

Infringement Notice Enforcement Policy

| Authority and Other Information | |
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| Date of approval | 17 October 2012 |
| Source of approval | Council Resolution No. 15.034/12* |
| Date of commencement | 17 October 2012 |
| Source of authority | <i>Monetary Penalties Enforcement Act 2005</i> |
| Legislative Reference | <i>Monetary Penalties Enforcement Act 2005</i> |
| Delegations | <i>Monetary Penalties Enforcement Act 2005 Delegations No. 17(1)-(7)</i> |
| Strategic Plan Reference | 5.1 |
| Date of review | To be reviewed once every three years with the first review on or before 30 September 2012 |
| Previous policies withdrawn or amended | <i>Huon Valley Council Infringement Notice Enforcement Policy (April, 2008)</i> |
| Department responsible for implementation | Planning & Legal Services |
| Department responsible for policy | Planning & Legal 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 Purpose

The objective of this Policy is to provide direction for the General Manager in exercising delegations made with regard to powers and functions under the Act and discretion with respect to enforcement of Infringement Notices to:

- withdraw an Infringement Notice;
- vary payment conditions of an Infringement Notice; or
- commence prosecution proceedings following lodging of a notice of election.

1.2 Background

Infringement Notices are issued by authorised Council Officers with respect to offences under a number of Acts, Regulations and By-laws administered by the Council.

Infringement Notices are in accordance with the Act.

Section 17 of the Act provides that a person served with an Infringement Notice must within the period of the notice (28 days) do one or more of the following:

- Pay the penalty stated on the notice in full to the Council;
- Apply to the Council for withdrawal of the infringement notice;
- Apply to the Council for a variation of payment conditions;
- Lodge with the General Manager a notice of election to have the offence or offences set out in the infringement notice heard and determined by a court.

For fairness and transparency to a person issued with an infringement notice (the Person) these options will be stated on all Council Infringement Notices.

Section 24 of the Act allows the Council to withdraw an infringement notice on an application by the Person or on its own motion.

Section 28 of the Act allows the Council to vary payment conditions which means the extension of time to pay the penalty but is to include a reduction in the penalty payable.

Sections 21, 39 & 40 of the Act provide responsibility for Council to decide whether to prosecute an offence in an Infringement Notice when a notice of election has been lodged with Council.

2. Policy statement:

2.1 Policy

Infringement Notices issued by Council Officers will be enforced except where in the interests of justice it is appropriate to take no further action or reduce the penalty payable in respect of the notice.

2.2 Policy Considerations

In considering the interests of justice in determining applications made to the Council and the exercise of the delegation or discretion to withdraw an Infringement Notice or vary payment conditions of a notice (extension of time for payment or reduction of penalty) the General Manager is to have regard to the following factors:

- The gravity or seriousness of the offence and the conduct of the person in dealings with Council Officers with respect to the circumstances associated with the offence.
- Whether a legal defence is raised and substantiated – This is to be supported by relevant documentation.
- Whether there has been a misidentification of the person committing an offence – This must be supported by an appropriate statutory declaration identifying the actual offender where possible.
- Any mitigating factors that justify a person's actions/inactions constituting an offence.
- Any legal advice that there is insufficient *prima facie* evidence to support a charge should it proceed to prosecution.
- Whether the offence is part of a pattern of offences and it is appropriate to withdraw the Infringement Notice and commence prosecution proceedings.
- The financial circumstances of the person issued with an Infringement Notice and their ability to pay – This must be supported by relevant financial information which at all times will be treated as confidential in accordance with the Council's Privacy Policy.

Applications for an extension of time to pay a penalty under an Infringement Notice are to be considered favourably where appropriate but a decision to extend time is not to prejudice the Council's ability to enforce the notice and will not exceed 5 months from the date of issue of the Infringement Notice.

Applications that do not address the above or clearly evidence an intention to delay enforcement will be refused.

3. Application

This Policy applies to all Infringement Notices.

4. Definitions

In this Policy the following definitions apply:

“Act” means the *Monetary Penalties Enforcement Act 2005*.

“General Manager” means the General Manager of the Council appointed under the *Local Government Act 1993*.

“Infringement Notice” means an infringement notice issued by the Council under any Act, Regulation or By-law administered by the Council.

5. Procedures

5.1 Act Processes

The processes for withdrawing an Infringement Notice, varying terms of payment and accepting a notice election are to be undertaken in accordance with the Act.

5.2 Enforcement

Before an Infringement Notice that has not been paid is referred to the Director of the Monetary Penalties Enforcement Service for enforcement the General Manager is to:

- Give a “First and Final Notice” to the Person issued with the Infringement Notice requiring payment to be made within 7 days and briefly advising of the possible consequences of failing to make payment under the Act.
- Consider any applications for variation of payment details (extension of time only) made with respect to the infringement notice within that period.
- Have the Infringement Notice reviewed to establish that there is sufficient *prima facie* evidence to support enforcement of the Infringement Notice – that is there is evidence to support commencement of prosecution proceedings with respect to the offence. If advice is provided that there is insufficient *prima facie* evidence with respect to the Infringement Notice the General Manager is to withdraw the notice.

Having undertaken the above and the penalty remains unpaid and the notice has not been withdrawn the General Manager is to refer the notice for enforcement to the Director of the Monetary Penalties Enforcement Service as determined by the General Manager.

5.3 Where a person issued with an Infringement Notice has lodged a notice of election to have the matter heard by a Court the General Manager is to have the Infringement Notice reviewed to establish that there is sufficient *prima facie* evidence to support prosecution of the offence for which the Infringement Notice was issued, there are no legal defences raised and there is a likelihood of success for the prosecution.

If advice is provided that there is insufficient evidence with respect to the offence the General Manager is to withdraw the Infringement Notice otherwise he may commence prosecution proceedings.

6. Review

This Policy will be reviewed at least once every 3 years.