

# LATE ITEMS ORDINARY MEETING

# **AGENDA**

# **9 FEBRUARY 2016**

Your attendance is required at an Ordinary meeting of Council to be held in the Council Chambers, 232 Bolsover Street, Rockhampton on 9 February 2016 commencing at 9.00am for transaction of the enclosed business.

CHIEF EXECUTIVE OFFICER

8 February 2016

Next Meeting Date: 08.03.16

#### Please note:

In accordance with the *Local Government Regulation 2012*, please be advised that all discussion held during the meeting is recorded for the purpose of verifying the minutes. This will include any discussion involving a Councillor, staff member or a member of the public.

## **TABLE OF CONTENTS**

ITEM		SUBJECT	PAGE NO
10	COUN	CILLOR/DELEGATE REPORTS	1
	10.1	REQUEST FOR DONATION FROM COUNCILLOR DISCRETIONARY FUND - ROTARY CLUB OF ROCKHAMPTO SOUTH INC	
11	OFFIC	ERS' REPORTS	2
	11.6	ENFORCEMENT STRATEGY AMENDMENT	2

#### 10 COUNCILLOR/DELEGATE REPORTS

# 10.1 REQUEST FOR DONATION FROM COUNCILLOR DISCRETIONARY FUND - ROTARY CLUB OF ROCKHAMPTON SOUTH INC

File No: 8295 Attachments: Nil

Authorising Officer: Evan Pardon - Chief Executive Officer
Author: Evan Pardon - Chief Executive Officer

#### **SUMMARY**

Mayor Margaret Strelow and Councillor Greg Belz requesting approval to donate \$845.55 from their respective Councillor Discretionary Funds to the Rotary Club of Rockhampton South Inc.

#### OFFICER'S RECOMMENDATION

THAT approval be granted to donate \$845.55 from Mayor's Councillor Discretionary Fund and Division 6 Councillor Discretionary Fund to the Rotary Club of Rockhampton South Inc towards building and plumbing application fees for the proposed disabled unisex toilet facility.

#### **BACKGROUND**

Mayor Margaret Strelow and Councillor Greg Belz require approval to donate \$845.55 each from their Councillor Discretionary Funds towards building and plumbing application fees for the proposed disabled unisex toilet facility.

In accordance with the Community Grants and Minor Sponsorship Policy, Council approval is required as the Rotary Club of Rockhampton South have also received funding towards the proposed disabled unisex toilet this financial year.

#### 11 OFFICERS' REPORTS

#### 11.6 ENFORCEMENT STRATEGY AMENDMENT

File No: 11979

Attachments: 1. Enforcement Strategy

Authorising Officer: Michael Rowe - General Manager Community Services

Author: Catherine Hayes - Manager Community Standards and

Compliance

#### **SUMMARY**

This report presents an amendment to Council's Enforcement Strategy relating to wandering dogs.

#### OFFICER'S RECOMMENDATION

**THAT** Council amend the Enforcement Strategy to:

1. Remove the reference to stray dog and wandering dog in the Animals table in Appendix 1: and

#### 2. Insert:

- a. in the medium risk list 'Dog wandering at large that meets registration and microchipping requirements, is not regulated and has no previous history (eg wandering, stray or attack)': and
- b. In the high risk list 'Dog wandering at large that does not meet registration and microchipping requirements, or is a regulated dog, or has previous history (eg wandering, stray or attack)'.

#### **COMMENTARY**

Council adopted an Enforcement Strategy in 2014. The strategy outlines Council's approach to enforcement matters and provides employees with direction about the manner in which enforcement activities are to be undertaken, ensuring:

- consistency in enforcement action in matters of non-compliance;
- transparency, procedural fairness and natural justice principles are applied; and
- enforcement action is proportionate to the alleged non-compliance in each case.

A wandering dog is categorised as a high risk in the Enforcement Strategy and therefore the first action is a legislative tool ie an infringement notice.

It is proposed that for a dog wandering at large that meets registration and microchipping requirements, is not a regulated dog and has no previous history (eg wandering, stray or attack), that the risk is reduced to a medium risk and the first action is an advisory letter.

Any subsequent wandering at large for the same animal would be a high risk and a legislative tool used ie infringement notice.

This in effect gives the owner of a dog that meets the registration and microhipping requirements, where the dog is is not a regulated dog and having no previous history, a one off opportunity as a responsible owner for that dog to be returned to its owner without penalty, before an infringement is imposed.

#### **BUDGET IMPLICATIONS**

That there will be a reduction in penalties and increase in education costs.

#### **LEGISLATIVE CONTEXT**

Under Local Law No. 2 (Animal Management) 2011 the owner of the animal must ensure that it is not wandering at large. Wandering at large means the animal is not under the effective control of someone and the animal is in either a public place or a private place without the consent of the occupier.

The current infringement amount is \$235.00.

#### **CONCLUSION**

To provide a responsible owner benefit it is proposed that Councils Enforcement Strategy be amended so that a dog wandering at large that is registered, microchipped, is not a regulated dog and has no previous history (eg wandering, stray or attack) receive an advisory letter only for the first offence. Any subsequent offences for wandering at large would attract an infringement notice.

# ENFORCEMENT STRATEGY AMENDMENT

# **Enforcement Strategy**

Meeting Date: 9 February 2016

**Attachment No: 1** 



#### 1. Scope

Council is responsible for the administration and also has a function in the State's administration of various Acts, related regulations and policies and Local Laws.

#### 2. Purpose

This strategy outlines Council's approach to enforcement matters and provides employees with direction about the manner in which enforcement activities are to be undertaken, ensuring:

- consistency in enforcement action in matters of non-compliance;
- transparency, procedural fairness and natural justice principles are applied; and
- enforcement action is proportionate to the alleged non-compliance in each case.

#### 3. Related Documents

Actionable Communications and General Complaints Procedure
Code of Conduct
External Delegations and Authorisation Registers
Human Resource Management Delegations Policy
Infringement Notice Policy
Infringement Notice Administration Procedure
Legal Proceedings – Commencement, Cessation and Other Matters Policy
Recordkeeping Policy
Any other related documents, however not legislation

#### 4. Defining Enforcement

Council adopts a broad definition of "enforcement" which combines the provision of advice and assisting compliance with formal action where necessary. This is intended to encourage higher levels of voluntary compliance with legal requirements by individuals, businesses and other bodies.

Notwithstanding the above, Council will take immediate action when required, for example to ensure public health and safety or to protect the environment and take firm action against those who act unlawfully when circumstances warrant.

#### 5. Principles of Good Enforcement

Enforcement actions are taken within the context of both a legal and policy framework. Employees will carry out their enforcement related work with due regard to the following principles.

#### 5.1 Proportionality

Actions will be scaled to the seriousness of the breach or level of risk.

Depending on the seriousness and persistence of the non-compliance, Council will minimise the costs to the person or body by enforcing the minimum action necessary to secure future compliance.





Prosecution will generally be used as a last resort or for continuous serious non-compliance.

#### 5.2 Consistency

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

- ensure fair, equitable and non-discriminatory treatment;
- follow work instructions, standard operating procedures and Council policies and procedures; and
- seek approval of any deviation from this strategy and any instructions/policies/procedures.

#### 5.3 Transparency

Council will maintain open communication at all stages of enforcement and will:

- be open and transparent about the manner in which it undertakes enforcement activities;
- consult and provide ready access to published standards, levels of service and performance expected from those on whom the law places a duty (duty holders);
- make clear what is legally required and what is desirable but not compulsory.

#### 6. Recordkeeping

Any records in regards to the following must be recorded in accordance with the Recordkeeping Policy:

- Approval of a decision;
- any deviation from this strategy or any related works instruction, policy or procedures, ensuring reasons, consequences and risks of the deviation are detailed;
- · conflicts of interest; and
- where it is not practical to give a notice before remedial or work required is undertaken.

#### 6.1 Complaints of Non-Compliance

When a report or a complaint about non-compliance is received a full and proper record of the complaint must be made in accordance with the Actionable Communications and General Complaints Procedure and the Recordkeeping Policy.

Where a decision is made not to investigate a complaint, the decision and reasons will be recorded in accordance with Actionable Communications and General Complaints Procedure and Recordkeeping Policy and the complainant will be advised in writing.

#### 7. Authorised Persons

Only employees who are competent by training, qualification and/or experience will be appointed by the CEO to take enforcement actions. These employees also have an understanding of Council's policies, procedures, work instructions and their Instruments of Appointments. Such employees must ensure currency of any relevant training/qualifications to maintain this authorisation.

2



#### 8. Delegations for Enforcement Action

Various Council positions delegated to initiate various levels of enforcement action are set out in the External Delegations Registers. These registers detail what positions have decision-making powers in accordance with the various acts to approve the issue of stop work orders, serve notices to serve orders, initiate proceedings, etc.

#### 9. Decision Making

The following factors are to be ignored when choosing an enforcement strategy:

- any element of discrimination or bias against the person such as ethnicity, nationality, political association, religion, gender, sexuality or beliefs; and
- possible political advantage or disadvantage to a government, person holding (or a candidate for) public office, or any political group or party.

In coming to a decision on the most appropriate means of enforcement, the employee shall consider, amongst other relevant factors:

- the seriousness of the offence;
- the degree of wilfulness involved;
- history;
- the consequences of non-compliance;
- the likely effectiveness of the various enforcement options;
- deterrence:
- · the effect on the community and the environment; and
- · consistency of approach to similar breaches/offences.

The Complaint and Non-Compliance Response/Action and Risk Assessment matrixes included in the appendices guide the enforcement process.

Any decision to act, other than in accordance with the Enforcement Strategy, must have approval from the relevant Manager.

#### 9.1 Conflicts of Interest

In accordance with the Code of Conduct, where a personal association or relationship with the alleged offender or any other person involved exists or maybe perceived to exist, an alternative person will make decisions where possible.

#### 10. Enforcement Options

Council can determine to take informal action or take formal action in response to an issue.

#### 10.1 Informal Action

Informal action to achieve compliance with legislation may include:

- offering verbal or written advice;
- verbal warnings and requests for action; and/or
- · written warnings, requests or reminders.

Advice will be clear and simple and confirmed in writing.





The circumstances in which informal action may be appropriate include:

- the act or omission is not serious enough to warrant formal action;
- the duty holder's past history reasonably suggests that informal action will secure compliance;
- confidence in the individual/other body is high;
- the consequences of non-compliance will not pose a significant risk; and
- where it may prove more effective than a formal approach.

Where statutory action is not possible, but it would be beneficial in a wider public safety context to urge a particular outcome, such action will be taken by an employee with HRM delegation of Band 4 or above. The recipient will be made aware that the requested actions are not legally enforceable.

#### 10.2 Mediation

Where practical, Council will make mediation available. Mediation is a possible alternative where, after investigation, an employee determines that the problems being complained of are incapable of resolution through other formal or informal means. The use of mediation services may also be appropriate where the complainant has no wish to pursue action to resolve a complaint by legal means.

#### 10.3 Formal Action

#### 10.3.1 Legislative Notices

Various pieces of legislation specify the procedures to follow, in order to:

- advise of the intention to issue a legislative notice;
- invite submissions with respect to the matter;
- order a person to do or refrain from doing a thing under specified circumstances; and
- issue directions specifying how the legislative notice may be complied with.

Professional judgement and discretion is used to assess the variables relating to each matter under consideration, including the reasonableness of the actions required by a legislative notice and the timeframe to comply.

Only in circumstances such as a threat to life or immediate threat to public health or safety will a legislative notice be made without giving notice of intention. In these circumstances immediate compliance to resolve a situation can be required.

In most cases the person receiving the legislative notice has a right to internal review or right of appeal to the appropriate court if the legislative notice is considered unreasonable. If a legislative notice is served for which an appeal is possible, Council will advise the recipient in writing of the right to appeal and the relevant legal provisions at the time of serving a legislative notice.

Where there is evidence that an offence has been committed Council may issue an infringement notice and/or launch a prosecution before or in addition to serving a legislative notice. This will only be done where it is determined that the conduct of the recipient justifies taking both steps.

4



#### 10.3.1.1 Non-Compliance with Legislative Notice

Failure to comply with a legislative notice will incur further enforcement action such as an infringement notice, further legislative notice or possible prosecution.

Where action in regard to non-compliance is provided for by legislation and the necessary work has not been carried out in the time allowed without good reason, Council may undertake the required work. Before doing the work it should be considered if there is a realistic prospect that the person responsible will complete the work within a reasonable time. Where work in default is undertaken Council will seek to recover all costs over a fair period, using all statutory means available.

The decision to carry out action in default is made by the Chief Executive Officer or delegate.

Where an offence has been committed Council may issue an infringement notice and/or launch a prosecution in addition to taking action to fulfil an Order. This will only be done where it is determined the conduct of the recipient justifies taking such steps. Factors such as giving false information, the obstruction of Council employees and the harm or risk of harm caused by the recipient's delay will be considered in determining additional enforcement actions.

#### 10.3.2 Prosecution

Prosecution will only proceed where there is a reasonable prospect that an affence can be proved beyond reasonable doubt. In some cases a Pre-Prosecution letter may be issued to warn the person that a prosecution may be taken if compliance is not attained.

The following circumstances are likely to warrant a prosecution:

- a flagrant breach of the law such that public health, safety and welfare have been put at risk;
- serious environmental harm:
- the alleged breach is too serious or the risks too great to be dealt with by means of an infringement notice, if available;
- a failure to correct an identified serious problem after having been given reasonable opportunity to do so;
- a failure to comply with the requirements of a legislative notice;
- an established and recorded history of similar offences;
- an unwillingness, on the part of the individual or other body, to prevent a recurrence of the problem; and
- the recovery of the costs of the investigation or remedial work or financial compensation that are required by Council.

A decision to prosecute must be in the public interest, the following factors will be considered:

- whether the offence was premeditated;
- the need to influence the offender's future behaviour;





- the effect of the offender's or witness's physical or mental health, balanced against the seriousness of the offence;
- the prevalence of the alleged offence and the need for deterrence, both personal and general; and
- the likely length, expense and outcome of a trial.

Legal advice should be sought to enable a decision whether or not to prosecute a matter.

The final decision to prosecute will be made by Council in accordance with the Legal Proceedings – Commencement, Cessation and Other Matters Policy.

6

Appendix 1 - Complaints Response/Action

omplaints and	Non-Compliance F	Response/Action			
Amenity or Other	1 <sup>st</sup> Action	2 <sup>nd</sup> Action	3 <sup>rd</sup> Action	4 <sup>th</sup> Action	Unauhatantiatas
Impact		20 days	20 days	20 days	Unsubstantiated
Low	Site Inspection Formal Contact Letter	Site Inspection Show Cause Notice and/or Infringement Notice	Site Inspection Enforcement Notice and/or Infringement Notice	Site Inspection Prosecution and/or Infringement Notice	No Action Letter
Medium	Site Inspection Show Cause Notice and/or Infringement Notice	Site Inspection Enforcement Notice and/or Infringement Notice	Site Inspection Prosecution and/or Infringement Notice		No Action Letter
High	Site Inspection Enforcement Notice and/or Infringement Notice	Site Inspection Prosecution and/or Infringement Notice			No Action Letter

Extension of time may be given before the next compliance action is taken, depending on response and actions taken.



Community Standards a	Community Standards and Compliance Enforcement Strategy					
Complaints and Non-Co						
Risk Rating	Unsubstantiated					
Minor	Verbal advice Fact sheet	Advisory letter	Site visit Warning letter	No action letter		
Low	Advisory letter	Advisory letter	Legislative tool	No action letter		
Medium	Advisory letter	Legislative tool	Legislative tool	No action letter		
High	Legislative tool	Legislative tool	Legislative tool	No action letter		

Extension of time may be given before the next compliance action is taken, any more than one extension must be discussed with the senior officer of the relevant Unit

In the case of parking offences, parking signage is considered the advisory letter therefore legislative tool is the first enforcement action taken.

In the case of a non-registered dog due to non renewal, the registration renewal notice is considered the advisory letter therefore legislative tool is the first enforcement action taken.

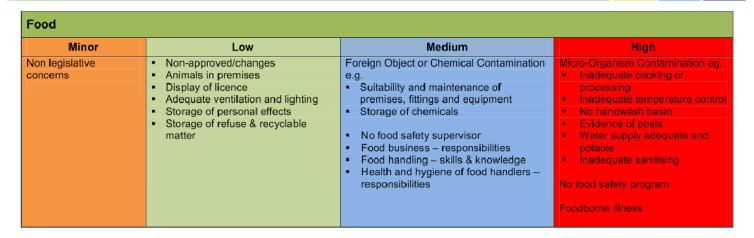
In the case of a non-registered dog of a new dog, Council's advertising is considered the advisory letter therefore legislative tool is the first enforcement action taken.

If a repeat offender (2 or 3 complaints within a 12 month period), enforcement will commence at the 2nd or 3rd non-compliance step.

Where the breach is considered frivolous, vexatious or trivial in nature or where taking action may prejudice other action, or whether action taken by another section of Council will gain compliance with the breach, no enforcement action will be taken. Where enforcement action is not taken, education may be provided to ensure the person fully understands their responsibilities.

# 9 FEBRUARY 2016

### **Enforcement Strategy**



Personal Appearance Services					
Minor	Low	Medium	High		
Non-Higher Risk PAS	Non-Higher Risk PAS	Higher Risk PAS	Higher Risk PAS		
<ul> <li>Hygiene</li> </ul>	Sterilisation	Qualification	Spread of disease		
<ul> <li>Cleaning</li> </ul>		<ul> <li>Non-approved</li> </ul>	<ul> <li>Sterilisation of equipment</li> </ul>		
<ul> <li>Vermin</li> </ul>	Higher Risk PAS				
<ul> <li>Structural</li> </ul>	Vermin				
<ul> <li>Animal in premises</li> </ul>	Structural				



Minor	Low	Medium	High
Non legislative	Air Pollution	Air Pollution	Water Pollution
concerns	Odour – general	Spray Drift	<ul> <li>Emergency Response</li> </ul>
		<ul> <li>Odour - septic tank</li> </ul>	
	Land contamination	<ul> <li>Devolved ERA</li> </ul>	
	Light	Water Pollution	
		<ul> <li>Release of contaminants</li> </ul>	
	Noise	Devolved ERA	
	Air conditioner		
	<ul> <li>Amplified devices</li> </ul>	ERA	
	<ul> <li>Pumps</li> </ul>	<ul> <li>Non-approved</li> </ul>	
	<ul> <li>Refrigeration equipment</li> </ul>		
	<ul> <li>Indoor venues</li> </ul>		
	Devolved ERA		
	■ Other		

Public Health Risk						
Minor	Low	Medium	High			
Non legislative	General – previously occurring	General – currently occurring	<ul> <li>Rats or mice present in house</li> </ul>			
concerns	Potential to harbour or be a source	<ul> <li>Single confirmed case</li> </ul>	<ul> <li>Mosquito eggs &amp;/or larvae</li> </ul>			
	of food for rats or mice	<ul> <li>Rats or mice in roof space or yard</li> </ul>	present			
		<ul> <li>Non-compliance with keeping of rats</li> </ul>				
		requirements				
		<ul> <li>Places mosquitoes likely to breed</li> </ul>				
		including non compliance with water				
		tank requirements				
		<ul> <li>Asbestos</li> </ul>				
		<ul> <li>Accumulation of waste</li> </ul>				

Animals						
Minor	Low	Medium	High			
Non legislative	Barking nuisance	Excessive number of animals without	<ul> <li>Dog attack on person</li> </ul>			
concerns	No micro-chip	permit	<ul> <li>Dog attack on another animal</li> </ul>			
		<ul> <li>Large animal without a permit</li> </ul>	<ul> <li>Wandering dog</li> </ul>			
		Nuisance bird	<ul> <li>Dog off leash in public place</li> </ul>			
		Stray dog	<ul> <li>Regulated dog non-compliance</li> </ul>			
		<ul> <li>Unregistered dog</li> </ul>	<ul> <li>Non-compliance with a permit</li> </ul>			
		Dog on heat in public place	condition			
		Dog defecating in public place				
		Wandering livestock	'			



Parking						
Minor	Low	Medium	High			
Non legislative concerns		<ul> <li>Timed zones and loading zones 1</li> <li>Disabled bays</li> <li>Bus, taxi and permit zones</li> <li>No standing, parking – yellow lines, footpaths, traffic islands, no within a bay, double parking, too close to a corner.</li> <li>Heavy vehicles</li> </ul>				

Local Laws General						
Minor	Low	Medium	High			
Non legislative		Sale of vehicles				
concerns		<ul> <li>Barbed wire fences</li> </ul>				
		<ul> <li>Overgrown allotments</li> </ul>				
		<ul> <li>Unsightly allotments</li> </ul>				
		<ul> <li>Items fox fixed eg roof sheeting</li> </ul>				
		<ul> <li>Fire under 2mx2mx2m</li> </ul>				
		<ul> <li>Temporary entertainment events</li> </ul>				

#### Appendix 2 - Risk Assessment

#### Probability

Page (17)

Level	Description	Frequency
Very Likely	expected to occur always	Daily Occurrences
Likely	Will probably occur often	Regular instances
Possible	Might occur at some time	Some local history
Unlikely	Could occur, but not likely	No local history; elsewhere
Very Unlikely	Only occur exceptionally	Never recorded anywhere

Cor	sequence	Minor	Low	Medium	High	Extreme
		Not really worth worrying about	Consequences readily absorbed but management effort to minimise impact	Significant event, which can be managed under normal procedures	Critical event, with proper management, will be endured	Disaster will lead to collapse
	Environmental Nuisance to material or serious environmental harm. (Can also be defined by the Environmental Protection Act 1998)	No harm to the environment	Environmental nulsance or some minor physical environmental damage	Material environmental harm with medium term Impacts (< 3 years)	Serkous environmental harm with long term impacts (> 3 years)	Uncontrolled toxic release, never able to be restored at all
RIA	Human Health & Safety No injuries to fatalities. How would the health & safety of employees or local community be compromised or impacted?	No or extremely low potential for health impact	Nuisance that has potential for health impacts	Exposure results in high potential or immediate health impact, medical treatment may be sought	Immediate health or safety impact, or potential for, of an extreme nature, immediate intervention required	Fatalities or potential for fatal health impact
CRITERIA	Economic Cost to community & businesses, fines, Council financial resources, clean up and repair costs (potential Ittigation expenses not included)	Less than \$1,000	\$1,000 < impact < \$10,000	\$19,000 < impact < \$100,000	\$100,000 < impact < \$0.5M	Impect > \$0.5M
	Strategic Significance Threat to Council or community assets (How Important is the issue to council?)	No local law or state regulation governing the issue	State regulation governing the issue	Specific Council policy or operational priority (key focus area or strategy)	Immediate impact on Council/community asset (major focus area or strategy)	Long-term, detrimental impact on public view of area impacting viability of the area

Community Exposure
To differentiate between isolated incidents and broader community

Localised impact, single complaint/single source

Localised impact multiple complaints >3 or multiple sources

Immediate impact on Council/community asset

City wide/regional community impact

#### Inherent Risk

Page (18)

Probability	Consequences				
	Minor	Low	Medium	High	Extreme
Very Likely	Low	Medium	High	High	Extreme
Likely	Low	Low	Medium	High	Extreme
Possible	Minor	Low	Medium	High	Extreme
Unlikely	Minor	Low	Medium	Medium	High
Very Unlikely	Minor	Minor	Low	Medium	High

Localised impact multiple complaints <3 & single source