



# Enforcement Policy

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<b>Responsible Officer:</b>	Director Governance, Recreation & Property Services
<b>Strategic Plan Reference:</b>	1.1 A Council that engages with and enables its community

### 1. POLICY STATEMENTS

- 1.1 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 Kingborough Municipal Area.

### 2. DEFINITIONS

- 2.1 **“Authorised Officer”** means a person appointed by the CEO, 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 the Kingborough Council.
- 2.5 **“Enforcement”** Includes but is not limited to the use of legal methods and any relevant statutory and common law powers that are used by the responsible authority to enforce where necessary and where applicable, lawful compliance.

### 3. OBJECTIVE

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

### 4. SCOPE

- 4.1 The Policy applies to Council’s responsibility for administration and enforcement of legislation including, but not limited to;
  - 4.1.1 *Local Government Act 1993*
  - 4.1.2 *Building Act 2016 and associated regulations*
  - 4.1.3 *Dog Control Act 2000 and associated regulations*
  - 4.1.4 *Environmental Management and Pollution Control Act 1994 and associated regulations*
  - 4.1.5 *Food Act 2003 and associated regulations and guidelines*
  - 4.1.6 *Land Use Planning and Approvals Act 1993*
  - 4.1.7 *Local Government (Highways) Act 1982*
  - 4.1.8 *Public Health Act 1997*
  - 4.1.9 *Litter Act 2007*
  - 4.1.10 *Weed Management Act 1999*
  - 4.1.11 *Traffic Act 1925*
  - 4.1.12 *Road Rules 2019*
  - 4.1.13 *Council By-laws*
- 4.2 Specific provisions within legislation that require Council to ensure or take reasonable steps to ensure that legislation is complied with and enforced include:
  - 4.2.1 Section 25 of the *Building Act 2016*;

4.2.2 Section 20A of the *Environmental Management and Pollution Control Act 1994*;

4.2.3 Section 97 of the *Food Act 2003*;

4.2.4 Section 48 and 63A of the *Land Use Planning and Approvals Act 1993*;

4.2.5 Section 27 of the *Public Health Act 1997*.

4.3 Council's enforcement actions will be underpinned by the following principles:

4.3.1 Proportionality

Enforcement action will be undertaken within a priority framework, with specific reference to the public interest.

4.3.2 Public Interest

Public interest or 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:

- i. Impacts a significant number of people;
- ii. Will disadvantage the community;
- iii. Has attracted sustained public attention and no resolution is proposed or is likely;
- iv. Creates public health and safety hazards and/or exposure of legal liability to the Council; and
- v. Is consistent or inconsistent with the environment in which the activity is being undertaken.

4.3.3 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.

4.3.4 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 if appropriate will provide advice on the process for seeking a review of, or how to appeal against a decision.

4.3.5 Natural Justice

The principles of natural justice and procedural fairness will be ensured to any person to whom a complaint relates.

4.3.6 Independence

Authorised and Council Officers will investigate compliance issues impartially and undertake enforcement action in a manner that is free from undue interference.

## 5. PROCEDURE (POLICY DETAIL)

### 5.1 Delegations

5.1.1 Authorised and Council 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.

### 5.2 Powers of Authorised and Council Officers

5.2.1 An Authorised and Council 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:

- i. Power of entry;
- ii. Inspection and investigation;
- iii. Examine and inspect any works, plant or other article;
- iv. Questioning and interview;
- v. Take photographs, films, audio and video;
- vi. Require records to be produced for inspection;
- vii. Examine, copy and inspect any records;
- viii. Issuing of Infringement Notices;
- ix. Issuing of Notices; and
- x. Commencing a prosecution process.

### 5.3 Staff Training

5.3.1 Council will ensure that Authorised and Council Officers are qualified and competent to use procedures that support the Policy.

### 5.4 Compliance and Enforcement Options

5.4.1 An Authorised or Council Officer 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 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 enough to warrant formal action;
- Past history reasonably suggests 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 an order, infringement notice 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 any 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 this enforcement option:

- The need to maintain the rule of law (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 reduce the risk of a continuation of an offence of adverse impact; and
- The need to maintain public confidence in the Council acting in the interest of the community and as a regulator.

## 6. GUIDELINES

### 6.1 Discretionary Power

6.1.1 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.

### 6.2 Priority for Enforcement Action

6.2.1 Council's response to non-compliance will be prioritised in accordance with the degree of urgency involved, the circumstances of the breach of the Legislation and the outcome if not addressed within an appropriate time frame. Any investigation will determine the nature and seriousness of the breach and the nature of the response will be determined on the following considerations:

- i. The degree of harm or potential harm resulting from the breach;
- ii. The extent to which the breach endangers human health, safety or the environment;
- iii. Whether the harm caused by the breach is temporary or long lasting;
- iv. The resource implications associated with investigating the breach;

- v. Whether there has been an intent to gain;
- vi. Whether the offence was intentionally committed; and
- vii. Whether the breach is likely to create a liability for Council.

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.

### 6.3 Options for dealing with an Infringement Notice

- 6.3.1 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 on the prescribed form and should set out the circumstances and mitigations for disputing the alleged offence.
- 6.3.2 The review of any applications or elections shall be undertaken by Council's Executive Officer - Compliance and a recommendation made to the Manager Legal and Property. In the event that an application or election relates to a staff member or Councillor, a recommendation shall be made to the CEO for decision.
- 6.3.3 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. 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.

### 6.4 Infringement Recovery

- 6.4.1 Infringements that have not been actioned within appropriate time frames will be subject to a recovery process. Depending on the circumstances of the infringement, this may entail referral to one of the following:
  - i. The Monetary Penalty Enforcement Service;
  - ii. A private collection agency;
  - iii. Council's solicitors; or
  - iv. The Magistrates Court.

### 6.5 Disclosure and Confidentiality

- 6.5.1 Details of Council's enforcement action will remain confidential in accordance with the provisions of Council's Privacy Policy, 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 will provide disclosure in accordance with common legal practices.

## 7. **COMMUNICATION**

- 7.1 Members of the public, Authorised Officers, Councillors and staff

## 8. **LEGISLATION**

- 8.1 The following legislation is applicable to this policy:

- 8.1.1 *Local Government Act 1993*
- 8.1.2 *Building Act 2016*
- 8.1.3 *Dog Control Act 2000*

- 8.1.4 *Environmental Management and Pollution Control Act 1994*
- 8.1.5 *Food Act 2003*
- 8.1.6 *Land Use Planning and Approvals Act 1993*
- 8.1.7 *Urban Drainage Act 2013*
- 8.1.8 *Local Government (Highways) Act 1982*
- 8.1.9 *Public Health Act 1997*
- 8.1.10 *Litter Act 2007*
- 8.1.11 *Weed Management Act 1999*
- 8.1.12 *Traffic Act 1925*
- 8.1.13 *Road Rules 2019*
- 8.1.14 *Council By-laws*

## **9. RELATED DOCUMENTS**

- 9.1 Nil.

## **10. AUDIENCE**

- 10.1 Members of the public.
- 10.2 Authorised Officers.
- 10.3 Councillors and staff