



TASMAN DISTRICT COUNCIL ENFORCEMENT POLICY



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1. Introduction

Local government in New Zealand is responsible for ensuring compliance with a variety of laws and regulations that are aimed at achieving positive community and environmental outcomes. In the Tasman District Council, there are many dedicated staff who have enforcement responsibilities which deliver on these obligations, while working within the organisational values and towards achieving the vision and mission for the Tasman community.

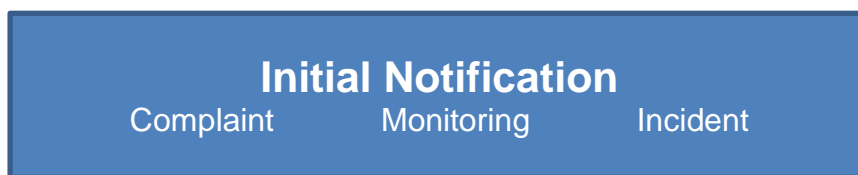
2. Purpose

This policy provides staff in Council and the general public with an understanding of the purpose and principles to be applied in monitoring and enforcing rules and regulations in the Tasman District. It also provides insight into the range of enforcement tools available to Council and the selection processes undertaken to achieve desired outcomes.

The primary purposes of this policy are to:

- Provide public understanding on how the Tasman District Council, through enforcement, gives effect to the purpose and principles of the relevant legislation, bylaws and the objectives of the Tasman Resource Management Plan (TRMP).
- Provide guidance on the range of compliance promotion and enforcement tools available to Council.
- Provide understanding of Council's enforcement process and what can be expected when contraventions occur.

3. The Investigation and Enforcement Process at a Glance



An Officer is tasked as being responsible for investigation and gathering information.

- Investigation may include:
- Site Inspection
 - Sampling
 - Measuring
 - Photographing
 - Expert advice
 - Interviews

Minor Offences

A warranted officer has powers under the various legislation to deal with offences in different ways. This may be a warning, infringement notice, enforcement order, abatement notice, seizure of an animal or item etc. In order to maintain consistency of approach, an officer may consult with their peers and managers, however, provided the officer complies with the law and this Policy they do not need to consult.

Major Offences

More serious offences e.g. those which may proceed to prosecution, have pecuniary fines over \$1000 and/or the possibility of imprisonment must be peer reviewed. The final decision on prosecution rests with the Group Manager or Chief Executive Officer. If the decision is to prosecute, legal advice will be sought prior to laying any charges.

ENFORCEMENT OPTIONS

- No further enforcement action.
- Letter of direction.
- Notices.
- Formal warning.
- Infringement.
- Seizure of Animal or Equipment.

These options can be applied on the authority of the relevant warranted officer.

ENFORCEMENT OPTIONS

- Enforcement Order.
- Prosecution.

These options can only be signed off by the Group Manager or the Chief Executive Officer (CEO).

Legal Review
Ensure correct application of the law

DISTRICT COURT

- Determines guilt.
- Imposes sentence.
- Makes orders.

4. Encouraging Compliance

It is important that the Tasman District Council takes a comprehensive “spectrum” approach to promote understanding of the need for compliance and encourage positive behavioural change to ensure the highest levels of compliance is achieved where that is needed.

To achieve this the Tasman District Council employs various strategies to promote compliance, such as:

Engagement with people, stakeholders and the community on matters that may affect them. This will promote greater understanding of the challenges and constraints; engender support and identify opportunities to work with others.

Education for those who are unaware of the rules and regulations or need reminding of their obligations. It is also important in providing the community with information about what rules and regulations are in place and what is acceptable behaviour.

Enabling individuals, stakeholders and supporting them to develop best practice by linking with resources and advice and promoting examples of best practice.

Enforcement when breaches of rules and regulations are identified using the range of enforcement tools council has available to bring about positive change

5. Why Enforce?

Enforcement is an integral part of the implementation and administration of the law. As an agency, having unitary functions Council covers both Regional and Territorial authority responsibilities. As such it has broad ranging environmental, planning, and development control responsibilities, including the statutory obligation to enforce its legal duties and responsibilities under the wide range of Acts it administers.

The reasons Council is required to enforce the law are essentially related to matters of health, safety and environmental protection. These are matters that Parliament has deemed to be of sufficient public interest to merit Government intervention.

The statutes under which the Council has duties and responsibilities for the enforcement of laws include the:

- Resource Management Act 1991
- Local Government Act 2002
- Local Government Act 1974
- Building Act 2004
- Sale and Supply of Alcohol Act 2012
- Dog Control Act 1996
- Impounding Act 1955
- Health Act 1956
- Land Transport Act 1998
- Hazardous Substances & New Organisms Act 1996
- Gambling Act 2003
- Prostitution Law Reform Act 2003
- Litter Act 1979
- Food Act 2014
- Biosecurity Act 1993
- Maritime Transport Act 1994
- And various Regulations, Council plans and bylaws

The need to take enforcement action may arise following routine monitoring or complaint investigation. In both instances, the need to take enforcement action will arise because a breach has arisen.

We can broadly categorise enforcement mechanisms as being concerned with three interrelated outcomes, these are:

- Avoidance, mitigation or remedying of adverse effects;
- Compliance promotion; and
- Deterrents and restitution.

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. This spectrum approach encourages positive behaviour change thus ensuring highest levels of compliance.

6. Enforcement Principles and Guidelines

The requirement to monitor and ensure compliance with the law is a mandatory obligation of most of the Acts 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.

Despite this, in New Zealand a clearly established set of guidelines and principles are in place for the enforcement role. Tasman District Council will apply and adhere to these principles ¹ when carrying out enforcement activities.

Transparency

We will provide clear information and explanation to the regulated community about the standards and requirements for compliance. We will ensure that the community has access to information about industry environmental performance as well as actions taken by us to address environmental issues and 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. We will ensure that our staff have the necessary skills and are appropriately trained; and that there are effective systems and policies in place to support them.

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.

¹ Principles taken directly from Strategic Compliance Framework authored by the Regional Council Compliance Special Interest Group

Evidence based, informed

We will use an evidence-based approach to our decision-making. Our decisions will be informed by a range of sources, including sound science, information received from other regulators, members of the community, industry and interest groups.

Collaborative

We will work with and, where possible, share information with other regulators and stakeholders to ensure the best compliance outcomes for our regions. We will engage with the community and consider public interest, those we regulate, and government to explain and promote environmental requirements, and achieve better community and environmental outcomes.

Lawful, ethical and accountable

We will conduct ourselves lawfully and impartially and in accordance with these principles and relevant policies and guidance. We will document and take responsibility for our regulatory decisions and actions. We will measure and report on our regulatory performance.

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.

7. Conflicts of Interest

We will carry out all of our enforcement functions in full accordance with the Tasman District Council Conflict of interest (COI) policy.

The purpose of the COI policy is to:

- create a framework for decision making that avoids actual or perceived conflict of interest
- minimise the risks where a conflict of interest exists
- ensure staff are free from any personal, commercial, financial, political or other pressures that might affect their actual or perceived ability to make independent decisions.

This policy provides guidance for staff as to where a COI may arise (and therefore how to avoid a COI) and a mechanism for ensuring that any actual or potential COI is disclosed and managed appropriately.

8. The Enforcement Pathway

The following section outlines in detail the enforcement pathway expected to be undertaken 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 effects, risk of continuing offending and the seriousness of the offence. It is expected that 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:

- A full pollution prevention response (for RMA). May include abatement notice, enforcement or interim enforcement order, in order to prevent further serious environmental damage from starting or continuing.
- An immediate closure in the case of a serious food hygiene risk.
- Seizure or destruction of an offending animal in the case of a dog attack.

Gathering information (Investigation)

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

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.

Note: Notwithstanding the above, Tasman District Council reserves the right to proceed directly to enforcement action, including prosecution, against parties where the circumstances support this.

Enforcement Decision Making

Enforcement can be complex, some Acts provide potentially large penalties for those who breach, however, do not offer any guidance as to determining what is serious and what is less so. In some cases, the Courts have provided helpful guidelines² as to what factors are appropriate to consider to determine seriousness of a breach. Factors to consider are;

- What are the actual adverse effects that have occurred from the breach?
- What are the likely or potential adverse effects arising from the breach?
- What is the value or sensitivity of the environment affected by the breach?
- Was the breach a result of deliberate, negligent or careless behaviour?
- What degree of care was taken by the culpable party, and how foreseeable was the incident?
- What efforts were made by the culpable to remedy or mitigate the effects of the breach?
- How effective was that remediation or mitigation?
- Was any profit or benefit gained from the breach by the culpable party?
- Is this incident a repeat non-compliance by the culpable party or has previous enforcement action been taken against the party for the same or similar breach?
- Has the culpable party failed to act on prior instructions, advice or notice?
- Is there a degree of specific deterrence required in relation to the alleged offender?
- Is there a need for a wider general deterrence required in respect of this activity or industry?
- Was the receiving environment of particular significance to iwi?
- How does the unlawful activity align with the purposes and principles of the legislation? Is the decision to prosecute (or not prosecute) in line with the Solicitor General's guidelines? (Extract from Guidelines attached as appendix A).

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. It is inappropriate to take a matrix or numerical approach to weighing and balancing these factors. Each case is unique, and the individual circumstances need to be considered on each occasion to achieve a fair and reasonable outcome. The discretion to take enforcement action, or not, sits solely with regulatory agency³.

Who Can Make a Decision?

Taking any kind of enforcement action can have a profound impact on the subject of the action and cannot be taken lightly. Decisions on enforcement action must be based on reliable and correctly obtained information. The Tasman District Council Appointment Register identifies warranted powers available to Council enforcement officers and the Delegation Register will cover other specific enforcement powers.

For low level breaches, warranted officers can issue of formal warnings, infringement

² Machinery Movers Limited –v Auckland [1994] 1 NZLR 492 & Selwyn Mews Ltd –v- Auckland City Council HC Auckland CRI -2003-404-159

³ New Zealand Law Commission http://www.nzlii.org/nz/other/nzlc/report/R66/R66-5_.html

notices and abatement notices. If felt necessary, the officer may consult with Team Leaders and/or managers. If a matter is complex, has a high public profile, requires specific guidance or simply there is no precedent, then the warranted officer will seek support from peers, Team Leaders, or managers, and, if necessary, legal advisors.

If the matter is being considered for prosecution or other remedies involving Court action, then it must ultimately be authorised by the Group Manager or CEO. In such circumstances, the case will be subjected to independent legal review.

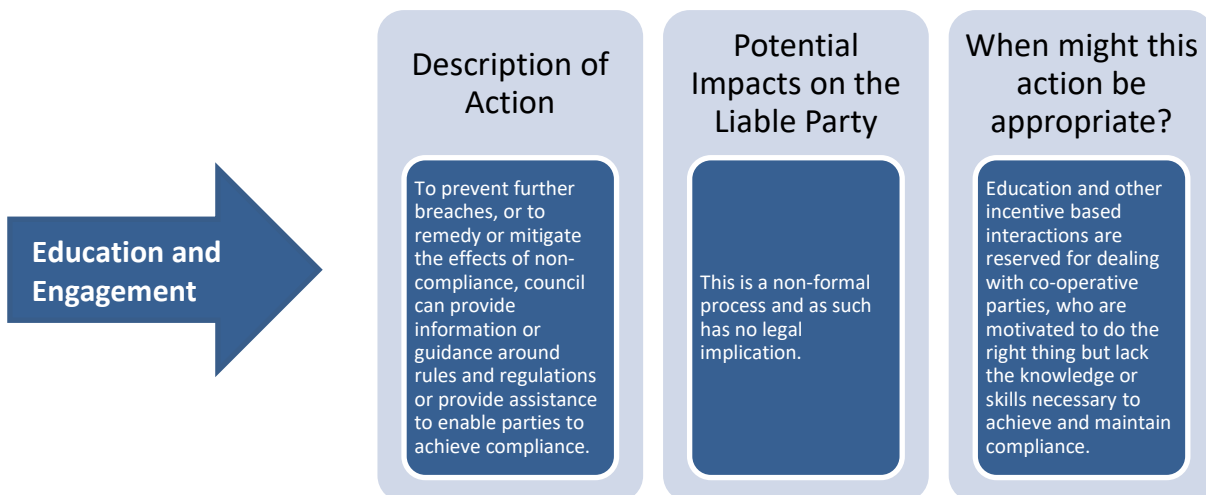
9. Enforcement Options

Tasman District Council enforcement officers have a broad range of enforcement options available to them to address matters of non-compliance. 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.

Enforcement can be categorised into three main types. 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.

The following range of enforcement options are available to staff in response to detected offending:

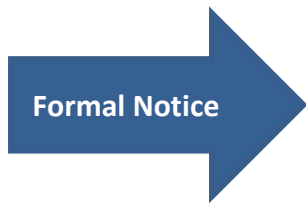
Education and Incentive



Directive Actions



<p>Description of Action</p> <p>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.</p>	<p>Potential Impacts on the Liable Party</p> <p>Such a direction is not legally enforceable.</p>	<p>When might this action be appropriate?</p> <p>Letters of direction 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.</p>
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<p>Description of Action</p> <p>A notice is a formal, written directive that is drafted and served by council instructing an individual or company to cease an activity, prohibit them from commencing an activity or requiring them to do something. The form, content and scope of an abatement notice are prescribed in statute.</p>	<p>Potential Impacts on the Liable Party</p> <p>A direction given through a notice is legally enforceable. To breach a notice is to commit an offence against that Act and make liable parties open to punitive actions.</p>	<p>When might this action be appropriate?</p> <p>A notice may be appropriate any time that there is a risk of further breaches of a regulation or remediation or mitigation is required as a result of non-compliance.</p>
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<p>Description of Action</p> <p>Like a notice, an order can direct a party to take particular action. However, an application for an order must be made to the Courts but can also be made during the course of a prosecution.</p>	<p>Potential Impacts on the Liable Party</p> <p>A direction given through an order is legally enforceable. To breach an order is to commit an offence against the Act and can make liable parties open to punitive actions.</p>	<p>When might this action be appropriate?</p> <p>An application for an order may be appropriate any time there is a risk of further breaches of regulation or remediation or mitigation is required as a result of non-compliance.</p>
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Formal warning

Description of Action

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.

Potential Impacts on the Liable Party

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.

When might this action be appropriate?

A formal warning may be given when:

- an administrative, minor or technical breach has occurred; and
- the effects or potential effects, 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; and
- a written warning would be appropriate in the circumstances.

Punitive Actions

Infringement Notice

Description of Action

An infringement notice is a written notice which requires the payment of a fine. The amount of the fine is set in law.

Potential Impacts on the Liable Party

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.

When might this action be appropriate?

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.

Prosecution

Description of Action

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 evidential rules and standards must be met in prosecution

Potential Impacts on the Liable Party

A successful prosecution will generally result in a conviction, a penalty imposed and consideration to costs of the investigation.

A prosecution forms part of the history of non-compliance and will be considered if there are future incidents of non-compliance.

When might this action be appropriate?

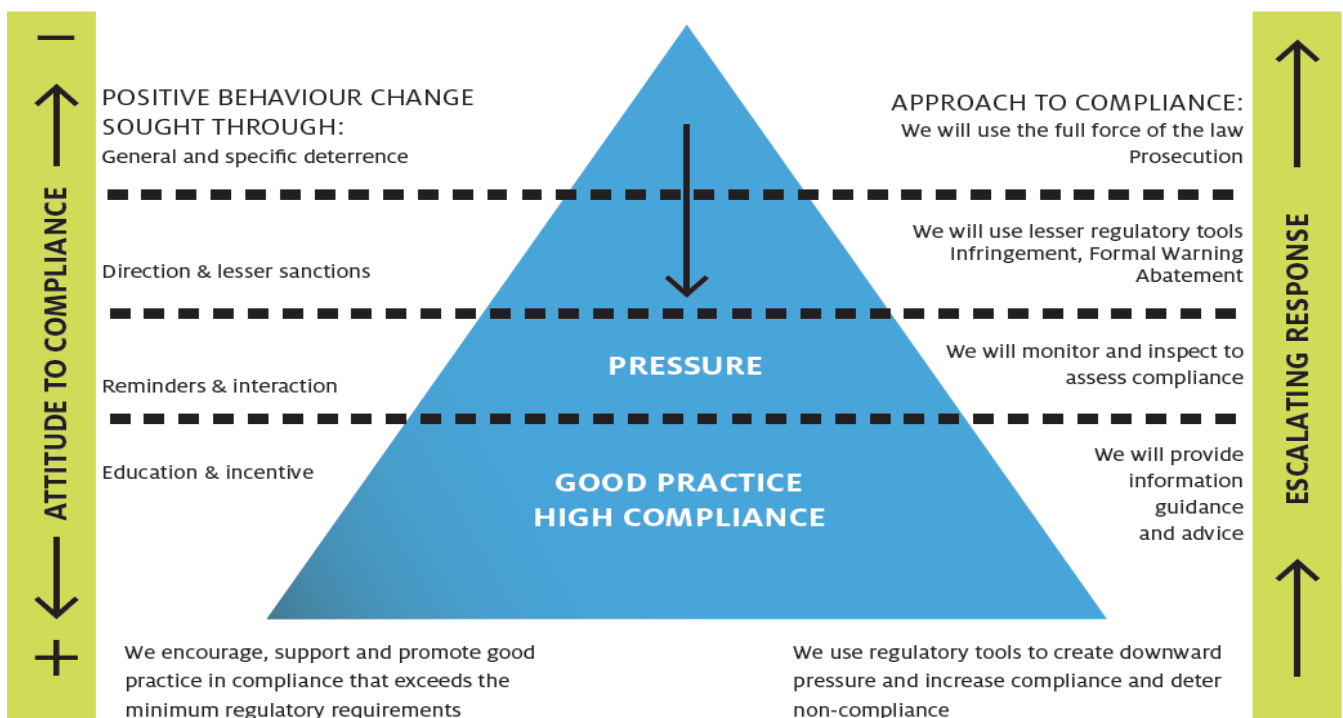
A prosecution may be considered appropriate when the factors listed above indicate that the matter is sufficiently serious to warrant the intervention of the criminal law.

10. Selecting an Enforcement Response

Deciding on the appropriate enforcement response is often complicated by a range of factors. In order to make a sound and justifiable decision, it is essential that all relevant issues surrounding the matter are carefully considered prior to actual enforcement action being taken.

The Compliance Pyramid⁴ is a widely used model for achieving positive behavioural change. At the bottom of the pyramid are those who are willing to comply - at the top are those who resist compliance. The pyramid is designed to create downward pressure – that is to move non-compliant individuals and organisations down the pyramid to full compliance and to where lower level and less costly interventions can be utilised.

Applying the available enforcement options outlined in the model provides clear direction to individuals, stakeholders and the community on the expectations and likely response from Council to those failing to comply.



The most severe response is reserved for the most serious breach

⁴ Waikato Regional Council Enforcement Policy. Adapted from Ayers & Briathwaite (1992), Responsive Regulation: Transcending the deregulation debate, Oxford University Press, New York

11. Review

Once an interim decision has been made, it should be rechecked for consistency against the principles and policies outlined in this document. When satisfied that the response selected is appropriate, the Enforcement Officer can act, subject to any referral to others where appropriate.

Any action will be proportional to the risks and issues involved and the legal options open to the Council. The Enforcement Officer must be satisfied that a case to answer exists before embarking on the more formal enforcement remedies. This will involve the application of two tests, an evidential test and a public interest test and in relation to any prosecution recommendation, this will be informed by legal advice.

The Evidential Test

The evidential test requires an assessment of whether:

- The evidence relates to an identifiable person (whether natural or legal).
- The evidence is credible.
- The council can produce admissible evidence before a court.
- The evidence is sufficient to prove the elements of any offence
- The evidence can reasonably be expected to satisfy a Judge or other decision maker, beyond a reasonable doubt, that the individual has committed a criminal offence; the individual has given any explanations and, if so, whether the court is likely to find the explanations credible in the light of the evidence as a whole.
- There is any other evidence the council should seek out which may support or detract from the case.

The Public interest Test

Once it has been established that there is sufficient evidence to provide a reasonable prospect that an offence has occurred, the public interest test requires any discretion to act is proportionally exercised in accordance with the rule of law and any relevant statutory requirements.

Appendix A - Solicitor-General's Prosecution Guidelines (2013)

The Council will adhere to the standards of good criminal prosecution practice expressed in the *Solicitor-General's Prosecution Guidelines* (2013). The Council's criminal prosecutions are conducted by external lawyers, on the Council's behalf, and the *Solicitor-General's Prosecution Guidelines* and the *Media Protocol for Prosecutors* (Crown Law, 2013) while not binding on local authorities, represent best practice. Also, the Solicitor-General's Guidance (CLO311/379) is helpful in guidance to local government as to who offers the best legal service in prosecution matters.

The list, based on the *Solicitor-General's Prosecution Guidelines*, is illustrative only and not a comprehensive list of the matters to be considered as the matters will vary in each case according to the particular facts.

Under the *Solicitor-General's Prosecution Guidelines* a prosecution is more likely if:

- A conviction is likely to result in a significant sentence;
- The offence caused significant harm or created a risk of significant harm;
- The offence was committed against a person serving the public for example, a police officer or Council officer;
- The individual was in a position of authority or trust;
- The evidence shows that the individual was a ringleader or an organiser of the offence;
- There is evidence that the offence was premeditated;
- There is evidence that the offence was carried out by a group;
- The victim of the offence was vulnerable, has been put in considerable fear, or suffered personal attack, damage or disturbance;
- The offence was committed in the presence of, or in close proximity to, a child;
- There is an element of corruption;
- The individual's previous convictions or cautions are relevant to the present offence;
- There are grounds for believing that the offence is likely to be continued or repeated, for example, by a history of recurring conduct;
- The offence, although not serious in itself, is widespread in the area where it was committed;
- A prosecution would have a significant positive impact on maintaining community confidence;
- The individual is alleged to have committed the offence while subject to an order of the court;
- A confiscation or some other order is required, and a conviction is a pre-requisite.