District Council of
Loxton Waikerie

ENFORCEMENT POLICY

Responsible Officer/s	Manager Environmental Services
Relevant Legislation / Documents	Planning Development and Infrastructure Act 2016 Dog and Cat Management Act 1995 Fire and Emergency Services Act 2005 Local Nuisance and Litter Control Act 2016 Local Government Act 1999 SA Public Health Act 2011
Adopted	17 June 2016
Reviewed	June 2025
Next Review	June 2029

A. Purpose

Local Government is charged with legislative responsibilities which protect individuals and the community as a whole. Council's customers include both those on whom the law places a duty and those whom the law protects. While 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.

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

In addition to enforcement, Council carries out a range of activities to ensure compliance such as community education programs to encourage conformance. Detailed policies and procedures about these specific activities may also apply.

Enforcement activities include:

- patrolling streets and public places
- inspecting premises either on a routine programmed basis or on a random basis; and
- responding to enquiries and complaints.

B. Objective

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

C. Policy

1. 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 and safety or to protect the environment) and take firm action against those who act unlawfully when circumstances warrant.

2. Principles of Good Enforcement

This policy has been developed to meet Council’s core values. Our core values are the principles, attributes, and qualities we hold as important that we will display in the way we go about our business.

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

2.1 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 focused 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.

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

2.3 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.

3. 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 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.

4. Decision Making

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

- Explaining legal requirements and, where appropriate, the means to achieve compliance
- Providing an opportunity to discuss points of issue where appropriate
- Allowing reasonable timeframes to achieve compliance
- Facilitating mediation between affected parties
- Issuing a verbal or written warning; or
- Enforcement actions such as issuing an expiation, issuing an order/direction or prosecution.

Enforcement decisions must 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 in writing.

In coming to a decision on the most appropriate means of enforcement, the officer shall consider, amongst other relevant factors:

- 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.

The following factors are to be ignored when choosing an enforcement strategy:

- any element of discrimination or bias against the person such as ethnicity, nationality, political association, religion, gender, sexuality, or beliefs; and
- possible political advantage or disadvantage to a government, person holding (or a candidate for) public office, or any political group or party.

Where a personal association or relationship with the alleged offender or any other person involved exists:

- an alternative person will make decisions where possible; and
- the facts about any conflict/relationship will be recorded in accordance with Council's Records Management protocols.

Written documentation will:

- include all the information necessary to make clear what needs to be done to comply with legal requirements, the required time frame and if necessary, the reasons for these actions and potential penalties for failing to comply with the request
- include the legislation contravened, measures necessary to ensure compliance and the consequences of non-compliance; and
- clearly differentiate between legal requirements and recommendations of good practice.

5. Enforcement Options

5.1 No Action

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

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.

5.2 Informal Action

Informal action to achieve compliance with legislation may include:

- offering verbal or written advice;
- verbal warnings and requests for action; or
- written warnings.

Advice from officers will be put clearly and simply and will be confirmed in writing.

The circumstances in which informal action may be appropriate include:

- the act or omission is not serious enough to warrant formal action;
- the duty holder's past history reasonably suggests that informal action will secure compliance;
- 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.

Where statutory action is not possible, but it would be beneficial in a wider public safety context to urge a particular outcome, such action will be taken by a senior officer of Council and the reasons recorded in accordance with Council's Records Management protocols. The recipient will be made aware that the requested actions are not legally enforceable.

5.3 Mediation

Where practical, Council will make mediation available. Mediation is a possible alternative where, after investigation, an officer determines that the problems being complained of are incapable of resolution through other 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.

5.4 Formal Action

5.4.1 Service of Orders and Directions

Various pieces of legislation specify the procedures which Councils 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 thing under specified circumstances; and/or
- issue directions specifying how the Order may be complied with.

Council Officers will use professional judgement and discretion to 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.

5.4.2 Action in Regard to a Default

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. Before doing 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 over a fair period, 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.

5.4.3 Service 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.

5.4.4 Prosecution

A prosecution will only proceed where there is a reasonable prospect that an offence can be proved 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; or
- 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's 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; and
- the likely length, expense, and outcome of a trial.

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

D. Availability

This Policy will be available for inspection at the Council Offices at Loxton or Waikerie during ordinary business hours at no charge.

Copies of this Policy will also be available from Councils website: www.loxtonwaikerie.sa.gov.au or postal copies may be obtained from the Council Office free of charge.

This policy will be available in Council's Electronic Document Management System (Content Manager).

E. Document history and version control

Date	Version	Authorisation	Amendment Details
17/06/2016	1.0	Council at the Meeting of 17 June 2016	First Version
15/06/2018	1.1	Council at the meeting of 15 June 2018	Addition of the notice availability and extension of review period to that of once in each term of Council
21/10/2022	1.2	Council	Updated policy into new template Added applicable legislation Amended responsible officer
16/07/2025	1.3	Council at the meeting of 16 July 2025	Transfer to new policy template Minor changes to text layout