Code of Australia

Impounding Act

Road Traffic Act

## 10. COUNCIL DELEGATION

<b>Delegate:</b>	Chief Executive Officer
<b>Sub Delegate:</b>	Director Development Services

## 11. VERSION HISTORY

Archived Policy Name	Policy Number	Date Adopted	Last Reviewed
Council Enforcement Policy [V1]	PO141	14/12/2011	
Council Enforcement Policy [V2]	PO141	13/11/2013	11/2016
Council Enforcement Policy [V3]	PO141		June 2018

Council Enforcement Policy [V4]	PO141	13/06/2018	
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