



# Wyndham City Enforcement Policy

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## 1. Introduction

Wyndham City and the community have a shared responsibility to protect public amenity and maintain community safety. With this shared commitment, council has the legal responsibility to ensure there is compliance with local laws, rules or obligations. Residents, businesses and visitors have a responsibility to understand and comply with these laws. The need for enforcement action is reduced with voluntary compliance.

When compliance is not achieved, enforcement action is one of the key ways in which Council helps achieve the economic, social and environmental objectives outlined in the Wyndham 2040 Vision. It is critical that enforcement activity is well designed, targeted and efficiently administered.

## 2. Scope

This policy describes Council's commitment to a shared responsibility with the community in achieving compliance. It provides a framework upon which Council officers will base their enforcement decisions and actions. It will provide a consistent approach in the use of community awareness, education and enforcement actions by officers to achieve compliance outcomes.

The policy does not cover instances where there is a legislative or legal requirement for a Council officer to take a prescribed enforcement action.

Council will, at times, have joint enforcement responsibilities with other regulatory agencies. This policy sets out a collaborative and cooperative approach to working with other agencies to support the protection of public amenity and maintenance of public safety in Wyndham.

## 3. A Shared Agreement & Guiding Elements

### Shared Agreement

Wyndham City recognises the need for a 'shared responsibility' in achieving compliance with the agreed rules that benefit the Wyndham community. The agreement is a commitment between Councillors, the community and Council officers to achieve compliance.

When the community and Wyndham City work together to achieve compliance, Council agrees to:

- treat each other with respect
- take the time to listen
- be honest with each other
- inform each other when things change.



## Guiding elements

In developing this agreement, the guiding elements describe Council's approach to delivering our compliance services to the community:

### ***Establish the Facts***

- Council will take the time to listen, hear and explain the situation, options and consequences.
- Council will seek a shared understanding by considering all aspects of the investigation.

### ***Explain and Inform***

- Council will communicate clearly, respectfully, in plain English or in language appropriate for the audience.
- Council will support the community to comply, encouraging them to understand and meet regulatory requirements.
- Council will keep our customers informed in relation to the progress of their matter, including any reasons for delay.

### ***Make a decision***

- Council will explain our decisions and why we considered them to be reasonable in the circumstances.
- Compliance and enforcement actions will be undertaken in a lawful, transparent and timely manner.
- Council will provide information about ways to seek a review of an enforcement decision.

These guiding elements provide a basis upon which each complaint or investigation will be considered.

## 4. Use of Discretion

Wyndham City will raise community awareness about the need for compliance with campaigns that will use a mix of tools including media releases, printed publications, and digital means, such as Council's website and social media content.

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 record only (no response); to verbal warnings; written warnings or cautions; penalty infringement notices; orders; notices; and prosecution or civil proceedings. For each

circumstance and situation, the challenge for officers is determining which enforcement option applies and when to escalate the use of these options.

The enforcement options to be considered by Council are ordered 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.

Council 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.

These enforcement decisions will be made in line with the Discretion Consideration Matrix found in Diagram 1.

Diagram 1. Discretion Consideration Matrix

<b>Discretion Considerations</b>	
<p><b>Offence related factors:</b></p> <ul style="list-style-type: none"> <li>• The seriousness of the offence</li> <li>• Whether there is public concern</li> <li>• The age of the offence</li> <li>• Infringement offence vs Prosecution.</li> </ul>	<p><b>Person related factors:</b></p> <ul style="list-style-type: none"> <li>• The person’s offence history</li> <li>• The age, physical health, or mental health of the offender</li> <li>• Willingness to cooperate in the investigation, or the extent to which the person has done so.</li> </ul>
<p><b>Other factors:</b></p> <ul style="list-style-type: none"> <li>• Community safety</li> <li>• The likely penalty</li> <li>• The need for deterrence</li> <li>• The need to maintain public confidence in Council</li> <li>• Any special circumstances (age, physical health, mental health)</li> <li>• The likely length and expense of a trial.</li> </ul>	<p><b>Improper considerations:</b></p> <ul style="list-style-type: none"> <li>• The ethnicity, religion, sex, national origin or political associations of the person</li> <li>• Political pressure or interference</li> <li>• Personal feelings concerning the offence, the offender, or a victim</li> <li>• The possible effect of the decision on those responsible for the decision.</li> </ul>

## 5. Using a Risk Based Approach

Based on the local context and the complexity of enforcement, Council must prioritise where to focus resources to achieve the most impact.

Using a risk-based framework to document an enforcement framework identifies that non-compliance poses a risk to the community and the environment. This risk-based approach is

consistent with Council’s use of the Australian Standard, AS/NZS ISO 31000: 2009, for risk management across its operations.

This risk management approach will guide enforcement activity and is described in the enforcement matrix in Diagram 2 below.

Diagram 2. Enforcement Matrix

Likelihood or Consequence	<b>Insignificant</b> No impact to community or environment.	<b>Minor</b> May have a minor impact on the wider community or environment. Harm abated and some remedial works required.	<b>Moderate</b> Has a moderate impact on community or environment. Non-compliance for a short duration (days). Harm abated and remedied.	<b>Major</b> Has a major impact on community or environment.
<ul style="list-style-type: none"> <li>Repeated non-compliance.</li> <li>Past enforcement activity or breaches of related law and no remedial works undertaken.</li> </ul>	<b>Elevated</b>	<b>Elevated</b>	<b>Significant</b>	<b>Significant</b>
<ul style="list-style-type: none"> <li>Requirements are apparent (e.g. signage in place)</li> <li>Previous enforcement activity or breaches of related law.</li> </ul>	<b>General</b>	<b>Elevated</b>	<b>Elevated</b>	<b>Significant</b>
<ul style="list-style-type: none"> <li>Non-compliance of medium duration (weeks).</li> <li>Harm abated and some remedial works undertaken.</li> </ul>	<b>Proactive</b>	<b>General</b>	<b>Elevated</b>	<b>Significant</b>
<ul style="list-style-type: none"> <li>No history of non-compliance</li> <li>Non-compliance of short duration (days).</li> <li>Harm abated and remedied.</li> </ul>	<b>Proactive</b>	<b>Proactive</b>	<b>General</b>	<b>Elevated</b>

### A. Level of enforcement - a proactive response

Proactive responses may include:

- provision of information or advice on how to be compliant
- 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
- issuing a warning.

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

- residents holding a single noisy party
- residents accessing a property other than via an approved driveway as a one-off

- residents not bringing their bin in within an appropriate timeframe.

## **B. Level of enforcement - general**

General responses may include issuing:

- a notice to comply
- an infringement notice
- a notice of intention to serve an order or notice under relevant local laws or legislation, then serving an order or notice if appropriate.

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.

## **C. Level of enforcement action - elevated**

Elevated responses may include:

- issuing an order to stop someone doing something
- 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 permits
- rectifying an unsafe building or structure
- failing to comply with dangerous dog requirements.


## **D. Level of enforcement action - significant**

Significant responses may include:

- issuing an order or direction under relevant legislation
- seeking an injunction through the courts to prevent future or continuing unlawful activity
- commence legal proceedings for an offence against the relevant Act or regulation.

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

- when an Emergency Building Order is required

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- 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.

## 6. Review of decisions to take enforcement action

Council will assist and raise community awareness of how to seek a review of an enforcement decision.

For example, through an infringement review request, an application to have a matter heard in Court or the Victorian Civil and Administrative Tribunal (VCAT). As a model litigant, Council is committed to making this process as easy as possible.

## 7. Shared enforcement responsibilities

Council recognises that collaboration and cooperation between authorities and private land owners to address issues of shared regulatory responsibility is the best approach.

Council will take a proactive approach to working with other agencies. Any request for enforcement agreements that seek to improve public safety and protect amenity will be considered on their individual merits.

## 8. Role of Councillors in enforcement

Councillors have a key role in setting the strategic objectives of Wyndham through the Annual Integrated Plan and Budget, as well as the creation and advocacy of policies to support them. Councillors can assist enforcement by:

- supporting the organisational requirements to carry out enforcement action
- developing policy that supports legislation
- advocating for the importance of legislation and compliance to the community.

Councillors can help individuals who raise concerns with them by satisfying themselves that Council's policies are being carried out correctly.

Decision-making relating to the investigation of reports alleging unlawful activity and taking enforcement action is the responsibility of appropriately authorised council officer or the Council itself. Any such matters referred to Councillors by the community should be referred to the respective Council officer.



## 9. Implementation and monitoring

As this is a new policy, implementation will include ongoing awareness raising, and a review of relevant supporting procedures to ensure officer adherence.