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**NAME OF POLICY:** Removal and Impounding of Vehicles Policy

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**POLICY MANUAL:** Governance

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## **BACKGROUND**

Local Government is charged with various legislative responsibilities which are aimed at protecting citizens and the community generally. In discharging its legislative responsibilities, the Council must deal with 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 parties to comply with the law, Council staff are required to carry out activities which are aimed at enforcing compliance with the legislation.

This Policy relates specifically to situations when the removal of vehicles may be required as provided for under Section 237 of the *Local Government Act 1999*.

The purpose of this Policy is therefore to provide a framework for the identification, removal and disposal of abandoned vehicles.

This Policy provides the framework for dealing with vehicles which have been reported to the Council as being abandoned or left on public roads, in public places or on Local Government land, to ensure such matters are dealt with lawfully and in a fair, consistent and transparent manner.

## **KEY PRINCIPLES**

### **Proportionality**

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

To this end, the Council recognises that most citizens want to comply with the law and will assist with compliance by being open, helpful, offering informal advice and providing the chance to discuss compliance issues.

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, the Council will minimise the costs to the person or body infringing the law, by enforcing the minimum action necessary to secure compliance. Prosecution will generally be used as a last resort, or for continuous serious offences.

### **Consistency**

The Council will take a similar approach in similar cases to achieve similar outcomes. While decisions in respect to enforcement issues requires the use of professional judgement and discretion to assess varying circumstances, Council staff 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 for the decision.

## Transparency

The Council will be open and transparent in the manner in which it undertakes enforcement activities and the laws which it enforces. The Council 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, the Council will make a clear distinction between what is legally required and what is desirable but not compulsory.

The Council's 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, the Council will explain clearly and in plain language, why the action is necessary. Where practicable, the Council will give notice of its intent to commence formal action. The Council 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 by Council staff in accordance with the Council's Records Management protocols.

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

## Scope

This Policy applies to:

- vehicles which have been classified as abandoned under Section 236 of *the Local Government Act 1999*;
- the removal and disposal of vehicles pursuant to Section 237 of the *Local Government Act 1999*; and
- the removal and disposal of vehicles pursuant to Section 40N of the *Road Traffic Act 1961*.

## Definitions

- *Abandonment* for the purposes of this Policy, refers to the relinquishment or renunciation of an interest, claim, possession or right, especially with the intent of never again resuming or reasserting it.
- *Authorised Officer* for the purpose of the *Road Traffic Act 1961*, refers to an Authorised Person appointed pursuant to the provisions of Section 260 of the *Local Government Act 1999*.
- *Authorised Persons* refers to a person appointed by the Council as an authorised person pursuant to Section 260 of the *Local Government Act 1999*.
- *Delegation* refers to the assignment by the Council of the authority for an officer to make decisions or undertake specific tasks.
- *Public Place* means a place to which the public has access, as defined in Section 4 of *the Local Government Act 1999*.
- *Public road* refers to a road as defined in Section 4 of *the Local Government Act 1999*.

## POLICY

### 1. Local Government Act Requirements

#### 1.1 Introduction

1.1.1 The *Local Government Act 1999*, provides the Council with the authority to:

- expiate or prosecute a person who abandons a vehicle on a public road or public place (refer to Section 236 of the *Local Government Act 1999*); and
- impound and sell vehicles that are left on public roads or public places, or local government land, for longer than 24 hours (refer to Section 237 of the *Local Government Act 1999*).

#### 1.2 Abandonment of Vehicles

1.2.1 Owners of vehicles will not be expiated or prosecuted under Section 236 of the *Local Government Act 1999*, unless abandonment can be clearly establishment together with the identity of the person who abandoned the vehicle.

1.2.2 The removal of a vehicle that is deemed to have been abandoned under Section 236, will be undertaken in accordance with the requirements of Section 237 of the *Local Government Act 1999*.

#### 1.3 Removal of Vehicles

1.3.1 Vehicles will not be impounded by the Council if the vehicle is:

- stolen as this is a SAPOL matter; or
- simply because the vehicle has been parked for more than 24 hours on a public road or public land.

1.3.2 Council staff will endeavour to and exhaust all avenues to have all vehicles which are left on a public road or in a public place or on Local Government Land, removed by the owner of the vehicle. All avenues to locate the owners of the vehicles and have the owner remove their vehicle, will be exhausted prior to resorting to impoundment of the vehicle.

1.3.3 If an unregistered vehicle is reported for being on a road, in breach of Section 9 of the *Motor Vehicles Act 1961*, Council staff will initially notify SAPOL and request action by SAPOL for the vehicle to be moved. Removal by the Council can occur after this has been done, where SAPOL have not acted, consistent with the requirements of this Policy.

1.3.4 Owners who have been identified and contacted, must be advised of the requirements of the *Local Government Act 1999* and be given a reasonable amount of time to remove their vehicles. Council staff will follow up any verbal requests of an owner with a letter explaining the Council's requirements and confirming the agreed time within which to remove the vehicle.

1.3.5 Where an owner cannot be contacted personally, a letter will be sent to the address of the last registered owner, requesting the owner to remove the vehicle or contact the Council office within seven (7) working days if the vehicle cannot be removed.

1.3.6 A prescribed warning notice must be placed on a vehicle before impoundment occurs.

## 2. Road Traffic Act Requirements

### 2.1 Introduction

- 2.1.1 Section 40N of the *Road Traffic Act 1961*, applies to vehicles which are left unattended or broken down on any road where the vehicle is:
- causing harm, or creating a risk of harm, to public safety, the environment or road infrastructure; or
  - causing or likely to cause an obstruction to traffic or any event lawfully authorised to be held on the road; or
  - obstructing or hindering, or likely to obstruct or hinder, vehicles from entering or leaving land adjacent to the road.
- 2.1.2 An *event* is defined in Section 33 of the *Local Government Act 1999*, as an organised sporting, recreational, political, artistic, cultural or other activity and includes a street party.
- 2.1.3 Removing a vehicle under these circumstances, is regarded by the Council as being a SAPOL matter. If a matter is reported to the Council, SAPOL must be advised immediately of the location of the vehicle and a request will be made for the vehicle to be moved. Where SAPOL contact the Council and request such a vehicle to be moved, advice will be provided to SAPOL that this is a SAPOL rather than a Council responsibility.
- 2.1.4 Further action by the Council is not normally required. However, it is recognised that under certain circumstances SAPOL may choose not to move dangerous or obstructive vehicles and in such cases, removal may be authorised, subject to the authorising officer being satisfied that Section 40N allows removal under the circumstances and the requirements of this Policy observed at all times.
- 2.1.5 The removal of stolen vehicles is a SAPOL matter and the Council staff will not be involved, apart from notifying SAPOL in the first instance.

## 3. Removal, Reclaim and Disposal of Vehicles

### 3.1 Towing a Vehicle

- 3.1.1 Prior to the towing of a vehicle, authorisation must be obtained in writing from the Team Leader, Regulatory Services.
- 3.1.2 An owner is entitled to the return of goods which are left in an impounded vehicle and the goods can be claimed by the owner by providing proof of ownership.

### 3.2 Notice of Removal

- 3.2.1 Owners of vehicles must be notified in writing of the removal of their vehicles and the place to where their vehicles have been moved and this must occur as soon as practicable after the vehicle is impounded. This notice must be served personally, whenever possible, but if the owner is unknown or cannot be found, an advertisement in a state newspaper must be placed within fourteen (14) days of a vehicle being removed.
- 3.2.2 Where personal service has not been possible, the notice may be sent to the owner by person-to-person registered post, requiring delivery only to the person named and their signature to acknowledge receipt of the notice.

### 3.3 Reclaiming a Vehicle

- 3.3.1 An owner of a vehicle which has been impounded, is entitled to take possession of the impounded vehicle when all expenses associated with the removal, custody, maintenance and advertising/notification are paid in full.  
Proof of ownership must be sighted prior to release of a vehicle and release of the vehicle requires the owner to sign a release form.
- 3.3.2 The Council will not profit from the exercise of statutory powers and as such, the expenses levied on the owner of an impounded vehicle, must not exceed the expenses which are incurred by the Council.
- 3.3.3 A vehicle must be sold when payment in full does not occur within the time frames set under the *Local Government Act 1999* and *Road Traffic Act 1961*.

### 3.4 Disposal of Vehicles

- 3.4.1 When a vehicle has been impounded and the Council has complied with all statutory requirements in relation to contacting the owner and/or advertising in a state wide newspaper, the Council may dispose of the vehicle.
- 3.4.2 The disposal process must not be commence until after the statutory time frames have passed following the service of a notice to the owner or advertisement appearing in a State newspaper.
- 3.4.3 All vehicles will be sold by auction by an automotive auctioneering company, except as provided below.
- 3.4.4 All vehicle disposals must be authorised in writing by the General Manager, Governance & Civic Affairs.
- 3.4.5 Disposal of a vehicle may occur other than by way of auction, but this can only occur when the proceeds of sale are unlikely to exceed the costs incurred in removing, holding and selling the vehicle. The costs incurred in selling a vehicle include:
- advertising;
  - sales commission;
  - costs associated with preparing a vehicle for sale, including having an ignition key cut; and
  - costs associated with towing a vehicle to the premises of a motor vehicle auctioneer.
- 3.4.6 Any goods in the vehicle at the time of impounding must not be sold with the vehicle. Disposal of all unclaimed goods must be in accordance with the requirements of the *Unclaimed Goods Act 1987*.

## 4. **Unclaimed Goods Act Requirements**

- 4.1 Goods which remain unclaimed must be dealt with in accordance with the provisions of the *Unclaimed Goods Act 1987* and associated regulations. This Act requires the Council to request collection of the goods by the owner within forty two (42) days, using the notice included in the regulations.
- 4.2 Subject to these requirements and it being at least three (3) months following the Council taking possession of the goods, the Council will either sell the goods or dispose of the goods as it sees fit, where the proceeds from the sale would be insufficient to defray the costs of sale.

- 4.3 A value must be established for goods prior to being offered for sale, by way of an independent valuation, depending on the value and nature of the goods. The value established for goods must be approved by the General Manager, Governance & Community Affairs.
- 4.4 The *Unclaimed Goods Act 1987*, also requires a court authorisation where the value of the goods exceeds \$1,000 and sale by public auction where the value of the goods is between \$200 and \$1,000.
- 4.5 The owner of the vehicle and SAPOL will be notified using the form included in the regulations where sale by public auction occurs.
- 4.6 The Council will retain reasonable costs associated with the sale, storage and maintenance of goods from the proceeds of any sale but will remit any surplus to State Treasury.

## **5. Transparency and Accountability**

- 5.1 The Council will not profit from the exercise of statutory powers and as such, costs levied on the owner of an impounded vehicle will not exceed the expenses incurred.
- 5.2 All the costs associated with holding a vehicle longer than one (1) month will be carried by Council and will not be passed on to a vehicle owner.

## **6. External Parties Used by Council**

- 6.1 Where external parties (ie contractors) are used to tow, store, value and sell vehicles, the General Manager, Urban Planning & Environment will ensure that the costs are reasonable and competitive and evidence of this must be available for audit purposes.
- 6.2 Formal agreements must be in place with the external parties (ie contractors) that provide these services. The storage company's responsibility for costs associated with damage to a vehicle being stored must be covered in an agreement.

## **REVIEW PROCESS**

The Council will review this Policy within three (3) years of the adoption date of the Policy.

## **INFORMATION**

The contact officer for further information at the City of Norwood Payneham & St Peters is Council's Team Leader, Regulatory Services, telephone 8366 4540.

## **ADOPTION OF THE POLICY**

This Policy was adopted by Council on 7 June 2010.

This Policy was reviewed and adopted by the Council on 3 June 2019.

This Policy was reviewed and adopted by the Council on 4 October 2022.

## **TO BE REVIEWED**

October 2025