



## **TITLE: ENFORCEMENT POLICY**

REFERENCE NUMBER:	DOC/15/108364
RESPONSIBLE DEPARTMENT:	Council Services Planning and Development
APPLICABLE LEGISLATION:	Australian Road Rules Council By-Laws Dog and Cat Management Act 1995 (& Regulations) Environment Protection Act 1993 (and Policies) Expiation of Offences Act 1996 Fire and Emergency Services Act 2005 Food Act 2001 (and Regulations) Food Safety Standards Housing Improvement Act 1940 Local Government Act 1999 Private Parking Areas Act 1986 Road Traffic Act 1961 SA Public Health Act 2011 (and Regulations) Safe Drinking Water Act 2011 Supported Residential Facilities Act 1992 (& Regulations) Development Act 1993
STRATEGIC PLAN 2012-2017:	14.2 Review effectiveness of Council decision making processes and structures
RELATED POLICIES:	<ul style="list-style-type: none"><li>• Animal Management Plan 2012 – 2017.</li><li>• Trade Waste Discharge Policy.</li><li>• Order Making Policy.</li><li>• Outdoor Dining Policy.</li></ul>

SUPPORTING PROCEDURES:	<ul style="list-style-type: none"> <li>• Enforcement Procedure</li> <li>• Issue of Parking and Infringement Notices (SOP 1)</li> <li>• Infringement Notice – Appeal To Council (SOP 2)</li> <li>• Impounding of Vehicles (SOP 5)</li> <li>• Dog Destruction &amp; Control Orders (SOP 6)</li> <li>• Impounding of Dogs (SOP 7)</li> <li>• Dog Attack Harass Chase (SOP 9)</li> <li>• Barking Dogs (SOP 10)</li> <li>• Issue of Infringement Notices (SOP 11)</li> <li>• Wandering Stock (SOP 12)</li> <li>• Keeping of Additional Dogs (SOP 13)</li> <li>• Issuing of Section 254 Orders (SOP 14)</li> <li>• By-Law 2 Moveable Sign (SOP 15)</li> </ul>
ENDORSED BY COUNCIL:	7 December 2015
NEXT REVIEW DATE:	December 2016

## 1. POLICY STATEMENT

Council is charged with legislative responsibilities which protect individuals and the community as a whole. While it is ultimately the responsibility of individuals and organisations to comply with legislation, Council's authorised officers are required to carry out activities which may include enforcement of compliance.

Examples of activities subject to this enforcement policy include:

- Handling and sale of food for human consumption.
- Installation and operation of wastewater systems.
- Monitoring of building sites for environmental pollution.
- Responding to animal management issues.
- Monitoring of parking controls within the Council area.
- Non compliance with Council's By-Laws.
- Responding to enquiries and complaints relating to public health, public safety and development.
- Responding to backyard burning complaints.
- Monitoring building sites for damage to Council infrastructure.

This policy is an “umbrella” policy which outlines the approach to enforcement matters and provides Council staff with direction about the manner in which enforcement activities are to be undertaken.

## **2. POLICY OBJECTIVES**

The primary objectives of this Policy are to:

- Establish a framework which guides Council in enforcement and prosecution action with respect to matters of non-compliance.
- Provide consistency in enforcement action in matters of non-compliance.
- Ensure that transparency, procedural fairness and natural justice principles are applied.
- Ensure that enforcement action is proportionate to the alleged offence in each case.
- Advocate a risk based approach to enforcement through the adoption of a proportionate response to non-compliance.

## **3. DEFINITIONS**

Defining ‘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.

Notwithstanding the above, Council will take immediate action when required (for example to ensure public health, public safety, to protect the environment and to maintain the amenity of an area) and take firm action against those who act unlawfully when circumstances warrant.

## **4. ROLES & RESPONSIBILITIES**

Staff involved in enforcement activities: To undertake enforcement activities in line with the relevant legislation, any relevant Standard Operating Procedure(s) and Council’s enforcement policy and procedure.

Relevant Managers: To review enforcement activities undertaken by staff to ensure consistency, transparency and adherence with the relevant legislation.

## **5. PRINCIPLE OF GOOD ENFORCEMENT**

Enforcement actions are taken within the context of both a legal and policy framework. All Council staff will carry out their enforcement related work with due regard to the following principles.

### **5.1 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 compliance by being open and helpful, offering informal advice and providing the chance to discuss compliance problems.

Attention will be focussed on those whose activities give rise to the most serious risks, or where potential hazards are least well controlled. 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.

### **5.2 Consistency**

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

While decisions on enforcement require the use of professional judgement and discretion to assess varying circumstances, officers will:

- Follow standard operating procedures;
- Ensure fair, equitable and non-discriminatory treatment; and
- Record any deviation from standard operating procedures and the reasons for the deviation.

### **5.3 Transparency**

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

In educating the community at large and dealing with duty holders, Council will make a clear distinction between what is legally required and what is desirable but not compulsory.

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

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 protocols.

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

## **6. AUTHORISATION OF OFFICERS**

Only officers who are competent by training, qualification and/or experience will be authorised to take enforcement action.

Officers will also have sufficient training and an understanding of Council's policies and procedures to ensure a consistent approach to their duties.

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 protocols.

Officers are required to show their authorisations on demand.

## **7. REVIEW**

This Policy will be reviewed in 12 months or earlier in the event of changes to legislation or related Policies and Procedures or if deemed necessary by the Manager Health and Public Safety.

## **8. ACCESS TO THE POLICY**

The Policy is available for public inspection at the Customer Service Centre, at the Local Government Centre, 6 Dutton Road, Mount Barker, South Australia and on the Council's website [www.dcmtbarker.sa.gov.au](http://www.dcmtbarker.sa.gov.au).

## **9. FURTHER INFORMATION**

For further information on this Policy, please contact:

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