

1.0 DEFINING ENFORCEMENT

- 1.1 The Waratah-Wynyard Council adopts a broad definition of “enforcement” which combines the provision of education, 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.
- 1.2 Notwithstanding the above, Council will act when required (for example to ensure public health and safety or to protect the environment) and take firm action against those who act unlawfully as circumstances warrant.

2.0 PRINCIPLES OF GOOD ENFORCEMENT

- 2.1 Enforcement actions are taken within the context of both a legal and policy framework. Council staff will carry out their enforcement related work with due regard to the following principles.

2.2 Proportionality

- 2.2.1 A proportionate response means that Council’s actions will be scaled to the seriousness of the offence.
- 2.2.2 Council recognises that most individuals want to comply with the law and will assist compliance by being open and helpful, offering informal education, advice and providing the chance to discuss compliance issues.
- 2.2.3 Attention will be focused on those whose activities give rise to the most serious risks, or where potential hazards are least controlled. Depending on the seriousness and persistence of the offence, Council will proportion the cost to the person or body infringing the law by enforcing a control and balanced action necessary to secure notification compliance and future compliance.
- 2.2.4 Prosecution will generally be used as a last resort, or for continuous serious offences.

2.3 Consistency

- 2.3.1 Council will seek to take a comparable approach in similar cases to achieve similar outcomes.
- 2.3.2 While decisions on enforcement require the use of professional judgement and discretion to assess varying circumstances, officers 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.

2.4 Transparency

- 2.4.1 Council will be open and transparent about the way it undertakes enforcement and the laws it enforces. It will consult on and provide ready access to published standards and levels of service and performance that can be

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expected and be clear and open about what is expected from those on whom the law places a duty of care (duty holders).

- 2.4.2 In educating the community at large and dealing with duty holders, Council will make a clear distinction between what is legally required and what is desirable but not compulsory.
- 2.4.3 Staff will be open to discussing potential and actual compliance failures, before, during, and after formal action has been taken.
- 2.4.4 When remedial action is needed, Council will explain clearly and in plain language why the action is necessary. Where practicable, it will give notice of its intent to commence formal action. Where it is not practical to give notice, the reasons why will be recorded in accordance with the Council's records management protocols.

2.5 Accountability

- 2.5.1 Council will point out what action is required to achieve compliance and the timeframe for undertaking that action. Advice will be provided regarding process for seeking a review of, or how to appeal against that decision.
- 2.5.2 Council has a duty to enforce legislation. Council can be the subject of prosecution if we are seen not to be abiding with the legislative requirement.

3.0 AUTHORISATION OF OFFICERS

- 3.1 Only officers who are competent by training, qualification, delegation and/or experience will be able to take enforcement action. Officers will also have sufficient training and understanding of Council's policies and procedures to ensure a consistent approach to their duties. Any decision to act other than in accordance with this Policy must have approval from the relevant Director or Manager.
- 3.2 Officers are required to show their authorisations on demand or in accordance with any specific legislative requirement.

4.0 DECISION MAKING

- 4.1 Where non-compliance is discovered because of enforcement activities, options available to Council to seek or promote compliance include:
 - Explaining legal requirements and, where appropriate, the means to achieve compliance;
 - Providing an opportunity to discuss points of issue where appropriate;
 - Allowing reasonable timeframes to achieve compliance;
 - Facilitating mediation between affected parties;
 - Issuing a verbal or written warning; or
 - Enforcement actions such as issuing an infringement notice, issuing an order/direction, prosecution or seizing items.
- 4.2 Enforcement decisions must be fair, consistent, balanced and relate to common standards that ensure the public is adequately protected. Where a decision is made

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not to investigate a complaint, the decision and reasons will be recorded in accordance with Council's records management protocols. This decision can be communicated to the complainant on request.

4.3 In coming to a decision on the most appropriate means of enforcement, the officer shall consider, amongst other relevant factors:

- The seriousness of the offence;
- The degree of willfulness involved;
- History of the site and of the alleged offender;
- The consequences of non-compliance;
- The likely effectiveness of the various enforcement options;
- Deterrence;
- The effect on the community and other people;
- Consistency of approach to similar breaches/offences; and
- Any specific legislative requirement; for example, s. 200 of the *Local Government Act 1993* requires the issue of an Abatement Notice in particular circumstances.

4.4 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;
- Any pressure from outside organisations or within Council; and
- Possible political advantage or disadvantage to a government, person holding (or a candidate for) public office, or any political group or party.

4.5 Where a complaint is referred to an officer for investigation and he/she is aware of a personal association or relationship with the alleged offender, complainant or any other person involved:

- The officer must report the facts about any conflict/relationship to their supervisor; and
- An alternative person will investigate and make decisions where possible.

4.6 Written documentation will:

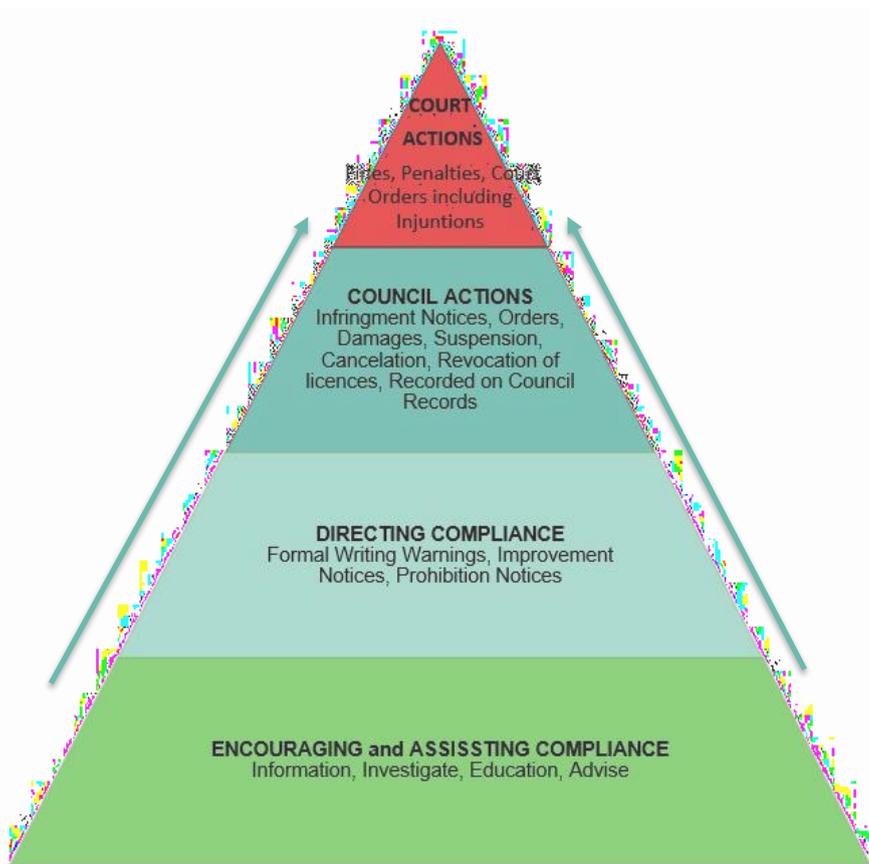
- Include all the information necessary to make clear what needs to be done to comply with legal requirements, the required timeframe, and if necessary, the reasons for these actions and potential penalties for failing to comply with the request;
- Include the legislation contravened, measures necessary to ensure compliance and the consequences of non-compliance; and
- Clearly differentiate between legal requirements and recommendations of good practice.

5.0 ENFORCEMENT OPTIONS

5.1 The following diagram represents, in the general sense, the relative volume or proportionate use of enforcement tools and the ability to escalate if an initial intervention does not achieve the desired outcome.

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- 5.2 The lowest level of the pyramid involves an approach which is employed most frequently, often in combination with other tools, to assist duty holders to achieve compliance. Sanctions (such as court actions) are at the top of the pyramid and are applied less frequently.
- 5.3 This does not mean that Council will always commence with provision of information and advice, and only use other tools in an escalated manner.
- 5.4 Council will commence their intervention using the tools that are most appropriate in the circumstances. These tools may be used in any combination to achieve compliance. However, using a range of tools in the lower levels of the pyramid may often achieve compliance without needing to escalate to the more serious levels of sanctions.



6.0 NO ACTION

- 6.1 No action will be taken when, after investigation, no breaches of the legislation are discovered. It may also be appropriate to take no action when:
 - The complaint is frivolous, vexatious or trivial in nature;
 - There are insufficient *prima facie* grounds to commence an investigation;
 - Another agency would be better suited to deal with the complaint;
 - Council has no jurisdiction; or
 - Action may prejudice other major investigations.

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7.0 INFORMAL ACTION AND WARNING

7.1 Informal action to achieve compliance with legislation may include:

- Education;
- Offering verbal or written advice;
- Verbal warning and requests for action; or
- Written warning.

7.2 Advice from officers will be clear, precise and in simple terms. When necessary be confirmed in writing.

7.3 The circumstances in which informal action may be appropriate include:

- The act or omission is not serious enough to warrant formal action
- The Officers history reasonably suggests that informal action will secure compliance
- Confidence in the individual/other body is high,
- The consequences of non-compliance have not posed a significant risk, or
- Where informal action may prove more effective than a formal approach.

7.4 Where statutory action is not possible, but it would be beneficial in a wider public safety context to urge an outcome, such action will be taken by a senior Officer of the Council and the reasons recorded in accordance with the Council's records management protocols. The recipient will be made aware that the requested actions are not legally enforceable.

8.0 MEDIATION

8.1 Where practical, Council will make mediation available. Mediation is a possible alternative where, after investigation, an officer determines that the problems being complained of are incapable of resolution through other formal or informal means. The use of mediation services may also be appropriate where an aggrieved individual has no wish to pursue action to resolve a complaint by legal means.

9.0 FORMAL ACTION

9.1 Service of orders and directions

9.1.1 Various pieces of legislation specify the procedures which councils must follow to:

- Advise of the intention to issue a Notice or an Order;
- Invite submissions with respect to the matter;
- Order a person to do or refrain from doing a thing under specified circumstances; and/or
- Issue directions specifying how the Order may be complied with.

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- 9.1.2 Orders including 'show cause' directions such as notices served under s. 237(4) of the *Building Act 2016*. This would routinely be the first action taken for alleged offences under the *Building Act 2016*.
- 9.1.3 Other orders require persons to take action to resolve a breach, such as notices under s. 200 of the *Local Government Act 1993*, orders under Division 3 of the *Building Act 2016* or a notice under s. 60 of the *Food Act 2003*. A notice under s. 60 of the *Food Act 2003* is routinely the first action taken for breaches of the Act.
- 9.1.4 Council Officers will use professional judgement and discretion to assess the variables relating to each matter under consideration, including the reasonableness of the actions required by an Order/direction and timeframe to comply.
- 9.1.5 Only in circumstances such as a threat to life, immediate threat to public health/safety or where it is a legislative requirement will a Notice or an Order be made without giving a notice of intention. In these circumstances immediate compliance to resolve a situation may be required. In most cases the person receiving the Order has a right of appeal to the appropriate court if the Order is considered unreasonable.
- 9.1.6 If an Order is served for which an appeal is possible, Council will advise the recipient in writing of the right to appeal and the relevant legal provisions at the time of serving the Order.
- 9.1.7 Where there is evidence that an offence has been committed, Council may issue a notice or launch a prosecution in addition to serving an Order. This will only be done where it is determined that the conduct of the recipient justifies taking both steps.

9.2 Action regarding a default

- 9.2.1 Failure to comply with Orders may incur further enforcement action such as service of an infringement notice or launch of a prosecution.
- 9.2.2 Where action regarding a default is provided for by legislation and the necessary work has not been carried out in the time allowed without reasonable justification, then Council may undertake the required work to resolve the issue. Before doing the work, Council will consider whether there is a realistic prospect that the person responsible will complete the work within a reasonable time. Where work in default is undertaken, Council will seek to recover all costs over a fair period, using all statutory means available.
- 9.2.3 The decision to carry out action in default will be made by the General Manager or delegate.
- 9.2.4 Where an offence has been committed, Council may issue a Notice or launch a prosecution in addition to taking action to fulfil an Order. This will only be done where the conduct of the recipient justifies taking such steps. Factors such as giving false information, the obstruction of Council staff and the harm or risk of harm caused by the recipient's delay will be considered in determining additional enforcement actions.

9.3 Service of an infringement notice

9.3.1 A person receiving a notice may be prosecuted for the alleged offence if the notice is not complied with. Hence there must be substantial, reliable and admissible evidence that an identifiable person or organisation has committed the alleged offence. In other words, there must be sufficient evidence on the face of it to enable a conclusion to be reached that there is a reasonable prospect of being able to prove the allegations in court of law.

9.3.2 The following circumstances are likely to warrant a notice:

- Certain breaches of the legislation administered by Council;
- Failure to correct an identified problem after having been given reasonable opportunity to do so by an authorised Officer;
- Failure to comply with the requirements of an Order;
- Confidence in the individual/other body is low; or
- A warning has previously been given for a similar offence.

9.3.3 Infringement notices may be served under the follow legislation;

- *The Local Government Act 1993;*
- *The Building Act 2016;*
- *The Dog Control Act 2000;*
- *The Food Act 2003;*
- *The Traffic Act 1925,*
- *The Litter Act 2007;*
- *The Public Health Act 1997; and*
- *The Waratah-Wynyard Council By-Law 1 of 2016.*

9.3.4 Offences under the *Dog Control Act 2000, Litter Act 2007, Traffic Act 1925* and the *Waratah Wynyard Council By-Law 1 of 2016* will routinely be dealt with initially by serving an infringement notice.

9.4 Prosecution

9.4.1 For the purposes of this Policy 'prosecution' includes actions in the Magistrates Court, Supreme Court or tribunals such as the Resource Management and Planning Appeals Tribunal.

9.4.2 A prosecution will only proceed where there is a reasonable prospect that an offence can be proved in a court of law.

9.4.3 The following circumstances are likely to warrant a prosecution:

- An obvious breach of the law such that public health, safety and welfare have been put at risk;

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- The alleged breach is too serious or the risks too great to be dealt with by means of a notice;
- A failure to correct an identified serious problem after having been given reasonable opportunity to do so;
- A failure to comply with the requirements of an Order;
- An established and recorded history of similar offences;
- Unwillingness, on the part of the individual or other body, to prevent a recurrence of the problem; or
- The recovery of the cost of the investigation or remedial work or financial compensation that are required by Council or an aggrieved party.

9.4.4 Where circumstances warrant a prosecution all relevant evidence and information will be considered to enable a consistent, fair and objective decision to be made.

9.4.5 Before a prosecution is recommended there must be substantial, reliable and admissible evidence that an identifiable person or organisation has committed the offence.

9.4.6 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 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;
- 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.

9.4.7 The final decision to prosecute will be made by the General Manager or delegate.

9.5 Withdrawal of action

9.5.1 A person who is served with formal action such as an infringement notice may apply in writing and must provide a reasonable response as to why that action should be withdrawn or set aside. Any such request will be dealt with in accordance with any relevant legislative provisions. A report provided by the relevant Department will be provided to the General Manager or delegate whose decision it will be whether to grant the request.

9.6 Submitting Complaints

- 9.6.1 Council becomes aware of unlawful activities in a variety of ways including, permit assessments identifying outstanding matters on a property, regular/routine patrols and complaints from members of the public.
- 9.6.2 Complaints from members of the public can be submitted to Council in writing, verbally or electronically. In all cases the complaint will be recorded in the Council's records and /or request management systems and referred to the relevant Council officer for any necessary investigation.
- 9.6.3 The name, address and contact details of the person submitting the complaint will need to be recorded. This information is critical as Council may need to rely on evidence from the complainant or act as a witness to prove any offence. The complainant will be advised on request if action is to be taken or the reasons if no action is taken.
- 9.6.4 However, it is important to note that when Council engages in compliance action, this is a private matter between Council and that person/company involved. Specific details of actions taken by Council cannot be provided to the complainant. Advice would be limited to that appropriate action that is being taken.
- 9.6.5 Council will take all reasonable measures to protect the privacy of the person submitting a complaint and generally details will not be released. However, Council may be required to disclose this information in circumstances including:
- Access to the information is permitted under relevant legislation;
 - The information is disclosed as part of legal proceedings; and
 - The nature of the complaint makes it a necessity.
- 9.6.6 A complainant may be asked to submit a written, rather than verbal complaint if it is necessary to establish enough grounds for an investigation. Anonymous complaints may not establish enough grounds for an investigation and will be dealt with at the discretion of the relevant Council Officer.

REVIEW

This policy will be reviewed every three years, unless organisational and legislative changes require more frequent modification.