

Enforcement Policy

GOV-ENF 001

Authority and Other Information

Date of approval	28 September 2016
Source of approval	Council Resolution No. 15.041/16*
Date of commencement	28 September 2016
Source of authority	<ul style="list-style-type: none"> • <i>Local Government Act 1993</i> • <i>Building Act 2000</i> • <i>Dog Control Act 2000</i> • <i>Environmental Management and Pollution Act 1994</i> • <i>Food Act 2003</i> • <i>Land Use Planning and Approvals Act 1993</i> • <i>Urban Drainage Act 2013</i> • <i>Public Health Act 1997</i> • <i>Litter Act 2007</i> • <i>Weed Management Act 1999</i> • <i>Road Rules 2009</i> • <i>Council By-laws</i>
Legislative Reference	<ul style="list-style-type: none"> • Part D of the <i>Local Government Act 1993</i> • Section 18 and Part II of the <i>Building Act 2000</i> • <i>Dog Control Act 2000</i> • Section 20A and Part 4 of the <i>Environmental Management and Pollution Act 1994</i> • Section 97 and Parts 4 and 5 of the <i>Food Act 2003</i> • Section 48 of the <i>Land Use Planning and Approvals Act 1993</i>. • Parts 3, 4 and 5 of the <i>Urban Drainage Act 2013</i> • Section 27 and Division 3 of Part 2 of the <i>Public Health Act 1997</i> • <i>Litter Act 2007</i> • Sections 13 and 14 of the <i>Weed Management Act 1999</i> • <i>Road Rules 2009</i> • <i>Council By-laws</i>
Delegations	Delegation Nos. 1(xxxviii), 5(xviii), 10(ii), 13(19)
Strategic Plan Reference	5
Date of review	At least once every four years but not later than September 2020 or as required as a result of any legislative change
Previous policies withdrawn or amended	<i>Enforcement Policy 14 May 2014</i> adopted 14 May 2014 by Council Resolution No. 16.030/14*
Department responsible for implementation	Regulatory and Development Services/Infrastructure Services
Department responsible for policy	Regulatory and Development Services
Publication of policy	A copy of the policy be placed on the Council's website and copies be made available for inspection at and free of charge from the Council's Customer Service Centre

1. Purpose and Background:

1.1 Background

The Council is responsible for the administration of the following legislation, inter alia;

- *Local Government Act 1993*
- *Building Act 2000* and associated regulations
- *Dog Control Act 2000* and associated regulations
- *Environmental Management and Pollution Control Act 1994* and associated regulations
- *Food Act 2003* and associated regulations and guidelines
- *Land Use Planning and Approvals Act 1993*
- *Urban Drainage Act 2013*
- *Local Government (Highways) Act 1982*
- *Public Health Act 1997*
- *Litter Act 2007*
- *Weed Management Act 1999*
- *Road Rules 2009*
- *Council By-laws*

While administration incurs a general requirement for enforcement, there are specific provisions with legislation that requires a Council to ensure or take reasonable steps to ensure that legislation is complied with and enforced including:

- Section 18 of the *Building Act 2000*
- Section 20A of the *Environmental Management and Pollution Control Act 1994*
- Section 97 of the *Food Act 2003*
- Section 48 and 63A of the *Land Use Planning and Approvals Act 1993*. This creates an offence for a Council that fails to take reasonable steps to enforce a planning scheme.
- Section 27 of the *Public Health Act 2000*

The enforcement of relevant legislation aims to:

- Ensure protection of both public and private property;
- Minimise legal action;
- Increase the public's confidence in the Council; and
- Protect public safety and to promote community health and well-being.

1.2 Purpose

The purpose of the Enforcement Policy is to ensure consistent, prompt and impartial handling of enforcement matters and provide guidance in making decisions in relation to enforcement providing a defined and measurable outcome.

2. Definitions:

In this Policy:

“Authorised Officer” means a Council Officer or person appointed by the General Manager or the Council for the purposes of administering and enforcing legislation

“Council” means the Huon Valley Council

“Enforcement” means to make people obey something, or to compel obedience to a law, regulation or command

“Legislation” means any statute, regulation rule or Council By-law for which Council has administration and enforcement functions and powers.

3. Policy Statement:

Council’s enforcement of legislation will be consistent, prompt and impartial having regard to the following principles which are to be taken into consideration when determining how appropriate it is to embark on enforcement action in the particular circumstances including:

3.1 Discretionary Power

Council’s enforcement action is a discretionary function power and consideration must be given to individual merits of pursuing action before embarking on the enforcement process.

The requirement to enforce compliance with the law is a mandatory obligation of most of the Acts Council administers. These Acts provide the specific legislative framework for Council to enforce the rules and regulations. While these Acts provide the enforcement tool, how Council choose to enforce remain at its discretion. This is necessarily so when considering that compliance and enforcement is complex in law and usually complicated by many factors, all having a bearing one way or another on an appropriate response.

3.2 Enforcement Action Types

Council’s Enforcement Action are to involve a number of types and steps to achieve compliance by:

- Voluntary compliance (guidance, information or improvement notices)
- Directed compliance (building orders, infringement notices); and
- Compulsory enforcement (prosecution, court orders or undertaking work required in a Notice or an Order).

The process of undertaking enforcement is a staged one of promoting awareness and providing assistance, warnings, issuing of enforcement notices and in serious cases, prosecution. The need to take enforcement action will arise because a breach of the legislation or a breach of a statutory consent has arisen.

3.3 Compulsory Enforcement

Enforcement action may at times prove necessary for Council to prevent undermining of the relevant legislation, as well as ensuring a precedent is not set by a failure to take enforcement action. The prevalence of the offence may at times add weight to the decision to take enforcement action due to the need for deterrence or to discourage repeat offenders.

3.4 Natural Justice

The Council will ensure that any person against whom a complaint is made and is being considered under this Policy in relation to a potential breach or contravention of legislation is provided with natural justice and procedural fairness.

3.5 Proportionality

Enforcement action is to be taken against the right person for the appropriate offence and the action taken must be in proportion to the magnitude of the offence.

3.6. Public Interest

Public Interest is used in ascertaining the scope of the breach. Relevant considerations include whether the breach resulted in a failure to achieve the aims and objectives of the Legislation.

Public interest or benefits will be weighed up against the cost to the Council of enforcement action.

In considering the public interest Council will have regard to whether the unlawful activity:

- Impacts a significant number of people;
- Will impact or disadvantage the community;
- Has attracted sustained public attention and no resolution is proposed or is likely;
- Creates public health and safety hazard and/or exposure of legal liability to the Council.
- Is consistent or inconsistent with the environment in which the activity is being undertaken taking into account relevant considerations such as land use, time of day, duration and reasonableness of the activity in the circumstances.

3.7 Fairness and Consistency

Duties are to be carried out in a manner fairly showing consistency and impartiality, whilst not discriminating on the basis of gender, age, race political associations or any other reasons.

3.8 Effectiveness

Enforcement action is to be effective without unnecessary escalation incurring time, costs to Council and associated parties and the desired outcome whilst still respecting the principles of natural justice, procedural fairness and providing opportunities for voluntary compliance where possible.

3.9 Legislative Compatibility

Any enforcement action must be carried out within the limitations of the powers conferred on Council under legislation, whilst ensuring they remain compatible with other published policies of Council.

3.10 Compliance

Voluntary Compliance will be considered, where appropriate.

3.11 Sufficiency of Evidence

The costs of enforcement action itself will not deter Council taking action however, there must be sufficient evidence available to provide a reasonable chance of success in enforcement proceedings.

3.12 Outcome

Where an offending party has an ability to right or legalise an activity undertaken by them without necessary approval or otherwise in contravention of legislation, opportunities for doing so will be explored and provided in appropriate circumstances. A reasonable period of time will be provided to achieve such an outcome however further enforcement action may be required to ensure that this occurs.

3.13 Relevant Factors

In determining appropriate compliance and enforcement options a number of factors (both mitigating or aggravating) will be considered including, but not limited to:

- Whether the alleged offender committed the breach deliberately or by mistake;
- Whether the alleged offender has shown a willingness to co-operate with Council and to comply in the future;
- Whether the alleged offender has a history of prior breaches and, if so:
 - a. Whether Council has taken action;
 - b. Whether the breach is continuing
 - c. Time which has elapsed since the breach /activity occurred
 - d. Attitude of the Offender

3.14 Nature of Complaint

Council will only become involved in what an Authorised Officer would reasonably consider to be neighbour and civil dispute (usually, but not always characterised by multiple and personal complaints about other parties) where it can be established by objective and independent evidence that an issue of concern giving rise to Council enforcement processes exists. In the absence of such evidence Council will not be in a position to undertake any enforcement action or be a party to the dispute.

Where it is established that Council should become involved the Authorised Officer will use their discretion to ascertain whether a full property audit should be conducted in relation to all parties involved in the dispute.

Where there are complaints of a private nuisance occurring from one private property to another and, despite Legislation enabling the Council's involvement, the Council will only exercise its discretion to become involved where, in the opinion of the Authorised Officer, the nuisance has a potential impact greater than one or two properties, has a potential major impact upon the health, welfare or safety of any person or for any structure on the property and has a potential impact upon Council infrastructure or service delivery or in the circumstances of any previous Council involvement it is appropriate to do so. It will otherwise be a matter for parties to exercise their own civil rights in relation to a private nuisance.

3.15 Resources

Council must also give consideration to the resources that can be directed towards implementing Council's Enforcement Policy. Budgetary and Officer resources that can be utilised in areas implementing the enforcement policy are tightly controlled. There are also a limited number of Council employees with the appropriate delegations as Authorised Officers allowing them to carry out enforcement action.

4. Application:

The Policy applies to Council's responsibility for administration and enforcement of legislation including, but not limited to;

- *Local Government Act 1993*
- *Building Act 2000 and associated regulations*
- *Dog Control Act 2000*
- *Environmental Management and Pollution Control Act 1994 and associated regulations*
- *Food Act 2003 and associated regulations and guidelines*
- *Land Use Planning and Approvals Act 1993*
- *Local Government (Highways) Act 1982*

- *Public Health Act 1997*
- *Litter Act 2007*
- *Weed Management Act 1999*
- *Traffic Act 1925*
- *Road Rules 2009*
- *Urban Drainage Act 2013*
- *Council By-laws*

5. Procedures:

5.1 Delegations

The General Manager has authority to appoint Authorised Officers. Delegation of regulatory function is limited to the regulatory function of Council. Council's regulatory function has been delegated to Authorised Officers such that they may respond to routine compliance and enforcement requests and meet Council's service standards in the provision of regulatory functions.

Delegation is granted and authorisation granted for the purpose of the Legislation.

5.2 Powers of Authorised Officers

An Authorised Officer may exercise powers and functions provided under the Legislation for the purposes of this Policy including, but not limited to:

- Power of entry;
- Inspection and investigation powers;
- Examine and inspect any works, plant or other article;
- Make such examinations, inquiries and tests as the Authorised Officer considers necessary;
- Take such photographs, films, audio, video and other recordings as the Authorised Officer considers necessary;
- Require records to be produced for inspection;
- Examine and inspect any records;
- Copy any records;
- Issuing Infringement Notices; and
- Issuing Notices and Orders.

5.3 Priority for Enforcement Action

Any non-compliance with any Legislation and Council's response has to be prioritised. This will be dependent upon the degree of urgency involved, the circumstances of the breach of the Legislation and the outcome if not addressed within an appropriate time frame.

Any investigation will determine the nature and seriousness of the breach and the nature of the response will be determined on the following considerations:

Immediate:

- The degree of harm or potential harm resulting from the breach will be considered;
- Whether the breach seriously endangers human health or safety;
- Whether the harm caused by the breach is temporary or long lasting;
- Whether the breach is likely to create a liability for the Council.

Routine:

- Aims to encourage compliance with the laws enforced by Council.

Low:

- Technical breach objectives of relevant laws;
- No ongoing breach with any significant consequence.

5.4 Compliance and Enforcement Options

In accordance with this Policy an Authorised Officer may use the following compliance enforcement options (including a combination thereof) to achieve an appropriate outcome for breaches of legislation:

- Provision of time to the alleged offender to take the necessary action to legalise any activity in breach of Legislation;
- Take no action;
- Educate or Counsel the alleged offender;
- Issue a First and Final Warning;
- Issue an Infringement Notice;
- Issue a Notice;
- Issue an Order; and
- Commence legal proceedings (whether prosecution for an offence or other enforcement action available under Legislation).

5.5 Notices and Orders

Certain legislation requires a notice and order to be issued to remedy the breach.

A person may, in accordance with a notice or order, make representations concerning a notice or order.

At every step in the process of dealing with notices and orders Authorised Officers will have regard to the current circumstances, any representations and other enforcement options.

Where a notice or order is not complied with, a determination will be made whether to pursue legal or other enforcement proceedings. This decision will be based on this Policy.

5.6 Procedures relating to Complainants

Where possible, taking into account Council's Privacy Policy, the *Personal Information Protection Act 2003* and the *Right to Information Act 2009* Complainant's details are to be kept confidential except in circumstances where Council is reliant upon evidence provided by the Complainant. In these instances Council will endeavour to maintain anonymity of the Complainant, however, this will not be possible in instances where such evidence is the subject of a court hearing or the requirement for disclosure of statutory declarations or other legal evidentiary documents.

Complainants will be advised prior to compliance action being taken if there is potential to be called for them to substantiate their evidence.

In instances where the complainant is unwilling to forego anonymity and substantiate evidence the case must be reviewed to ascertain if there is sufficient additional evidence of an objective nature to provide a reasonable chance of success in any enforcement proceedings.

Complainant's expectations of feedback concerning progress in any enforcement action must be managed in accordance with the privacy rights of the person against whom the complaint has been made.

5.7 Procedures

When the initial complaint has been received and prioritised, the procedures for the specific unit areas as may be determined by the General Manager in accordance with this Policy are then followed to determine the next course of action.