

Regulatory Enforcement Policy

Management Policy

Policy Owner	Group Manager Regulatory Services		
Adopted by	Regulatory Committee of the Thames-Coromandel District Council		
Description of policy	This policy sets out how the council will undertake enforcement of breaches of an Act, Regulation and other sub-ordinate legislation Council administers.		
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POLICY OBJECTIVES

This policy will provide staff with clear direction on enforcement action to be taken in response to violations of all acts, regulations and other sub-ordinate legislation it administers as part of its function as a territorial authority.

Enforcement action should be proportionate to the violation and balance the value and benefits with the need to ensure that rules and regulations in the district are upheld to promote public good. Enforcement may be carried out by way of a graduated approach with the focus on encouraging voluntary compliance.

Public health and safety will be maintained through active and appropriate enforcement action.

PRINCIPLES

Underlying this policy are the following principles. Council encourages:

- Voluntary compliance and self-regulation through education
- Transparency of decision making
- Consistency of decision making
- Accountability of decision making
- Proportionality of response to breach
- Deterrence of future offending
- Adequacy of evidence
- Impartiality of compliance response

BACKGROUND

All local authorities have requirements under legislation to ensure compliance and to be able to take steps to remedy non-compliance. The specific obligations under this legislation are addressed in further detail as part of the enforcement procedures that form part of this policy.

Council also makes bylaws under the Local Government Act 2002 and other legislation. Council has powers to infringe for breaches of a bylaw pursuant to certain specific empowering legislation.

Council has historically had enforcement policies for each Regulatory function separately. This policy combines the approach to all enforcement undertaken by Council, to ensure consistent and fair enforcement.

POLICY STATEMENT

General policy statements

Staff will develop enforcement guidelines and procedures which provide detailed explanation of enforcement action that the staff may take to respond to non-compliance.

Enforcement action by staff will balance the severity of non-compliance, the precedent set by the non-compliance and risks to the public from the non-compliance.

Voluntary Compliance and Self- Regulation

Council regards prevention as better than cure and will apply a range of flexible and targeted measures to promote self-regulation. These measures will include communication, education, timely provision of information and advice (where appropriate), persuasion, assistance and collaboration. These are all components of a co-operative approach aimed at encouraging voluntary compliance.

Transparency of decision making

Transparency is important in maintaining public confidence in the Council's ability to regulate. It means helping those regulated, and others, to understand what is expected of them and what they should expect from the Council. It also means making clear why staff intend to, or have taken a particular action. In this way Council will also be accountable for its decisions.

Consistency, discretion and proportionality

Consistency means taking a similar approach in similar circumstances to achieve similar ends. Council aims to achieve consistency in education and advice tendered, response to incidents and offences and its use of powers and decision making on compliance matters. However, Council also recognises that consistency does not simply mean uniformity. Staff need to take into account many variables, therefore, decisions on compliance and enforcement response are a matter of professional judgement. Staff have the authority to exercise discretion based on the facts of each breach or incident, together with any supporting information gathered and the evidence collected in support of that case. Any action taken should be proportionate to the seriousness or potential harm represented.

The criteria staff will consider in determining an appropriate response include:

- The objectives and principles of the legislation;
- The effect of the breach on the environment (which includes the public);
- The prevalence of the type of breach;
- How similar cases have been best dealt with;
- The most appropriate response to ensure an effective deterrent against continuing non-compliance or similar breaches by others;
- The standard of evidence that has been collected;
- The demeanour of the offender and whether they have offended before; and
- The likelihood of repeat offending.

The factors listed above are not intended to be exhaustive and those factors that are deemed relevant will necessarily depend on the particular circumstances of each case.

Graduated response to compliance and enforcement

Where appropriate, staff may exercise discretion to apply a range of compliance tools to any given breach. These include:

a) Informal enforcement

- Advice and education;
- Informal warnings;
- Formal warnings;
- Statutory notices such as Notice to Fix, Excessive Noise Direction Notice, Nuisance Notices
- Infringement notices issued for offences under a bylaw for parking, freedom camping, litter and dog control, and under the Sale and Supply of Alcohol Act 2012

b) Formal enforcement (Management approval only)

- Infringement notices issued for offences under the Building Act 2004;
- Bylaw prosecutions

c) Formal enforcement (Enforcement Team decision)

- Infringement notices issued for offences under the Resource Management Act;
- Abatement notices;
- Enforcement Orders;
- Prosecution (Resource Management Act, Building Act, Dog Control Act, Sale & Supply of Alcohol Act and the Health Act)

Below is a table outlining the various enforcement tools available to ensure compliance for each regulatory function:

	Oral Warning	Written Warning	Notice to Fix	Infringement Notice	Abatement Notice	Enforcement Order	Prosecution
Building	x	x	x	x			x
Planning	x	x		x	x	x	x
Environmental Health	x	x					x
Alcohol	x	x		x			x
Noise	x	x			x		x
Animal Control	x	x		x			x
Bylaws - Freedom Camping, Parking, Litter	x	x		x			x

and Dog Control							
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In the first instance, Staff will apply the least coercive tool unless legal and procedural requirements are such that a statutory notice (see above) needs to be issued or the severity of the breach is such that prosecution is required. In general staff will work through a range of options only reverting to prosecution for those serious or persistent offenders or where the effect of the offending is severe.

From time to time, staff will promote the education of statutory requirements to the members of the public by:

- 1) Making the public aware of enforcement action carried out ; and
- 2) Ensuring the public are aware of statutory requirements for certain activities being profiled

Enforcement Team

If a Council Officer believes that a case may require formal enforcement, and the enforcement mechanism required cannot be approved by the relevant Manager, the case in question will need to go to the Enforcement Team for a decision on the course of action.

The Enforcement Team is made up of the Group Manager Regulatory Services, Legal Counsel, the relevant activities' Team Leader or Manager and the relevant compliance officer. This group represents an additional step in the formal enforcement process, and its involvement will lead to more robust and consistent decision making. The use of a team will also 'de-personalise' various situations. The Enforcement Team will convene as and when required.

When the Enforcement Team convenes, they must select a mechanism for enforcement. To facilitate this process, each case is to be assessed under the Prosecution Decision Making Framework detailed below. Discussion will need to occur based on this framework. The discussion and decision action taken will be recorded in the enforcement folder located on Council's electronic document management records.

THE DECISION TO PROSECUTE

The independence of the decision-maker

The universally central tenet of a prosecution system under the rule of law in a democratic society is the independence and transparency of the regulatory function as part of the prosecution decision-making process.

Solicitor General's Prosecution Guidelines

The Crown Law office has issued the Solicitor General's Prosecution Guidelines (SGPG) to assist regulatory agency prosecutors in exercising their discretion to prosecute criminal cases.

The SGPG sets out a test of prosecution decision making. There are two limbs to that test:

- (i) The evidential test - whether there is a reasonable prospect of securing a conviction on reliable, available and admissible evidence; and
- (ii) The public interest test - whether the public interest requires a prosecution

Both limbs of that test must be met before a prosecution can be brought.

Any prosecution undertaken by the Council or on its behalf should be conducted in accordance with this policy and the SGPG.

Prosecution Decision Making Framework

Obtaining a conviction is a consequence but not the purpose of a prosecution. Factors that are relevant to a decision to prosecute includes whether:

1. The actual (or risk of) loss, harm or damage as a consequence of the non-compliance is significant;
2. The non-compliance is intentional or calculated;
3. The offender has a history or pattern of non-compliance;
4. There are no proper alternatives to prosecution

Once an enforcement team case has been considered and the decision is to prosecute, this decision will be recorded under the delegation of the Manager or Team Leader of the function recommending the prosecution.

The investigation file will be reviewed by Legal Counsel. If the Legal Counsel considers that both the evidential test and the public interest test are met (see above), the prosecution should be initiated.

Council's Chief Executive Officer will be notified of the intention to prosecute.

Policy Implementation

- This policy will be effective [to be determined]

- The Resource Management Act, Bylaws and Building Act functions and how this policy links in with those functions are prescribed in procedure manuals
- Each function provides a monthly report to the Regulatory Committee on enforcement matters.

Policy Measurement and review

This policy will be reviewed every three years. An early review of this policy may be initiated if deemed necessary by senior management responsible for the policy.

Assessment of the effectiveness and this policy will be undertaken annually by Managers or Team Leaders responsible for enforcement, their Group Manager and Legal Counsel.