

Enforcement Policy

Council Policy

Policy Reference Number	6212516
Responsible Department	Infrastructure, Planning & Sustainability Services
Related Policies	Order Making Policy; Records Management Policy; Dog Attacks and Harassment Policy; Animal Management Plan
Related Procedures	Nil
Date of Initial Adoption	
Last Reviewed by Council	

1. Purpose

The purpose of this Enforcement Policy (Policy) is to provide a framework for local enforcement and prosecution action for non-compliance of regulatory matters. This Policy will provide consistency and transparency for Council operations, and ensure that any agreed action is proportionate to the alleged offence.

2. Introduction

Legislation outlines the responsibilities of Council to protect persons and the Community by applying consistent and transparent standards. Council, persons and entities have a responsibility to comply with the law. State legislation provides Council with the ability to carry out enforcement action for a range of activities, and to commence proceedings to penalise persons or entities for such Illegal Activities to rectify those activities.

This Policy provides direction to Council employees, persons, entities and the wider Community regarding its expectations in managing enforcement across a range of legislative requirements. Further, this Policy assists in informing the public about procedural fairness principles that will be applied in any enforcement action.

Council is responsible for ensuring that the Community and visitors to its area adhere to legislation which regulates and controls the actions of persons to protect the broader Community.

3. Power to Make the Policy

The Council is responsible for administering and enforcing compliance under the following legislation and associated Regulations:

- *Local Government Act 1999*
- *Planning, Development and Infrastructure Act 2016*
- *Dog and Cat Management Act 1995*
- *South Australian Public Health Act 2011*
- *Fire and Emergency Services Act 2005*
- *Private Parking Areas Act 1986*

- *Road Traffic Act 1961; and*
- *Local Nuisance and Litter Control Act 2016.*

Council has adopted By-Laws under the *Local Government Act 1999* that enable it to regulate activities under a range of issues. Council By-Laws include:

- By-Law No. 1 - Permits and Penalties
- By-Law No. 2 - Moveable Signs
- By-Law No. 3 – Roads
- By-Law No. 4 - Local Government Land
- By-Law No. 5 – Dogs; and
- By-Law No. 6 – Cats.

By - Laws can be viewed on Council's website www.campbelltown.sa.gov.au

4. Strategic Plan Link

This Policy has the following link to Council's Strategic Plan 2024:

- Leading our People (Goal 5)

5. Principles

Council may undertake enforcement action within the context of both a legal and policy framework. Council will have regard to the following principles when delivering regulatory services:

Conflicts of Interest

Where possible, Council employees and contractors will not make decisions about matters if they (or a person closely associated with them) have a personal association or relationship, or a perceived association or relationship with anyone involved in the issue, or they may receive a direct or indirect pecuniary or non-pecuniary benefit or detriment from the decision. In these instances where possible, an alternative Council employee will make required decisions. Where a personal relationship, or perceived relationship exists this will be disclosed to the Chief Executive Officer as required by law, and recorded as part of the investigation and recorded in Council's Record Management System.

Consistency

Council commits to taking a similar approach in similar cases to achieve similar outcomes. Enforcement decisions require sound professional judgement and discretion to assess a range of circumstances. Council will ensure fair, equitable, transparent and non-discriminatory treatment, and will record any deviation from normal practices and the circumstances behind that deviation.

Professionalism

Council employees commit to the highest ethical and professional standards and the most effective and appropriate use of their legislative enforcement powers.

Proportionality

Council's actions will have regard to the seriousness of an alleged breach; a measured enforcement approach will be applied recognising that most people comply with the law. Council's financial resources are finite and will, where appropriate, be prioritised to pursue those cases worthy of enforcement or prosecution. The seriousness and nature of the breach, the relevant legislation, the willingness of the entity to cooperate with any investigation and their contrition in relation to the matter, as well as the cost to Council in pursuing the breach, are relevant considerations when determining the appropriate action in relation to investigation matters.

Transparency

Council will be open and transparent about the manner in which it undertakes enforcement activities and the laws it enforces. It will provide easy access to published standards, levels of service and performance that can be expected.

Where remedial action is needed, Council will explain clearly and in plain English why the action is necessary. Where practicable, Council will give notice of any intent to commence formal action, advising what action is required to achieve compliance by remedying the breach and the timeframe for undertaking that action. Advice will be provided on the process for seeking a review of, or how to appeal, against a decision.

Where it is not practicable to give notice of an intent to commence formal action, the reasons will be recorded and kept in accordance with Council's Records Management System. Complainants will be advised of what action has been taken and why that action has been taken.

Definitions

Authorised Officer A person who is authorised to carry out statutory functions or powers as specified within a particular piece of legislation. The decision to appoint an Authorised Officer (also called an Authorised Person in some legislation) is made by Council or Council's CEO.

CEO Chief Executive Officer or a person Acting in the role of Chief Executive Officer for Campbelltown City Council.

Compliance The act of adhering to and demonstrating adherence to an Act, By-Law, Regulation or similar. Compliance may or may not involve the process of enforcement.

Complainant A person(s) or entity who has made a complaint about the compliance of a regulatory matter.

Court Means a court relevant to the matter (including South Australian Civil and Administrative Tribunal).

Delegate A person appointed by Council or the CEO to exercise specific powers or functions under legislation.

Entity	A person or persons including a business, organisation or formal group.
Enforcement	Enforcement refers to the use of legislative provisions to direct an entity to make good a breach of the <i>Act</i> and / or otherwise penalise them for a breach. Enforcement is a tool to ensure compliance and accountability for illegal activity.
Illegal Activity/ Activities	An act or activity which has occurred contrary to requirements contained within legislation.
Order	Formal direction(s) issued by Council or a Council delegate to an entity concerning a breach of a particular piece of legislation.
Prosecution	The process of instituting legal proceedings against an entity in relation to an illegal activity, with the intent of penalising them for that activity.
Real Estate Sign	A transportable sign used for the purpose of advertising the sale or lease of a specific piece of real estate.
Recipient	Entity who is alleged to have breached legislation.
Regulatory Services	Services delivered by Council that are regulatory in nature and require compliance with legislation administered by Council.
Variable Message Sign (VMS)	VMS is a form of temporary signage (including an associated trailer if relevant).

6. Policy

6.1 Council's Role

Council will perform regulatory services to protect the safety and well-being of Community members by:

- Patrolling streets and public places
- Inspecting properties through routine programs or random inspections
- Responding to enquiries and complaints.

Where a breach is observed or reported, Council will investigate the breach and undertake enforcement action as identified to remedy the illegal activity and / or commence proceedings to penalise an entity for such illegal activity.

To facilitate consistent and transparent standards of enforcement, through this Policy Council will ensure that:

- Breaches are rectified in a timely manner and to the reasonable satisfaction of Council, where appropriate
- The safety and well-being of the Community are not compromised or unduly inconvenienced by Illegal Activities

It takes into consideration the financial and administrative impact that enforcement or prosecution action may have on its ratepayers.

DRAFT

Authorised Officers are required to use their legislative discretion to determine whether a matter is worthy of enforcement or prosecutorial action. Authorised Officers will take into consideration:

- Relevant legislation
- The seriousness and nature of the alleged breach, and in particular, whether there is a serious safety risk if a matter is not pursued
- The willingness of an entity to cooperate with an investigation and their contrition if a breach is identified
- The cost to Council in pursuing a breach through enforcement or prosecution.

When undertaking enforcement action, all Council employees will:

- Comply with Council policies and associated practices where possible. Variation and the reasons for such deviations will be recorded in Council's Records Management System
- Exercise their professional judgement and discretion to assess varying circumstances
- Ensure fair, equitable and non-discriminatory treatment.

Council may exercise its powers to:

- Issue Orders, Notices and directions to persons or entities requiring them to take action to ensure compliance with a relevant *Act*
- Issue an Expiation Notice where an entity has committed an offence
- Commence enforcement (legal) action to obtain an Order requiring a breach of an *Act* to be rectified
- Commence criminal prosecution against an entity who has committed an offence.

6.2 Community Role

Residents, ratepayers and entities within the Council area have a responsibility to comply with the law and expect Council to uphold the law where it is empowered to make decisions.

6.3 Council Approach to Illegal Activities

The Council will adopt the following approach to matters relating to Illegal Activities:

- Consider and investigate all customer enquiries concerning Illegal Activities, that are within Council's jurisdiction
- Adopt a proactive approach to identifying and investigating Illegal Activities, where adequate resources are available to perform such duties
- Refer to SA Police (SAPOL), where action falls outside of Council's jurisdiction.

When remedial action is needed, Council employees will explain clearly and in plain English why the action is necessary. Where practicable, Council will give notice of any intent to commence formal action, advising what action is required

to achieve compliance by remedying the breach and the timeframe for undertaking that action. Advice will be provided on the process for seeking a review of, or how to appeal, against a decision.

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

Where possible, complainants will be advised of what action has been taken and why that action has been taken.

6.4 Enforcement Options

Council administers and enforces a broad range of legislation. As a result, enforcement options may vary with the Act being enforced. In some circumstances, the issuing of Civil Enforcement Notices may be appropriate as opposed to the commencement of prosecution proceedings or the issuing of Expiation Notices. The range of legislation enforced by Council means that a range of enforcement options are available.

6.4.1 No Action

No action will be taken where, after investigation, no breach of the legislation is discovered.

It may also be appropriate to take no action where:

- The complaint is frivolous, vexatious or trivial in nature
- The entity who may have breached a law has, or has committed to, making good the breach
- The alleged breach is outside of Council's jurisdiction
- Taking action may prejudice other more significant investigations; or
- Having regard to the principles of proportionality and consistency, an Authorised Officer has determined that the breach is of such a minor nature that action would be an unreasonable use of Council resources.

6.4.2 Informal Action

Informal Action to achieve compliance with legislation may include, but is not limited to:

- Offering an entity who may have breached a law with a verbal or written warning; or
- A verbal or written warning that may include a request for remedial action.

Advice from an Authorised Officer will be conveyed clearly and simply and any verbal advice or requests for action will be confirmed in writing, in accordance with Council procedures.

The circumstances in which Informal Action may be appropriate include, but are not limited to:

- The act or omission is not serious enough to warrant formal action
- The past history of the entity who has committed the breach reasonably suggests that informal action will secure compliance
- The Authorised Officer's confidence in the entity is high
- The consequences of non-compliance will not pose a significant risk of harm or nuisance to other persons or property; or
- Where informal action may prove more effective than a formal approach.

In circumstances where statutory action is not possible, but it would be beneficial in a wider public safety context to urge a particular outcome, Informal Action may be undertaken, and the reasons recorded in Council's Records Management System. The Recipient will be made aware that the requested action(s) is not legally enforceable.

6.4.3 Mediation

Where practical, Council may provide details of mediation services available (at user expense) through an external provider. Mediation is a possible alternative where, after investigation, an Authorised Officer considers that the issue is unlikely or incapable of resolution through either formal or informal means. The use of mediation services may also be appropriate where an aggrieved entity has no wish to pursue action to resolve a complaint by legal means.

6.4.4 Service of Orders

Depending on the nature of the breach and the legislation relevant to the breach, formal Orders may be issued by an Authorised Officer or by a relevant court of competent jurisdiction. Orders to address matters of non-compliance will only be used or sought from a court where:

- An Order is required to prevent further Illegal Activities
- The breach is of such a serious nature so as to warrant immediate action
- The breach has resulted in a threat to life or an immediate threat to public health or safety
- Where Informal Action has failed to achieve compliance.

A decision for Council to seek an Order through a court will only be made by an appropriate Council Delegate following consultation with the CEO.

Formal Orders issued verbally will be recorded in accordance with the relevant legislation in Council's Records Management System. Such Orders will also be confirmed in writing within a timeframe prescribed by the relevant legislation.

In most cases, an entity receiving an Order has a right of appeal to an appropriate court. If an Order is served for which an appeal is possible, the Authorised Officer that issues the Order will advise the Recipient in writing of the right of appeal and the relevant legal provisions at the time of serving the Order.

Failure to comply with Orders will result in further enforcement action.

6.4.5 Expiation Notices

An Expiation Notice alleges that an entity has committed an offence and sets out an expiation fee, which can be paid to expiate the offence rather than the entity being prosecuted. Authorised Officers will only issue Expiation Notices where there is appropriate evidence to substantiate that the offence occurred.

Council issues Expiation Notices for matters including, but not limited to the following:

- Development related offences (*Planning, Development and Infrastructure Act 2016 and Regulations*)
- Dog and cat management offences (*Dog and Cat Management Act 1995*)
- Fire hazard reduction (*Fire and Emergency Services Act 2005*)
- Nuisance or litter offences (*Local Nuisance and Litter Control Act 2016*)
- Offences against Council's By-Laws
- Parking offences (*Road Traffic Act 1961, Australian Road Rules and the Private Parking Areas Act 1986*)
- Public realm uses and management offences (*Local Government Act 1999*).

Where an expiation is not paid, it will be automatically referred to the State Government's Fines Enforcement and Recovery Unit.

6.4.6 Prosecution

A decision to prosecute must be in the public interest. Council may initiate prosecution proceedings in the following instances:

- The breach is of a serious nature so as to warrant prosecution; or
- An entity who receives an Expiation Notice does not expiate the Offence by payment or otherwise elects to instead be prosecuted.

In considering whether prosecution is in the public interest, Authorised Officers will consider the following factors:

- The prevalence of the alleged offence and the need for deterrence
- Whether the entity has committed a similar offence in the past
- Whether the entity has shown remorse or contrition
- Whether the alleged offence was premeditated

- The effect on the physical or mental health of an entity or witness, balanced against the seriousness of the alleged offence
- The availability, competence and credibility of witnesses and their likely impression on the Court
- The admissibility of any alleged confession or other evidence
- Any lines of defence
- The need to maintain confidence in the Council as a prosecuting authority

The likely length and expense of a trial is a relevant (but not decisive) consideration when deciding whether to prosecute for Illegal Activities. Similarly, the implications and financial burden on an entity will not be a decisive consideration when determining whether to proceed with a prosecution.

Prosecution proceedings should not be commenced in circumstances where there is no reasonable prospect of success in securing a finding of guilt against the alleged offender.

As a matter of practical reality, the proper decision in most cases will be to proceed with a prosecution if there is sufficient evidence available to justify a prosecution. Although there may be mitigating factors present in a particular case, often the proper decision will be to proceed with a prosecution and for those factors to be put to the sentencing court in mitigation.

Where an alleged offence may not appear to be serious enough to justify prosecution, Council will always take into consideration whether the public interest requires a prosecution to be pursued.

The CEO is to be consulted prior to proceeding to prosecute an alleged offence, to ensure that there is agreement that prosecution is in the public interest.

6.4.7 Food & Public Health

The Eastern Health Authority (EHA), is a subsidiary of Council and manages the following legislative requirements on behalf of Council:

- Food offences (the subsidiary is an enforcement agency for the purposes of the *Food Act 2001*)
- Public health offences (*South Australian Public Health Act 2011*).

6.5 Cost Recovery

Council may incur significant costs (legal and / or otherwise) when enforcement action is taken to rectify Illegal Activities. In the interest of reducing the financial burden of pursuing enforcement and compliance matters on ratepayers, where possible, the Council will seek to recover those costs incurred in attempting to rectify the breach through the relevant court.

DRAFT

The document on Council's Records Management System is considered to be the current and controlled version. Before using a printed copy, verify that it is the current version.

6.6 Compliance Matters of Special Consideration

6.6.1 Temporary VMS

Illuminated temporary VMS are viewed as important tools for promoting upcoming events occurring within the City and are required to have approval under the *Planning, Development and Infrastructure Act 2016*. Furthermore, such signs may also require approval under the *Local Government Act 1999* if they are being sought to be placed on Council land.

Council Authorised Officers will act upon a complaint received concerning illuminated temporary VMS. Where a VMS is found to be unlawful, enforcement action will be considered having regard to the principles of proportionality contained within this Policy.

6.6.2 Real Estate Signs

It is common practice for a Real Estate Sign to be erected on Council land in instances where front boundary fencing exists. Although Council approval is required under the *Local Government Act 1999*, the impact of such signs being placed on Council land is often negligible and largely unavoidable.

For the reason outlined above and in accordance with Section 226 of the *Local Government Act 1999*, Council grants a standing authorisation for the placement of Real Estate Signs on Council land in the following instances:

- When the Real Estate Sign is exempt from requiring development approval under the *Planning, Development and Infrastructure Act 2016*
- The Real Estate Sign is to be placed directly adjacent the fence line and as close as practicably possible to the property boundary with the public road
- There is a boundary fence which would otherwise obstruct views of the sign if it were to be placed on private property
- The person responsible for installing the signs is responsible for ensuring public / private utilities and any associated infrastructure located on the road reserve is not damaged during erection and removal of the sign and for the duration the sign is in place.

7. Review & Evaluation

Within twelve months of each new Council term, Council will review this policy. Following this initial review, this Policy will be reviewed at least biennially by Staff with minor administrative adjustments being approved by the Chief Executive Officer.

8. Availability of the Policy

Copies of this Policy will be available at Council's principal office during ordinary business hours and at Council's website www.campbelltown.sa.gov.au.

DRAFT

The document on Council's Records Management System is considered to be the current and controlled version. Before using a printed copy, verify that it is the current version.