

POLICY NO EP02 COMPLIANCE POLICY

DEPARTMENT:	All Departments
RESPONSIBLE OFFICER:	Development Services Coordinator
LINK TO STRATEGIC PLAN:	Ensure Council services support the betterment of the community while balancing statutory requirements with community and customer needs.
STATUTORY AUTHORITY:	<ul style="list-style-type: none"> • Local Government Act 1993 • Building Act 2016 and • Dog Control Act 2000 • <i>Environmental Management and Pollution Control Act 1994</i> • Food Act 2003 • Land Use Planning and Approvals Act 1993 • Local Government (Highways) Act 1982 • Public Health Act 1997 • Litter Act 2007 • Bio Security Act 2019 • Traffic Act 1925 • Road Rules 2019 • Council By-laws • Cat Management 2019
OBJECTIVE:	To establish a framework for how compliance matters are to be enforced and minimise Council's legal liability including, risk to the community, providing consistent enforcement actions, ensuring transparency and procedural fairness.
POLICY INFORMATION:	Adopted 19 March 2012 – Minute No 03/12.15.4.069 Amended 16 April 2018 – Minute No 04/18.15.5.98 Amended 18 October 2021 – Minute No 10/21.16.2.229 Amended 26 June 2023 – Minute No 06/23.16.4.155

POLICY

1. INTRODUCTION

Council is committed to ensure enforcement is carried out in the public interest and is transparent, fair, efficient and consistent.

This Enforcement Policy defines the standards and expectations set by Council, for the exercise of duties, functions and responsibilities involved in carrying out any enforcement in the Break O'Day Municipal Area.

2. DEFINITIONS

2.1 "Authorised Officer" means a person appointed by the General Manager, Minister or the Council for the purposes of administering and enforcing legislation.

- 2.2 Relevant to law “Authorised Person” has the same meaning as Authorised Officer.
- 2.3 “Council Officer” means an employee of a council appointed under section 21 of the Environmental Management and Pollution Control Act 1994.
- 2.4 “Council” means Break O’Day Council.
- 2.5 “Enforcement” means to make people obey something, or to compel obedience to a law, regulation or command.

3. SCOPE

3.1 The Policy applies to Council’s responsibility for administration and enforcement of legislation including, but not limited to:

- Local Government Act 1993
- Building Act 2016 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
- Local Government (Highways) Act 1982
- Public Health Act 1997
- Litter Act 2007
- Weed Management Act 1999
- Traffic Act 1925
- Road Rules 2019
- Council By-laws

3.2 Specific provisions within legislation that require Council to ensure or take reasonable steps to ensure that legislation is complied with and enforced include:

- Section 41 of the Building Act 2016
- 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
- Section 27 of the Public Health Act 1997

3.3 Council’s enforcement actions will be underpinned by the following principles:

(i) Proportionality

Enforcement action will be prioritised based on the seriousness of the offence assessed in accordance with Councils Compliance Matrix (see Appendix 1).

(ii) Public Interest and benefits

Public interest and 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:

- Significantly impacts people and property, business and industry, or the natural environment;

- Will disadvantage the community;
 - Has attracted sustained public attention and no correction is proposed or is likely;
 - Creates public health and safety hazards and/or exposure of legal liability to the Council; and
 - Fails the shared responsibility of achieving the Vision, Values and Goals of the Break O’Day Council Strategic Plan.
- (iii) Consistency
Council will take a similar approach in similar matters to achieve similar outcomes. While decisions on enforcement require the use of 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.
- (iv) Transparency
Council will be open and transparent about compliance actions where there is a requirement to do so. When remedial action is needed Council will explain why the action is necessary and will provide advice on the process for seeking a review of, or how to appeal against a decision.
- (v) Natural Justice
Natural justice and procedural fairness will be ensured to any person to whom a complaint relates.
- (vi) Independence
Authorised Officers will investigate compliance issues impartially and undertake enforcement action in a manner that is free from undue interference.

4. PROCEDURE

4.1 Delegations

Authorised Officers will be appointed such that they may respond to routine compliance and enforcement requests and meet Council’s service standards and the provision of statutory obligations.

4.2 Powers of Authorised Officers

An Authorised Officer may exercise powers and functions in accordance with their relevant delegation. For the purposes of this Policy, powers may include, but are not limited to:

- Power of entry;
- Inspection and investigation;
- Examine and inspect land, works, machinery, product or material or other article;
- Questioning and interview;
- Take photographs, films, audio and video;
- Require records to be produced for inspection;
- Examine, copy and inspect any records;
- Issuing of Infringement Notices;
- Issuing of Notices; and
- Commencing a prosecution process.

4.3 Staff Training

Council will ensure that Authorised Officers are competent to enforce relevant legislation and use procedures that support the Policy.

4.4 Compliance and Enforcement Options

An Authorised Officer with reference to Councils principles of enforcement actions (Section 4.3) may use the following compliance enforcement options to achieve an appropriate outcome for breaches of legislation:

(i) 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, for example when:

- The complaint is frivolous, anonymous, vexatious or trivial in nature;
- The alleged offence is outside Council's area of authority; or
- Taking action may prejudice other major investigations.

(ii) Informal Action:

Informal action to achieve compliance with legislation may include offering verbal or written warning or a request for action. The circumstances in which informal action may be appropriate include:

- The act or omission is not serious or is a first or not a wilful breach;
- Past history or commitments of the respondent reasonably suggest that informal action will secure compliance;
- The consequences of non-compliance will not pose a risk; or
- Where informal action may prove more effective than a formal approach.

(iii) Formal Action:

Formal action may take the form of the service of a Notice, Order together with an infringement notice and/or prosecution.

(a) *Service of Notices, Orders and Directions*

Various pieces of legislation require a notice, order or direction to be issued to remedy a breach. When legally required, Council will provide an opportunity to make representations concerning a notice, order or direction.

(b) *Service of an Infringement Notice*

Infringement Notices will be served in accordance with this policy for contravention of Council's By-laws or any Legislation that Council is authorised to enforce, in instances where prosecution has not commenced.

(c) *Prosecution*

Without limiting discretionary power provisions, Council will commence or continue a prosecution when:

- It is in the public interest to do so; or
- The offence is of a serious nature; or
- There has been an intent to gain; or
- The offence was intentionally committed.

The following factors will be taken into consideration in relation to Prosecution as an option:

- The need to maintain the rule of law and public confidence in the Council applying it (e.g. an offence which is a community safety issue);
- The need for deterrence, (e.g. an offence that represents a negative impact on the environment);
- The need to end continuation of an offence of adverse impact; and
- The offender has committed a similar breach previously.

5. GUIDELINES

5.1 Discretionary Power:

The requirement to enforce compliance with the law is a mandatory obligation of most of the Acts that Council administers. These Acts provide the specific legislative framework for Council to enforce rules and regulations. While these Acts provide the enforcement tool, how Council chooses to enforce remains at its discretion.

5.2 Priority for Enforcement Action:

Council's response to non-compliance will be prioritised using this policy. This includes the Break O' Day's Compliance Matrix (see Appendix 1) tool. This matrix aims to balance the offender's 'appetite' to comply with regulatory and legislative requirements with the seriousness of the offence.

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

- The degree of harm or potential harm to people, property or the natural environment resulting from the breach;
- The extent to which the breach endangers human health, safety, property or the natural environment;
- Whether the harm caused by the breach is temporary or long lasting;
- The resource implications associated with investigating the breach;
- Whether there has been an intent to gain;
- Whether the offence was intentionally committed;
- Whether the breach is likely to create a liability for Council;
- Whether the offender has committed previous offences;
- The offender's likelihood of compliance.

Any decision to commence an investigation will also be prioritised on the basis of the above considerations, along with other factors including the source and validity of the initial information.

6. OPTIONS FOR DEALING WITH AN INFRINGEMENT NOTICE

Council acknowledges the right of people issued with infringement notices to make an application for variation/withdrawal or lodge a notice of election to have the matter heard and determined by a court in accordance with relevant legislation. Any application or election must be provided in writing to the General Manager or in accordance with the instructions contained within the infringement notice. Any request in writing should set out the circumstances and mitigations for disputing the alleged offence or specific details including any relevant expert advice detailing why an offence has not been committed.

The review of any applications or elections shall be undertaken by Council's Development Services Coordinator and a recommendation made to General Manager.

A recommendation to withdraw an infringement notice (either partially or wholly) shall only be made in circumstances in which there has been an error of law or mistaken identity or at the discretion of the General Manager. In instances where relevant mitigations are present and the likelihood of a successful prosecution is compromised, a cautioned infringement notice letter of direction or signed undertaking may be issued on review.

7. INFRINGEMENT RECOVERY

Infringements that have not been actioned within appropriate time frames will be subject to a process to recover penalties. Depending on the circumstances of the infringement, this may entail referral to one of the following:

- The Monetary Penalty Enforcement Service;
- A private collection agency;
- Council's solicitors; or
- The Magistrates Court.

8. DISCLOSE AND CONFIDENTIALITY

Details of Council's enforcement action will remain confidential in accordance with the provisions of Council's Privacy Policy (LG29), the Personal Information Protection Act 2004 and the Right to Information Act 2009. However, Council reserves the right to disclose enforcement information when it is in the public interest to do so and in accordance with legal requirements.

Appendix 1 – Break O’Day Compliance Matrix

Break O Day Council Compliance Matrix		Escalation of Human Health or Safety and Environmental Harm (Actual or Potential)				
		LEVEL 1	LEVEL 2	LEVEL 3	LEVEL 4	LEVEL 5
Categories of Likely Compliance (Compliance History/Willingness and Capacity to Apply)	CAT A (High)	Verbal Advice & Education Required	Discretionary action with a written request for explanation and intentions	Formal Action Taken without Infringement	Formal Action Taken, issue of Notice & associated Infringement	Formal Action Taken, issue of Notice & associated Infringement
	CAT B	Discretionary action with a written request for explanation and intentions	Discretionary action with a written request for explanation and intentions	Formal Action Taken without Infringement	Formal Action Taken, issue of Notice & associated Infringement	Formal Action Taken, issue of Notice & associated Infringement
	CAT C	Formal Action Taken without Infringement	Formal Action Taken without Infringement	Formal Action Taken without Infringement	Formal Action Taken, issue of Notice & associated Infringement	Requires immediate action, Order & Infringement followed up with Legal proceedings
	CAT D	Formal Action Taken without Infringement	Formal Action Taken without Infringement	Formal Action Taken, issue of Notice & associated Infringement	Requires immediate action, Order & Infringement followed up with Legal proceedings	Requires immediate action, Order & Infringement followed up with Legal proceedings
	CAT E (Low)	Formal Action Taken without Infringement	Formal Action Taken without Infringement	Formal Action Taken, issue of Notice & associated Infringement	Requires immediate action, Order & Infringement followed up with Legal proceedings	Requires immediate action, Order & Infringement followed up with Legal proceedings

	Verbal Advice and Education Required - More likely to be a honest mistake or error
	Discretionary action with a written request for explanation and intentions in relation to the matter. May result in issue of Building Notice where offender becomes questionable or capapcity to comply is unclear.
	Formal Action Taken without Infringement - Offence results in written letter requesting application to be made or demolition of any approved works (where appropriate) including the issue of notice or order (where required)
	Formal Action Taken, issue of Notice & associated Infringement- Compliance File Raised and onsite compliance Investigation carried out. Infringement reccomended in these instances
	Requires immediate action, Order & Infringement followed up with Legal proceedings- Compliance file raised, Building Notice and Infringement Notice to be issued. If compliance and cooperation is not achieved then Legal Action and/or Criminal proceedings to be taken against offender. May require council to undertake works and recover costs.

CAT A (High)	<p>Indications of future and ongoing compliance are very high</p> <ul style="list-style-type: none"> • No previous occurrences of non-compliance; • Good demonstrated awareness of and/or capacity to meet regulatory requirement; and/or • Offender has a reasonable and cooperative attitude.
CAT B	<p>Indications of future and ongoing compliance are uncertain</p> <ul style="list-style-type: none"> • Few previous occurrences of non-compliance; and/or • Questionable awareness of and/or capacity to meet regulatory requirement.
CAT C	<p>Indications of future and ongoing compliance are unlikely</p> <ul style="list-style-type: none"> • Numerous previous occurrences of non-compliance; and/or • Little or no awareness of and/or capacity to meet regulatory requirement.
CAT D	<p>No indication of future and ongoing compliance</p> <ul style="list-style-type: none"> • Wilful violation of council regulatory requirement; and/or • Little or no demonstrated willingness or capacity to meet regulatory requirement.
CAT E (Low)	<p>Indications of obstruction and ongoing or future non-compliance</p> <ul style="list-style-type: none"> • Hindering or obstructing a council official; • Refusing to furnish required information; and/or • Intentionally including false or misleading information in any required document.

LEVEL 1	LEVEL 2	LEVEL 3	LEVEL 4	LEVEL 5
<ul style="list-style-type: none"> • Non-compliance that does not result or is unlikely to result in any environmental, human health or safety impact or financial gain for the offender; or • Minor administrative non-compliance. 	<ul style="list-style-type: none"> • Non-compliance resulting in a minor, temporary impact to the environment or minor, temporary threat to human health or safety or limited financial gain for the offender; or • Significant administrative non-compliance. 	<ul style="list-style-type: none"> • Non-compliance resulting in a moderate, temporary impact to the environment or moderate, temporary threat to human health or safety or moderate financial gain for the offender. 	<ul style="list-style-type: none"> • Non-compliance resulting in a significant impact to the environment or significant threat to human health or safety (may be temporary or permanent) or significant financial gain. 	<ul style="list-style-type: none"> • Known or likely human health impact that is severe in effect, i.e. resulting in death or multiple deaths, hospitalization and/or long term human health consequences.