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1. STATEMENT

The purpose of this policy is to assist Council staff to act promptly, consistently and effectively in response to alleged or detected unlawful activity and non-compliance. It creates a framework which ensures transparency, procedural fairness and natural justice principles are applied and that enforcement action is proportionate to the alleged offence in each case.

It is the responsibility of individuals and other bodies to comply with the law. Notwithstanding this, Council is empowered by various legislation to address unlawful activity by enforcing and administering certain laws to protect individuals, property, and the community as a whole.

The compliance and enforcement tools available to Council are broad. Council will adopt a tailored approach to enforcement matters which takes into account the unique factors of each case, with the ultimate aim of encouraging voluntary compliance.

In addition to enforcement, Council carries out a range of activities to ensure voluntary compliance including community education programs. Related policies and procedures about such activities may also apply.

Unlawful activity may come to Council's attention in various ways, including by information received from members of the public or observation by Council Officers. Not all non-compliance or unlawful activity will warrant enforcement action by Council. Council must determine its response to non-compliance and/or an unlawful activity, and in doing so will consider a range of factors.

Enforcement activities include:

- patrolling streets and public places;
- inspecting premises either on a routine or random basis; and
- responding to enquiries and complaints

Council is empowered to make Orders under the *Local Government Act 1999* ("LG Act") and is committed to utilising those powers in order to facilitate a safe and healthy environment, to improve the amenity of a locality, and generally for the good governance of its area.


2. SCOPE

This policy applies to all Council staff, including Authorised Officers/Persons undertaking compliance and enforcement activities on behalf of the Council pursuant to the following legislation, any other legislation that Council has enforcement responsibilities, and any legislative instrument made thereunder:

- *Burial and Cremation Act 2013*;
- *Dog and Cat Management Act 1995*;
- *Environment Protection Act 1993*;

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- *Expiation of Offences Act 1996;*
- *Fire and Emergency Services Act 2005;*
- *Food Act 2001;*
- *Impounding Act 1920;*
- *Liquor Licencing Act 1997;*
- *Local Government Act 1999;*

[Note: Section 259 of the Local Government Act (LG Act) requires Council to take reasonable steps to prepare and adopt policies concerning the operation of Part 2 of Chapter 12 of the Act. Part 2 deals with the making of Orders. This Policy is prepared and adopted pursuant to section 259 of the LG Act and sets out the steps Council will take in the making of Orders under that Act.]

- *Local Nuisance and Litter Control Act 2016;*
- *Planning, Development and Infrastructure Act 2016;*
- *Private Parking Areas Act 1986;*
- *Road Traffic Act 1961;*
- *Safe Drinking Water Act 2011;*
- *South Australian Public Health Act 2011; and*
- *Supported Residential Facilities Act 1992.*

3. DEFINITIONS

Authorised Officer is a person authorised by the Council (through a written instrument of authorisation) to carry out statutory functions or powers as specified within a particular piece of legislation and **Authorised Person** has the same meaning.

Complainant means the individual or organisation who makes a complaint or first brings issues of suspected Non-Compliance or Unlawful Activity to the attention of the Council.


Compliance means obeying and demonstrating adherence to the law.

Council means Wattle Range Council.

Council Officer means a member of the Council administration who is acting under the Council's delegated authority or pursuant to an authorisation.

Enforcement refers to the use of legislative powers by authorised officers/persons of the Council to seek, direct or require a person or body to remedy a legislative breach and/or seek to penalise a person for Unlawful Activity, and includes action taken in relation to Non-Compliance.

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Natural Justice means the rules and procedures to be followed by a person or body with the power to settle disputes. Some rules of natural justice are to act fairly, without bias, and the right of all parties to be heard.

Non-Compliance means failure to comply with an Order.

Order means a written direction or requirement, such as an order or notice, requiring specific action to be taken to ensure Compliance. An order under the Local Government Act is a formal, written direction issued by Council to a person requiring them to take specified action/s or refrain from doing specified things.

Prosecution means a process of instituting legal proceedings to prosecute an offender for alleged Unlawful Activity and is a form of Enforcement. Prosecution may result in a criminal conviction, fines, and/or terms of imprisonment being imposed on the offender.

Unlawful Activity is any activity that is:

- contrary to a legislative provision regarding that activity;
- undertaken without the required permit or other consent;
- contrary to the terms or conditions of a permit or other consent; and/or
- contrary to the terms of an Order, including breaches of the criminal law.

4. PRINCIPLES

Enforcement action is taken within a legal and policy framework. Council will always carry out its Enforcement related work having regard to principles including:


4.1 Proportionality

A proportionate response means that Council's response and any actions will be scaled and determined by having regard to the seriousness of the suspected Non-Compliance or Unlawful Activity, and a measured response will be applied.

The following criteria will be considered by Council when determining the appropriate response and/or action to be taken:

- whether there are serious safety/health risks or concerns;
- where actual or potential hazards are controlled;
- the seriousness and nature of the suspected Non-Compliance or Unlawful Activity;
- the relevant legislation, including the powers of Council;
- Occurrence of the activity/incident e.g. frequency, duration and number of complaints received;
- Implications of not taking actions;
- The likely effectiveness of the various enforcement options;

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- the willingness of the individual or entity to cooperate with any enquiries or investigation;
- the cost to the Council in pursuing the suspected Non-Compliance or Unlawful Activity;
- the benefit to the community; and
- any other factor that may be relevant (for example any compliance action taken by another enforcement agency).

4.2 Consistency

Council will endeavour to take a similar approach in similar matters to ensure consistent responses and outcomes. Decisions regarding Enforcement require the use of professional judgement and discretion to assess varying circumstances. To assist with this, Council will:

- ensure fair, equitable and non-discriminatory treatment;
- follow standard operating procedures wherever possible; and
- make records of any deviation from standard operating procedures including the reasons.

4.3 Transparency

Council will be open and transparent about the manner in which it undertakes Enforcement action, and the laws it enforces.

When remedial action is needed, Council will explain clearly in plain language why the action is necessary. Where legally required and otherwise where practicable, Council will give notice of its intention to commence formal action, advising what action is required to achieve Compliance, and the timeframe for undertaking that action. If applicable, information will be provided to the individual or organisation on the process of seeking a review of, or how to appeal, a decision (within the relevant legal/policy framework).

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


4.4 Cost Recovery

Council may incur significant costs (legal and/or otherwise) when enforcement action is taken to rectify non-compliance or unlawful activity. In the interest of reducing the financial burden of pursuing enforcement matters on ratepayers, where possible, Council will seek to recover those costs incurred in attempting to rectify the breach in accordance with the relevant legislative provisions.

5. ENFORCEMENT RESPONSES

Council administers and enforces a broad range of legislation. As a result, the Enforcement action taken by Council may vary, depending on the legislation being enforced. In some circumstances, more than one Enforcement response will be available, in which case the most

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appropriate response will be considered, having regard to the principles listed in Section 4 above.

Subject to a provision of this Policy to the contrary, Council decisions about which Enforcement option to pursue will be made by the Council Officer or Authorised Officer with authority for enforcement of the relevant provision, or otherwise by resolution of Council.

The kinds of responses available to the Council are:

- **Education:** Encourage Compliance with the relevant legislation through education of rights and responsibilities.
- **Encouragement:** Council will listen, respond and provide information and opportunities for stakeholders to ask questions and discuss issues of concern, as well as giving parties an opportunity to voluntarily comply, without need for Enforcement action. Council may offer appropriate incentives or support from time to time to assist with achieving compliance.
- **Enforcement:** Enforcement responses (which are dependent on the applicable legislation) can include: no action, informal action (e.g. education), Orders, expiation notices, civil penalties, and/or Prosecution. Each Enforcement response (and the situations in which they may be pursued) are outlined below.

5.1 No Action

Council may determine to take no action in relation to suspected Non-Compliance or Unlawful Activity for a number of reasons, including where:

- the complaint is frivolous, vexatious or trivial in nature;
- there is insufficient evidence to prove the non-compliance;
- the person or entity who may have breached a law has rectified the breach, or committed to doing so;
- the alleged breach is outside of Council's jurisdiction or there is another jurisdiction or agency that may be the more appropriate to address the breach;
- taking action may prejudice other major investigations;
- having regard to the principles of proportionality and consistency, Council has determined that the breach is of such a nature that action would be an unreasonable use of Council resources.


A determination to take no action is itself a decision of the Council which will occur following full consideration of the matter.

5.2 Informal Action

Informal action to achieve Compliance may include:

- issuing a person or entity who may have breached a law a verbal or written warning; or

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- verbal or written warnings that may include education about legislative requirements and requests for remedial action.

The circumstances in which informal action may be appropriate include situations where:

- the Non-Compliance or Unlawful Activity is not serious enough to warrant formal action;
- the past history of the person or entity who has committed the breach reasonably suggests that informal action will achieve compliance;
- Council's confidence in the person or entity is high;
- the consequences of Non-Compliance will not pose a significant risk of harm or nuisance to other persons or property;
- informal action is considered more effective than a formal approach.

5.3 Formal Action

Council may determine to take formal action in certain circumstances. When considering whether to commence formal Enforcement action, Council will use professional judgement and discretion to assess the suspected Unlawful Activity or Non-Compliance, including the reasonableness of the actions required by any direction or Order issued by Council, and the timeframe given to comply. Examples of formal action include:

5.3.1 Orders

Depending on the nature of the breach and the legislation relevant to the breach, Orders may be issued by Council itself, or by a relevant court of competent jurisdiction (which may occur on application of the Council).


Orders to address matters of Non-Compliance may be used, or sought from a court, where:

- a direction is required to prevent further Unlawful Activities or Non-Compliance;
- the Non-Compliance is of such a serious nature so as to warrant immediate action;
- the Non-Compliance has resulted in a threat to life or an immediate threat to public health or safety;
- informal action has failed to achieve Compliance.

A decision for Council to seek an Order through a court will only be made with the prior written consent of the Chief Executive Officer or their delegate, having completed an assessment of the matter and after considering the options available.

Orders will be recorded in accordance with the relevant legislation. Where required, Orders will also be confirmed in writing within any timeframe prescribed by the relevant legislation.

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Section 259 of the *Local Government Act 1999* requires that Council develop policies with respect to its Order making powers in Part 2, Division 1 of that Act. Refer to Schedule 1 of this Policy for these specific policy considerations.

In some circumstances, such as (but not limited to) a threat to life or immediate threat to public health or safety, where permitted by legislation an Order may be made by the Council without giving the person or entity to whom the Order is to be directed notice of Council's intention to make the Order.

If permitted by the relevant legislation, an individual or entity receiving an Order may have a right of appeal. If an Order is served for which an appeal is possible, Council will advise the recipient in writing of the right of appeal and the relevant legal provisions at the time of serving the Order.

Where there is evidence and circumstances to support such action, Council may also issue an expiation notice or commence Prosecution proceedings in addition to serving an Order.

Non-Compliance with an Order may result in further Enforcement action.


5.3.2 Expiation Notices

An expiation notice alleges that an individual or entity has committed an offence, and sets out an expiation fee, which can be paid to expiate the offence, as an alternate to Prosecution.

Expiation notices may be issued by Council for certain expiable offences, including:

- animal management offences pursuant to the *Dog and Cat Management Act 1995*;
- development related offences pursuant to the *Planning, Development and Infrastructure Act 2016*;
- fire safety preparedness related offences under the *Fire and Emergency Services Act 2005*;
- food safety related offences under the *Food Act 2001*;
- in circumstances where the Council has responsibility for administering the provision, environmental offences under the *Environment Protection Act 1993*;
- local nuisance and litter related offences under the *Local Nuisance and Litter Control Act 2016*;
- offences against Council's By-laws; and
- parking offences under the *Road Traffic Act 1961* (including under the Australian Road Rules and Road Traffic (Miscellaneous) Regulations 2014) and the *Private Parking Areas Act 1986*;
- public realm use and management offences under the *Local Government Act 1999*;
- public health related offences under the *South Australian Public Health Act 2011*;

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- supported resident facility management offences under the *Supported Residential Facilities Act 1992*.

Council may choose to issue an expiation notice under the abovementioned legislation where it assesses that there has been a failure to comply with relevant legislative provisions and an Enforcement response, short of Prosecution, is justified in the circumstances.

5.3.3 Civil Penalties

Council has the ability under Section 34 of the *Local Nuisance and Litter Control Act 2016* to recover civil penalties in relation to offences against that Act. Council has also obtained the authorisation from the State Planning Commission under Section 225 of the *Planning, Development and Infrastructure Act 2016* to recover civil penalties in relation to offences against that Act.

This power is a targeted, pragmatic and efficient way to address compliance matters commonly faced by Council.

Council is to use its discretion as to when it is appropriate to utilise this power, bearing in mind generally it will be for situations involving a breach of the legislation which warrants a form of punishment that is more serious than an expiation, but not serious enough to warrant a Prosecution.

A civil penalty may be recovered in one of two ways, either by negotiation with the alleged offender, or by application to the Environment, Resources and Development Court.


Council may not recover an amount by way of civil penalty in respect of a contravention if the relevant offence requires proof of intention or some other state of mind. Council must, in respect of any other contravention, determine whether to initiate proceedings for an offence or take action under civil penalty provisions, having regard to the seriousness of the contravention, the previous record of the offender and any other relevant factors.

If Council applies to the Court for a civil penalty, it is required to give the offender the option of electing to be prosecuted first. It therefore should, prior to making such an application, ensure there is a reasonable prospect that the offence can be proven beyond reasonable doubt.

If Council negotiates a civil penalty, in determining what it considers an appropriate penalty, it should take into account:

- the maximum penalty for the offence under the relevant Act;
- the nature and extent of the offence;
- the seriousness of the offence;
- the offender's history of compliance with the relevant Act;
- any detriment to the public that has resulted from the offence;
- any financial benefit or saving the offender stood to gain from the offending; and

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- any other factors that aggravate or mitigate the offending.

Should Council determine that a civil penalty is appropriate, the alleged offender is to be notified in writing setting out basic details of the alleged offence, the appropriate penalty and the factors taken into account in arriving at that amount.

In respect of civil penalties under the Planning, Development and Infrastructure Act 2016, Council must comply with the conditions of its authorisation from the State Planning Commission, including that it must, to the best of its ability, make use of this power in a consistent manner that is proportionate to the alleged offence or breach.

5.3.4 Prosecution

Council may choose to initiate Prosecution where it is deemed appropriate, for example where:

- the Unlawful Activity or Non-Compliance is of a serious nature;
- a person who receives an expiation notice does not expiate the offence by payment of the expiation fee, or otherwise elects to be prosecuted;
- prosecution is in the public interest;


In considering whether prosecution is in the public interest, the following factors may be considered:

- the prevalence of the alleged offence and the need for deterrence, both personal and general;
- whether the individual or entity has committed a similar offence in the past;
- whether the individual or entity has shown remorse or contrition;
- whether the alleged offence was premeditated;
- the effect on the physical or mental health of relevant individuals (including witnesses);
- the availability, competence and credibility of witnesses and their likely impression on the Court;
- the admissibility of any alleged confession or other offence;
- any defences available to the individual or entity;
- the need to maintain confidence in the Council as a prosecuting authority.

Council may choose not to commence Prosecution proceedings in circumstances where there is not a reasonable prospect of success of securing a finding of guilt against the alleged offender/s.

The likely length and expense of any trial is a relevant (but not determinative) factor when deciding whether to prosecute for Unlawful Activities. Similarly, the implications and financial burden on a person or entity will not be determinative in considering whether to proceed with a Prosecution.

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5.4 Complex Situations

At times, Council may be involved in a matter or dispute which involves more than one suspected Unlawful Activity, and/or more than one relevant party, or some other delicate or complicating factor.

In such cases, it may not be appropriate for Council to pursue a single option for Enforcement, but rather a combined approach, encompassing more than one Enforcement option may be utilised.

Council will have regard to the principles listed in Section 4 in exercising its discretion to act in complex situations and will always act within the bounds of the relevant legislation.

6. AVAILABILITY

This Policy is available for inspection without charge at the following location during ordinary business hours:

- Principal Office, "Civic Centre", George Street, Millicent
- Council Website: www.wattlerange.sa.gov.au.

A copy of the Policy may be purchased from the Principal Council Office upon payment of a prescribed fee in accordance with Council's Schedule of Fees and Charges.


7. REVIEW

This Policy will be reviewed every four years.

8. REFERENCES AND FURTHER READING

References	
Relevant Legislation:	<ul style="list-style-type: none"> • <i>Burial and Cremation Act 2013</i>; • <i>Dog and Cat Management Act 1995</i>; • <i>Environment Protection Act 1993</i>; • <i>Expiation of Offences Act 1996</i>; • <i>Fire and Emergency Services Act 2005</i>; • <i>Food Act 2001</i>; • <i>Impounding Act 1920</i>; • <i>Liquor Licencing Act 1997</i>; • <i>Local Government Act 1999</i>; • <i>Local Nuisance and Litter Control Act 2016</i>; • <i>Planning, Development and Infrastructure Act 2016</i>; • <i>Private Parking Areas Act 1986</i>;

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	<ul style="list-style-type: none"> • <i>Road Traffic Act 1961;</i> • <i>Safe Drinking Water Act 2011;</i> • <i>South Australian Public Health Act 2011; and</i> • <i>Supported Residential Facilities Act 1992</i>
Relevant Policies / Procedures / Guidelines	<ul style="list-style-type: none"> • Any procedures made to support this policy • Register of Authorised Persons • Delegations Register (RelianSys) • Building Fire Safety Committee Terms of Reference

9. ADOPTION AND AMENDMENT HISTORY

The table below sets out the adoption, review and amendment history of the policy.

Version No:	Issue Date:	Authorised by:	Description of Change:	Minutes Reference:
1	12 December 2023	Council	Adapted into new format. Combined the following policies together: <ul style="list-style-type: none"> • 1.4 Order Making Policy; • 3.8 Enforcement Policy; & • 3.14 Enforcement Policy – Unlawful Development 	Folio 10943; Item 15.3.1

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SCHEDULE 1: ORDER MAKING UNDER *LOCAL GOVERNMENT ACT 1999*

This Schedule will apply to those circumstances listed in Section 254 of the LG Act which provides that Council may Order a person to do or refrain from doing a thing under certain circumstances, as specified in the table included within that section of the LG Act.

In accordance with the requirements of the LG Act, this schedule also applies in respect of Orders issued by Council under Section 216 (power to Order the owner of private road to carry out specific roadworks) and section 218 (power to require owner of adjoining land to carry out specific work)¹.

Procedures

Except in the case of an emergency described below, Council will take reasonable steps, within available resources, to resolve cases by negotiation and agreement before issuing an Order. This may include Council Officers approaching the person informally and/or issuing an informal warning letter prior to commencing a formal Order making process.

Except in the case of an emergency described below, before making an Order Council will give notice of its intention to make an Order in accordance with section 255 of the Act by:

- Giving the person to whom an Order is intended to be directed a notice in writing stating the:
 - proposed action;
 - terms of the proposed Order (i.e. what it requires the person to do or refrain from doing);
 - period within which compliance with the Order will be required;
 - penalties for non-compliance; and
 - reasons for the proposed action; and
 - review rights; and
- Inviting the person notified of the opportunity to give reason/s, within a specified time, why the proposed action should not be taken.


Where notice of a proposed Order has been given to a person who is not the owner of the relevant land, the Council must take reasonable steps to serve a copy of the notice on the owner of the land.

After considering any submissions received from the person to whom notice of the Order has been directed, the Council may make an Order in terms of the original proposal or in modified terms or determine not to proceed with making an Order.

An Order must be served by the Council on the person to whom it is addressed, in accordance with the methods of service set out in Section 279 of the LG Act.

¹ See sections 216(2) and 218(2).

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If the person to whom the Order are addressed is not the owner of the land, the Council must take reasonable steps to serve a copy of the Order on the owner of the land.

Council may vary any Order or revoke any Order at its discretion.

Acting in the Case of an Emergency

Council will proceed to make an Order without negotiation or notice, in accordance with section 255(12) of the LG Act where Council considers the circumstances or activity constitute, or are likely to constitute:-

- a threat to life; or
- an immediate threat to public health or public safety; or
- an emergency situation.

Review Rights

Pursuant to section 256 of the LG Act any person to whom an Order is issued (including an Order issued under section 254, 216 or 218) has a right to seek a review in respect of the Order. Any such review must be lodged within 14 days of that person's receipt of the Order. The Council will ensure that reference to this right of review, in a form which complies with the requirements of the regulations, is included in any Order issued.

Non-Compliance with an Order


If an Order is not complied with within the time fixed for compliance (or if there is an application for review, within 14 days after the determination of the review) the Council may (subject to the outcome of any review) take the action required by the Order.

The reasonable costs and expenses incurred by Council in taking action under this section may be recovered by Council as a debt from the person who failed to comply with the requirements of the Order.

Where an amount is recoverable by Council, Council may, by notice in writing to the person, fix a period, being not less than 28 days from the date of the notice, within which the amount must be paid and, if the amount is not paid by the person within that period, the person is liable to pay interest and Council may impose a charge on the land for the unpaid amount, together with interest, in accordance with section 257(5) of the Act.

Non-compliance with an Order of Council is an offence for which a person may incur a statutory penalty provided for in the LG Act. Section 258 provides for a maximum penalty of \$2,500 and an expiation fee of \$210 for failure to comply with an Order issued under the LG Act.

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Responsibilities & Delegations

Council's Authorised Persons are responsible for enforcing compliance with the LG Act.

Council may choose to delegate the power to issue Orders under sections 254, 216 and 218 of the LG Act to Council Officers.

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