

Title	Enforcement Policy
Council Resolution	Item 15 (30 July 2018) as per Council Minutes
Responsible Directorate	Corporate Governance
Due for Review	Four (4) years from Council Resolution Date
Strategic Plan Reference	<u>Leading our community</u> 4.1 Govern in an open and responsible manner in the best interests of the community 4.3 Foster relationships to deliver community outcomes
ECM	Council policy

PURPOSE

This policy sets out Council's approach to the taking of enforcement action and provides guidance to Council staff about how enforcement action is to be undertaken. Its objectives are to:

- (a) provide consistency in enforcement action for matters of non-compliance;
- (b) ensure that principles of transparency and procedural fairness are applied in all cases; and
- (c) ensure that the enforcement action taken is proportionate to the alleged offence.

SCOPE

This policy applies to all enforcement action taken by or on behalf of the Glenorchy City Council.

STATUTORY REQUIREMENTS

Council has statutory duties under various state Acts and Councils by-laws to take enforcement action for matters of non-compliance.

Acts	Various
Regulations	Various
Related Documents	Customer Service Charter

DEFINITIONS

Act	Any Tasmanian or Commonwealth Act or Regulations or By-law enforced by Glenorchy City Council
enforcement action	Any and all action taken by Council in response to unlawful activity. The term 'enforcement action' includes (but is not limited to): <ul style="list-style-type: none"> (a) the provision of information, guidance and advice in relation to potential unlawful activity; (b) the investigation and assessment of potential unlawful activity; (c) the service of infringement notices; (d) the issue of statutory orders and directions; (e) the prosecution of offences; (f) any actions ancillary to those listed above.

POLICY STATEMENT

1. Fundamental Principles

All enforcement action taken by or on behalf of Council will be in accordance with the following principles:

Transparency

Council will be open and transparent about how it undertakes enforcement activities.

Consistency

Council will take a similar approach in similar cases to achieve similar outcomes.

Proportionality

Council will scale its enforcement response to the seriousness of the breach. A more serious breach is likely to attract a more severe response.

Accountability

Council will explain decisions and make avenues of complaint or appeal available.

Responsibility

All enforcement officers have the responsibility to undertake a range of activities to encourage and enforce compliance. Before taking formal action Council will, where appropriate, provide advice and educate the public on how to achieve compliance and any required time frames.

Respect, courtesy and professionalism

Council staff will treat persons affected by enforcement action, with respect, courtesy and professionalism, in accordance with Council's Customer Service Charter.

Public Interest

Council will consider the public interest having due regard to costs and benefits, likelihood of success, impact on Council resources and any unintended, inequitable or unreasonable consequences. The seriousness or materiality of the offence and the proportionality of Council's response need to be factored in when considering the public interest.

2. Council-wide Enforcement Procedure

The framework set out in this Policy is supported by an Enforcement Guide and Procedures (**Enforcement Guide**) that provides further guidance on how compliance with the Policy is to be achieved.

3. Departmental Enforcement Procedures

Each Council department will develop and document its own specific internal enforcement procedures relevant to the Acts that it enforces. Departmental procedures must not be contrary to this Policy or the Enforcement Guide.

Departmental enforcement procedures will also set out a process to be followed for withdrawing an infringement notice or other form of enforcement action, and ensure that robust procedures are in place to ensure consistency and procedural fairness.

4. Delegation and Authorisation

Council employees must ensure that they hold the necessary statutory delegations and authorisations required to undertake the enforcement action and, if required, must be able to produce written evidence within a reasonable time frame.

Any Council officer taking enforcement action must carry their Council identification card at all times and be able to produce it on request.

5. Records to be kept

Council employees must ensure that they keep an appropriate record of all enforcement action which is to be of a sufficient standard and quality for use in any prosecution related to the unlawful activity.

6. Complaints procedure

Any complaints received by Council in relation to enforcement action will be dealt with in accordance with Council's Customer Service Charter. This includes any complaints made to Aldermen. The complaint will initially be registered and sent to the relevant Council department to investigate and determine the most appropriate response in the circumstances.

Unless the matter concerns the enforcement officer's behaviour or the person investigating the complaint considers that there is another reason to undertake further investigation, Council's response is restricted to:

- ensuring that this policy or the relevant enforcement procedure has been adhered to; and
- informing the complainant of any other internal or external appeal mechanisms available to them.

Any steps taken in response to the complaint will be at the discretion of Council (through the officer with the appropriate delegation/authority). Council officers must have regard to this policy and the Enforcement Guide in determining the response to the complaint.

7. Withdrawal of infringement notices

Section 24 of the *Monetary Penalties Enforcement Act 2005* allows Council to withdraw an infringement notice on an application by a person or on its own motion.

Council will only withdraw an infringement notice where the recipient is able to present satisfactory evidence to Council that:

- the infringement notice was issued erroneously or unlawfully (i.e. no offence was committed)
- there were exceptional circumstances outside of the offender's control that led to the offence being committed (e.g. a medical emergency or a vehicle breakdown) , or
- The infringement notice was issued to the incorrect person or vehicle.

Council will not consider a person's personal financial circumstances in determining whether to withdraw an infringement notice.

BACKGROUND

Council has statutory responsibilities to ensure compliance with various Acts (including by-laws) by undertaking enforcement action.

As the governing body for the City of Glenorchy, Council must set a high standard in its dealings with the public, by balancing the need to ensure that laws achieve their objectives and are adequately enforced with the right of the community to procedural fairness and natural justice.