


POLICY		Responsible Department	Governance
		Original Adoption Date	29.01.2020
		Current Adoption Date	29.01.2020
		Audit Committee Review Date	NA
		Date of Review	29.01.23

TITLE	POLICY – EXPIATION REVIEW POLICY
Latest Review Changes	This is a new policy to replace the Expiation & Fines Policy
Previous Council Reviews	NA
Previous Audit Committee Reviews	NA

Applicable Legislation:

<p>Dog and Cat Management Act 1995 Local Government Act 1999 Road Traffic Act 1961 and Road Traffic (Road Rules – Ancillary and Miscellaneous Provisions (Regulations 2014) Food Act 2001 Public Health Act 2011 Environment Protection Act 1993 Fire and Emergency Services Act 2005 Expiations of Offences Act 1996 and Expiation of Offences Regulations 2011 Fines Enforcement and Debt Recovery Act 2017 Local Nuisance and Litter Control Act 2016 Council's By-Laws</p>
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Related Policies:

<p>Review of Council Decision Policy Dog - Cat Management Policy - Procedure</p>

Related Procedures:

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Reference Documents:

<p>Expiation Notice</p>

1. PURPOSE

The Municipal Council of Roxby Downs (“the Council”) acknowledges the right of a person, who has been issued with an expiation notice (“the notice”) under the provisions of the *Expiation of Offences Act 1996* (“the Act”), to seek a review of Council’s decision to issue the notice.

This Policy provides an avenue for the review of a decision to issue an expiation notice under the Act and the requirements of Section 270 of the *Local Government Act 1999*.

This Policy is to ensure that all review requests are dealt with consistently, equitably, fairly and impartially. In all situations, the principles of natural justice will be applied.

2. SCOPE

This Policy applies to all expiation notices issued by Authorised Officers on behalf of the Council.

Expiation notices that have moved to the Fines Enforcement and Recovery Office for enforcement do fall within the scope of this Policy.

3. DEFINITIONS

Expiation Notice

An expiation notice refers to the notice issued by Council for (amongst other things):

- Dog and cat management offences pursuant to the Dog and Cat Management Act 1995
- Public realm use and management offences under the Local Government Act 1999
- Parking offences under the Road Traffic Act 1961
- Food safety offences under the Food Act 2001
- Public health offences under the South Australian Public Health Act 2011
- Breaches of the Environment Protection Act 1993
- Breaches of the Fire and Emergency Services Act 2005
- Breaches of the Local Nuisance and Litter Control Act 2016
- Offences against Council’s By-laws

An expiation notice provides the alleged offender with the opportunity to deal with the alleged offence by payment of a fee to Council without having to be summonsed to Court where they risk a fine and a conviction. An expiation notice alleging non-compliance with an Act may only be issued by an Authorised Officer who has been provided with the relevant authority to do so under either the Expiation of Offences Act 1996 or the relevant Act.

Trifling

In the context of this Policy an offence will be regarded as trifling and excused on the grounds that:

- There were compelling humanitarian or safety reasons for the offence; or
- The alleged offender could not, in all circumstances, reasonably have averted the offence
- The offence was merely a technical, trivial or petty instance of the offence

Responsible Officer

Responsible Officer refers to the Officers who are responsible for dealing with requests for review. These Officers are the Group Manager Governance and Community, the Group Manager Essential Services and Assets and the Chief Executive.

4. POLICY STATEMENT

4.1 Expiation of Offences Act

The Act provides for circumstances in which a person who has been given an expiation notice may apply to the Council for a review of the notice.

4.2 Review

4.2.1 If a person believes an expiation notice should not have been issued, or was issued without relevant or adequate evaluation of the circumstances surrounding the alleged offence, a request for review may be submitted to Council. The request must be in writing which may be in letter or email form. The request should set out the reasons why the recipient believes the notice should not have been issued and include supporting evidence.

4.2.2 Where the Council receives a request for a review of a notice the Responsible Officer will determine whether the offence to which it relates is trifling and if not, whether there are otherwise grounds to withdraw the notice under Section 16 of the Act.

4.2.3 The Responsible Officer shall consider withdrawing an expiation notice in the following circumstances:

- The alleged offender did not commit the offence; or
- A notice should not have been given with respect to the offence; or
- (in the case of a parking or traffic offence) Council receives a statutory declaration that declares that the alleged offender was not driving the vehicle or the owner of the vehicle at the time of the offence; or
- The alleged offender did not receive the notice until after the due date for payment has passed due to an error on the part of Council or the postal system; or
- The notice is defective; or
- The alleged offence to which the notice relates is trifling; or
- The Responsible Officer is of the opinion that the alleged offender is suffering from a cognitive impairment that excuses the alleged offending; or
- The Responsible Officer decides that the alleged offender should be prosecuted for the offence.
- Any other reason based on the facts and circumstances considered reasonable by the Chief Executive.

4.2.4 The Responsible Officer will make a determination based on the evidence provided as to the removal, waiver or reinstatement of the expiation notice. Factors that may be considered include, but are not limited to:

- Any errors or omissions of fact;
- Any errors or omissions in procedure; and/or
- Any evidence of extenuating or mitigating circumstances that may ameliorate the offence (such circumstances are considered on their individual merits)

4.2.5 A person's inattention to their circumstances, or ignorance of the law will not be considered sufficient reason to withdraw an expiation notice.

4.2.6 A declaration of financial hardship is not sufficient grounds for the expiation to be waived by Council. However, in these circumstances the applicant can apply to the Fines Enforcement and Recovery Unit of the Attorney General's Department to enter into a payment plan in respect of the notice.

4.3 Completion of Review

- 4.3.1 If a decision is made to withdraw the notice, the Responsible Officer must advise the applicant in writing, that the expiation notice has been withdrawn and the reasons for the withdrawal.
- 4.3.2 If, at the completion of the review, the decision is not to withdraw the expiation notice the applicant must be advised in writing of the reasons for the decision with a clear explanation of the options which remain available to the applicant namely:
- Pay in full the prescribed fee and any associated levies, in accordance with the procedures outlined in the *Expiation of Offences Act 1996*; or
 - Enter into a payment plan with the Fines Enforcement and Recovery Unit; or
 - Elect to be prosecuted and have the matter determined by a court.

4.4 Responsibility and Authority

- 4.4.1 Only Responsible Officers will be able to withdraw or waive an expiation notice.
- 4.4.2 A Responsible Officer may refuse to consider and application for review if it appears that the application is frivolous or vexatious.

5. REVIEW AND EVALUATION

This Policy will be reviewed and evaluated no less than once every three years or when there is a change in legislation.

6. AVAILABILITY OF POLICY

This Policy will be available for inspection at the Council office at 6 Richardson Place, Roxby Downs during ordinary business hours and is available to be downloaded, free of charge, from Council's website: www.roxbydowns.com.au