

Enforcement Policy



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INTRODUCTION

The Gore District Council (“the Council”) is responsible for the administration and regulation of a wide range of 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 of 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 Acts under which the Council has responsibilities for enforcing regulatory requirements includes, but is not limited to:

- Building Act 2004
- Dog Control Act 1996
- Food Act 2014
- Gambling Act 2003
- Hazardous Substances and New Organisms Act 1996
- Health Act 1956
- Impounding Act 1955
- Land Transport Act 1998
- Litter Act 1979
- Local Government Act 2002
- Local Government Act 1974
- Prostitution Law Reform Act 2003
- Resource Management Act 1991
- Sale and Supply of Alcohol Act 2012
- And various Regulations, Council plans and bylaws

The need to take enforcement action may arise where a breach, including statutory requirements, rules and bylaws, has occurred, or is proposed to occur.

Typically, the process of undertaking enforcement is a staged one of promoting awareness and providing assistance, warnings, issuing of enforcement notices and in serious cases, prosecution, although this may vary from time to time. The Council considers that this stepped approach encourages positive behaviour change ensuring high levels of compliance.

This policy sets out the overarching principles for enforcement in the Gore District. For some of the Council’s functions, guidelines have also been prepared setting out the relevant procedures and considerations applying to particular Acts or functions of the Council.

PURPOSE

The primary purpose of this policy document is to:

- Inform the general public of the Council's approach 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 Council staff and contractors in the performance of their compliance, enforcement and prosecution functions; and
- Ensure consistent, appropriate and coordinated decision-making of compliance, enforcement and prosecution matters.

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.

This Enforcement Policy and the manner in which Council staff and contractors are to exercise their discretion is based on the following principles:

Self-compliance

A high level of self-compliance reduces the cost and time to the Council of enforcing the law. To foster a high level of self-compliance the Council will focus on ensuring:

- Bylaws and other regulatory documents prepared by it are concise and well-drafted (in plain English)
- Where practicable, the Council will regularly communicate with the public and/or affected people on their statutory obligations (and the consequences for non-compliance), particularly when there are significant changes to government legislation and to the Council's bylaws and policies. This will include sector specific stakeholder meetings to alert new requirements and provide an element of training/awareness raising
- The Council will provide clear signage to ensure that the public is aware of any applicable restrictions (eg parking)
- Where remedial action is required, documentation from the Council will clearly explain the reason why the action is necessary and when it must be carried out

- Enforcement for minor or inadvertent offending is light-handed with breaches generally being dealt with by way of warning and/or explanation before penalties are imposed.

Notwithstanding these matters, it is still the responsibility of individuals and businesses to comply with all Acts, Regulations and Bylaws. Ignorance of legal requirements is not a defence. Council staff are available to assist people in understanding the legal requirements that apply to them and their activities.

Education

Education is a crucial factor in providing an effective approach to enforcement. Ongoing education ensures that the public is aware of the current regulations and rules, as well as increasing public confidence that, where warranted, the Council will take action.

Pro-active campaigns will be used to educate the public in relation to breaches of specific regulations through Council publications and press releases. As part of the Council's commitment to being open and accountable staff and contractors will report to the Council any enforcement action taken.

Fair, reasonable and proportional approach

The Council will apply regulatory interventions and actions appropriate for the situation and risk or impact of the offending. Staff and contractors will use discretion justifiably, and ensure decisions are appropriate to the circumstances, and that interventions and actions are proportionate to the risks posed to people and the environment, and the seriousness of the non-compliance. Responses will be undertaken in an effective and timely manner in accordance with legislative requirements.

Consistency of Process

Consistency means taking a similar approach in similar circumstances to achieve similar ends. The Council aims to achieve consistency in any advice given, response to incidents and offences and its use of powers and decision making on compliance matters. However, the Council also recognises that consistency does not simply mean uniformity and the merits of each scenario will need to be fully considered. The following matters are particularly relevant when considering consistency of process:

- The objectives and principles of the legislation;
- How similar cases have been best dealt with;
- The prevalence of the type of breach;
- 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.

Decisions on compliance and any enforcement response are a matter of professional judgement. Council staff and contractors 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.

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 it clear why an Enforcement 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.

Cost recovery

Where enforcement action is taken, the costs incurred by the Council should not be subsidised by the general rate. The Council will seek to recover all reasonable costs as the Court or relevant legislation provides.

The general public, by way of complaints, is an important source of information which may require investigation, and the Council is grateful for this input.

On occasion however, the level of baseless complaints made by an individual, usually against the same person or organisation, can result in a waste of time by staff and contractors. Where this is ongoing, then following written warning, the Council will also seek to recover reasonable costs against the complainant.

THE ENFORCEMENT PROCESS

The response upon discovery of an offence will be dependent on a number of factors, including the need to deal with any ongoing adverse environmental effects, risk of continuing offending and the seriousness of the offence. Generally, the response will take the following staged approach:

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:

- Preventing serious environmental damage from starting or continuing, either with the agreement of the offender or by way of abatement notice, enforcement or interim enforcement order.
- The Council undertaking work and recovering the associated costs from the offender.
- An immediate closure in the case of a serious food hygiene risk.
- Seizure of an offending animal in the case of a dog attack.

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 an 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, it is necessary to decide on an appropriate response to the offence.

Deciding the enforcement response

Providing the correct enforcement response, requires sound professional judgment and good knowledge and understanding of the relevant legislation involved. The following factors are to be considered in deciding the appropriate enforcement approach:

- The actual adverse effects that have occurred from the breach
- The likely or potential adverse effects arising from the breach
- The value or sensitivity of the environment affected by the breach
- Whether the breach is a result of deliberate, negligent or careless behaviour
- Any relevant special circumstances, for example, extreme weather event or other event outside the control of the offender.
- The degree of care taken by the offender, and how foreseeable was the incident
- Any effort made to remedy or mitigate the effects of the breach
- The effectiveness of any remediation or mitigation undertaken
- Whether any profit or benefit gained from the breach by the offending party
- Whether there is repeat non-compliance by the offender, or previous enforcement action taken against the offender for the same or similar breach
- The attitude of the offender toward the offence
- Whether the offender failed to act on prior instructions, advice or notice
- Whether there is a degree of specific deterrence required in relation to the offender

- Whether a wider general deterrence is required in respect of this activity or industry?

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.

ENFORCEMENT OPTIONS

Staff and contractors have a broad range of enforcement options available to them to address matters of non-compliance. The general tools that apply to the different regulatory functions of the Council are as follows:

	Oral Warning	Written Warning	Excessive Noise Direction	Notice to Fix	Infringement Notice	Abatement Notice	Enforcement Order	Prosecution
Building	X	X		X	X			X
District Plan and Consents	X	X			X	X	X	X
Environmental Health	X	X			X			X
Liquor	X	X			X			X
Parking	X				X			X
Noise	X	X	X		X	X		X
Animal Control*	X	X			X			X
Bylaws	X	X			X			X

**Other options occur including the disqualification of owners and the classification of dogs as menacing or dangerous*

A brief description of each of the enforcement options, when they may be used and what delegation as follows.

Oral warning

Where there is an actual or potential breach the Council can provide an oral warning. It is usually accompanied by information or guidance around rules and regulations. This is an informal process and as such has no legal implications.

Authority to determine

Issued by an Enforcement Officer with delegation from the Council.

Written warning

A written warning takes the form of letter or email to an offender informing them that an offence against an Act or regulation has been committed, and that they are liable. This approach is used where no further action is intended to 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 when assessing the attitude of the offender.

A formal warning may be given when:

- An administrative, minor or technical breach has occurred; and
- The environmental effect, or potential effect, is minor or trivial in nature; and
- The people, businesses or organisation 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.

Authority to determine

Issued by an Enforcement Officer with delegation from the Council and confirmed by Council management.

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. Excessive noise directions can be given verbally or in writing. If a direction is not complied with, enforcement officers can seize and remove, render inoperable or make unusable, any device causing excessive noise.

Excessive noise directions are used in urgent cases where noise is causing immediate nuisance. This is usually in response to a complaint from a neighbour or a member of the public where, for example, a burglar alarm is sounding continuously, or a noisy party continues to an unreasonable hour.

Authority to determine

Issued by an Enforcement Officer with delegation from the Council.

Notice to fix

A notice to fix is a formal, written directive. It is drafted and served by the 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 and it 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 has not been obtained for building work that requires a consent.

Authority to determine

Issued by a Building Control Officer with delegation from the Council, confirmed by management.

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. If paid, no further action is 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:

- There is prima facie (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.

Authority to determine

Issued by an Enforcement Officer with delegation from the Council and confirmed by Council management.

Abatement notice

An abatement notice is a formal, written directive. It is drafted and served by the 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 and 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.

Authority to determine

Issued by an Enforcement Officer with delegation from the Council and confirmed by Council management.

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.

Authority to determine

Council senior management decision supported by legal advice.

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, and section of the Act used. 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. Prosecution may be considered appropriate when the matter is sufficiently serious to warrant the intervention of the criminal law.

Authority to determine

Council senior management decision supported by legal advice.

REVIEW

This policy will be reviewed every three years.