

Notice and Order Enforcement Policy

GOV-ENF 002

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"> • Part 12 of the <i>Local Government Act 1993</i> • Part 11 of the <i>Building Act 2000</i> • Part 5A of the <i>Environmental Management and Pollution Control Act 1994</i> and associated regulations • Part 4 of the <i>Land Use Planning and Approvals Act 1993</i> • Part VIII of the <i>Local Government (Highways) Act 1982</i> • Part 8 of the <i>Public Health Act 1997</i> • Part 3 of the <i>Litter Act 2007</i> • Parts 3, 4 and 5 of the <i>Urban Drainage Act 2013</i> • Sections 13 and 14 of the <i>Weed Management Act 1999</i> • Enforcement provisions of Council By Laws
Legislative Reference	<ul style="list-style-type: none"> • Part 12 of the <i>Local Government Act 1993</i> • Part 11 of the <i>Building Act 2000</i> • Part 5A of the <i>Environmental Management and Pollution Control Act 1994</i> and associated regulations • Part 4 of the <i>Land Use Planning and Approvals Act 1993</i> • Part VIII of the <i>Local Government (Highways) Act 1982</i> • Part 8 of the <i>Public Health Act 1997</i> • Part 3 of the <i>Litter Act 2007</i> • Parts 3, 4 and 5 of the <i>Urban Drainage Act 2013</i> • Sections 13 and 14 of the <i>Weed Management Act 1999</i> • Enforcement provisions of Council By Laws
Delegations	Delegations No. 1(xxxviii), 5(xviii), 10(ii), 13(18), 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Previous policies withdrawn or amended	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>Notice and Order Enforcement Policy, January 2012</i> adopted 18 January 2012 by Resolution No. 18.007/12*
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 Council's website and copies be made available for inspection at and free of charge from Council's Customer Service Centre.

1. Purpose and Background:

1.1 Background

In accordance with relevant Legislation and Council's *Enforcement Policy* the Council may issue Notices or Orders requiring persons to undertake action within a specified time period to ensure compliance.

Examples include, but not limited to:

- Building and Demolitions Orders requiring a person to demolish unauthorised building work;
- Abatement Notices requiring persons to remove fire hazards;
- Abatement Notices requiring persons to undertake works with wastewater disposal systems to ensure that wastewater is contained within title boundaries;
- Abatement or specific Litter Abatement Notices requiring litter or rubbish to be removed from properties;
- Environmental Protection Notices requiring persons to undertake certain action to ensure that environmental impacts of an activity are addressed;
- Notices requiring accesses (crossovers) to be upgraded to a specified standard;
- Rectification Orders requiring works to be undertaken to bring a residence up to a healthy standard to avoid issue of a closure order; and
- Enforcement Notices requiring a person to comply with a Planning Scheme or condition of a Planning Permit.
- A Notice requiring a person to connect to Council's stormwater system.
- Requirement Notice to undertake action in relation to a declared weed.

Where the work is undertaken to the Council's satisfaction in accordance with the Notice or Order then no further action is required.

If a person fails to comply with a Notice or Order then the various Legislative provisions allows the Council to undertake the work.

Undertaking works under a Notice or Order can, depending on the required work, create a financial impost upon the person upon whom the Notice or Order has been served.

However where the Council undertakes the required work it then bears the initial cost of doing so and requires reimbursement from the property owner, where the debt is not immediately paid there is an impact upon the Council's budget with the Council carrying the debt until such time as it is repaid.

Depending on the relevant Legislative Provisions, the Council may seek to recover the costs of undertaking the work either as a debt due to the Council recoverable in a Court of competent jurisdiction or the cost may be applied as a charge on the property and recoverable in the same way as rates.

1.2 Purpose

The purpose of this Policy is to provide for a process for the taking of action by the Council for enforcement of Notices or Orders issued under Legislative Provisions and for the recovery of debts due and owing to the Council from undertaking works required under Notices or Orders.

2. Definitions:

In this Policy:

“Notice or Order” means any Notice, Order, Direction or Requirement made by the Council to a person in accordance with a Legislative Provision

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

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

3. Policy Statement:

3.1 Policy Statement

Where a person fails to comply with a Notice or Order that has been issued on them requiring them to undertake works, and Legislative Provisions provide for it, the Council will where appropriate, undertake the required works and seek to immediately recover the costs of doing so in accordance with this Policy.

3.2 Decision to Undertake Works

The decision to undertake the required works under a Notice or Order will be subject to consideration of relevant factors including, but not limited to:

- The time period for which the required works are to be undertaken
- Reasonable opportunity being provided to undertake the works along with progress being undertaken in undertaking the required works in meeting compliance and addressing the relevant issue
- Representations made by the person upon whom the Notice or Order has been issued
- Opportunities for the person to apply, and having made application for, “retrospective” approvals that may be available under the relevant Legislative Provisions
- The impact that delays in undertaking the required works may have upon public health and safety, the environment or the Council’s infrastructure.

3.3 Fire Hazards

Notwithstanding anything in Clause 3.2 the Council will undertake works to reduce actual or potential fire hazards where an Abatement Notice is issued under Sections 199 and 200 of the *Local Government Act 1993* in respect of a fire hazard has not been acted upon.

3.4 Debt Due and Owing to the Council

Where the Council undertakes works required under the Notice or Order such cost shall be payable by the person prior to the works be undertaken or immediately following the works being completed as a debt due and owing to the Council. Where available, such amount will be applied as a charge on the property and recoverable in the same manner as rates and charges.

Council will also apply its administrative costs associated with the work and may from time to time determine any such fee or charge under section 205 of the *Local Government Act 1993*.

3.5 Debt Recovery

Court action to recover any outstanding debt under this Policy may be commenced by the General Manager in the event that:

- No arrangement has been entered into and the amount has not been paid within 30 days of invoice or 60 days for any amount above \$1,000.00;
- Payment has not been made in accordance with any Agreement entered into under this Policy.

3.6 Debt Repayment Agreement

A person is required to enter into an arrangement to pay off the outstanding debt subject to the following conditions:

- The debt must be paid within a 12 month period.
- A daily interest rate will be applied equivalent to that applied to outstanding rates under section 128 of the *Local Government Act 1993*.
- Any failure to pay one or any instalment without prior arrangement with the General Manager will result in the total amount becoming due and owing.
- The agreement will be subject to such establishment fee or charge as the Council may determine from time to time under section 205 of the *Local Government Act 1993*.

3.7 Exceptional Circumstances

Any arrangement outside of this Policy, taking into account exceptional circumstances, will be required to be considered by the Council and must be accompanied by as much information as the General Manager may require.

Such matter will be considered in Closed Council pursuant to regulation 15(2) and (j) of the *Local Government (Meeting Procedures) Regulations 2015* (the personal affairs of any person) information of a personal nature or of personal hardship of any person.

3.8 Other Recovery of Costs

Where the Council may recover funds from undertaking required works under Legislative Provisions (such as selling materials), this may be undertaken by the General Manager at their discretion having considered the value of the relevant materials prior to determining the amount of the outstanding debt due to the Council.

3.9 Other Action

Nothing in this Policy prevents any other prosecution or enforcement action being undertaken in relation to the failure to comply with the Notice or Order.

3.10 Budget

Council will make a budget allocation toward undertaking of works required under Notices or Orders in accordance with this Policy. Such amount is as determined by the Council on a cost recovery basis from time to time when adopting the estimates in accordance with the *Local Government Act 1993*.

4. Application:

This Policy applies to the Council undertaking works required under Notices or Orders issued under Legislative Provisions, including, but not limited to:

- Part 12 of the *Local Government Act 1993*
- Part 11 of the *Building Act 2000*
- Part 5A of the *Environmental Management and Pollution Control Act 1994* and associated regulations

- Part 4 of the *Land Use Planning and Approvals Act 1993*
- Part VIII of the *Local Government (Highways) Act 1982*
- Part 8 of the *Public Health Act 1997*
- Part 3 of the *Litter Act 2007*
- Parts 3, 4 and 5 of the *Urban Drainage Act 2013*
- Section 13 and 14 of the *Weed Management Act 1999*
- Enforcement provisions of Council By Laws

5. Procedures:

The General Manager will determine any procedures required to implement this Policy.