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<i>Enforcement Policy</i>	<i>Adopted</i>	<i>Ordinary Council Meeting</i>	<i>19 December 2017</i>	<i>A127909</i>



OPOTIKI DISTRICT COUNCIL

ENFORCEMENT POLICY

INTRODUCTION

Ōpōtiki District Council (the Council) is responsible for the administration and regulation of a wide range activities. These include matters such as land use and development under the District Plan, the carrying out of building work, the preparation of food for sale at cafes, restaurants and other outlets, controls on the sale and consumption of alcohol in public, controls on dogs, littering and parking.

The primary purpose of these regulatory activities is to protect the public, the environment and groups such as consumers and residents. The main statutes under which the Council has responsibilities for enforcing regulatory requirements are listed below. (Note this is not a complete list.)

- Biosecurity Act 1993
- Building Act 2004
- Dog Control Act 1996
- Freedom Camping Act 2011
- Food Act 2014
- Forest and Rural Fire Act 1977
- Gambling Act 2003
- Hazardous Substances & New Organisms Act 1996
- Health Act 1956
- Impounding Act 1955
- Land Transport Act 1998
- Litter Act 1979
- Local Government Act 2002
- Prostitution Law Reform Act 2003
- Reserves Act 1977
- Resource Management Act 1991
- Sale and Supply of Alcohol Act 2012
- Transport Act 1962
- Various regulations, Council policies, plans and bylaws

The Enforcement Policy (the Policy) sets out the general principles that Ōpōtiki District Council intends to follow in relation to its regulatory obligations.

PURPOSE

The primary purpose of this Policy is to:

- Inform the general public of the Council's approaches to the compliance and enforcement of the legislation it is responsible for enforcing;
- Outline the possible enforcement actions able to be administered by the Council;
- Guide and assist officers of the Council in the performance of their compliance, enforcement and prosecution functions;
- Ensure consistent, appropriate and coordinated decision-making of compliance, enforcement and prosecution matters.

OBJECTIVES

The regulatory activities the Council is responsible for, provide a range of health, safety and environmental benefits for the public and residents of the Ōpōtiki District. The key areas where the Council has enforcement responsibilities are:

Our environment – We want everyone to be able to share in the benefits of living in a built and natural environment that contributes to the outcomes agreed in the District Plan.

Buildings – We want to have buildings that are safe and provide the amenities expected by owners and users. We are concerned about buildings that expose owners and users to risks to their health or safety.

Food – We want to support local food businesses that meet the food safety standards and ensure people can enjoy food prepared and sold in the district. We are concerned about risks to people's health that can arise from poor food safety standards when preparing food for sale at cafes, restaurants or other outlets.

Alcohol – We want people to enjoy public events and public spaces without being confronted by anti-social behaviour caused by excessive consumption of alcohol or alcohol being consumed by persons who are under-age.

Dogs – We want people to have the confidence they can live and carry out their businesses in the district without being distressed or intimidated by dogs that are not being properly controlled by their owners.

PRINCIPLES OF ENFORCEMENT

The requirement to monitor and ensure compliance with the law is a mandatory obligation of most of the Acts that the Council administers. These Acts provide the specific legislative framework for Council to enforce the rules and regulations. While these Acts provide the enforcement tools, how Council chooses to enforce remains at its discretion. This is necessarily so when considering that compliance and enforcement is complex in law and usually complicated by many factors, all having a bearing one way or another on an appropriate response. The Council is accountable to the community for the manner in which it exercises this discretion.

A number of principles guide this exercise of discretion as follows:

- Fair, reasonable and proportional approach
- Consistency of process
- Transparency
- Targeted
- Responsive and effective
- Education

Fair, reasonable and proportional approach - We will apply regulatory interventions and actions appropriate for the situation. We will use our discretion justifiably and ensure our decisions are appropriate to the circumstances and that our interventions and actions will be proportionate to the risks posed to people and the environment, and the seriousness of the non-compliance.

Consistency of process - Our actions will be consistent with the legislation and within our powers. Compliance and enforcement outcomes will be consistent and predictable for similar circumstances. Consistency of process does not mean uniformity, it means taking a similar approach in similar circumstances to achieve similar ends, while allowing for the flexibility of discretion for case by case scenarios.

Transparency - Transparency is important in maintaining public confidence in the Council's ability to regulate. It is about helping those who are regulated and other members of the community, to understand what is expected of them and what they should expect from the Council. An integral component of transparency is making clear why an Officer intends to take or has taken enforcement action. It also involves distinguishing between statutory requirements and providing advice or guidance about what is desirable or good practice but is not necessarily compulsory.

Targeted - We will focus on the most important issues and problems to achieve the best environmental outcomes. We will target our regulatory intervention at poor performers and illegal

activities that pose the greatest risk to the environment. We will apply the right tool for the right problem at the right time.

Responsive and effective - We will consider all alleged non-compliance to determine the necessary interventions and action to minimise impacts on the environment and the community and maximise deterrence. We will respond in an effective and timely manner in accordance with legislative and organisational obligations.

Education - Education is a crucial factor in providing an effective enforcement service. Ongoing education ensures that the public is aware of the current regulations as well as increasing public confidence in the service to enforce them.

THE ENFORCEMENT PROCESS

The following section outlines the enforcement process we will undertake from discovery of an offence through to the decision to take enforcement action.

The response upon discovery of an offence will be largely dependent on several factors, including the need to deal with any ongoing adverse environmental effects, risk of continuing offending and the seriousness of the offence. It is expected that the response will take the following staged approach:

1. Response to Effects

Upon discovery, the initial response will be to assess the actual or potential effects, if any, resulting from the contravention. Significant adverse effects will require an immediate response prior to any other action. This may include:

- To prevent further serious environmental damage from starting or continuing. May include abatement notice, enforcement or interim enforcement order.
- An immediate closure in the case of a serious food hygiene risk.
- Seizure of an offending animal in the case of a dog attack.

2. Gathering information

Following any urgent intervention to deal with effects, the next stage is to conduct investigations, including gathering evidence, speaking to witnesses and obtaining explanations.

The purpose of this is to find out whether, how, and why the breach occurred and enable informed decisions to be made. The depth and scope of an investigation will be dependent on the seriousness of the incident.

In less serious matters, it may be sufficient to write to the offending party or parties requiring written explanation as to why the offence occurred and the circumstances behind it, and then determine and appropriate response.

In more serious matters, it is expected that the investigation will be more in depth and that detailed witness statements will be obtained and that liable parties will be interviewed under formal caution.

Regardless of the level of offending, a response will ordinarily be sought from an offender. The exception to this would be matters of a very minor nature with nil environmental or other detrimental effects, or the person has responded such that the effects are remedied and it will not happen again.

Upon receipt of any explanation, the next and final stage is one of deciding on an appropriate response to the offence through a sound decision-making process.

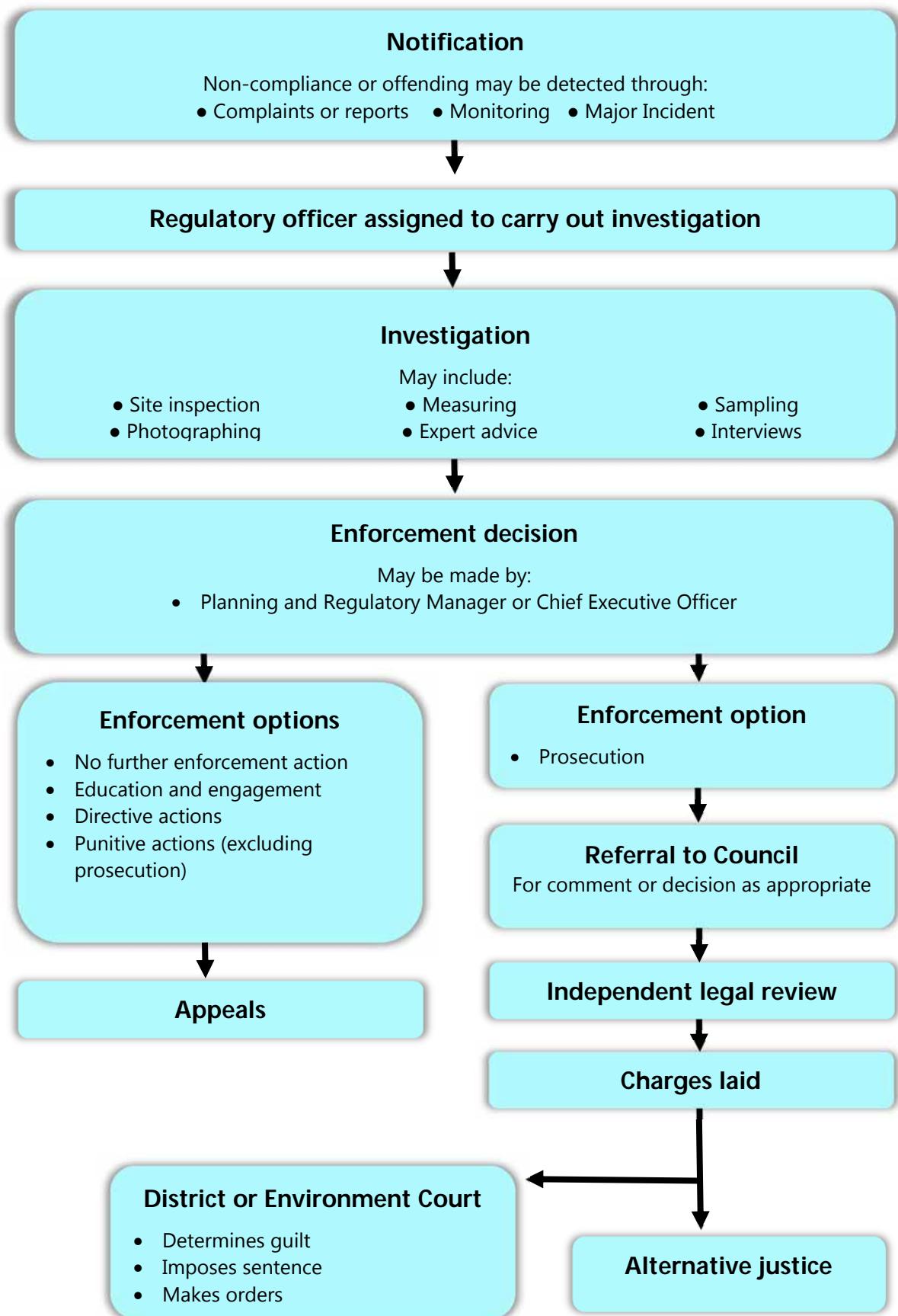
3. Deciding the Enforcement Response

Providing the correct enforcement response, requires considerable skill. It also requires a good knowledge or understanding of the relevant legislation involved. It is widely accepted across agencies that the Courts have provided helpful guidelines as to what factors are appropriate to consider to determine seriousness of a breach. Factors to consider are:

- The actual adverse effects (effects that have occurred)
- Any likely adverse effects (potential effects)
- Whether it was deliberate or an accidental action
- The degree of due care taken/foreseeability of incident
- The value or sensitivity of the area affected
- The attitude of the offender toward the offence
- Whether it was a repeat non-compliance or if previous enforcement action was needed for a similar situation
- Any effort made to avoid, remedy and/or mitigate the adverse effects
- The effectiveness of any remediation or mitigation undertaken
- Any profit or benefit gained by alleged offender
- Any relevant special circumstances – e.g. extreme weather event or other event outside the control of the party involved

Not every factor will be relevant every time. On occasion one single factor may be so overwhelmingly aggravating, or mitigating, that it may influence the ultimate decision. Each case is unique and the individual circumstances need to be considered on each occasion to achieve a fair and reasonable outcome.

An overview of the enforcement process is illustrated below:



ENFORCEMENT OPTIONS

Ōpōtiki District Council Regulatory Officers have a broad range of enforcement options available to them to address matters of non-compliance. The tools that apply to the different regulatory functions are illustrated in the table below. These tools can be categorised into three main types; informal directive and punitive actions. Informal actions are focussed on providing education and incentive based responses to allow the person to become better informed and develop their own means to improved compliance. Directive actions are about looking forward and giving direction and righting the wrong. Punitive actions are about looking back and holding people accountable for what they have done.

	Building	Planning and resource consents	Environmental Health	Liquor	Noise	Animal control	Bylaws
Education and incentive							
Education and Engagement	X	X	X	X	X	X	X
Directive actions							
Letter of Direction	X	X	X	X	X	X	X
Excessive Noise Direction					X		
Notice to Fix	X						
Abatement Notice		X			X	X	
Enforcement Order		X					
Negotiated settlements	X	X	X	X	X	X	X
Punitive actions							
Formal Warning	X	X	X	X	X	X	X
Infringement Notice	X	X		X		X	X
Prosecution	X	X	X	X	X	X	X

Selecting the appropriate enforcement response will depend on such factors as the seriousness of the offence, the significance of adverse effect on people and/or the environment, and the level of remorse shown by the offender. A brief description of each of the relevant tools, impacts on the liable party, and the circumstances when we might use these tools are described below.

Education and Incentive			
Action	Description of Action	Potential impacts on the liable party	When might this action be appropriate
Education and Engagement	To prevent further breaches, or to remedy or mitigate the effects of non-compliance, Council can provide information or guidance around rules	This is a non-formal process and as such has no legal implications.	Education and other incentive based interactions are reserved for dealing with co-operative parties, who are motivated to do the right thing but lack the

	and regulations or provide assistance to enable parties to achieve compliance.		knowledge or skills necessary to achieve and maintain compliance.
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Directive Actions

Action	Description of Action	Potential Impacts of the Liable Party	When might this action be appropriate
Letter of Direction	To prevent further breaches, or to remedy or mitigate the effects of non-compliance, Council can give a written direction for a party to take or cease a particular action.	Such a direction is not legally enforceable.	Letter of directions should be reserved for dealing with co-operative parties, who are motivated to follow the direction, and where the breach is of a minor nature, consistent with a breach that would perhaps also receive a formal warning.
Excessive Noise Direction	These binding notices require excessive noise to be reduced to a reasonable level and can apply for a period of up to 72 hours. Directions can be given verbally or in writing.	If a direction is not complied with, officers can seize and remove, render inoperable or make unusable, any device causing excessive noise.	Used in urgent cases where noise is causing immediate nuisance. Usually in response to complaint from neighbour or member of the public where, for example, a burglar alarm is sounding continuously, or a noisy party continues to an unreasonable hour.
Notice to Fix	A notice to fix is a formal, written directive. It is drafted and served by council instructing a specified person to correct an instance of non-compliance with the Building Code and/or Building Act. The form and content of the notice are specified in the Building Act.	A direction given through a notice to fix is legally enforceable. To breach a notice to fix is to commit an offence and make liable parties open to punitive actions or fines.	A notice to fix may be appropriate where a building warrant of fitness and/or compliance schedule requirements in the Building Act have not been adhered to or when Building Consent is not obtained for building work that requires a consent.
Abatement Notice	An abatement notice is a formal, written directive. It is drafted and served by Council instructing an individual or company to cease an activity or requiring them to do something. The form, content and scope of an abatement notice are prescribed in statute.	A direction given through an abatement notice is legally enforceable. To breach an abatement notice is to commit an offence and make liable parties open to punitive actions.	An abatement notice may be appropriate any time that there is a risk of further breaches of environmental regulation or remediation or mitigation is required as a result of non-compliance.

Enforcement Order	Enforcement orders offer more options than an abatement notice, including the ability to recover clean-up costs incurred or likely to be incurred in avoiding, remedying or mitigating any adverse effect on the environment.	To breach an enforcement order is to commit an offence and make liable parties open to punitive actions.	An enforcement order may be appropriate when an abatement notice has not been complied with as another way of achieving compliance.
Negotiated settlements	A person may approach the Council with a proposal for settlement. We are open to resolving non-compliance by agreement where a remedy is possible and where this is prompt, easily implemented and in the public interest.	A negotiated settlement typically requires the following – the person to admit that they have breached the law, to cease the non-compliant conduct, pay compensation, pay our costs and may involve some publicity	A negotiated settlement will only be agreed to if it is in the public interest. Council is unlikely to agree to a negotiated settlement where the non-compliance has caused serious harm, the person is a repeat offender or activity resists compliance.
Punitive Actions			
Action	Description of Action	Potential impacts on the liable party	When might this action be appropriate
Formal Warning	A formal warning is documented by way of a letter to a culpable party informing them that an offence against an Act or regulation has been committed, and that they are liable.	No further action will be taken in respect of that breach. However, the warning forms part of a history of non-compliance and will be considered if there are future incidents of non-compliance.	A formal warning may be given when: <ul style="list-style-type: none">• An administrative, minor or technical breach has occurred; and• The environmental effect, or potential effect, is minor or trivial in nature; and• The subject does not have a history of non-compliance; and• The matter is one which can be quickly and simply put right; or• A written warning would be appropriate in the circumstance.

Infringement Notice	An infringement notice is a written notice which requires the payment of a fine. The amount of the fine is set in law.	No further action will be taken in respect of that breach. However, the infringement forms part of a history of non-compliance and will be considered if there are future incidents of non-compliance.	An infringement notice may be issued when: <ul style="list-style-type: none">• There is <i>prima facie</i> (on the face of it) evidence of a legislative breach; and• A one-off or isolated legislative breach has occurred which is of minor impact and which can be remedied easily; and• Where an infringement notice is considered to be a sufficient deterrent.
Prosecution	A prosecution is a process taken through the criminal courts to establish guilt or innocence and, if appropriate, the court will impose sanctions. Matters are heard in either the District Court or Environment Court depending on the Act. All criminal evidence rules and standards must be met.	A successful prosecution will generally result in a conviction, a penalty imposed and consideration of the costs of the investigation. A prosecution forms part of a history of non-compliance and will be considered if there are future incidents of non-compliance.	A prosecution may be considered appropriate when the factors listed above indicate that the matter is sufficiently serious to warrant the intervention of the criminal law. Consideration will be given to the Solicitor-General's Prosecution Guidelines (2013).

WHAT THE COMPLAINANT CAN EXPECT FROM THE REGULATORY TEAM

To initiate an enforcement investigation, complaints should be preferably made via the standard form which can be found on the Council's website, at the Council offices or alternately they can be sent out to complainants if requested.

In order to assist the investigation we ask that as much information is provided as possible when the initial enquiry is made. This should include the identity and address of complainant, the address at which the alleged breach has taken place, a description of the unauthorised activities and the harm that is considered to be caused. Complainants will also be encouraged to send in dated photographs of the alleged breach in order to assist the investigation. In respect of complaints received, the following standards apply:

- All valid enquiries will be properly recorded and investigated
- The personal details of the new enquirer will be held in the strictest confidence.
- Other than cases where immediate or urgent action may be required (see step 1 of the Enforcement Process above), an initial investigation is to be undertaken within five working days of receipt.
- In cases of involving a serious and/or irreversible harm, the complaint will be investigated as a matter of priority, usually within 24 hours of receipt. Urgent action will be instigated to stop unlawful activity.

- The enquirer will be updated on any subsequent action that may result as soon as reasonably practicable.
- Staff will not take sides in a dispute; staff will however judge what action is appropriate according to the evidence, particular circumstances, impact on the environment, relevant policies, and legalisation.

WHAT THOSE IN BREACH CAN EXPECT FROM THE REGULATORY TEAM

Under normal circumstances, prior to taking formal enforcement action, the officer concerned will fully and openly discuss the circumstances of the breach with those involved. Those in breach will be contacted as soon as possible following the site visit, and advice will be provided on what action is required to avoid, remedy and/or mitigate the environmental harm identified. When breaches are found to have occurred Regulatory Officers will:

- Communicate clearly to the responsible party or their agent, identifying the problem and that they may need to undertake action to achieve compliance.
- Where officers consider there is a minimal effect, or effects are satisfactorily addressed by mitigation measures, a reasonable period of time will be allowed for the submission of a retrospective application to regularise an activity (where this is an available course of action under the relevant piece of legislation).
- Initiate formal enforcement powers after being satisfied that there is a clear breach of the relevant piece of legislation, and there has been an adverse impact on the environment.
- In the case of formal action being authorised, the rights of appeal will be explained to those in breach.
- Persistent offenders and those who seek to exploit the compliance process at the expense of others will be dealt with using appropriate action.

WHAT THE REGULATORY TEAM CAN EXPECT FROM THE COMPLAINANT AND THOSE IN BREACH

Regulatory Officers often deal with heavy caseloads and can, as a result, experience many pressures on their time throughout the day. Therefore, in order to allow Officers to make best use of their time, and ensure that the regulatory Team service is operating as effectively and efficiently as possible, members of the public are asked to adhere to the following:

- People are asked to treat officers with respect and listen to what is being said rather than what they 'think or want to hear'. Sometimes a favourable outcome, or the outcome the complainant seeks, cannot always be achieved. If this occurs, the reasons for taking the action or not taking any action, will be explained in full by the Officer in a clear and understandable fashion.
- Officers are happy to speak to members of the public on the phone provided the conversations are productive. If callers are unreasonable in their expectations or are rude to staff they will be asked to only communicate with the Officer via letters or email to which they can expect a response within 10 working days of receipt.

INFORMING THE PUBLIC

The Council is committed to educating and informing members of the public in relation to the work carried out by its Regulatory Team. The Council will attempt to strike a balance between informing the public about regulation through publishing articles in newsletters as well as publicising when formal action is taken via the media. It is considered important to highlight action that has been taken to

discourage others from breaching regulations and to ensure the public have confidence in the Regulatory Team. All communication with the media will be undertaken in accordance with relevant policies.

Pro-active campaigns will be used to educate the public in relation to the targeted breaches of the specific regulations through Council publications and press releases. Local community groups may also be encouraged to assist in targeted campaigns in their particular area.

As part of the Council's commitment to being open and accountable, a six-monthly Regulatory report will be presented to Council.

RELEVANT LEGISLATION

See Introduction.

REVIEW

This policy will be reviewed every three years. Refer to policy index for policy owner.