

Enforcement Policy



Record number	D20/57747
Responsible Manager	Manager Community Safety Manager City Development
Other key internal stakeholders	Director Community and Cultural Development
Last reviewed	19 August 2020
Adoption reference	Policy and Strategic Development Committee
Resolution number	80
Previous review dates	18/10/17, 10/03/15, 10/06/14, 11/02/14, 18/09/12, 10/08/10
Legal requirement	NA
Due date next review	2023

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PURPOSE

The purpose of this Policy is to establish a framework which guides the Council in enforcement and prosecution action with respect to matters of non-compliance. The framework provides consistency and ensures that any action is proportionate to the alleged offence in each case. This policy assists in informing the public and ensuring that transparency and procedural fairness principles are applied in any enforcement action.

POLICY

Council observes its legislative responsibilities to protect individuals and the community as a whole by applying consistent standards. It is ultimately the responsibility of individuals and other entities to comply with the law. State legislation provides the ability for Council to carry out enforcement action to remedy Illegal Activities and / or commence proceedings to penalise individuals or entities for such activities.

Compliance related activities are performed by Council in the following ways:

1. By patrolling streets and public places
2. Inspecting properties either on a routine programmed basis or on a random basis
3. Responding to enquiries and complaints.

Council is committed to the highest ethical and professional standards and strives to achieve the most effective and appropriate use of its legislative enforcement powers so as to facilitate achievement of the following in respect of breaches of legislation:

1. Ensuring that (where appropriate) a breach is rectified in a timely manner and to the reasonable satisfaction of Council
2. Ensuring that the safety and well-being of community members is not compromised by any non-compliance issue
3. Ensuring that the general public are not unduly inconvenienced by Illegal Activities (e.g. unauthorised parking in bicycle lanes and disabled car parks)
4. Considering the costs that illegal activities and related prosecution or enforcement actions might have on ratepayers.

Principles of Good Enforcement

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

Proportionality

A proportionate response means that the extent of Council's actions will be determined by having regard to the seriousness of the breach; i.e. a measured enforcement approach will be applied.

Council recognises that most individuals comply with the law, and for example in planning and development matters people will generally assist Council in respect of enforcement and compliance issues by being helpful and cooperative, offering information to Council and being available to discuss compliance concerns.

In respect of proportionality, the following criteria will be considered by Council employees in determining the best course of action:

1. Whether there are serious safety risks
2. Where potential hazards are least well controlled.

Council's financial resources are finite and should not be used pursuing inappropriate cases. Council's resources should be deployed in pursuing those cases worthy of enforcement or prosecutorial action. The seriousness and nature of the breach, the relevant legislation, the willingness of the individual or entity to cooperate with any investigation, their contrition and the cost to the Council in pursuing the breach, are all relevant considerations to the Council's exercise of discretion.

Consistency

Council will take a similar approach in similar cases to achieve similar outcomes. Decisions on enforcement and compliance require the use of professional judgement and discretion to assess varying circumstances. To assist with this, Council will:

1. Establish and follow standard operating procedures wherever possible
2. Ensure fair, equitable and non-discriminatory treatment
3. Record any deviation from standard operating procedures and the reasons for such deviations.

Transparency

Council will be open and transparent about the manner in which it undertakes enforcement activities and the laws it enforces. It will provide ready access to published standards and levels of service and performance that can be expected. Council will also be clear and open 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, 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 and kept in accordance with Council's Records Management Policy and procedure.

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

Conflicts of Interest

Where a Council employee or contractor has a personal association or relationship, or a perceived association or relationship, with an individual or entity who may have breached a law (or with any other individual or entity involved):

1. An alternate Council employee or contractor will make decisions where possible
2. The facts about the conflict/relationship will be reported and recorded in accordance with Council's Record Management Policy and procedure.

Council Approach to Illegal Activities

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

1. Consider and investigate all customer enquiries concerning Illegal Activities, that are within Council's jurisdiction
2. Adopt a proactive approach to identifying and investigating Illegal Activities, where adequate resources are available to perform such duties
3. Refer to SAPOL, where appropriate, where it falls outside of Council's jurisdiction.

Enforcement Options

Council administers and enforces a broad range of legislation. As a result, enforcement options can 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.

No Action

No action will be taken where, after investigation, no breaches of the legislation are discovered.

It may also be appropriate to take no action where:

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

Informal Action

Informal action to achieve compliance with legislation may include:

1. Offering an individual or entity who may have breached a law with verbal or written warning
2. Verbal or written warnings that may include requests for remedial action.

Advice from Council will be conveyed clearly and simply and any verbal advice or requests for action will be confirmed in writing, as determined by procedures.

The circumstances in which informal action may be appropriate include:

1. The act or omission is not serious enough to warrant formal action
2. The past history of the individual or entity who has committed the breach reasonably suggests that informal action will secure compliance
3. Council's confidence in the individual or entity is high
4. The consequences of non-compliance will not pose a significant risk of harm or nuisance to other persons or property
5. 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 accordance with Council's Records Management Policy and procedure. The recipient will be made aware that the requested action(s) are not legally enforceable.

Mediation

Where practical, Council may make mediation available through an external provider. Mediation is a possible alternative where, after investigation, Council considers that the issues are unlikely or incapable of resolution through either formal or informal means. The use of mediation services may also be appropriate where an aggrieved individual has no wish to pursue action to resolve a complaint by legal means.

Formal Action

Council will use professional judgement and discretion to assess the particulars relating to each matter under consideration, including the reasonableness of the actions required by Council and the timeframe to comply.

Service of Orders

Depending on the nature of the breach and the legislation relevant to the breach, formal orders may be issued by Council 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:

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

A decision for Council to seek an Order through a court will only be made with the prior written consent of the CEO.

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

In most cases, an individual or entity receiving an Order has a right of appeal to an appropriate court. If an Order is served for which an appeal is possible, Council 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.

Expiation Notices

An expiation notice alleges that an individual or entity has committed an offence and sets out an expiation fee, which can be paid to expiate the offence rather than the individual or entity being prosecuted. The evidence obtained to substantiate the issuing of expiation notice must be sufficient to prove that the offence occurred.

Expiation notices may be issued by Council for (amongst other things):

1. Parking offences under the Road Traffic Act 1961, Australian Road Rules and the Private Parking Areas Act 1986
2. Dog management offences pursuant to the Dog and Cat Management Act 1995
3. Development related offences pursuant to the Development Act 1993 and Regulations which is transitioning to the Planning, Development and Infrastructure Act 2016
4. Planning Development and Infrastructure Act 2016
5. Food safety offences under the Food Act 2001
6. Public realm use and management offences under the Local Government Act 1999
7. Public health offences under the South Australian Public Health Act 2011
8. Supported residential facility management offences under the Supported Residential Facilities Act 1992
9. Offences against Council's By-laws.

An individual or entity that receives an expiation notice has a right to elect to be prosecuted for their alleged offence, instead of paying the expiation fee. Payment of an expiation fee is voluntary and is not an admission of guilt or civil liability.

Prosecution

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

1. The breach is of a serious nature so as to warrant prosecution
2. A person 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, the following factors will be considered:

1. The prevalence of the alleged offence and the need for deterrence, both personal and general
2. Whether The individual or entity has committed a similar offence in the past
3. Whether The individual or entity has shown remorse or contrition
4. Whether the alleged offence was premeditated
5. The effect on the physical or mental health of the individual or persons comprising an entity or witness, balanced against the seriousness of the alleged offence
6. The availability, competence and credibility of witnesses and their likely impression on the Court
7. The admissibility of any alleged confession or other evidence
8. Any lines of defence
9. The need to maintain confidence in the Council as a prosecuting authority.

Prosecution proceedings should not be commenced in circumstances where there is not a reasonable prospect of success in securing a finding of guilt against the alleged offender.

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 individual or entity will not be a decisive consideration when determining whether to proceed with a prosecution.

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. Nevertheless, where the alleged offence is not as serious as plainly to require prosecution, Council as the prosecuting authority, will always apply its mind to whether the public interest requires a prosecution to be pursued.

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.

Compliance Matters of Special Consideration

Signage

Temporary Variable Message Signs

Illuminated temporary VMS' are viewed as important tools for promoting upcoming events occurring within the City and are required to have approval pursuant to the *Development Act 1993*. Furthermore, such signs also require approval pursuant to the *Local Government Act 1999* if they are being sought to be placed on Council land.

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

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 pursuant to section 221(1) 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:

1. When the Real Estate Sign is exempt from requiring development approval under the *Development Act 1993*
2. 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
3. There is a boundary fence which would otherwise obstruct views of the sign if it were to be placed on private property
4. The person responsible for installing these signs is responsible for ensuring public utilities and/or other public services located in the road reserve area is not damaged during the erection and removal of these signs.

LEGISLATIVE FRAMEWORK

There is no legislative requirement for Council to have a policy relating to this area.

Council is responsible for ensuring that its community and visitors to its area adhere to the various acts of Parliament and Council by-laws which regulate and control the actions of individuals in order to protect the broader community.

The Council is responsible for administering and enforcing compliance pursuant to the following legislation:

- a. [Local Government Act 1999](#)
- b. [Development Act 1993](#) and [Development Regulations 2008](#) (transitioning to [Planning Development and Infrastructure Act 2016](#) and associated regulations)
- c. [Dog and Cat Management Act 1995](#)
- d. [South Australian Public Health Act 2011](#)
- e. [Food Act 2001](#)
- f. [Fire and Emergency Services Act 2005](#)
- g. [Private Parking Areas Act 1986](#)
- h. [Road Traffic Act 1961](#)
- i. [Local Litter and Nuisance Control Act 2016](#)

Council may have the power to:

- a. Issue orders, notices and directions to individuals or entities requiring them to make good a breach of the relevant Act
- b. Commence enforcement action in a court of competent jurisdiction to obtain orders requiring breaches of the relevant Act to be rectified
- c. Commence criminal prosecutions against individuals or entities who have committed an offence under the relevant Act
- d. In some cases, issue an expiation notice where an individual or entity has committed an offence under the relevant Act.

Other references

Council's document including:

- a. Fees and Charges Register
- b. Order Making Policy
- c. Records Management Policy
- d. Animal Management Plan.

The Council is also authorised under the Local Government Act 1999 to create by-laws which apply in its area and is also responsible for taking action against individuals who contravene Council's By-laws. The By-laws relevant to this Policy are:

1. Council's By-law No. 1 - Permits and Penalties
2. Council's By-law No. 2 - Roads
3. Council's By-law No. 3 - Local Government Land
4. Council's By-law No. 4 - Dogs
5. Council's By-law No. 5 - Moveable Signs
6. Council's By-law No. 6 - Waste Management

A copy of the Council's By-laws can be obtained on the Council's website: www.cttg.sa.gov.au

External documents includes:

This policy is based on a model policy developed by the Local Government Association of South Australia.

STRATEGIC PLAN/POLICY

Strategic Plan

The following strategic objectives in Council's Strategic Plan 2025 are the most relevant to this report:

Objective	Comments
Environment	
<i>Environmentally valuable places and sites that are flourishing and well cared for</i>	<i>We are leaders in how we manage and care for our environment, we minimise the impacts of climate change, protect our community from public and environmental health risks, and actively promote sustainable and healthy living.</i>
<i>A community that is protected from public and environmental health risks</i>	<i>A safe community is one where people can be at home and move around in public places without fear and without risk of harm or injury</i>
Economy	
<i>People are supported to develop their leadership and employment capabilities</i>	
<i>Support the efficient use of land for valuable mineral extraction and energy resources</i>	
Leadership	
<i>Customer service provides a positive experience for people and is based on honesty and transparency</i>	<i>We are trusted to make good decisions that are in the best interests of our community.</i>
<i>Decision making is informed, based on evidence and is consistent</i>	<i>Council will be open and transparent about the manner in which it undertakes enforcement activities and the laws it enforces</i>

Organisation Plan

Our Strategic Plan is supported by an Organisation Plan which focuses on five key themes of organisational excellence. The themes most relevant to this report are: People and Leadership; Customers and community relations; Governance.

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 may only be made by Council or a delegate of Council.

CEO

Refers to the Chief Executive Officer (including their delegate) of the City of Tea Tree Gully.

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.

Enforcement

Enforcement refers to the use of legislative provisions to direct a person or body to make good a breach of the Act and / or otherwise penalise a person for a breach. Enforcement is a tool to ensure compliance and accountability for illegal conduct or other wrongdoing.

Illegal Activities

An act or activity which has occurred contrary to legislative obligations contained within legislation.

Order

Formal direction(s) issued by Council or Council delegate to a person or entity concerning a breach of a particular piece of legislation.

Prosecution

The process of instituting legal proceedings against a person or body in relation to an illegal activity, with the intent of penalising the person/body for illegal activity.

Real Estate Sign

A transportable sign used for the purpose of advertising the sale or lease of a specific piece of real estate.

SAPOL

Refers to the South Australia Police.

VMS

Refers to Variable Message Signs. VMS's are a form of temporary signage and includes associated trailers they are fixed to.

POLICY IMPLEMENTATION

This Policy will be implemented by the Chief Executive Officer or relevant portfolio director and managed in accordance with Council's scheme of delegations.

ACCESSIBILITY

This Policy and Council's Fees and Charges Register are available to be downloaded free of charge from Council's website: www.cttg.sa.gov.au

Hard copies, for a fee, can be provided in accordance with Council's Fees and Charges Register at Council's Civic Centre at 571 Montague Road, Modbury SA 5092.