

	<b>COUNCIL POLICY</b>	<b>POLICY NUMBER</b>
	COMPLIANCE & ENFORCEMENT POLICY	C 033
<b>RESPONSIBLE OFFICER</b>	<b>APPROVAL DATE</b>	<b>REVIEW DUE</b>
General Manager	May 2016	May 2018

## 1.0 PURPOSE OF POLICY

The purpose of this policy is to establish clear guidelines for the management of Council's regulatory activities. The policy aims to ensure that regulatory matters are managed in a consistent and transparent manner and the principals of procedural fairness and natural justice are followed.

The policy will assist Council officers to act promptly, consistently and effectively in response to allegations of unlawful activities, whilst providing options for dealing with regulatory breaches and determining whether or not enforcement action is warranted.

Council's enforcement of legislation will be consistent, prompt and impartial having regard to the following principles:

**Proportionality** - Council's actions will be scaled to the seriousness of the breach.

**Fairness & Consistency** - Council will carry out its duties fairly showing consistency and impartiality using a consistent approach in similar cases to achieve consistent outcomes. Whilst decisions on enforcement require the use of professional judgement and discretion to assess varying circumstances, officers will:

- Follow standard operating procedures; and
- Ensure fair, equitable and non-discriminatory treatment

**Transparency** - Council will be open and transparent about the manner in which it undertakes enforcement activities.

**Effectiveness** – Enforcement action must be effective in achieving the desired outcome without unnecessary escalation incurring time, cost to Council and associated parties whilst still respecting the principles of natural justice and providing opportunities for voluntary compliance where possible;

## 2.0 SCOPE

Potential unlawful activity may come to the attention of Council through complaints from members of the public or through Council officer patrols and inspections.

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. The enforcement of legislation by Council aims to:

- Ensure protection of both public and private property;
- Educate the community
- Minimise legal action; and
- Increase the public's confidence in Council

The Council is responsible for the administration of the following legislation and associated regulations, including but not limited to:-

- *Local Government Act 1993;*
- *Building Act 2016;*
- *Dog Control Act 2000;*
- *Environmental Management and Pollution Control Act 1994;*
- *Food Act 2003;*
- *Land Use Planning & Approvals Act 1993;*
- *Urban Drainage Act 2013;*
- *Local Government (Highways) Act 1982;*
- *Public Health Act 1997;*
- *Litter Act 2007;*
- *Road Rules 2009;*
- *Traffic Act 1925;*
- *Local Government (Building & Miscellaneous Provisions) Act 1993*
- *Council Bylaws*

The requirement to enforce compliance with legislation is generally a mandatory requirement of the legislation Council administers, and the legislation provides the specific framework for Council to enforce the rules and regulations. How Council chooses to enforce breaches of legislation remains at its discretion. Consideration must be given to individual merits of pursuing action before embarking on the enforcement process.

### **3.0 PROCESS**

#### **3.1 *Authorisation of Officers***

Only Authorised Officers who are competent by training, qualification and/or experience will be authorised by Council to undertake enforcement action. Officers will also act in accordance with any delegated authority and other relevant Council policies and procedures to ensure a consistent approach to their duties. Any decision to act other than in accordance with Council policies must have approval from the General Manager. Officers are required to show their authorisations on demand.

#### **3.2 *Nature of Complaint***

A person can make a complaint in a variety of ways:-

- Letter;
- Telephone;
- Facsimile;
- Email;
- In Person at the Council offices

Council encourages complainants to provide full contact information when lodging complaints. In the event of an anonymous complaint, Council will determine whether the complaint will be investigated dependent upon the seriousness of the complaint, and provided there is sufficient information in the complaint to enable an investigation to be conducted. In addition, Council will determine whether there is a statutory requirement for identification of the complainant, as if the matter proceeds to court, quite often a written statement is required from the complainant.

### **3.3 Determining Whether Investigation is Required**

Not all allegations of non-compliance and breaches of legislation will warrant investigation. Authorised Officers will consider a range of factors when deciding whether to investigate, including but not limited to:-

- Is the matter within the jurisdiction of Council?
- Is the complaint frivolous or vexatious?
- Has a significant period of time elapsed since the events the subject of the complaint took place?
- Is there another body that is a more appropriate agency to investigate and deal with the matter?
- Is the activity having a significant detrimental effect on the environment or does it constitute a risk to public safety?
- Does the complaint indicate the existence of a systemic problem e.g. if the complaint is one of a series, could there be a pattern of conduct or a more widespread problem?
- Has the person or organisation complained of been the subject of previous complaints? (i.e. is there a history of non-compliance)
- Does the complaint have special significance in terms of the Council's existing priorities?
- Are there significant resource implications in relation to an investigation and any subsequent enforcement action?

All complaints will be recorded in Council's records management system. 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.

### **3.4 Factors in Selecting the Appropriate Level of Enforcement Action**

Prior to any compliance or enforcement action being taken the Authorised Officers will acknowledge the circumstances of each case and may apply the following principles:

- Are the breaches technical or inconsequential in nature?
- Are there aggravating or mitigating circumstances surrounding the activity?
- What is the impact on the person affected by the complaint?
- Has the unlawful activity created a health, safety or environmental hazard or is there potential for this to occur?
- Has the unlawful activity affected a significant number of people?
- How long has the unlawful activity been occurring and is enforcement statute barred?
- Is the penalty commensurate with the nature of the offence?
- Is there sufficient evidence, or any doubt over the evidence or offence?
- Would a conviction by a Court be necessary to prevent re-occurrence?
- How common is the offence and would action act as a deterrent?

- Has the person or corporation who carried out the unlawful activity had an opportunity to provide representations or submissions on the matter?
- Have Council Officers acted appropriately in investigating the matter and were standard procedures followed?

*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 details regarding any conflict/relationship will be recorded in accordance with Council policy.

*Written documentation will:*

- Include details of the Authorised Officers' investigation including notes, photos and communication;
- 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;
- detail the section/s of the Act contravened, measures necessary to ensure compliance and the consequences of non-compliance; and
- clearly differentiate between legal requirements and recommendations of good practice.

If it is determined after these considerations that enforcement action is required, then it will be taken in accordance with legislation and Council procedures. Where a decision is made not to pursue compliance, having exercised discretion in doing so, the decision and reasons, will be recorded in accordance with Council policy, and the complainant will be advised in writing.

### **3.5 Options for Enforcement Action**

Where, after having undertaken investigation and exercising an appropriate level of discretion in accordance with this policy, it is determined that non-compliance has occurred, Council has various options available to it to seek or promote compliance including:

- Provide educational material that explains legal requirements and, where appropriate, the means to achieve compliance;
- allowing reasonable timeframes to achieve compliance;
- facilitating communication between affected parties to achieve a resolution;
- issuing a verbal or written warning; or
- enforcement actions such as issuing a Notice, Order, Direction or prosecution

Enforcement decisions must be fair, consistent, balanced and relate to common standards that ensure the public and community is adequately protected.

### **3.6 Enforcement Actions**

Council have a range of enforcement actions available as outlined below. In considering each option, regard should be had to the factors detailed in Part 3 of this Policy. Any formal enforcement action will be undertaken in accordance with the principles outlined in this policy.

*The following enforcement actions are standard across Local Government:*

- Issuing of Notices
- Issuing Orders
- Directions and Declarations requiring compliance with legislative requirements.
- Issuing an Infringement Notice or alternatively commencing criminal proceedings for an offence under legislation.
- Commencement of civil proceedings in a Court to either remedy or restrain unlawful activity.

#### **3.6.1 No Action**

No action will be taken when, after investigation and exercising an appropriate level of discretion, no breaches of the Act are discovered. It may also be appropriate to take no action when:-

- The complaint is unsubstantiated or there is insufficient evidence to commence enforcement action
- the complaint is frivolous or vexatious in nature;
- the alleged offence is outside Council's area of jurisdiction;
- taking action may prejudice other major investigations;

#### **3.6.2 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 to health, safety or the environment; or
- where informal action may prove more effective than a formal approach.

Where statutory enforcement 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 Authorised Officer of Council and the investigation details and reason for decision

recorded in Council's records management system. The complainant will be advised in writing of the outcome, and the recipient will be made aware that the requested actions are not legally enforceable.

### **3.6.3 Formal Action**

Legislation provides for a number of enforcement options, including but not limited to legally binding Notices, Orders or Directions (for example a Building Notice issued in accordance with the Building Act 2016) and prosecution.

Council's Authorised Officers will use professional judgement and discretion to assess the facts relating to each matter under consideration, including the reasonableness of the actions required by the enforcement option chosen and the timeframe to comply.

#### **3.6.3.1 Failure to Comply with Notices, Orders and Directions**

Legislative provisions which permit Notices and Orders to be issued also have offence provisions for failure to comply. Where Council has issued Notices, Orders and Directions, and follow up investigations reveal non-compliance, and where there has been no appeal lodged within the specified timeframe, Council may apply enforcement action in accordance with the provisions of the applicable Act.

#### **3.6.3.2 Making of Representations to Notices, Orders or Directions**

Where a person is afforded the right to make representations to a Notice, Order or Direction, Council requires those representations to be made in writing.

#### **3.6.3.3 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 where public health, safety and the environment have been put at risk;
- the alleged breach is too serious or the risks too great to be dealt with by means of a Notice, Order or Direction;
- Non-compliance with a Notice, Order or Direction;
- it is not possible to rectify a breach (eg a building has been demolished without Council approval);
- 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
- recovery of the costs of the investigation, remedial work or financial compensation that are required by Council

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 impact of the action that caused the offence on individuals and the community ie it might be a victimless crime;
- 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 (i.e. would a prosecution be perceived as a disproportionate response given the offender's circumstances);
- 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 by the General Manager, who will make the determination in consultation with Council's solicitor.

#### **4. DEFINITIONS**

In this Policy the following definitions apply:-

"Authorised Officer" means a Council Officer or person appointed by the General Manager or the Council for the purposes of administering and enforcing Council Bylaws made under the Local Government Act 1993 and any other Act which the Authorised Officer is responsible.

"Enforcement" means to make people obey something, or to compel obedience to a law, regulation or command.

"Council" means the Tasman Council.

"Legislation" means any statute, regulation rule or Council By-Law for which Council has administrative and enforcement functions and powers.

Robert Higgins  
**General Manager**

Policy Developed and approved: May 2016

Policy reviewed & amended: February 2017

#### **Disclaimer**

That this policy be read in conjunction with any or all other Council and/or Management Policies.