



SOUTHERN
MIDLANDS
COUNCIL



Southern Midlands Council

Dog Management Policy 2016

August 2016

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PREAMBLE

- *Local Government is charged with legislative responsibilities which protect individuals and the community as a whole.*
- *Council’s customers include, both those on whom the law places a duty and those whom the law protects.*
- *While it is ultimately the responsibility of individuals and other bodies to comply with the law, Council staff are required to carry out activities which enforce compliance.*
- *In addition to enforcement, Council carries out a range of activities to ensure compliance such as community education programs to encourage conformance.*

COUNCIL’S OBLIGATION

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

Definitions

In this policy:-

“at large”

A dog is at large if –

- (a) it is not under the effective control of a person in a public place or in or on premises without the consent of the occupier; or
- (b) it is a dangerous dog in a public place and is –
 - (i) in the charge of a person under the age of 18 years; or
 - (ii) without a muzzle; or
 - (iii) not on a lead; or
 - (iv) without an approved collar.

“**domestic animal**” means an animal kept as a domestic pet.

“**fees**” means a fee determined by the Council.

“**attack**” includes bite, menace or harass.

“**authorised person**” means:-

- (a) a police officer; or
- (b) a general manager; or
- (c) a person appointed by a general manager to be an authorised person; or
- (d) a person who is a ranger under the *National Parks and Wildlife Act 1970*; or
- (e) a person appointed as a bailiff of Crown Lands under the Crown Lands Act 1976.

“**built-up area**” means an area in which:-

- (a) there are buildings on land next to the road; and
- (b) there is street lighting at intervals not over 100 metres for a distance of at least 500 metres, or, if the road is shorter than 500 metres, for the whole road.

“**dangerous dog**” means a dog declared to be a dangerous dog under section 29 or 30 of the *Dog Control Act 2000*.

A general manager, by notice served on the owner of a dog –

- (a) may declare that dog to be a dangerous dog if –
 - (i) the dog has caused serious injury to a person or another animal; or
 - (ii) there is reasonable cause to believe that the dog is likely to cause serious injury to a person or another animal; and

“declared area” means a declared area under division 2 or part 3 of the *Dog Control Act 2000*.

“de-sexed dog” means a dog of either sex which has been sterilised or neutered.

“effective control” means effective control as referred to in section 4 of the *Dog Control Act 2000*.

“exercise area” refers to an area declared under section 20 of the *Dog Control Act 2000*.

“General Manager” means the general manager of the Council appointed under the *Local Government Act 1993*.

“Guide Dog” means

(a) a guide dog as defined by the [Guide Dogs and Hearing Dogs Act 1967](#); or

(b) a dog training to be a guide dog;

“lead” means a lead, leash, cord or chain of sufficient strength to restrain a dog.

“licence” means a licence to keep on premises –

(a) more than two dogs over the age of 6 months; or

(b) more than 4 working dogs over the age of 6 months.

“nuisance” means a dog referred to in section 46 (3) of the *Dog Control Act 2000*

(a) behaves in a manner that is injurious or dangerous to the health of any person; or

(b) creates a noise, by barking or otherwise, that persistently occurs or continues to such an extent that it unreasonably interferes with the peace, comfort or convenience of any person in any premises or public place.

“owner of a dog” means a person referred to in section 6 of the *Dog Control Act 2000*.

The person who is the owner of a dog is –

(a) in the case of a registered dog, the person in whose name the dog is registered; or

(b) in the case of an unregistered dog, the person who ordinarily keeps the dog;
or

(c) in the case of a child's pet, the child's parent or guardian.

“pensioner” means a person in receipt of a Federal Pension as defined in the *Local Government Act 1993*.

“premises” includes land or any part of any premises or land.

“prohibited area” means an area declared under section 22 of the *Dog Control Act 2000*.

“public place” means:-

- (a) a public places as defined in the *Police Officers Act 1935*; and
- (b) a road; and
- (c) a road related area.

“register” means a register kept under section 15 of the *Dog Control Act 2000*.

“registered dog” means a dog registered in accordance with the *Dog Control Act 2000*.

“registration disc” means a disc or tag referred to in section 10 (1) of the *Dog Control Act 2000*.

“restricted area” means an area declared under section 23 of the *Dog Control Act 2000*.

“road” means:-

- (a) an area that is developed for, or has as one of its main uses, the driving or riding of motor vehicles and is open to, or used by, the public; and
- (b) a part of the kerb; and
- (c) an unsealed part of a sealed road.

“road related area” means:-

- (a) an area that divides a road; or
- (b) a footpath or nature strip adjacent to a road; or
- (c) a footpath or track that-
 - (i) is not a road; and
 - (ii) is designed for use by cyclists or pedestrians; and
 - (iii) is open to the public.

“shopping centre” means a collection of shops in an enclosed area covered by a roof or forming a courtyard or square, excluding any area provided for the parking of vehicles.

“training area” means an area declared under section 21 of the *Dog Control Act 2000*.

“working day” means a day on which the public office of the council is open for business.

“working dog” means a dog used principally for:-

- (a) droving or tending stock; or
- (b) detecting illegal substances; or
- (c) searching, tracking or rescuing; or
- (d) working with police officers.

1. Introduction

The Southern Midlands Council is committed to encouraging the responsible ownership of dogs within its municipal area. To achieve this it will enforce its responsibilities set out in the *Dog Control Act 2000* as well as the Dog Control Amendment Act 2009 and abide by its commitments set out in this Dog Management Policy.

The Council recognises the significant contribution that responsible dog owners (whether urban, rural or working dogs) can make within society. Therefore a strong emphasis will be placed on education to ensure that all dog owners and potential dog owners are encouraged to behave responsibly.

Community education will be progressed through measures including the production of information pamphlets, articles in Council's newsletter and other publications, use of the Community Radio Station and presentations to schools and community groups.

Council recognises that education programs need to target new residents, particularly those that have had no experience living in country areas and who may therefore be unaware of the associated additional responsibilities of dog ownership.

2. Code of Responsible Dog Ownership

2.1 Dog Owners Responsibilities

To promote responsible ownership the Southern Midlands Council will ensure its policies are consistent with community expectations, and are designed to encourage a compatible relationship between dog owners and non-dog owners.

It is the responsibility of every dog owner whilst in the municipal area of Southern Midlands to:

- Ensure that the dog is registered and that registration is maintained, as well as ensuring that the dog is microchipped in accordance with the *Dog Control Act 2000*
- Ensure that the dog is kept under effective control at all times and not allowing a dog to be at large;
- Ensuring that it is collared and on a lead in public places and that it is properly restrained when in or on a vehicle.
- Ensure that the dog does not cause a nuisance to any other person, whether by persistent or loud barking, howling or by any other means;
- Ensure that the dog does not injure, endanger, intimidate, or otherwise cause distress to any person. *An owner is responsible for the actions of a dog;*
- Ensure that the dog does not damage or endanger any property belonging to any other persons;
- Ensure that dogs are not allowed to roam unsupervised;

- Take all reasonable steps to ensure that the dog does not injure, endanger, or cause distress to any live stock, poultry, domestic animal, or protected wildlife;
- Ensure that the dog receives proper care and attention and is supplied with proper and sufficient food, water and shelter;
- Ensure that the welfare of the dog is protected as required by the Animal Welfare Act 1993
- Ensure that the dog receives adequate exercise; and
- Clean up after the dog should it defecate in a public place and dispose of waste in a responsible way.

An owner can be held liable for the actions of a dog and can be fined or penalised for dog control offences. Owners can also be liable to pay compensation for injury or damage caused by a dog in their charge.

An owner's failure to properly control a dog may in some circumstances result in the dog being destroyed.

2.2 Irresponsible Dog Ownership

No matter how much positive education on responsible dog ownership the community is exposed to, there will always be an element of our society that is unresponsive and uncooperative. Such people either fail or simply refuse to conform to acceptable codes of behaviour and reasonable community expectations.

It is this minority group that make it necessary to have legislation in place to govern the keeping of dogs in our community. Council is committed to maintaining community standards by means of positive education wherever possible. However, at times it is necessary to instigate legal proceedings to change some people's attitudes and unacceptable behaviour. Council is equally committed to "Education by Prosecution" if required.

2.3 Seizure of Dogs

Pursuant to the *Dog Control Act 2000* authorised officers have the power to seize and impound any dog:

- That is not under effective control,
- That is in a prohibited area,
- That has attacked or chased any person or animal
- Where there is reason to believe it may attack or chase any person or animal

Impounded dogs that are currently registered will be held for a period of 5 working days before any further action. Dogs that are not registered will be kept for a minimum period of 3 working days.

Council's preferred solution for dogs that are impounded but remain unclaimed is for re-homing. Only as a last resort will dogs be put down.

3. Control of Dogs

Southern Midlands Council is committed to providing a caring and safe community. To achieve this Council will enforce its regulatory functions in relation to the *Dog Control Act 2000*.

3.1 Responsibilities of the Owner or Person in Charge of a Dog

Under the Act the owner or person in charge of a dog must ensure (that):

1. That the dog remains under effective control and does not cause a nuisance in private premises, in a public place, or rushes at or chases any person.
2. The dog is on a leash no longer than 2 metres when in a built-up area in a public place
3. The dog is not tethered to a fixed object in a public place by a lead longer than 2 metres or for longer than 30 minutes.
4. They have no more than 2 dogs on a lead on a footpath or road
5. They have no more than 4 dogs in their charge in a public place
6. When on private property the dog/s are securely confined to that property
7. They clean up after the dog should it defecate in a public place
8. The dog is wearing a collar and registration disc when in a public place
9. Council is notified on the death, loss or disposal of a dog, or a change of address
10. The dog does not rush at or chase motor vehicles or bicycles in a public place
11. The dog does not attack or chase any person or another animal
12. Dogs are not taken into prohibited areas
13. Dogs are not taken into restricted areas outside allowable times
14. The dog is microchipped in accordance with the Act

Failure to comply with these requirements is an offence under the Dog Control Regulations 2010 and may be punished by a fine of up to five penalty units (as of 1 July 2010, one penalty unit is equal to \$130)

Regular patrols of the municipal area will be maintained by the Animal Control Officer to ensure compliance by the dog owners with provisions of the *Dog Control Act 2000*.

The Southern Midlands Council will locate dog tidy bins within exercise areas and other high usage areas where deemed necessary.

It is the responsibility of owners to ensure they have the means to clean up after their dogs in public places.

3.2 Dogs in Vehicles

When a dog is in or on a vehicle, the owner or person in charge of the dog must restrict it sufficiently so that it is unable to leave the vehicle or attack any person or animal outside the vehicle. Failure to do so is an offence punishable by a fine of up to

five penalty units. When in open vehicles, dogs should be restricted in such a way that the restraint does not allow the animal to reach over the side of the vehicle.

Using a restraint that permits a dog to be strangled or otherwise injured, should it fall from the vehicle, may be an offence under the Animal Welfare Act 1993. Animal welfare offences are punishable by fines of up to 100 penalty units and/or a term of imprisonment of up to 12 months.

4. Declared Areas

4.1 Off the Lead Dog Exercise Areas

Being a large rural municipality it is assumed that most dog owners have the opportunity to exercise their dog(s) without the need for dedicated off-lead exercise areas.

Nevertheless, Council recognises that there may be a need for such areas in parts of the municipality and is prepared to accept and consider nominations of such areas from the community.

Since the last Dog Management Policy 2011, Council commenced a process to identify such areas as part of its strategic planning and Community consultation process. This process has given rise to the Mangalore Recreation Ground in Blackbrush Road being declared as a Dog Training Area, under Section 21, Training areas, *Dog Control Act 2000*. The conditions for the use of that Declared Dog Training Area are included in the Appendices.

It is noted that, while in any dedicated off-lead exercise area, dogs are still required to be under the effective control of the owner at all times and must be prevented from creating a nuisance to nearby residents and other users.

In addition, dogs declared dangerous under the *Dog Control Act 2000* remain subject to the requirements of Section 32 of the Act and must not be allowed off a lead, even when in a dog exercise area.

The Southern Midlands Council will locate dog tidy bins within formally designated exercise areas and other high usage areas where deemed necessary.

4.2 Areas where dogs are required to be on leads

As defined under Section 4 (2) of the *Dog Control Act 2000* all road and road related areas in built up areas are areas where dogs must be on leads at all times.

In addition, dogs must be on leads in all Council parks except those designated as off lead exercise areas

4.3 Dog Prohibited Areas

(Guide dogs and hearing dogs are exempt from these provisions)

These areas relate to sensitive habitats for wildlife, reserves which are set aside for biodiversity conservation and provide recreational opportunities for users that are compatible with the protection of these values.

The following areas are declared as areas prohibited to dogs on the basis that they provide sensitive habitat for wildlife.

- Chauncy Vale Sanctuary
- Lake Dulverton Wildlife Reserve (The Reserve is defined as being that area under water at any point of time)
- Lake Tiberius
- Coal River Gorge Nature Reserve
- All dedicated Conservation Areas

4.4 Prohibited Public Areas

(Guide dogs and hearing dogs are exempt from these provisions)

The *Dog Control Act 2000* prohibits dogs in the following defined areas:

- In any grounds of a school, pre-school, kindergarten, crèche or any other place for the reception of children without the permission of a person in charge of the place
- Any shopping centre or shop
- In any grounds of a public swimming pool
- Any playing area of a sportsground on which sport is being played
- Any area within ten metres of a children's playground

Additional Areas includes:

- Any place licensed as a Place of Assembly

5. Dangerous Dogs

Amendments to the Act were made in 2009 in response to widespread community concern about dog attacks, which can result in horrific injuries and, in extreme cases, the death of the victim. The Government introduced new controls with the aim of increasing public safety and highlighting the responsibilities of dog owners. Changes were made to the requirements relating to dogs declared to be dangerous dogs, and a category of restricted breed dog has also been introduced.

5.1 Restricted breed dogs

Dogs of a breed which have been banned from importation into Australia may be declared restricted breed dogs. Of the breeds banned from importation, only the American pit bull terrier or pit bull terrier is understood to be in Tasmania.

The restricted breed dogs are the dogo Argentino, the fila Brasileiro, the Japanese tosa, the American pit bull terrier or pit bull terrier, and the Perro de Presa Canario or Presa Canario. These breeds were banned from importation into Australia over 15 years ago due to the threat they pose to public safety. Cross-breeds are not included. Council officers will determine whether a dog is a restricted breed dog on the basis of approved guidelines which will include key characteristics of dog breeds such as height, weight, coat, colouration, tail carriage, and facial and body features.

Owners can appeal the declaration of their dog as a restricted breed dog to the Magistrates Court (Administrative Appeals Division) within 28 days of the service of notice of the declaration. In such an appeal the onus is on the owner to prove that the dog is not a restricted breed.

5.2 Sale and Purchase of Dangerous and Restricted Breed Dogs

A person who wishes to purchase or become the owner of a restricted breed dog must apply to Council for approval to have ownership transferred to them.

All dogs declared to be dangerous or restricted breed dogs in other states will be recognised as such in Tasmania and approval will be required before they can be imported into the state.

A dangerous or restricted breed dog may only be sold or given away after the buyer or new owner has received prior approval from Council. The seller must notify their council within 24 hours of completion of the sale of the dog and failure to notify the council of such a sale may incur a penalty of up to 20 penalty units.

5.3 Monitoring the Location of Dangerous Dogs

The Southern Midlands Council dog register will record all dogs declared dangerous under the *Dog Control Act 2000*. This register will contain the owners name and address, and dog registration details.

Where the Southern Midlands Council is made aware that a dangerous dog has moved to another municipal area, notification will be given to that Council. On a regular basis, an officer of the Southern Midlands Council will visit the premises on which a dangerous dog is kept to ensure:

- a) the dog is being housed correctly as defined in the *Dog Control Act 2000*, and
- b) appropriate signage is displayed at every entrance to the property.

Appropriate legal action will be taken against any dangerous dog owner not complying with the regulations.

5.4 Collars and Signage Associated with Dangerous Dog

To ensure dogs that are declared dangerous under Section 32 and 33 of the *Dog Control Act 2000* are using the specified collars and warning signage, the Southern Midlands Council will make the required purchases from the appropriate supplier and issue them to the owner of the dangerous dog. The costs associated with purchasing the items will be the responsibility of the dog owner.

5.5 Declaration of a Dangerous Dog

Any dog that has caused serious injury to a person or another animal, or there is reasonable cause to believe that the dog is likely to cause serious injury to a person or another animal, may be declared a dangerous dog.

Where the Council has cause to believe that a dog is likely to cause serious injury to a person or another animal, the Council will consider all evidence, including third party dog behaviour assessments where necessary, before declaring the dog to be dangerous.

As defined in the *Dog Control Act 2000*, all dogs that are recognised as used to guard non-residential premises will be immediately declared dangerous.

5.6 Requirements for Keeping Dangerous Dogs

The owner of a dog declared dangerous must ensure that the dog is implanted with an identifying micro-chip in an approved manner, within 30 days of being served notice of the declaration.

The owner or person in charge of a dangerous dog must ensure that approved signs are displayed at all entrances to the property where the dog is kept. These are available only through Council.

The owner or person in charge of a dangerous dog must ensure the dog wears an approved collar at all times. These are available only through Council.

When on private premises and not under adult supervision or, in the case of a guard dog, when the dog is not performing guard duties, it is to be housed in a childproof enclosure.

The owner or person in charge of a dangerous dog must ensure that the dog, when in a public place is:

- a. muzzled so as to be unable to bite a person or animal; and
- b. on a lead not exceeding 2 metres in length and of sufficient strength to control and restrain the dog; and
- c. under the control of a person at least 18 years of age.
- d. *wearing an approved collar at all times (an approved collar has distinctive markings and is available through Council).*

Failure to meet any of these requirements may incur a penalty of up to 20 penalty units.

5.7 Dangerous Dog Enclosures & Secure Confinement of Restricted Breed Dogs

When not under the control of a person, a dangerous dog must be kept in a childproof enclosure that meets certain requirements. Owners of dangerous dogs should refer to the Dog Control (Regulations) 2010 for the full requirements.

The childproof enclosure must be a full enclosure and:

- a. have a minimum height of 1.8 metres and a minimum width of 1.8 metres
- b. have a floor area of at least 10 square metres for each dog in the enclosure
- c. have walls, roof and door or gate made of brick, timber, concrete, iron or mesh, or a combination of those materials, of sufficient strength and durability to prevent the escape of a dog
- d. have a sufficient weatherproof sleeping area for each dog in the enclosure
- e. have a sealed, graded concrete floor
- f. be situated so as not to require a person to pass through it to gain access to other parts of the property
- g. if fitted with a door or gate, be fitted with a self-closing and self-latching mechanism for the door or gate, be locked from the outside when a dog is inside the enclosure, and have a clearly legible sign saying "Dangerous Dog" displayed on the door or gate, and
- h. be sufficient to prevent any dog in it from escaping.

Council may detain a dangerous dog until a suitable enclosure has been built and the dog owner will be responsible for the costs of holding the dog. If a suitable enclosure is not built, Council may destroy the dog and recover all costs from the owner.

When on private premises a restricted breed dog does not have to be kept in such an enclosure, but must be securely confined to those premises.

A warning sign that meets certain requirements must be erected at each entrance to a property that houses a dangerous or restricted breed dog. Council can advise where the appropriate signs can be obtained.

5.8 Attacks by dangerous or restricted breed dogs

If a dog declared to be a dangerous or restricted breed dog attacks a person or animal, the owner is guilty of an offence and may be punished by a fine or imprisonment. A restricted breed dog that attacks a person or animal may subsequently be declared a dangerous dog.

A person found guilty of an attack by an already-declared dangerous dog will be automatically banned from owning or being in charge of any dog for a period of five years

5.9 Loss, straying or death of a dangerous or restricted breed dog

If a dangerous or restricted breed dog goes missing, strays or dies, or is lost, the owner or a person on behalf of the owner must notify the council as soon as possible and failure to do so may incur a penalty of up to 20 penalty units.

A dangerous or restricted breed dog must not be allowed to stray or be abandoned, and abandonment is also an offence under the Animal Welfare Act 1993.

6. Dogs Creating Nuisance

Council recognises the problems associated with nuisance dogs and in particular the issue of excessive dog barking. Council's preferred option is to stop the dog barking

quickly without the need for lengthy legal proceedings which are costly and time consuming.

Therefore the most important issue is for the owner to be made aware of the nuisance and to be advised as to the best methods available to alleviate the problem. Using this approach, these issues can often be settled quickly and without causing conflict amongst neighbours.

Council will follow the processes set out in its standard operating procedures when investigating nuisance dogs (for a copy of Council's standard operating procedures refer to Council web site www.southernmidlands.tas.gov.au)

7. Registration and Registration Fees

All fees payable under the *Dog Control Act 2000* will be determined by the Council (section 80). The schedule of fees will be set annually prior to the end of May in each year and will be in line with the financial year, i.e. 1st July to 30th June.

Consultation with other municipal councils may occur to ensure a level of consistency and uniformity in regard to fee structures.

Fees subject to this section include:

- Registration fee
- Formal notice of complaint
- Licence applications and renewals (Division 7)
- Impounding reclaim fee
- Impounding maintenance fee
- Replacement tag fee

In addition to setting a schedule of fees, Council will also determine categories of dog registration, discounted registration fees and the required evidence in order to claim a discounted registration fee.

Refund of registration fees will only be provided for dogs that have died or those that have been de-sexed in the current year of registration. Refunds are only available on completion of the appropriate form lodged with Council by the owner of the dog subject of the claim. Any refund provided is on a pro-rata basis as at the time application.

A discount will also be offered to pensioners.

The Southern Midlands Council will transfer dog registrations from other Tasmanian Councils at no cost to the dog owner, provided the registration is for the same registration period.

8. Kennel Licences

The Southern Midlands Council will administer kennel licences in line with Division 7, of the *Dog Control Act 2000*. In particular, any property upon which it is intended to

keep more than two dogs (or more than four dogs in the case of working dogs) will be required to submit an application for a kennel licence. Such applications include a fourteen day representation period.

In addition, where required by the planning scheme, an application for a development / use permit pursuant to the *Land Use Planning and Approvals Act 1993* may also be required for kennels.

8.1 Limitations on Licences

A Licence for kennels will not be approved in the following circumstances:

- Licences will not be approved for more than 5 dogs in a village zone, business zone or residential zone (not including the rural residential zone) of the Planning Scheme.
- Licences will not be approved in respect of properties where the land is less than 600sq metres in size.
- Licences will not be approved for kennels on land used for multiple dwellings (i.e. strata dwellings).

8.2 Application Requirements for Licence

All applications to Council for kennel licences and development/use permits for kennels must include plans and details sufficient for Council officers and any member of the public interested in the application to gain a full understanding of what is proposed. Once detailed plans are submitted to the satisfaction of Council Officers then Council will advertise the application in the local newspaper at a cost specified in the Council *Schedule of Fees and Charges*.

Before determining the application, Council officer(s) will inspect the premises to assess its suitability for the number and type of dogs proposed to be kept on the property, along with relevant issues raised within representations received from members of the public.

Upon being satisfied that the proposal meets with the requirements listed in Division 7, of the *Dog Control Act 2000*, and any relevant planning scheme requirements, the appropriate approvals will be issued by Council. It is noted that kennel licences issued pursuant to the *Dog Control Act 2000* apply to the applicant, whereas development / use permits for kennel issued pursuant to the *Land Use Planning and Approvals Act 1993* apply to, and run with, the property regardless of subsequent change of ownership.

A kennel licence will apply for a financial year, and must be renewed annually. During the course of each year a Council officer will inspect every property issued with a licence to ensure compliance of the licence conditions.

Where a dog owner is not meeting the conditions, appropriate action will be taken pursuant to the *Dog Control Act 2000* and/or the *Land Use Planning and Approvals Act 1993*.

In the event of extenuating circumstances the General Manager may grant a temporary exemption from the need to obtain a licence if in the opinion of the General Manager, that in doing so, it will not cause a nuisance to any other person in any other premises.

8.3 Kennels - Requirements

The following specifications are considered the minimum required for the construction of kennels and yards in licensed premises:

- The kennel or yard is to be sited the furthest practical distance, (and not less than 9 metres), from any neighbouring dwelling.
- The kennel or yard shall be at least 2 metres from any boundary of the premises on which the kennel or yard is constructed.
- The premises shall be enclosed in such a manner so as to contain any dogs kept in the kennel or yard.
- The kennel or yard shall be constructed in such a way as to provide effective methods of cleaning and disinfection.
- There shall be sufficient room to allow dogs reasonable freedom of movement.
- There shall be a raised (50mm) weatherproof sleeping area.
- Adequate ventilation and insulation shall be provided to maintain a comfortable internal temperature free from condensation.
- A sanitary method of disposal of excreta and other waste shall be provided to the satisfaction of the General Manager.

Council may issue a kennel licence for the keeping of a specified number of dogs on premises which does not comply with some or all of the above minimum specifications provided that the General Manager or his delegate is satisfied that adequate provisions for health, welfare and control of the dogs is provided, and no nuisance is likely to occur to any other person.

10. Review Period

In accordance with section 7(4) of the *Dog Control Act 2000* the Southern Midlands Council will review the Dog Management Policy at least every five years and more regularly should there be significant changes in community expectations relating to the issue of dog control within the municipal area.

A twelve month trial period will be introduced for any off lead areas that may be declared; therefore the first review of this policy will take place immediately following the trial period.

11. Further Information

Southern Midlands Council web site

www.southernmidlands.tas.gov.au

- Animal Management – Is Your Dog a Noisy Dog?
- Animal Management – Barking Dogs
- Animal Management – Anti Barking Collar Hire
- Animal Management – Anti Barking Collar Hire Rental Agreement
- Animal Management - Anti Barking Collar Purchase
- Animal Management – Notice of Complaint Form
- Animal Management – Dog Attack Incident Report Form
- Standard Operating Procedure – Barking Dogs
- Standard Operating Procedure – Seizing & Impounding a Dog
- Standard Operating Procedure – Dog Attack & Harassment

Tasmanian Legislation website

www.thelaw.tas.gov.au

- *Dog Control Act 2000*
- Dog Control Regulations 2010

Department of Premier & Cabinet - Local Government Division

www.dpac.tas.gov.au/divisions/lgd/dog_control

- General Dog Legislation & Control Matters

12. Appendix A - Enforcement

Preamble

Local Government is charged with legislative responsibilities which protect individuals and the community as a whole. Council's customers include both those on whom the law places a duty and those whom the law protects. While it is ultimately the responsibility of individuals and other bodies to comply with the law, Council staff are required to carry out activities which enforce compliance.

This policy is an "umbrella" policy which outlines Council's approach to enforcement matters and provides staff with direction about the manner in which enforcement activities are to be undertaken.

In addition to enforcement, Council carries out a range of activities to ensure compliance such as community education programs to encourage conformance. Detailed policies and procedures about these specific activities may also apply.

Enforcement activities include:

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

Purpose of this Document

- convey communication to the broader Community
- to provide consistency in enforcement action in matters of non-compliance;
- to ensure transparency, procedural fairness and natural justice principles are applied; and
- to ensure that enforcement action is proportionate to the alleged offence in each case.

Defining Enforcement

Council adopts a broad definition of "enforcement" which combines the provision of advice; assisting compliance, and 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.

Principles of Good Enforcement

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

Proportionality

A proportionate response means that Council's actions will be scaled to the seriousness of the breach.

Council recognises that most individuals want to comply with the law and will assist compliance by being open and helpful, offering informal advice and providing the chance to discuss compliance problems.

Attention will be focussed on those whose activities give rise to the most serious risks, or where potential hazards are least well controlled. Depending on the seriousness and persistence of the infringement, Council will minimise the costs to the person or body infringing the law by enforcing the minimum action necessary to secure future compliance. Prosecution will generally be used as a last resort, or for continuous serious offences.

Consistency

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

While decisions on enforcement require the use of professional 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.

Transparency

Council will be open and transparent about the manner in which it undertakes enforcement activities and the laws it enforces. It will consult on and provide ready access to published standards and levels of service and performance that can be expected and be clear and open about what is expected from those on whom the law places a duty (duty holders).

In educating the community at large and dealing with duty holders, Council will make a clear distinction between what is legally required and what is desirable but not compulsory.

Staff will be open to discussing potential and actual compliance failures, before, during and after formal action has been taken.

When remedial action is needed Council will explain clearly and in plain language why the action is necessary. Where practicable, it will give notice of its intent to commence formal action. It will point out what action is required to achieve compliance and the timeframe for undertaking that action. Advice will be provided on the process for seeking a review of, or how to appeal against that decision.

Where it is not practical to give notice, the reasons why will be recorded.

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

Authorisation of Officers

Only officers who are competent by training, qualification and/or experience will be authorised to take enforcement action. Officers will also have sufficient training and understanding of Council's policies and procedures to ensure a consistent approach to their duties. Any decision to act other than in accordance with this policy must have approval from the relevant Manager and the reasons for action recorded. Officers are required to show their authorisations on demand.

Decision Making

Where non-compliance is discovered as a result of enforcement activities, options available to the Council to seek or promote compliance include:

- explaining legal requirements and, where appropriate, the means to achieve compliance;
- providing an opportunity to discuss points of issue where appropriate;
- allowing reasonable timeframes to achieve compliance
- facilitating mediation between affected parties;
- issuing a verbal or written warning; or
- enforcement actions such as issuing an order/direction/notice or prosecution.

Enforcement decisions must be fair, consistent, balanced and relate to common standards that ensure the public is adequately protected. Where a decision is made not to investigate a complaint, the decision and reasons, will be recorded, and the complainant will be advised in writing.

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

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

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.

Where a personal association or relationship with the alleged offender or any other person involved exists:

- an alternative person will make decisions where possible; and
- the facts about any conflict/relationship will be recorded.

Written documentation will:

- include all the information necessary to make clear what needs to be done to comply with legal requirements, the required time frame and if necessary, the reasons for these actions and potential penalties for failing to comply with the request;
- include the legislation contravened, measures necessary to ensure compliance and the consequences of non-compliance; and
- clearly differentiate between legal requirements and recommendations of good practice.

Enforcement Options

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, vexatious or trivial in nature;
- the alleged offence is outside Council's area of authority; or
- taking action may prejudice other major investigations.

Informal Action

Informal action to achieve compliance with legislation may include:

- offering verbal or written advice;
- verbal warnings and requests for action; or
- written warnings.

Advice from officers will be put clearly and simply and will be 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; or

- where informal action 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 a senior officer of Council and the reasons recorded in accordance with Council's Records Management protocols. The recipient will be made aware that the requested actions are not legally enforceable.

Mediation

Where practical, Council will make mediation available. Mediation is a possible alternative where, after investigation, an officer 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 an aggrieved individual has no wish to pursue action to resolve a complaint by legal means.

Formal Action

Service of Orders / Directions / Notices

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

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

Council Officers will use professional judgement and discretion to assess the variables relating to each matter under consideration, including the reasonableness of the actions required by an Order/Direction/Notice and the timeframe to comply.

Only in circumstances such as a threat to life or immediate threat to public health or safety will formal action 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 Order/Direction/Notice has a right of appeal to the appropriate court if the Order/Direction/Notice is considered unreasonable. If an Order/Direction/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.

Where there is evidence that an offence has been committed Council may issue a Notice or launch a prosecution in addition to serving an

Order. This will only be done where it is determined that the conduct of the recipient justifies taking both steps.

Action in Regard to a Default

Failure to comply with Orders will incur further enforcement action such as launch of a prosecution.

Where action in regard to a default 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 Council will consider whether 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 will be made by the General Manager or delegate.

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

Prosecution

A prosecution will only proceed where there is a reasonable prospect that an offence can be proved beyond reasonable doubt.

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;
- the alleged breach is too serious or the risks too great to be dealt with by means of an expiation;
- 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 an Order;
- 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; or
- the recovery of the costs of the investigation or remedial work or financial compensation that are required by Council or an aggrieved party.

Where circumstances warrant a prosecution all relevant evidence and information will be considered to enable a consistent, fair and objective decision to be made.

Before a prosecution is recommended there must be substantial, reliable and admissible evidence that an identifiable person or organisation has committed the offence.

A decision to prosecute must be in the public interest. In considering whether prosecution is in the public interest, the following additional factors will be considered:

- whether the offence was premeditated;
- the need to influence the offender's future behaviour;
- the effect on the offender's or witness's physical or mental health, balanced against the seriousness of the offence;
- the availability and efficacy of any alternatives to prosecution;
- 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.

The final decision to prosecute will be made via a formal decision by the Council and carried out by the General Manager.

13. Appendix B – Mangalore Recreation Ground Conditions

The following conditions apply to the use of the Declared Training Area at the Mangalore Recreation Ground:

1. A supervising officer shall be appointed to oversee and take responsibilities for the activities on the day of each event;
2. A formal risk assessment must be undertaken prior to activities commencing, with a copy of that document being signed off and then tabled at the next Mangalore Recreation Ground Management Committee meeting;
3. All dogs to be on a leash and under control of a competent person whilst within the grounds, unless partaking in an activity that requires off leash work;
4. Check chains only are acceptable, no harnesses or fixed collars or halters. No check chain no train;
5. Dogs not participating in training sessions to be confined to trailers or placed into the care of a competent handler not participating in an active training session;
6. Dogs participating in training may, with permission, be allowed off leash whilst undertaking training in any activity that requires off leash work but must exhibit control at all times. Owners/trainers who exhibit any degree of loss of control will be requested to leash their dog;
7. No one to attempt to control more than two leashed dogs at any one time;
8. No one to attempt to control more than one unleashed dog at any one time;
9. All owners are responsible for cleaning up after their dog, droppings, grooming leftovers etc.;
10. Dogs in trailers and vehicles must have adequate access to water, shade and ventilation;
11. Dogs that exhibit ongoing aggression towards other dogs and/or persons must be muzzled until such times as their aggression is curbed;
12. No dogs within the buildings;
13. Respect shown at all times for other organisations equipment and needs;
14. No dogs on the ground whilst Equestrian club horses are present unless by invitation from the equestrian club(s). May be in trailers and/or vehicles whilst waiting to utilise the grounds only; and
15. Grounds, buildings and equipment must be left as found or better [clean up].