




## ENFORCEMENT POLICY

POLICY TYPE	DOCUMENT CONTROLLER	RESPONSIBLE MANAGER	POLICY ADOPTED	REVIEW DUE
Council	Executive Manager	General Manager	25 September 2023	September 2025
<b>PURPOSE</b>	<p>To ensure enforcement is carried out in the public interest and is transparent, fair, efficient, and consistent.</p> <p>This Enforcement Policy defines the standards and expectations set by Council, to exercise its duties, functions and responsibilities involved in carrying out any enforcement in the Devonport Municipal area.</p>			
<b>SCOPE</b>	<p>The Policy applies to Council's responsibility for administration and enforcement of legislation including, but not limited to:</p> <ul style="list-style-type: none"> <li>• <i>Local Government Act 1993</i></li> <li>• <i>Building Act 2016</i> and associated regulations</li> <li>• <i>Dog Control Act 2000</i> and associated regulations</li> <li>• <i>Environmental Management and Pollution Control Act 1994</i> and associated regulations</li> <li>• <i>Food Act 2003</i> and associated regulations and guidelines</li> <li>• <i>Land Use Planning and Approvals Act 1993</i></li> <li>• <i>Local Government (Highways) Act 1982</i></li> <li>• <i>Public Health Act 2000</i></li> <li>• <i>Litter Act 2007</i></li> <li>• <i>Biosecurity Act 2019</i></li> <li>• <i>Traffic Act 1925</i></li> <li>• <i>Road Rules 2019</i></li> <li>• <i>Urban Drainage Act 2013</i></li> <li>• Council By-laws</li> </ul> <p>Specific provisions within legislation that require Council to ensure or take reasonable steps to ensure that legislation is complied with and enforced include:</p> <ul style="list-style-type: none"> <li>• Section 41 of the <i>Building Act 2016</i></li> <li>• Section 20A of the <i>Environmental Management and Pollution Control Act 1994</i></li> <li>• Section 97 of the <i>Food Act 2003</i></li> <li>• Section 48 and 63A of the <i>Land Use Planning and Approvals Act 1993</i>. This creates an offence for a Council that fails to take reasonable steps to enforce a planning scheme.</li> <li>• Section 27 of the <i>Public Health Act 2000</i></li> </ul> <p>The enforcement of relevant legislation aims to:</p> <ul style="list-style-type: none"> <li>• Ensure protection of both public and private property;</li> <li>• Minimise legal action;</li> </ul>			

	<ul style="list-style-type: none"> <li>• Increase the public's confidence in Council; and</li> <li>• Protect public safety and to promote community health and well-being.</li> </ul>
<b>DEFINITIONS</b>	<p>For the purposes of this Policy, the following definitions apply:</p> <p><b>Authorised Officer</b> – means a person appointed by the General Manager, Minister of the Crown or the Council for the purpose or administering and enforcing legislation. For the purposes of this policy an Authorised Officer includes Environmental Health Officer (or a Medical Officer of Health) as defined under the <i>Public Health Act 2000</i>.</p> <p>Relevant to law 'Authorised Person' has the same meaning as Authorised Officer.</p> <p><b>Council Officer</b> – means an employee of a council appointed under section 21 of the <i>Environmental Management and Pollution Control Act 1994</i>.</p> <p><b>Council</b> – means Devonport City Council.</p> <p><b>Enforcement</b> – means to make people obey something, or to compel obedience to a law, regulation or command.</p> <p><b>Legislation</b> – means any statute, regulation or Council By-law for which Council has administration and enforcement functions and powers.</p>
<b>POLICY</b>	<p>Council's enforcement of legislation will be consistent, prompt and impartial having regard to the following principals which are to be considered when determining if it is appropriate to embark on enforcement action in a particular circumstance including:</p> <ul style="list-style-type: none"> <li>• To provide consistency in enforcement action in matters of non-compliance;</li> <li>• To ensure transparency, procedural fairness and natural justice principles are applied; and</li> <li>• To ensure that enforcement action is proportionate to the alleged offence in each case.</li> </ul> <p>Council's enforcement actions will be underpinned by the following principles:</p> <ol style="list-style-type: none"> <li><b>1. Proportionality</b> <ol style="list-style-type: none"> <li><b>1.1.</b> Enforcement action will be undertaken within a priority hierarchy with specific reference to the public interest.</li> </ol> </li> <li><b>2. Public Interest</b> <ol style="list-style-type: none"> <li><b>2.1.</b> Public interest or benefits will be weighed up against the cost to the Council of enforcement action. In considering the public interest, Council will have regards to whether the unlawful activity: <ul style="list-style-type: none"> <li>• Impacts a significant number of people;</li> <li>• Will disadvantage the community;</li> </ul> </li> </ol> </li> </ol>

	<ul style="list-style-type: none"> <li>• Has attracted public attention and/or no resolution is proposed or is likely;</li> <li>• Creates public health and safety hazards and/or exposure of legal liability to the Council; and</li> <li>• Is consistent or inconsistent with the environment in which the activity is being undertaken.</li> </ul> <p><b>3. Consistency</b></p> <p><b>3.1.</b> Council will take a consistent approach in similar matters to achieve acceptable outcomes. While decisions on enforcement require the use of judgement and discretion to assess varying circumstance, officers will:</p> <ul style="list-style-type: none"> <li>• Follow standard operating procedures wherever possible;</li> <li>• Ensure fair, equitable and non-discriminatory treatment; and</li> <li>• Record any deviation from standard operating procedures and the reasons.</li> </ul> <p><b>4. Transparency</b></p> <p><b>4.1.</b> Council will be open and transparent about compliance actions where there is a requirement to do so. When remedial action is required, Council will explain why action is necessary and will provide advice on the process for seeking a review of, or how to appeal, against a decision.</p> <p><b>5. Natural Justice</b></p> <p><b>5.1.</b> Natural justice and procedural fairness will be afforded to any person to whom a complaint relates.</p> <p><b>6. Independence</b></p> <p><b>6.1.</b> Authorised Officers will investigate compliance issues impartially and undertake enforcement action in a manner that is free from undue influence.</p> <p><b>7. Nature of Allegation</b></p> <p><b>7.1.</b> Council will only become involved in what an Authorised Officer would reasonably consider to be neighbour and civil dispute, (usually, but not always characterised by multiple and personal complaints about other parties) where it can be established by objective and independent evidence that an issue of concern giving rise to Council enforcement processes exists. In the absence of such evidence, Council will not be in a position to undertake any enforcement action or be a party to the dispute.</p> <p><b>7.2.</b> Where it is established that Council should become involved, the Authorised Officer will use their discretion to ascertain whether a full property audit should be conducted in relation to all parties in the dispute.</p>
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	<p><b>7.3.</b> Where there are complaints of a private nuisance occurring from one private property to another and, despite legislation enabling the Council's involvement, the Council will only exercise its discretion to become involved where, in the opinion of the Authorised Officer, the nuisance:</p> <ul style="list-style-type: none"> <li>• Has a potential impact greater than one or two properties;</li> <li>• Has a potential major impact upon the health, welfare or safety of any person or for any structure on a property; and</li> <li>• Has a potential impact upon Council infrastructure or service delivery or in the circumstances of any previous Council involvement it is appropriate to do so.</li> </ul> <p>It will otherwise be a matter for parties to exercise their own civil rights in relation to a private nuisance.</p> <p><b>8. Resources</b></p> <p><b>8.1.</b> Council must also give consideration to the resources that can be directed towards implementing Council's Enforcement Policy. Budgetary and Officer resources that can be utilised in areas implementing the Enforcement Policy are -limited. There are also a limited number of Council employees with the appropriate delegations as Authorised Officers allowing them to carry out enforcement action.</p>
<b>LEGISLATION AND RELATED DOCUMENTS</b>	<p><i>Local Government Act 1993</i>  <i>Building Act 2016</i> and associated regulations  <i>Dog Control Act 2000</i> and associated regulations  <i>Environmental Management and Pollution Control Act 1994</i> and associated regulations  <i>Food Act 2003</i> and associated regulations and guidelines  <i>Land Use Planning and Approvals Act 1993</i>  <i>Local Government (Highways) Act 1982</i>  <i>Public Health Act 2000</i>  <i>Litter Act 2007</i>  <i>Biosecurity Act 2019</i>  <i>Traffic Act 1925</i>  <i>Road Rules 2019</i>  <i>Urban Drainage Act 2013</i>  Council By-laws  Delegation register</p>
<b>ATTACHMENTS (IF APPLICABLE)</b>	N/A
<b>STRATEGIC REFERENCE</b>	5.3 Council looks to employ best practice governance, risk and financial management
<b>MINUTE REFERENCE</b>	23/189

<b>OFFICE USE ONLY</b>	Update Register	Y	Training/Communication	Y
	Advise Document Controller	Y	Advise HR / MCO	Y
	Management Sign Off:    Date: 25 September 2023			