

# Development & Associated Public Realm (Urban Corridor)

## Enforcement Policy

<b>Reference Number:</b>	CR17/64212
<b>Type:</b>	Council Policy
<b>Responsibility:</b>	Director Community & Planning Director Infrastructure & Environment
<b>Responsible Officer (s):</b>	Manager Development Services & Manager City Maintenance & Community Safety
<b>Initial Adopted Date:</b>	December 2017
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<b>Next Review Date:</b>	December 2022
<b>Legislation:</b>	Planning, Development and Infrastructure Act 2016 Planning, Development and Infrastructure (General) Regulations 2017 Local Government Act 1999 Local Nuisance and Litter Act 2016
<b>Related Documents:</b>	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

**All contents within this Policy Document must be read in the context, and with the guiding principle, that Council had adopted a 'zero-tolerance' approach to higher density and commercial developers omitting external structures, materials, finishes, landscaping or other features required as part of their current development approval.**

**In relation to the enforcement of new developments, this policy adopts a 'zero tolerance' enforcement approach to breaches of a development approval by higher density and commercial developers within the Urban Corridor Zone. This means that swift action by Council can be expected.**

## **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 undertake activities which enforce compliance.

The content of this Policy is separated into two sections, recognising the distinct processes that apply to enforcement activities under the Local Government Act 1999 in relation to the public realm, and enforcement activities under the Planning, Development and Infrastructure Act 2016 in relation to breaches of a development approval.

This policy outlines Council's approach to enforcement matters and provides staff with clear direction about the manner in which enforcement activities are to be undertaken. In relation to issues that give rise to public health or safety risks, Council will act swiftly to ensure that such risks are mitigated.

In relation to the enforcement of new developments, this policy adopts a 'zero tolerance' enforcement approach to breaches of a development approval by higher density and commercial developers within the Urban Corridor Zone. This means that swift action by Council can be expected.

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.

Inspection activities that may lead to enforcement 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**

This Policy shall:

- provide consistency in enforcement action in matters of non-compliance;
- ensure transparency, procedural fairness and natural justice principles are applied;
- clearly indicate Council's expectations in relation to new developments within City of Prospect;
- ensure that enforcement action is proportionate to the alleged offence in each case; and
- 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, 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.

Council will take a compliance approach targeted at multi-storey and mixed use developments within Council's Urban Corridor Zone, with zero tolerance for breaches of approvals in relation to such developments. Council will endeavour to minimise the impact of rectification works upon new residents of such buildings through the use of enforcement powers at the earliest reasonably opportunity following the detection of breaches.

### **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 (buildings greater than two storeys in height) within the Urban Corridor Zone will require the approval (by Council) of a Traffic Management Plan for local roads or approval (by DPTI) for arterial roads prior to a local or arterial road being used for any purpose related to development.

### **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 (in some instances being the owner of land, in some cases being the person undertaking work, or in some cases being the applicant for a development approval) 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 skips/ containers 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 will NOT be 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 means

- (a) a change in the use of land; or
- (b) building work; 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
- (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—any work (including painting) that could materially affect the heritage value of the place (including, in the case of a tree, any tree-damaging activity) specified by the Planning and Design Code for the purposes of this paragraph (whether in relation to local heritage places generally or in relation to the particular local heritage place); or

- (g) the external painting of a building within an area specified by the Planning and Design Code for the purposes of this paragraph; or
- (h) in relation to a regulated tree—any tree-damaging activity; or
- (i) the creation of fortifications; or
- (j) prescribed mining operations on land; or
- (k) prescribed earthworks (to the extent that any such work or activity is not within the ambit of a preceding paragraph); or
- (l) an act or activity in relation to land declared by or under the regulations to constitute development, (including development on or under water) but does not include an act or activity that is declared by or under the regulations not to constitute development for the purposes of this Act.

*Source: Planning, Development and Infrastructure Act 2016.*

Development Approval – an approval issued under the relevant provisions of the Planning, Development and Infrastructure Act 2016.

Direction – is an action required to be undertaken, or a requirement to stop undertaking an action, given by Council or by an authorised officer. Directions may be given under Section 261 of the Local Government Act 1999, and Sections 211 or 213 of the Planning, Development and Infrastructure Act 2016.

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).

Enforcement - Enforcement refers to the use of legislative provisions to order or 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.

Inspector - an authorised officer of the Council, appointed under the Local Government Act 1999 and/or Planning Development and Infrastructure Act 2016.

Legislation – means the relevant law(s) expressed by the South Australian Parliament through acts and their associated regulations. In relation to this policy, a reference to legislation means a reference to the Local Government Act 1999, or the Planning, Development and Infrastructure Act 2016, or both.

Notice – is an item of written correspondence setting out orders and/or directions (including directions given by Council or by an authorised officer) under Section 255 of the Local Government Act 1999 and/or Section 213 of the Planning, Development and Infrastructure Act 2016.

Order – is a type of direction contained within a Notice with which a person must comply. Orders may be made under Section 254 of the Local Government Act 1999 in relation to certain matters (such as vegetation overhanging a footpath), or may be made by the Environment,

Resources and Development Court under Section 214 of the Planning, Development and Infrastructure Act 2016.

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 (Boulevard) Zone', 'Urban Corridor (Business) Zone', 'Urban Corridor (Living) Zone' and 'Urban Corridor (Main Street) Zone' within the Planning and Design Code.

# **Local Government Act Enforcement**

## **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 proactively targeting known areas of community interest, including the public realm impacts of more significant types of development.

## **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:

- City Works Guide
- Driveway Crossover Policy
- Footpath Trading Policy
- Order Making Policy
- Verge Development Policy

## **6. 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.

### **6.1 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 and rectify compliance problems.

Attention will be focussed on those whose activities give rise to the most serious risks, 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.



## **6.2 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.

## **6.3 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 enforcement 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.

## **7. 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.

## 8. 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 as:
  - Issue orders, notices and/or directions to individuals or entities requiring them to make good a breach of the relevant legislation within a specified time period (*where a person or company has broken the law, and that part of the law entitles Council to direct or order that a person undertake specified actions to remedy an identified, Council may serve an order, notice or direction upon that person or company*); or
  - Issue an expiation notice where an individual or entity has committed an expiable offence under the relevant legislation (*where a person or company has broken the law, and that part of the law carries a fine as a penalty, Council may fine that person or company*); or
  - Commence enforcement action in a court of relevant jurisdiction (such as the Magistrate's Court), to obtain orders requiring breaches of the relevant legislation to be rectified; or
  - Commence criminal prosecutions against individuals or entities who have committed an offence under the relevant legislation.

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 options;
- deterrence;
- the effect on the community and other people; and
- consistency of approach to similar breaches/offences.

To ensure non-discriminatory treatment, the following factors are not regarded as a proper basis as part of the decision making process:

- 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 conflict of interest (including 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, direction, notice or order (as relevant);
- 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.

## **9. Potential Inspection Outcomes**

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

Council administers and enforces a broad range of legislation. As a result, inspection outcomes can vary with the Act being enforced. The range of legislation enforced by Council means that a range of enforcement options are available as follows:

### **9.1 No Enforcement Action is Taken**

9.1.1 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.

9.1.2 Informal action to achieve compliance with the Local Government Act 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.

9.1.3 Where statutory action is not possible, but it would be beneficial in a wider public interest 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.

## **9.2 Enforcement Action is Undertaken**

### **9.2.1 Service of Orders, Notices and Directions**

The Local Government Act specifies the procedure 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.

Only in circumstances such as a threat to life or immediate threat to public health or safety can an Order be made under the Local Government Act without giving notice of intention. In these circumstances immediate compliance to resolve a situation can be required.

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.

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 (depending on which penalty action the relevant legislation allows), 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.

### 9.2.2 Action in Regard to a Default

Failure to comply with Orders will incur further enforcement action such as launch of a prosecution. 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.

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.

## **9.3 Service of an Expiation Notice**

Many breaches of the Local Government Act are not expiable offences (i.e. cannot be enforced by Council through the service of an expiation notice). Where a breach of the legislation is expiable, the person receiving an Expiation Notice is entitled to elect to be prosecuted for the alleged offence.

Given that a person is entitled to elect to be prosecuted, 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 may 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 a Notice or Order;
- confidence in the individual/other body is low; or
- a written warning has been given for a similar offence.

# **Planning Development and Infrastructure Act Enforcement**

## **10. Policy Statement – Planning, Development and Infrastructure Act**

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 to achieve the greatest community benefit within anticipated resources. A targeted compliance approach will involve Council staff proactively targeting known areas of community interest.

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, with a 'zero tolerance' approach to be used by Council staff in managing detected breaches of development approvals.

## **11. 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.

### **11.1 Proportionality**

A proportionate response means that Council's actions will be scaled to the seriousness of the breach. Any breach of a development approval (irrespective of its nature) within the Urban Corridor Zone is considered to be a serious breach.

Council recognises that most individuals want to comply with the law and will assist compliance by being open and helpful, offering advice and providing the chance to discuss and rectify compliance problems.

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 (typically Section 211 Directions and/or Section 213 Notices) to secure future compliance. Prosecution under Section 214 will generally be used as a last resort, or for continuous serious offences.

### **11.2 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 ensure fair, equitable and non-discriminatory treatment.

### **11.3 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).

Staff will be open to discussing potential and actual compliance failures, before, during and after enforcement action has been taken.

When remedial action is needed Council will explain clearly and in plain language why the action is necessary. 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.

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

## **12. 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.

## **13. Decision Making**

Enforcement decisions must be fair, consistent, balanced and relate to common standards that ensure the public is adequately protected. 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 options;
- deterrence;
- the effect on the community and other people;
- consistency of approach to similar breaches/offences.

To ensure non-discriminatory treatment, the following factors are not regarded as a proper basis as part of the decision making process:

- 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 conflict of interest (including 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 direction, notice or order (as relevant);
- clearly detail the alleged breach of development approval, in addition to the related obligation under the legislation; and
- clearly detail measures necessary to ensure compliance and the consequences of non-compliance.

## **14. Potential Inspection Outcomes**

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

The range of enforcement outcomes available to Council under the Planning, Development and Infrastructure Act 2016 are set out below, in order from least to greatest potential financial penalty:

### **14.1 No Enforcement Action is Taken**

14.1.1 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 received by Council 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.

### **14.2 Service of a Notice or Direction**

#### **14.2.1 Service of Section 213 Notice**



A Notice under Section 213 of the Planning, Development and Infrastructure Act is appropriate where a person or entity has:

- failed to complete or threatened to fail to complete (by, for example, removing scaffolding or equipment necessary to complete) elements of building work in accordance with the relevant development approval;
- failed to complete or threatened to fail to complete (by, for example, seeking a certificate of occupancy prior to completing hard and soft landscaping) hard or soft landscaping elements of a site in accordance with the relevant development approval; or
- failed to maintain building elements of a building or hard and soft landscaping elements of a site in accordance with the relevant development approval; or
- failed to comply with conditions of a relevant development approval.

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 a Notice (or its individual Directions) and the timeframe to comply.

The person receiving the Notice has a right of appeal to the appropriate court if the Notice is considered unreasonable. Council will advise the recipient in writing of the right to appeal and the relevant legal provisions at the time of serving the Notice.

#### **14.2.2 Issue of Section 211 Authorised Officer Direction**

A Direction under the Planning, Development and Infrastructure Act is appropriate where a person or entity has:

- failed to complete or threatened to fail to complete (by, for example, removing scaffolding or equipment necessary to complete) elements of building work in accordance with the relevant development approval;
- failed to complete or threatened to fail to complete (by, for example, seeking a certificate of occupancy prior to completing hard and soft landscaping) hard or soft landscaping elements of a site in accordance with the relevant development approval; or
- failed to maintain building elements of a building or hard and soft landscaping elements of a site in accordance with the relevant development approval; or
- failed to comply with conditions of a relevant development approval.

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 the Direction and the timeframe to comply.

### **14.3 Service of an Expiation Notice**

Many breaches of the Planning, Development and Infrastructure Act are not expiable offences (i.e. cannot be enforced by Council through the service of an Expiation Notice).

Where a person has breached the legislation by failing to comply with a Section 213 Notice, or failing to Notify Council of a required Inspection Stage, Council may serve an Expiation Notice on that person in relation to the breach.

The person receiving an Expiation Notice is entitled to elect to be prosecuted for the alleged offence. Given that a person is entitled to elect to be prosecuted, 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.

If a person makes payment having received an Expiation Notice for failure to comply with an Order under the Planning, Development and Infrastructure Act, this legally resolves the breach notwithstanding that no physical change has occurred in order to comply with the Order. Expiations will thus rarely be appropriate in relation to a failure to comply with a Section 213 Notice.

#### **14.4 Council to Undertake Actions in Default**

Failure to comply with Orders will incur further enforcement action such as launch of a prosecution. 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.

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.

#### **14.5 Application to Court under Section 214**

Many breaches of the Local Government Act and Planning, Development and Infrastructure Act are not expiable offences (i.e. cannot be enforced by Council through the service of an expiation notice). Where a breach of the legislation is expiable, the person receiving an Expiation Notice is entitled to elect to be prosecuted for the alleged offence.

## **15. Review**

The Policy will be reviewed on or about December 2022, and subsequently reviewed every four (4) years.

## **16. Access to the Policy**

The Policy is available for public inspection on Council's website [www.prospect.sa.gov.au](http://www.prospect.sa.gov.au) and from Customer Service at Payinthe, 128 Prospect Road, Prospect SA 5082.

## **17. 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  
Email [admin@prospect.sa.gov.au](mailto:admin@prospect.sa.gov.au)