



# **ATTACHMENTS**

**Under Separate Cover  
Council Meeting**

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**6.00pm Tuesday 29 June 2021**



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ENFORCEMENT POLICY



# Enforcement Policy 2021

ENFORCEMENT POLICY

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## ENFORCEMENT POLICY

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### 1. PURPOSE

- 1.1 Golden Plains Shire Council has a responsibility to the community, residents and businesses to maintain community safety, protect public amenity and follow state legislation. Council shares this duty with the community to ensure local laws, rules, acts and obligations are complied with.
- 1.2 When compliance is not achieved by voluntary measures, or the matter is of a serious nature, enforcement action may be required. Enforcement must be targeted and efficiently administered.
- 1.3 This policy is based on the principles of proportionality, consistency, fairness and transparency and provide internal direction regarding enforcement. The policy will include steps to undertake the following:
- Achieving compliance,
  - Enforcement & prosecution decision making factors, including what will and what will not be taken into account when Authorised Officers make enforcement decisions,
  - Enforcement actions, including examples of when and how certain options might be preferred,
  - Principles regarding enforcement and revenue,
  - Customer expectations during enforcement activities.

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### 2. SCOPE

- 2.1 This policy defines Council's assurance to a shared responsibility with the community in achieving compliance with applicable laws and acts enforced by Council. This policy provides a framework upon which Council officers will base their enforcement decisions and actions and will provide a consistent approach in the use of community awareness, education and enforcement actions by officers to achieve compliance outcomes.

This policy does not cover instances where there are legislative or legal requirements for a Council officer to take a prescribed action.

Council will, due to the nature or some enforcement requirements and responsibilities, have joint investigations with other regulatory agencies.

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### 3. POLICY STATEMENT

- 3.1 Council is committed to undertaking enforcement action when required. Council recognises that there is a shared responsibility between Council and the community in achieving compliance that will benefit the whole community.

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### 4. PROCEDURES

- 4.1 On a regular basis, Council receives complaints and potential enforcement requirements from a number of sources, being the community, neighbours, other regulatory bodies or internally from Council officers. These complaints can come in person, in writing, via email or by phone. Council Officers have a preference that all complaints are in writing. The complaints can relate to a number of areas, acts, regulations and local laws, and include offences relating to the following acts:

## ENFORCEMENT POLICY

- Domestic Animals Act 1994
- Planning and Environment Act 1987
- Building Act 1993
- Public Health and Wellbeing Act 2008
- Subdivision Act 1988
- Impounding of Livestock Act 1994
- Country Fire Authority Act 1958
- Environment Protection Act 1970
- Road Safety Act 1986
- Road Safety Regulations 2019
- Local Law – General Public Amenity

### 4.2 Complaint and Investigation Steps to Achieve Compliance

On receipt of a complaint, Council will allocate the file to an officer and commence an investigation. During the investigation:

- Officers will take the time to listen, hear and explain the situation, options and consequences,
- Officers will communicate clearly and respectfully,
- Officers will support the community to comply, encouraging them to understand and meet regulatory requirements,
- Officers will keep our customers informed in relation to the progress of their matter, including any reasons for delay, (Council will not give specific details or any results of the investigation to the complainant)
- Compliance and enforcement actions will be undertaken in a lawful, transparent and timely manner; and
- Council will provide information about ways to seek a review of an enforcement decision.

### 4.3 Discretion

Council officers have a variety of enforcement options available to them when non-compliance is identified, and an enforcement decision is required to be made. These options range from recording only in Council's database; verbal warnings; written warnings or cautions; penalty infringement notices; orders; notices; and prosecution or civil proceedings.

The enforcement options to be considered by Council are in order to reflect an escalation in response that is proportionate to the level of risk, the level of community harm, the seriousness of the confirmed breach, or the need for a deterrent.

Officer discretion in determining the most appropriate enforcement action is established by legislation, delegations, operating procedures, relevant public interest considerations and the facts of the individual case.

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Residents who have received an infringement notice or official warning can apply to Council to have the infringement reviewed. The ability to apply for an internal review is described in Section 22 of the Infringements Act 2006.

Recipients of an infringement notice may apply for an internal review under the following circumstances:

- Contrary to Law,
- Mistake of Identity,
- Special Circumstances,
- Exceptional Circumstances.

### 4.4 Enforcement and Prosecution Decision Making

Enforcement decisions will be made in line with the following principles:

- The seriousness of the offence,
- Whether there is and the extent of public concern,
- The time since the offence occurred,
- Whether an infringement can be issued or must proceed to prosecution,
- The person's offence history,
- The age, physical health, or mental health of the offender,
- Willingness of the victim, offender or witnesses to cooperate in the investigation, or the extent to which the person will cooperate,
- Community safety,
- The need for deterrence,
- The need to maintain public confidence in Council,
- Any special circumstances, (age, physical health, mental health)
- The likely length and expense of court.

Factors that officers will not consider when undertaking enforcement action include:

- The ethnicity, religion, sex, national origin or political associations of the person,
- Political pressure or interference,
- Personal feelings concerning the offence, the offender, or a victim,
- The possible effect of the decision on those responsible for the decision.



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### 4.5 Enforcement Actions

Due to limited resources to undertake enforcement, Council must prioritise and focus resources where required to achieve the most impact. The following chart will determine relevant courses of action. This chart is fluid and can be referred to and assessed at multiple times during the investigation.

Consequence	Insignificant	Minor	Moderate	Major
Duration and History	No or extremely minor impact on the community or environment	Small impact on the community or environment	Moderate impact on the community or environment	Major impact on the community or environment
<ul style="list-style-type: none"> <li>Past history of repeated non-compliance or failing to comply with repeated applicable notices</li> <li>No remedial works have been undertaken (either by request of Council or self)</li> </ul>	Elevated	Elevated	Significant	Significant
<ul style="list-style-type: none"> <li>Past history of non-compliance or failing to comply with applicable notices</li> <li>Requirements are apparent but offender has been wilful or negligent as to their actions</li> </ul>	General	Elevated	Elevated	Significant
<ul style="list-style-type: none"> <li>Non-compliance for a short duration (2 weeks +)</li> <li>Works rectified or remedial work undertaken.</li> </ul>	Proactive	General	Elevated	Significant
<ul style="list-style-type: none"> <li>No history of non-compliance in relevant area</li> <li>Non-compliance of short duration (days)</li> <li>Works rectified or remedial work undertaken.</li> </ul>	Proactive	Proactive	General	Elevated

Table 1 – Risk Based Approach to Enforcement at Golden Plains Shire Council

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Options for Table 1 include but not limited to the following:

### Proactive

- Supply information or advice on how to become compliant and explain why their actions may be illegal,
- Negotiating with the person so they voluntarily comply, or an agreement is reached to address the issues of concern,
- Issuing a letter requiring work to be done or activity to cease instead of more formal action; and/or
- Issuing a verbal warning.

Examples of compliance matters where a proactive level of enforcement action may be appropriate are:

- Residents holding a single noisy party,
- A complaint over high grass on a nature strip,
- A truck parking in a residential area occasionally,
- A concrete company starting before permitted time on a job site; or
- A registered dog off lead in an on-lead location.

### General

General responses may include issuing:

- A notice to comply and cover letter or / and
- An infringement notice; or / and
- A written warning.

Examples of compliance matters with a general level of enforcement action may include:

- General parking offences such as parking in a 'No Stopping' zone, parking in front of a fire hydrant, or blocking a footpath,
- Damage to a Council property, such as removing a street tree,
- Depositing mud on a road,
- Failing to maintain a residential property to the extent that there is concerns of vermin and/or snakes; or
- An unregistered dog that is required to be registered.

### Elevated

Elevated responses may include options from Proactive and General as well as:

- Issuing an order to stop works and / or;
- Issuing a direction for a person to carry out work.

Examples of a compliance matter with an elevated level of enforcement action may include:

- A food vendor operating without the appropriate food safety permits,
- Rectifying an unsafe building or structure,
- Failing to comply with dangerous dog requirements,
- Non-compliance with previous directions; or
- A property owner constructs a road illegally.

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### Significant

Significant responses may include options from Proactive, General and Elevated as well as:

- Issuing an order or direction under relevant legislation,
- Seeking an injunction through the courts to prevent future or continuing unlawful activity; and/or
- Commence legal proceedings for an offence against the relevant Act or regulation through the Magistrates Court of VCAT.

Examples of compliance matters with a significant level of consequence are:

- When an Emergency Building Order is required,
- Undertaking native vegetation removal without Council consent,
- Continued sale of food which has been deemed to be a public health risk,
- Illegal dumping where the dumped waste includes hazardous materials, such as asbestos,
- Continued disregard to letters and notices from Council; or
- Repeated and wilful non-compliance with previous directions.

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## 5. RESPONSIBILITIES

### Compliance, monitoring and review

The policy owner is responsible for ensuring the policy:

- aligns with relevant legislation, government policy and Council's requirements/strategies/values;
- is implemented and monitored; and
- is reviewed to evaluate its continuing effectiveness.

### Reporting

No additional reporting is required.

### Records Management

- 5.1 Council must maintain all records relevant to administering this policy in accordance with the Public Records Act 1973.

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### 6. DEFINITIONS OF TERMS OR ABBREVIATIONS USED

Term	Definition
Amenity	Amenity is something considered to benefit a location, contribute to its enjoyment, and thereby increase its value
Authorised Officer	An Authorised Officer is a council employee, contractor or a member of Victoria Police authorised by the CEO (in the case of a Local Law) to carry out compliance or enforcement functions under legislation delegated to Council.
Council	Golden Plains Shire Council
Caution	See Written Warning
Order	In serious cases, or when the offending party has not complied with legal directions, Council may apply for an order from a Court. This may be in the form of an Enforcement Order from Victorian Civil Administration Tribunal. Orders do not preclude Council undertaking enforcement action as a criminal matter and not only a civil matter.
Penalty Infringement Notice	A Penalty Infringement Notice, also known as a fine or ticket is issued when required. There is a set infringement for this amount and when the Penalty Infringement Notice relates to State legislation, the value of this notice may increase to fees as set by the State.
VCAT	Victorian Civil and Administrative Tribunal
Verbal Warning	A verbal warning is a warning given in person or via phone to an offending party. This verbal warning is documented in the notes of the Authorised Officer.
Written/Official Warning	A written warning is a warning documented on Council's internal software and a copy given or sent to the offending party. Written warnings can be referred to if any subsequent prosecutions are required.

### 7. RELATED LEGISLATION AND DOCUMENTS

#### 7.1 Strategic Documents, Policies or Procedures

- Enforcement Procedure

#### 7.2 Legislation

- Domestic Animals Act 1994
- Planning and Environment Act 1987
- Building Act 1993

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- Public Health and Wellbeing Act 2008
- Subdivision Act 1988
- Impounding of Livestock Act 1994
- Country Fire Authority Act 1958
- Environment Protection Act 1970
- Road Safety Act 1986
- Road Safety Regulations 2019
- Local Law – General Public Amenity

### 8. HUMAN RIGHTS STATEMENT OF COMPATABILITY

- 8.1 As a public authority, Council has a duty to act compatibly with human rights and to give human rights proper consideration in decision making. See the guidelines for policy makers available at: <https://www.justice.vic.gov.au/justice-system/laws-and-regulation/human-rights-legislation/charter-of-human-rights-guidelines-for->
- 8.2 It is considered that this policy does not impact negatively on any rights identified in the Charter of Human Rights and Responsibilities Act 2006 (Vic)

### 9. POLICY OWNER

- 9.1 The Manager Development and Regulatory Services is the owner of this policy.

### 10. FEEDBACK

- 10.1 You may provide feedback about this document by emailing [enquiries@gplains.vic.gov.au](mailto:enquiries@gplains.vic.gov.au)

### 11. DOCUMENT INFORMATION

DOCUMENT TYPE:	Council Policy document
DOCUMENT STATUS:	[For example: Approved/Not Approved]
DOCUMENT OWNER POSITION:	Manager Development and Regulatory Services
APPROVED BY:	[For example: Senior Management Team/Director/Manager]
DATE ADOPTED:	[Insert Date/Month/Year]
VERSION NUMBER:	[Insert version number]
REVIEW DATE:	[Insert review date – this should coincide with the policy review date. Best practice would be no longer than five years between reviews]
DATE RESCINDED:	[Include if relevant]
EVIDENCE OF APPROVAL:	  Signed by Chief Executive Officer

## ENFORCEMENT POLICY

FILE LOCATION:	[Include a file location (AltusECM Ref) so that it may be accessed in future and amended - Word and PDF – insert file path] INT[XX/XXXX]
NOTES:	<p>Policy documents are amended from time to time, therefore you should not rely on a printed copy being the current version. Please consult Council's Policy page on the Golden Plains Shire Council website to ensure that the version you are using is up to date. Available at: [Select one URL below and delete the other]</p> <p>[for Council policy]</p> <p><a href="https://www.goldenplains.vic.gov.au/residents/my-council/about-council/council-policies">https://www.goldenplains.vic.gov.au/residents/my-council/about-council/council-policies</a></p> <p>[for organisational policy]</p> <p><a href="https://intranet.goldenplains.vic.gov.au/the-hub">https://intranet.goldenplains.vic.gov.au/the-hub</a></p>