
RESPONSIBLE OFFICER:	Chief Executive Officer
RELEVANT DELEGATIONS:	Director Infrastructure & Services, Manager Finance & Corporate, Manager Planning and Compliance
LEGISLATION AND REFERENCES:	Chapter 12, Local Government Act, 1999 Also refer to the list under Other Policies, Procedures and Legislation

PURPOSE OF POLICY

Local Government is provided with legislative responsibilities which protect individuals and the community as a whole. Whilst it is ultimately the responsibility of individuals and other bodies to comply with the law, Council staff are required to carry out activities which enforce compliance.

The compliance and enforcement tools available to Council are quite broad. Council's response will be tailored to the individual situation, with the ultimate aim of encouraging high levels of voluntary compliance. Council will continue to place an educative approach as a priority before enforcement.

Potential unlawful activity may come to the attention of Council through public enquiries or complaints, through Council officer patrols and inspections or through reports from SAPOL. Council has discretion as to whether it takes and what action it takes with respect to any unlawful activity and Council will do so in accordance with the principles of good governance and administrative practice as well as common sense.

This policy outlines Council's approach to enforcement and provides enforcement activities undertaken.

The purposes of this policy is to:

- Provide consistency in enforcement action in matters of non-compliance;
- Ensure transparency, procedural fairness and natural justice principles are applied; and
- Ensure that enforcement action is proportionate to the alleged offence.

POLICY STATEMENT

In the interests of encouraging voluntary compliance with legal requirements Council adopts a definition of "enforcement" which combines the provision of advice and assistance with formal action where necessary.

Note that Council will take immediate action when and if required (for example to ensure public health and safety or to protect the environment) and take firm action against those who act unlawfully when circumstances warrant.

Examples of enforcement activities are:

- managing streets and community public places
- inspecting premises either on a routine programmed basis or on an ad hoc basis; and
- responding to enquiries and complaints that warrant further investigation

Definitions

Compliance means adhering to and demonstrating adherence to Acts, by-laws, regulations or similar.

Council means the Naracoorte Lucindale Council.

Complainant means the individual or organisation who makes the original complaint or first brings the issue to the attention of the Naracoorte Lucindale Council.

Direction means a written direction or requirement, etc requiring specific action to be taken to secure Compliance.

Prosecution means a process of instituting legal proceedings to prosecute an offender for a criminal offence. A successful prosecution can result in a criminal conviction, fines and terms of imprisonment being imposed on the offender

Orders and Notices means any order, notice or other document issued under an Act which contains Directions.

Proportionate response means that Council's actions will be scaled to the seriousness of the unlawful activity.

Council Officer means employees and contractors of Council who are authorised to take enforcement actions under one or more Acts administered by Council.

Unlawful activity means any activity that is:

- contrary to a legislative provision regarding that activity.
- undertaken without the required permit or license or other consent;
- contrary to the terms or conditions of a permit or license or other consent;
- contrary to the terms of an Order or Council direction.

PRINCIPALS AND GOALS

Enforcement actions are taken within the context of both a legal and policy framework. Enforcement related work will be carried out with regards to the following principles:

1. Proportionality

A proportionate response means that Council's actions will be scaled to the seriousness of the breach.

Council recognises that most individuals want to comply with the law and will assist with compliance by:

- being open, honest, and helpful
- offering informal advice and
- providing the chance to discuss compliance issues

Attention will focus on activities which pose the most serious risks, or where potential hazards are difficult to control. Depending on the seriousness or persistence of the infringement, Council may minimise the costs to the person or body infringing the law by enforcing the minimum action necessary to secure future compliance.

2. Consistency

Council will take a similar approach in similar cases to achieve consistent outcomes and approach.

Decisions on enforcement will:

- follow standard operating procedures wherever possible
- ensure fair, equitable and non-discriminatory treatment: and
- record any deviation from standard operating procedures and the reasons

3. Transparency

Council will be open and transparent about the manner in which it undertakes enforcement activities and the laws it enforces.

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

4. Authorisation of Officers

The Chief Executive Officer will appoint Authorised Officers who are competent by training, qualification and/or experience to take enforcement action. Officers will also have sufficient training and understanding of Council's policies and procedures to ensure a consistent approach to their duties.

Officers are required to show their authorisations on demand.

5. Decision Making

Where non-compliance is discovered as a result of enforcement activities, options available to Council to seek or promote compliance include:

- providing an opportunity to discuss points of issue where appropriate;
- allowing reasonable timeframes to achieve compliance
- facilitating mediation between affected parties if the matter involves Council
- issuing a verbal or written warning; or
- enforcement actions such as issuing an expiation, issuing an order/direction or prosecution.

Enforcement decisions will be fair, consistent, balanced and relate to common standards that ensure the public is adequately protected. Where a decision is made not to investigate a complaint, the decision and reasons will be recorded in accordance with Council's Records Management protocols and the complainant will be advised. Council is not obligated to provide outcomes to the satisfaction of complainants.

In coming to a decision on the most appropriate means of enforcement, some of the factors that may be considered are:

- the seriousness of the offence
- the degree of wilfulness involved
- past history
- the consequences of non-compliance
- the likely effectiveness of the various enforcement options
- deterrence
- the effect on the community and other people; and
- consistency of approach to similar breaches/offences
- ability to prove/determine who has committed the offence

ENFORCEMENT OPTIONS

1. **No Action**

No action will be taken when, after investigation, no breaches of the legislation are discovered, or no clear evidence or proof of a breach..

It may also be appropriate to take no action when:

- 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

2. **Informal Action**

Informal action to achieve compliance with legislation may include:

- providing verbal or written advice
- verbal warnings and requests for action; or
- written warnings

Advice from officers will be stated clearly and simply.

The circumstances in which informal action may be appropriate include:

- the act or omission is not serious enough to warrant formal action
- confidence in the individual / other body is high
- the consequences of non-compliance will not pose a significant risk; or
- where informal action may prove more effective than a formal approach

3. **Mediation**

Where practical, Council may consider making mediation available.

4. **Formal Action**

a. **Service of Orders and Directions**

Various pieces of legislation specify the procedures which Council must follow, in order to:

- advise of the intention to issue an Order
- invite submissions with respect to the matter
- order a person to do or refrain from doing a something under specified circumstances and/or
- issue directions specifying how the Order may be complied with

Council will assess the variables relating to each matter under consideration, including the reasonableness of the actions required by an Order/Direction and the timeframe to comply.

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.

In most cases the person receiving the Order has a right of appeal to the appropriate Court if the Order is considered unreasonable. If an Order is served for which an appeal is possible, Council will advise the recipient, in writing, of the right to appeal and the relevant legal provisions at the time of serving the Order.

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.

b. **Action in Regard to a Default**

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

Where action in regard to a default is provided for by legislation and the necessary action has not been carried out in the time allowed without good reason, Council may undertake the required work. Before undertaking the work Council will consider whether there is a realistic prospect that the person responsible will complete the work within a reasonable time. Where work in default is undertaken Council will seek to recover all costs, using all statutory means available.

The decision to carry out action in default will be made by the Chief Executive Officer or delegate.

Where an offence has been committed Council may issue an Expiation Notice or launch a prosecution in addition to taking action to fulfil an Order. This will only be done where the conduct of the recipient justifies taking such steps. Factors such as giving false information, the obstruction of Council staff and the harm or risk of harm caused by the recipient's delay will be considered in determining additional enforcement actions.

c. Service, Review and Withdrawal of an Expiation Notice

A person receiving an Expiation Notice is entitled to elect to be prosecuted for the alleged offence. Hence there must be substantial, reliable and admissible evidence that an identifiable person or organisation has committed the alleged offence. In other words, there must be sufficient evidence on the face of it to enable a conclusion to be reached that there is a reasonable prospect of being able to prove an offence beyond reasonable doubt.

The following circumstances are likely to warrant an Expiation Notice:

- certain breaches of the legislation administered by Council
- failure to correct an identified problem after having been given reasonable opportunity to do so by an Authorised Officer
- failure to comply with the requirements of an Order
- confidence in the individual/other body is low; or
- a written warning has been given for a similar offence

Expiation notices that have been issued may be reviewed and considered for withdrawal in the following circumstances:

- the notice was incorrectly issued
- there is insufficient evidence to achieve a successful prosecution and the expiation fee has not been paid
- the person to whom the expiation notice was issued
 - holds a valid permit and produces the permit - this will only occur in the first instance, and repeat occurrences of being issued a permit as a result of not displaying the correct permit will not be reviewed or withdrawn
 - cannot be located to issue a reminder notice and the expiation fee has not been paid
- other reason which is in the best interests of Council

Only officers with delegated authority have the power to review or withdraw expiation notices. To determine which roles within Council have this authority refer to the Delegations Policy available on Council's website.

d. Prosecution

A prosecution will only proceed where there is a reasonable prospect that an offence can be proven beyond reasonable doubt.

The following circumstances are likely to warrant a prosecution:

- a flagrant breach of the law such that public health, safety and welfare have been put at risk
- the alleged breach is too serious or the risks too great to be dealt with by means of an expiation

- a failure to correct an identified serious problem after having been given reasonable opportunity to do so
- a failure to comply with the requirements of an Order
- an established and recorded history of similar offences
- an unwillingness, on the part of the individual or other body, to prevent a recurrence of the problem
- the recovery of the costs of the investigation or remedial work or financial compensation that are required by Council or an aggrieved party

Where circumstances warrant a prosecution all relevant evidence and information will be considered to enable a consistent, fair and objective decision to be made.

Before a prosecution is recommended there must be substantial, reliable and admissible evidence that an identifiable person or organisation has committed the offence.

A decision to prosecute must be in the public interest. In considering whether prosecution is in the public interest, the following additional factors will be considered:

- whether the offence was premeditated
- the need to influence the offender's future behaviour
- the effect on the offender's or witness' physical or mental health, balanced against the seriousness of the offence
- the availability and efficacy of any alternatives to prosecution
- the prevalence of the alleged offence and the need for deterrence, both personal and general
- the likely length, expense and outcome of a trial

The final decision to prosecute will be made by the Chief Executive Officer

e. Complex Situations

At times, Council may be involved in a matter or dispute which involves more than one suspected Illegal Activity, and/or more than one relevant party, or some other delicate or complicating factor.

In such cases, it may not be appropriate for Council to pursue a single option for Enforcement action, but rather a blended approach, encompassing more than one Enforcement avenue.

OTHER RELEVANT POLICIES, PROCEDURES AND LEGISLATION

This Policy is implemented in conjunction with the following Policies and Strategies:

- Strategic Management Plan
- Customer Service Policy
- Complaint Handling and Review of Decision Procedure
- Grievance / Review of Decision Policy
- Order Making Policy
- Fraud and Corruption Prevention Policy (includes Whistleblower Protection)

Some of the legislation this Policy aligns with is:

- Council's By-Laws
 - By-Law 1 - Permits and Penalties
 - By-Law 2 - Local Government Land
 - By-Law 3 – Roads
 - By-Law 4 - Moveable Signs
 - By-Law 5 - Dogs
- Fire and Emergency Services Act 2005
- Local Government Act 1999
- Planning Development & Infrastructure Act 2016 Road Traffic Act 1961

- Dog and Cat Management Act 1995
- Environmental Protection Act 1993
- Food Act 2001
- Expiation of Offences Act 1996
- Housing Improvement Act 2016
- South Australian Public Health Act 2011

POLICY REVIEW

This policy will be reviewed every four years.

AVAILABILITY OF POLICY

The public may inspect a copy of this policy, without charge, at the Council's Naracoorte and Lucindale offices during office hours.

Council employees can access a copy of the policy on Council's network or by contacting the Responsible Officers.

The Policy is also available on Council's website www.naracoortelucindale.sa.gov.au

ADOPTION AND AMENDMENT HISTORY

<i>Date</i>	<i>Authorised by</i>	<i>Minute Reference</i>
January 2028		Next Review
23 January 2024	Council	Council resolution 159/24
28 July 2015	Council	New policy, Council resolution 39/16