	<p style="text-align: center;"><b>Enforcement Policy</b> <i>Policy No. ENVPOL 21</i></p>	<b>Version No:</b>	1
		<b>Responsible Officer/s:</b>	Team Leader – Development Services
		<b>Classification:</b>	Administration
		<b>Issued:</b>	20 February 2023
		<b>Next Review:</b>	February 2027

## 1. Introduction

District Council of Grant is charged with legislative responsibilities which protect individuals and the community as a whole. 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.

Enforcement activities include:

- Investigating private land and public places;
- Inspecting premises either on a routine basis or on a random basis; and
- Responding to enquiries and complaints.

## 2. Purpose

To provide a framework which guides Council and its officers in investigating and addressing matters of non-compliance within the community. The framework provides consistency and ensures that any action is proportionate to the circumstances. The framework ensures that transparency and procedural fairness principles are applied.

## 3. Definitions

<i>Order / Notice</i>	A written direction of Council requiring specific action to be taken to secure legislative compliance
<i>Expiation notice</i>	An expiation notice alleges that you committed an offence and sets out an expiation fee, which you can pay to expiate the offence rather than being prosecuted.

## 4. Policy Statement


Enforcement activity is underpinned by the principles of fairness, impartiality and transparent and accountable decision-making. Authorised Officers undertake enforcement activity in a fair, transparent, timely and consistent manner.

Council may prioritise enforcement activity and action according to the seriousness of the offences and degree of risk to the community. Any individual or business aggrieved by a decision of Council under this Policy may follow the steps set out in Council’s *Customer Service, Complaints and Request for Service Policy*.

## 5. Principles of Enforcement

Council will ensure that it adheres to the following principles:

### 5.1. Proportionality

	<p style="text-align: center;"><b>Enforcement Policy</b> <i>Policy No. ENVPOL 21</i></p>	<b>Version No:</b>	1
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		<b>Classification:</b>	Administration
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		<b>Next Review:</b>	<b>February 2027</b>

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 opportunity to discuss compliance issues.

Prosecution will generally be used as a last resort, or for continuous serious offences.

## 5.2. Consistency

Council will endeavour to 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. To assist with this officers will:

- Follow standard operating procedures wherever applicable;
- Ensure fair, equitable and non-discriminatory treatment;
- Record and store all relevant information relating to enforcement in accordance with Council's Records Management Policy; and
- Record any deviation from standard operating procedures and the reasons.

## 5.3. Transparency

Council will be open and transparent about the manner in which it undertakes enforcement actions and the legislation under which the action is enforced. 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, or required by legislation, give notice of Council's intent to commence formal action.
- Identify what action is required to achieve compliance and an appropriate timeframe for undertaking that action.
- Provide advice on the process for seeking a review of, or how to appeal against that decision, or required by legislation.
- Provide guidance on accessing relevant documents, legislation and where required, legal aid.

Enforcement decisions must be fair, consistent, balanced and relate to standards that ensures the public is adequately protected.

Where it is not practical to give notice due to inherent risk to the community, the reasons why will be recorded in accordance with Council's Records Management Policy detailing what action has been taken and why that action has been taken at the earliest opportunity.

## 5.4. Authorisation of Officers

	<p style="text-align: center;"><b>Enforcement Policy</b> <i>Policy No. ENVPOL 21</i></p>	<b>Version No:</b>	1
		<b>Responsible Officer/s:</b>	Team Leader – Development Services
		<b>Classification:</b>	Administration
		<b>Issued:</b>	20 February 2023
		<b>Next Review:</b>	<b>February 2027</b>

Only Officers who have the required training, qualification and/ or experience will be authorised by Council or its delegate to take enforcement action. Officers will also have sufficient training and understanding of Councils policies and processes to ensure a consistent approach to their duties.

## 6. Enforcement

### 6.1. No Action

Authorised Officers may determine to take no action in a matter if:

- No offence has been committed;
- The alleged offence is trivial in nature;
- The complaint is vexatious;
- There is insufficient evidence that an offence or wrong has been committed or the offender can't be identified; and/or
- Taking action may prejudice more significant considerations or investigations by Council.

### 6.2. Informal Action

Despite a law or by-law being contravened, Authorised Officers have discretion to take informal action in a matter to achieve compliance if:

- The act or omission is not serious enough to warrant formal action;
- It is reasonably believed that informal action will achieve compliance;
- The consequences of non-compliance will not pose a significant risk to the community;
- Informal action may prove more effective than a formal approach.

Informal action to achieve compliance with legislation may include:

- Providing verbal or written advice on the matter, which may include recommendations to prevent further non-compliances
- Requesting a lawful action be undertaken within a specified timeframe
- A verbal or written warning with a request for remedial action


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 Policy*.

### 6.3. Formal Action

Where informal action has failed to achieve the desired outcome, or where there are greater public interests, or due to the seriousness, systemic or ongoing nature of the matter; the following actions will be considered.

#### 6.3.1. Service of Orders and Directions

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

	<p style="text-align: center;"><b>Enforcement Policy</b> <i>Policy No. ENVPOL 21</i></p>	<b>Version No:</b>	1
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		<b>Classification:</b>	Administration
		<b>Issued:</b>	20 February 2023
		<b>Next Review:</b>	<b>February 2027</b>

- 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.

#### 6.3.2. Action in Regard to a Default

Failure to comply with Orders will incur further enforcement action and/ or 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 Authorised Officer of Council with appropriate delegated authority.

#### 6.3.3. Service of an Expiation Notice

Various Acts allow Councils to issue expiation notices for a range of matters. Council will avoid using expiation notices as a means of securing compliance in the first instance, unless:

- There has been a failure to correct an identified breach of a similar nature after informal or formal action, or;
- There is evidence of systemic, regular or ongoing breaches of legislation, by an individual or range of individuals and informal action is unlikely to achieve the desired outcome effectively or efficiently, or
- The breach creates a significant risk to the community, or
- There is a desire to provide appropriate disincentive for the behaviour or breach.

A person receiving an Expiation Notice is entitled to elect to be prosecuted for the alleged offence, as such Council officers must have sufficient and

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		<b>Next Review:</b>	<b>February 2027</b>

admissible evidence to prove the offence beyond reasonable doubt as if the matter was proceeding to court.

When issuing an expiation notice an authorized officer of Council should have regard to the relevant provisions set out in the *Expiation of Offences Act 1996*.

#### 6.4. Mediation

Mediation is a possible alternative where, after investigation, Council Officers consider that the matter is unlikely to be easily resolved 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; or where Council has no legal authority to act.

If deemed appropriate by the relevant officer, Council will provide guidance and information on suitable mediation services, if both parties agree.

Council will not contribute to the costs of mediation, any costs associated with mediation services is the responsibility of both parties.

#### 6.5. 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;

	<p style="text-align: center;"><b>Enforcement Policy</b> <i>Policy No. ENVPOL 21</i></p>	<b>Version No:</b>	1
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		<b>Classification:</b>	Administration
		<b>Issued:</b>	20 February 2023
		<b>Next Review:</b>	<b>February 2027</b>

- 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 (or delegate).

#### 6.6. Recovery of Costs

Council will seek to recover enforcement action costs and expenses. A notice will be served in accordance with applicable legislation requiring the offender to pay Council the reasonable accosts and expenses incurred by Council in taking such action.

### 7. Responsibilities

<b>Role</b>	<b>Responsibility</b>
<i>Authorised Officers</i>	<ul style="list-style-type: none"> <li>- Undertaken enforcement activity and action in accordance with this Policy.</li> <li>- Suggests mediation as an alternative to formal action</li> <li>- Recommend prosecution, where warranted</li> </ul>
<i>Chief Executive Officer (or delegate)</i>	<ul style="list-style-type: none"> <li>- Approve the commencement of prosecution proceedings</li> </ul>

### 8. References / Other Documents

#### 8.1. Legislation

*Australian Road Rules*

*District Council of Grant By-Laws*

*Development Act 1993*

*Dog and Cat Management Act 1995*

*Environment Protection Act 1993 - Water Quality Policy*


*Expiation of Offences Act 1996*

*Fire and Emergency Services Act 2005*

*Food Act 2001*

*Graffiti Control Act 2001*

*Local Government Act 1999*

	<p style="text-align: center;"><b><i>Enforcement Policy</i></b> Policy No. ENVPOL 21</p>	<b>Version No:</b>	1
		<b>Responsible Officer/s:</b>	Team Leader – Development Services
		<b>Classification:</b>	Administration
		<b>Issued:</b>	20 February 2023
		<b>Next Review:</b>	<b>February 2027</b>

*Local Nuisance and Litter Control Act 2016*

*Impounding Act 1920*

*Planning, Development and Infrastructure Act 2016*

*Road Traffic Act 1961*

*South Australian Public Health Act 2011*

## **8.2. Council Policies / Procedures**

*Employee Code of Conduct*

*Customer Service, Complaints and Request for Service Policy.*

*Delegations Register*

*Order Making Policy*

## **9. Review**

This Policy shall be reviewed by the District Council of Grant at a minimum, once within every four (4) year Council term (or on significant change to legislation or other matters which could affect this policy).

<b>Action</b>	<b>Date</b>	<b>Minute Reference</b>
Adopted by Council	20 February 2023	23028