

ENFORCEMENT POLICY

September 2023



1. PURPOSE

The purpose of this policy is to outline Derwent Valley Council's approach to investigation, compliance and enforcement, providing staff with direction about the way enforcement activities are to be undertaken, and seeks to:

- Provide consistency in enforcement action in matters of non-compliance.
- Ensure that the principles of transparency, fairness and impartiality are followed.
- Ensure that any enforcement action is proportionate to the seriousness of the non-compliance and opportunity for effectiveness.
- Provide guidance to the application of powers by Council's nominated or authorised officers.

2. SCOPE

This policy applies to where Council has a legislative obligation and responsibility to enforce decisions, permits and notices. This policy has been drafted to accord with the Good Governance Principles under Council's Governance Framework.

3. LEGISLATION

This policy relates to Council's functions and powers, and those of nominated or authorised officers, under various Acts (and associated regulations) including, but not limited to, the:

- *Building Act 2016*
- *Biosecurity Act 2019*
- *Burial and Cremation Act 2019*
- *Dog Control Act 2000*
- *Environmental Management and Pollution Control Act 1994*
- *Food Act 2003*
- *Land Use Planning and Approvals Act 1993*
- *Litter Act 2007*
- *Local Government Act 1993*
- *Local Government (Highways) Act 1982*
- *Monetary Penalty Enforcement Act 2005*
- *Public Health Act 1997*
- *Right to Information Act 2009*
- *Traffic Act 1925*
- *Urban Drainage Act 2013*

3.1 DELEGATION AND NOMINATED OFFICERS

Council routinely delegates functions and powers to the General Manager to facilitate Council activities and some decisions to be made in an efficient manner. These delegations are generally undertaken under Section 22 of the *Local Government Act 1993* (although some delegation powers also exist in other legislation) and apply to all other relevant legislation. Section 64 of the Act then provides that General Manager may delegate any function or powers conferred by legislation or by delegation from Council (under s.22) to an employee of Council. Council, acting as a Planning Authority, under Section 6 the *Land Use Planning and Approvals Act 1993*, may directly delegate functions or powers under that Act directly to the General Manager or an employee of Council – these powers cannot be on-delegated.

Council or the General Manager, is also empowered to authorise or appoint a person to a specific function under various Acts. Under some Acts, such as the biodiversity and the Traffic Act, the appointment of the function is undertaken by a nominated authority (ie: Secretary or Commission, or delegate)

The functions and powers of these roles may be conferred to a nominated person or Council employee either directly through legislation or by delegation from the General Manager. Some functions and powers may only be conveyed to an employee of Council or may require the consent of Council. Some functions require certain qualifications to be achieved or maintained.

Functions are appointed on an as-needs basis and are required to be incorporated into role descriptions for employees or terms and conditions for contractors (where appropriate). Not all functions have been assigned in Derwent Valley.

These specific functions are outlined below.

Function	Relevant legislation
Permit Authority	<i>Building Act 2016</i>
Authorised Officer	<i>Biosecurity Act 2019</i>
Authorised Officer	<i>Burial and Cremation Act 2019</i>
Authorised Person	<i>Dog Control Act 2000</i>
Council Officer	<i>Environmental Management and Pollution Control Act 1994</i>
Authorised Officer	<i>Food Act 2003</i>
Authorised Officer	<i>Land Use Planning and Approvals Act 1993</i>
Authorised Officer	<i>Litter Act 2007</i>
Powers of Entry	<i>Local Government Act 1993</i>
Medical Officer of Health Environmental Health Officer	<i>Public Health Act 1997</i>
Authorised Officer	<i>Traffic Act 1925</i>

In addition, any by-laws adopted by Council under the *Local Government Act 1993*, may authorise an employee of Council to undertake enforcement action.

4. DEFINITIONS

The terms used in this policy are set out in the relevant Acts.

5. POLICY

The application of this policy will provide consistency when dealing with matters of non-compliance in a fair and equitable manner.

Council provides advice to the community on a wide range of matters including compliance obligations through a wide variety of methods, including:

- Face to face interactions.
- Letters and community brochures.
- Social media and education campaigns.
- Council’s website with reminders, frequently asked questions, and links to regulatory documents such as the Planning Scheme.



Figure 1 Graduated risk diagram

A graduated risk-based approach to regulatory compliance is preferred as shown in Figure 1 (adapted from Fire and Emergency New Zealand's Regulatory Compliance Guide 2021 (<https://www.fireandemergency.nz>) which was based on the Ayres and Braithwaite Regulatory Enforcement Pyramid).

5.1 INVESTIGATION

The need for investigation will vary depending upon the nature of the alleged offence and the empowering legislation. For complex matters, such as breach of planning permits, legal assistance may be sought to determine the nature of evidence necessary to provide for successful prosecution, and third-party specialised evidence may also be required.

In investigating a matter of non-compliance, Council may consult with a State Government department or other agency for comment or, in the case of coordinated enforcement, to determine which agency should lead any investigation and would be the appropriate agency to take any enforcement action. There may be circumstances in which it is appropriate for a joint investigation to take place, and for each agency to take its own enforcement action.

If, during any investigation, Council becomes aware of criminal activity occurring, it will refer the matter to the Tasmanian Police.

5.2 DECISION-MAKING

Derwent Valley Council is charged with legislative responsibilities which protect individuals and the community as a whole. Enforcement actions are taken within the context of both a legal and policy framework.

In applying this policy and meeting its obligations under legislation, Council may apply a wide range of enforcement actions, including:

- Taking no action.
- Providing verbal directions.
- Issuing a warning letter.
- Issuing an infringement notice.
- Issuing other notices and orders under legislation.
- Commencing legal proceedings (whether prosecution on for an offence or other enforcement action available under legislation).

Sometimes it may be appropriate for several enforcement actions to be undertaken in combination or commenced via formal notification. However, it is recognised that some enforcement, such as some sections of the *Dog Control Act 2000*, provide for "on the spot" infringements in appropriate circumstance. In addition, in matters of life safety, immediate orders may be required to be issued.

While it may not be required under legislation, given there is likely to be a significant cost associated with the escalation of enforcement matters to a Tribunal or court of law, prior to commencing prosecution or enforcement proceedings at such a body, all matters will be brought to Council seeking endorsement (in closed meeting) unless there is a timeframe imperative. However, formal notices, infringements and orders may be issued as per delegations.

Council staff will carry out their enforcement related work in accordance with the following principals and the process outlined in Appendix A.

5.2.1 TRANSPARENCY

The Derwent Valley Council will be open and transparent about how it undertakes enforcement policy and the laws it enforces. The review and adoption of an Enforcement Policy provides a clear discussion on the service and performance that can be expected by the public.

In educating the community at large, Council will make a clear distinction between what is legally required and what is desirable but not compulsory. Staff will be open to discussing potential and actual compliance failures - before, during and after formal action has been taken.

Where breeches of legislation have occurred, Council will:

- Where suitable, or required by legislation, give notice of its intent to commence formal action.
- Provide advice on the process for seeking a review of, or how to appeal against that decision.

Where corrective or remedial action is required, Council will:

- Explain clearly and in plain language why the action is necessary.
- Advise what action is required to achieve compliance and provide a suitable timeframe for undertaking that action.
- Explain the consequences of not undertaking the required action.

Where the matter has arisen from a complaint, subject to Council's Privacy Policy, Council will advise the complainant as to what action has been undertaken.

5.2.2 FAIRNESS AND IMPARTIALITY

Councillors and Council officers are subject to Codes of Conduct. In making decisions about enforcement action, Council will be impartial, based on available evidence, and on the strategic objectives of Council.

Above all, where suitable, a person will be provided with an opportunity to correct any breach of legislation or permit, or action of non-compliance. However, this opportunity may be restricted by the nature of the non-compliance, risk and cost factors associated with the delay in correction or any legislative timeframe constraints.

A decision on whether to take enforcement action will not be influenced by factors such as:

- Any party's gender, ethnicity, nationality, political associations, religion or beliefs.
- Any existing relationship with the alleged offender and any Councillor or Council staff member.
- The possible effect of the decision on the personal or professional circumstances of those responsible for the decision.

5.2.3 PROPORTIONALITY

A proportionate response means that Council's actions will be scaled to the seriousness of the breach and potential outcomes. Council recognises most individuals want to comply with the law, and will assist compliance by being open and helpful, offering informal advice and providing the opportunity to discuss compliance problems.

It is also recognised that Council is unable to be resourced to prosecute every breach of every legislation for which it is responsible. Non-compliance activities may range from very minor to very serious. Actions may have been undertaken a significant time in the past with little opportunity now to provide effective radiation at a late stage.

Enforcement attention will be focussed on those whose activities give rise to the most serious risks, where potential hazards are not well controlled, or where ongoing or repeat actions provide an opportunity for effective intervention.

Depending on the seriousness and persistence of the infringement, Council will seek to minimise the costs to the individual or body infringing the law by enforcing the minimum action necessary to secure future compliance.

Prosecution will generally be used as a last resort, or for continuous serious offences.

5.2.4 EFFECTIVENESS

This policy ensures that the enforcement action is effective without unnecessary escalation, incurring time and cost to Council and associated parties while still achieving the desired outcomes, and still respecting the principles of natural justice and providing opportunities for voluntary compliance where possible.

Dependent upon the nature of the breach, the empowering legislation, and the nature of the enforcement action taken, a person may be directed to undertake action (with subsequent action before a court or financial penalties for non-compliance) or be provided with an infringement notice in some form with a financial penalty. Where penalties are not paid, Council will refer the matter to the Monetary Penalties Enforcement Service (Department of Justice).

5.3 COMPLAINTS & PERSONAL INFORMATION

Derwent Valley Council recognises that enforcement matters are often raised by community members via a complaint.

While we take complaints seriously, in accordance with Council's Privacy Policy, anonymous complaints inhibit the Council's ability to undertake an investigation into an issue or follow up on a matter. Accordingly, we generally do not respond to anonymous requests, complaints or other matters where relevant personal information has not been provided to the Council, or is insufficient.

In addition, we generally will not deal with complaints which are considered of a frivolous or vexatious nature.

5.4 DISCRETIONARY POWER

The requirement to enforce compliance with the law is a mandatory obligation of most of the Acts that Council administers. However, Council's enforcement action is a discretionary power and consideration must be given to individual merits of pursuing action before embarking on the enforcement process.

While these Acts provide the specific framework for Council to enforce rules and regulations, Council's enforcement process and decision-making remains at its discretion. This is necessary, considering that compliance and enforcement is complex in law and usually complicated by many factors, to ensure an appropriate response pathway is achieved.

6. RELATED DOCUMENTS

- Complaints Policy
- Customer Service Charter
- Governance Framework.

ATTACHMENT A – ENFORCEMENT PROCESS

