Development &
Associated Public Realm (Urban Corridor)

Enforcement Policy
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<tr>
<th><strong>Reference Number:</strong></th>
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<td><strong>Type:</strong></td>
<td>Council Policy</td>
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| **Responsibility:**    | Director Community & Planning  
                        | Director Infrastructure & Environment |
| **Responsible Officer (s):** | Manager Development Services &  
                        | Manager City Maintenance & Community Safety |
| **Initial Adopted Date:** | TBA |
| **Last Review Date:**  | New Policy |
| **Next Review Date:**  | As required |
| **Legislation:**       | Development Act 1993  
                        | Development Regulations 2008  
                        | Planning, Development and Infrastructure Act 2016  
                        | Local Government Act 1999  
                        | Local Nuisance and Litter Act 2016 |
| **Related Documents:** | Building Inspection Policy  
                        | Business Use of a Road Policy  
                        | Customer Service Charter  
                        | Narrow Streets Policy and Procedure  
                        | Traffic Management Policy  
                        | Council By-Laws  
                        | City Works Permit  
                        | Crossover Permit  
                        | Application to Place Mini Skips/Containers |
1. Preamble

Local Government is charged with legislative responsibilities which protect individuals and the community as a whole. Council’s customers include both those on whom the law places a duty and those whom the law protects. 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 outlines Council’s approach to enforcement matters and provides staff with direction about the manner in which enforcement activities are to be undertaken.

In addition to enforcement, Council carries out a range of activities to ensure compliance such as community education programs to encourage conformance. Detailed policies and procedures about these specific activities may also apply.

Enforcement activities include:
- patrolling streets and public places;
- inspecting premises either on a routine programmed basis or on a random basis; and
- responding to enquiries and complaints.

2. Purpose of the Policy

- to provide consistency in enforcement action in matters of non-compliance;
- to ensure transparency, procedural fairness and natural justice principles are applied; and
- to ensure that enforcement action is proportionate to the alleged offence in each case.

It is intended to provide a co-ordinated policy approach to a number of related compliance issues within the Urban Corridors (Prospect Road, Churchill Road & Main North Road) of City of Prospect including:

- Compliance with Development Approvals;

Council is responsible for the assessment of development applications lodged within City of Prospect along with other relevant authorities including the State Planning Commission and Private Certifiers. Where development applications are granted consent of approval conditions are generally applied e.g. development is suitable subject to relevant conditions. Council has no legal obligation to enforce conditions of consent or approval, however in practise this does occur on an as required basis.

- Traffic and Pedestrian Management Plans around construction sites;

Council has a Traffic Management Policy that establishes a framework for the management of traffic on local roads throughout City of Prospect. The traffic management policy seeks to manage the competing demands on our roads and balance the needs of a broad range of road users with an appropriate level of amenity for the adjacent land uses. Council has adopted several local traffic management precincts which form the basis of local traffic management.
Significant urban development within the Urban Corridor Zone may require the approval (by Council) of a Traffic Management Plan for local roads or approval (by DPTI) for arterial roads.

- **Alterations and Damage to Public Infrastructure;**
  Council has a crossover permit process where new access points to a property require an application under the Local Government Act (Section 221).

  Where Council has identified that damage has been caused to public infrastructure through development or construction, Council will pursue the responsible parties to make good any damage.

- **Occupation of Council Spaces during construction (City Works Permits)**
  Council has a permit system in place for the occupation of Council space and land and an associated administration fee for occupation.

  Council has an application process for the placement of mini skips/containers on public land is received and the terms that govern placement on public land for which there is an associated administration fee. Terms and conditions are detailed within the application form.

3. **Definitions**

**Authorised Officer** - A person who is authorised to carry out statutory functions or powers as specified within a particular piece of legislation. The decision to appoint an Authorised Officer may only be made by Council or a delegate of Council.

**Complaint** – is an expression of dissatisfaction with a product or service provided by Council or its representative that has failed to reach the standard stated, implied or expected. A complaint to Council may relate to a decision by Council or its employees which may affect a ratepayer, community member, organisation or business.

"The following is NOT considered a complaint:
- A request for Council services (unless it is a second request, where there was no response to the first).
- A request for documents, information or explanation of policies or procedures.
- A request for Council to exercise a regulatory function (unless it is a second request, where there was no response to the first).
- The lodging of an appeal or objection in accordance with a statutory process, standard procedure or policy (unless this is recorded as a complaint about Council’s decision making. – this will be dealt with under Review of Council Decisions Policy). {City of Prospect’s Internal Review of Council Decisions Policy}
- A submission relating to the exercise of a regulatory function (e.g. An objection to a development application or a submission on a policy)."

Source: Extract from Practice Note No 9 Joint publication of the NSW Ombudsman & NSW Dept of LG
Compliance - The act of adhering to and demonstrating adherence to an Act, By-Law, Regulation or similar. Compliance may or may not involve the process of enforcement.

Council – City of Prospect

Development - for the purposes of the Policy, development involves

(a) building work; or
(b) a change in the use of land; or
(c) the division of an allotment; or
(d) the construction or alteration (except by the Crown, a council or other public authority (but so as not to derogate from the operation of paragraph (e))) of a road, street or thoroughfare on land (including excavation or other preliminary or associated work); or
(da) the creation of fortifications; or
(e) in relation to a State heritage place—the demolition, removal, conversion, alteration or painting of, or addition to, the place, or any other work that could materially affect the heritage value of the place; or
(f) in relation to a local heritage place—the demolition, removal, conversion, alteration or external painting of, or addition to, the place, or any other work (not including internal painting but including, in the case of a tree, any tree-damaging activity) that could materially affect the heritage value of the place; or
(faa) the external painting of a building within an area prescribed by the regulations for the purposes of this paragraph; or
(fa) in relation to a regulated tree—any tree-damaging activity; or
(g) prescribed mining operations on land; or
(ga) prescribed earthworks (to the extent that any such work or activity is not within the ambit of a preceding paragraph); or
(h) an act or activity in relation to land (other than an act or activity that constitutes the continuation of an existing use of land) declared by regulation to constitute development,

Source: Development Act 1993

Development Approval – an approval issued under the provision of the Development Act 1993

Employee/Staff - any person carrying out duties or performing tasks for and on behalf of City of Prospect, whether they are paid or unpaid (except if stated otherwise).

Elected Member – a person who has been elected to Council, including the Mayor.

Enforcement - Enforcement refers to the use of legislative provisions to direct a person or body to make good a breach of the Act and / or otherwise penalise a person for a breach. Enforcement is a tool to ensure compliance and accountability for illegal conduct or other wrongdoing.

Inspection - for the purposes of the Policy, an inspection involves the visual assessment of any building or land. An inspection is a comparison by an inspector (with or without assistants) of the visual observations of that building or land, the plans and details (if any) which form part of a development approval (or exemption), and any other relevant documents.

Person - includes all legal persons including bodies corporate.

Public Place - public place includes a street, road, square, reserve, park, lane, footpath, court, alley and thoroughfare which the public are allowed to use (whether formed on private property or not) and any public watercourse.

Public Realm - the area of publicly accessible land in vicinity of development sites including streets and laneways, squares, parks and open spaces.

Urban Corridor – the area of land zoned ‘Urban Corridor Zone’ within the Prospect (City) Development Plan.

4. Policy Statement

Council will observe its legislative responsibilities to protect individuals and the community as a whole. While it is ultimately the responsibility of individuals and other entities to comply with the law, State legislation provides the ability for Council to carry out compliance action.

Within the Urban Corridors City of Prospect will undertake a targeted compliance approach to urban development and the associated public realm to achieve the greatest community benefit within anticipated resources. A targeted compliance approach will involve Council staff targeting known areas of community interest, typically poor compliance and more significant types of development.

Development within Council’s Urban Corridor Zone (Churchill Road, Prospect Road and Main North Road) is highly visible, and has drawn significant community interest. These areas will be focus areas for compliance by Council staff.

5. Legislative and Corporate Requirements

The Development and Associated Public Realm (Urban Corridor) Enforcement Policy is to be read and implemented in conjunction with Council’s other relevant policies, strategies and documents, including:

- Building Inspection Policy
- City Works Permits
- Damage to Public Infrastructure
- Traffic Management Policy
- Application to Place Mini Skips/ Containers in the City of Prospect
- Business Use of a Road Policy

6. Defining Enforcement

Council adopts a broad definition of “enforcement” which combines the provision of advice and assisting compliance with formal action where necessary. This is intended to encourage higher levels of voluntary compliance with legal requirements by individuals, businesses and other bodies.
Notwithstanding the above, Council will take immediate action when required (for example to ensure public health and safety or to protect the environment) and take firm action against those who act unlawfully when circumstances warrant.

7. Principles of Good Enforcement

Enforcement actions are taken within the context of both a legal and policy framework. Council staff will carry out their enforcement related work with due regard to the following principles.

7.1 Proportionality

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 chance to discuss compliance problems.

Attention will be focussed on those whose activities give rise to the most serious risks, or where potential hazards are least well controlled. Depending on the seriousness and persistence of the infringement, Council will minimise the costs to the person or body infringing the law by enforcing the minimum action necessary to secure future compliance. Prosecution will generally be used as a last resort, or for continuous serious offences.

7.2 Consistency

Council will 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, 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.

7.3 Transparency

Council will be open and transparent about the manner in which it undertakes enforcement activities and the laws it enforces. It will consult on and provide ready access to published standards and levels of service and performance that can be expected and be clear and open about what is expected from those on whom the law places a duty (duty holders).

In educating the community at large and dealing with duty holders, Council will make a clear distinction between what is legally required and what is desirable but not compulsory.
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, it will give notice of its intent to commence formal action. It will point out what action is required to achieve compliance and the timeframe for undertaking that action. Advice will be provided on the process for seeking a review of, or how to appeal against that decision.

Where it is not practical to give notice, the reasons why will be recorded in accordance with Council’s Records Management protocols.

Complainants will be advised of what action has been taken and why that action has been taken.

8. Authorisation of Officers

Only officers who are competent by training, qualification and/or experience will be authorised to take enforcement action. Officers will also have sufficient training and understanding of Council’s policies and procedures to ensure a consistent approach to their duties. Any decision to act other than in accordance with this policy must have approval from the relevant Manager and the reasons for action recorded in accordance with Council’s Records Management protocols.

Officers are required to show their authorisations on demand.

9. Decision Making

Where non-compliance is discovered as a result of enforcement activities, options available to the Council to seek or promote compliance include:

- explaining legal requirements and, where appropriate, the means to achieve compliance;
- providing an opportunity to discuss points of issue where appropriate;
- allowing reasonable timeframes to achieve compliance
- facilitating mediation between affected parties;
- issuing a verbal or written warning; or
- enforcement actions such:
  - Issue an expiation notice where an individual or entity has committed an offence under the relevant Act.
  - Issue orders, notices and directions to individuals or entities requiring them to make good a breach of the relevant Act;
  - Commence enforcement action in a court of relevant jurisdiction to obtain orders requiring breaches of the relevant Act to be rectified;
  - Commence criminal prosecutions against individuals or entities who have committed an offence under the relevant Act;

Enforcement decisions must be fair, consistent, balanced and relate to common standards that ensure the public is adequately protected. Where a decision is made not to investigate a complaint, the decision and reasons will be recorded in accordance with Council’s Records Management protocols and the complainant will be advised in writing.
In coming to a decision on the most appropriate means of enforcement, the officer shall consider, amongst other relevant factors:

- the seriousness of the offence;
- the degree of wilfulness involved;
- past history;
- the consequences of non-compliance;
- the likely effectiveness of the various enforcement options;
- deterrence;
- the effect on the community and other people; and
- consistency of approach to similar breaches/offences.

The following factors are to be ignored when choosing an enforcement strategy:

- any element of discrimination or bias against the person such as ethnicity, nationality, political association, religion, gender, sexuality or beliefs; and
- possible political advantage or disadvantage to a government, person holding (or a candidate for) public office, or any political group or party.

Where a personal association or relationship with the alleged offender or any other person involved exists:

- an alternative person will make decisions where possible; and
- the facts about any conflict/relationship will be recorded in accordance with Council’s Records Management protocols.

Written documentation will:

- include all the information necessary to make clear what needs to be done to comply with legal requirements, the required time frame and if necessary, the reasons for these actions and potential penalties for failing to comply with the request;
- include the legislation contravened, measures necessary to ensure compliance and the consequences of non-compliance; and
- clearly differentiate between legal requirements and recommendations of good practice.

10. Enforcement Options

An inspection procedure will apply and will:

- include a standard-form inspection checklist;
- identify what evidence should be gathered during an inspection by an Authorised Officer of Council;
- set out what record keeping will occur, including how evidence gathered in the course of an inspection is to be filed; and
- set out what statistics must be identified and reported, including to whom and how such reports will be made.

All inspections will comply with the inspection procedure insofar as is reasonably practicable and the inspector in each case will complete the inspection checklist.

Council administers and enforces a broad range of legislation. As a result, enforcement options can vary with the Act being enforced. The range of legislation enforced by Council means that a range of enforcement options are available.
10.1 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 when:
- the complaint is frivolous, vexatious or trivial in nature;
- the alleged offence is outside Council’s area of authority; or
- taking action may prejudice other major investigations.

10.2 Informal Action

Informal action to achieve compliance with legislation may include:
- offering verbal or written advice;
- verbal warnings and requests for action; or
- written warnings.

Advice from officers will be put clearly and simply and will be confirmed in writing. The circumstances in which informal action may be appropriate include:
- the act or omission is not serious enough to warrant formal action;
- the duty holder’s past history reasonably suggests that informal action will secure compliance;
- confidence in the individual/other body is high;
- the consequences of non-compliance will not pose a significant risk; or
- where informal action may prove more effective than a formal approach.

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 protocols. The recipient will be made aware that the requested actions are not legally enforceable.

10.3 Mediation

Where practical, Council will make mediation available. Mediation is a possible alternative where, after investigation, an officer determines that the problems being complained of are incapable of resolution through other 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.
10.4 Formal Action

10.4.1 Service of Orders and Directions

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

- 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.

In most cases the person receiving the Order has a right of appeal to the appropriate court if the Order is considered unreasonable. If an Order is served for which an appeal is possible, Council will advise the recipient in writing of the right to appeal and the relevant legal provisions at the time of serving the Order.

Where there is evidence that an offence has been committed Council may issue an Expiation Notice or launch a prosecution in addition to serving an Order. This will only be done where it is determined that the conduct of the recipient justifies taking both steps.

10.4.2 Action in Regard to a Default

Failure to comply with Orders will incur further enforcement action such as launch of a 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 delegate.
Where an offence has been committed Council may issue an Expiation Notice or launch a prosecution in addition to taking action to fulfil an Order. This will only be done where the conduct of the recipient justifies taking such steps. Factors such as giving false information, the obstruction of Council staff and the harm or risk of harm caused by the recipient’s delay will be considered in determining additional enforcement actions.

10.4.3 Service of an Expiation Notice

A person receiving an Expiation Notice is entitled to elect to be prosecuted for the alleged offence. Hence there must be substantial, reliable and admissible evidence that an identifiable person or organisation has committed the alleged offence. In other words, there must be sufficient evidence on the face of it to enable a conclusion to be reached that there is a reasonable prospect of being able to prove an offence beyond reasonable doubt.

The following circumstances are likely to warrant an Expiation Notice:
- certain breaches of the legislation administered by Council;
- failure to correct an identified problem after having been given reasonable opportunity to do so by an Authorised Officer;
- failure to comply with the requirements of an Order;
- confidence in the individual/other body is low; or
- a written warning has been given for a similar offence.

11. Review

The Policy will be reviewed as required.

12. Access to the Policy

The Policy is available for public inspection on Council’s website www.prospect.sa.gov.au and from Customer Service at the Civic Centre, 128 Prospect Road, Prospect SA 5082.

13. Further Information

For further information about this policy please contact:
Manager City Maintenance & Community Safety or Manager Development Services
City of Prospect
128 Prospect Road
Prospect SA 5082

Phone 8269 5355
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