

Enforcement Strategy and Prosecution Policy

Enforcement Strategy

INTRODUCTION

Queenstown Lakes District Council is responsible for the administration and regulation of a wide range of functions across the district. The regulatory activities that the Council deals with include:

- Building and resource consents
- Parking
- Animal control
- Noise management
- Bylaws enforcement
- Liquor licensing
- Environmental health
- Waterways
- District Plan

The Council endeavours to work with various stakeholders, statutory organisations, voluntary groups, individuals and non-governmental organisations to achieve high levels of compliance with the various regulatory requirements.

This strategy sets out the general principles that Queenstown Lakes District Council intends to follow in relation to its regulatory obligations.

ENFORCEMENT MATRIX

Council has various enforcement tools to ensure compliance for each activity undertaken.

Table 1: Enforcement Tools

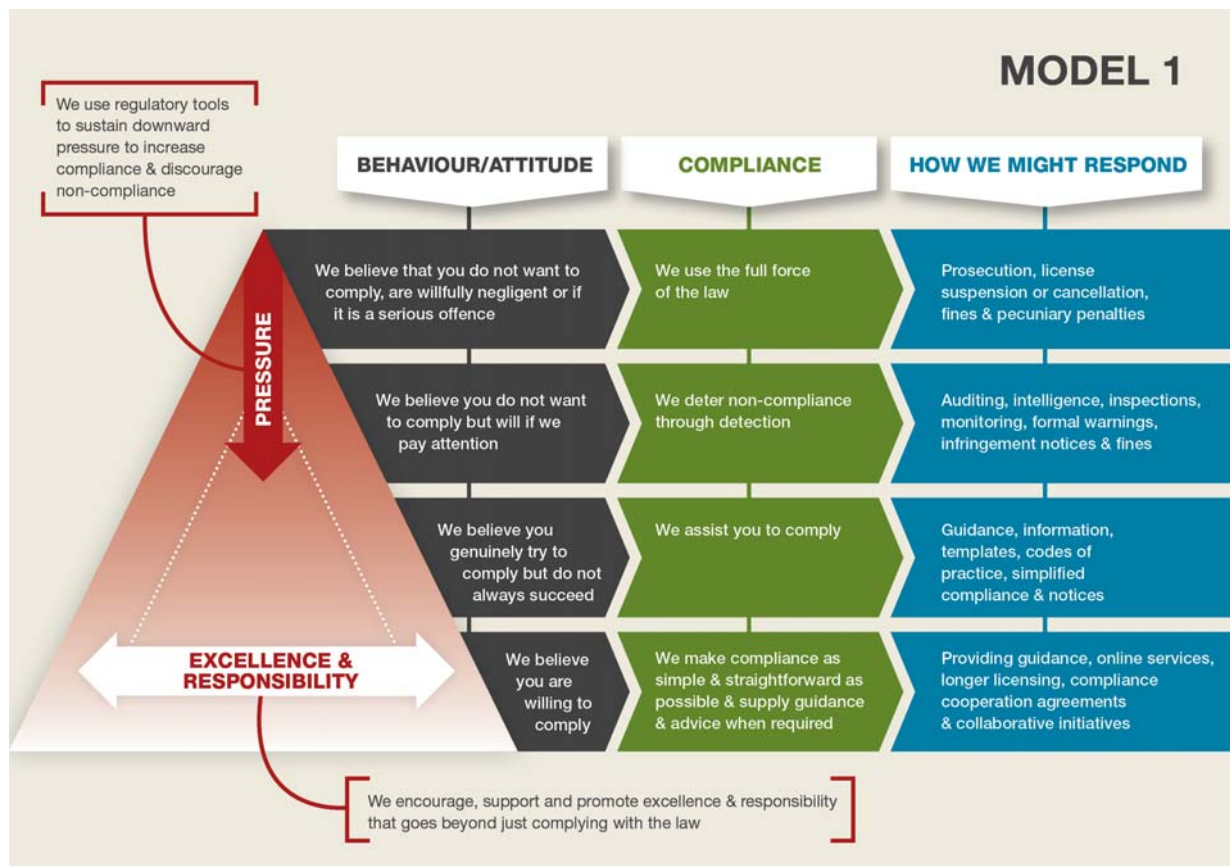
	Oral Warning	Written Warning	Notice to Fix	Infringement Notice	Abatement Notice	Enforcement Order	Prosecution
Building	x	x	x	x			x
Resource Consents	x	x		x	x	x	x
Environmental Health	x	x					x
Liquor	x	x		x			x
Parking	x			x			x
Waterways	x	x		x			x
Noise	x	x			x		x
Animal Control	x	x		x			x
District Plan	x	x		x	x	x	x
Bylaws	x	x		x			x

The enforcement tool used to achieve compliance is dependent upon factors such as:

- The nature and scale of the harm caused by the offending;
- The nature of the penalty which is likely to be most effective in ensuring compliance or acting as a deterrent;
- Whether the offending relates to a Council priority for greater compliance;
- Whether there is general public awareness of the regulation; and
- Whether there has been previous offending.

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The relationship of the relevant factors which assist in determining the action taken is shown in the below model:



Please note: In certain circumstances legislation will dictate the appropriate response/penalty.

GOAL

The Council's principal enforcement goal is:

To increase the level of voluntary compliance with the law through an effective and appropriate enforcement activity.

OUTCOMES

The outcomes that the Council endeavour to achieve are:

- Our community complies with national and local legislation because they are well-understood and easy to comply with; and*
- Our community is confident that Council will enforce laws in a timely, effective and fair manner.*

STRATEGY

This enforcement strategy is based on the following principles:

Self-Compliance

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

- We have concise and well-drafted (in plain English) bylaws that are easy to comply with;
- Where practicable, we will regularly communicate with the public on their statutory obligations (and the consequences for non-compliance). This will include publicising any regulations and any significant changes to the law, and giving warnings of increased enforcement action where appropriate;
- We target priority areas of compliance with specific campaigns or media articles;
- We provide access to the various laws Council enforces on the QLDC website;
- We provide clear signage to ensure that the public is aware of any applicable restrictions (e.g. parking);
- Where remedial action is required, we clearly explain the reason why the action is necessary and when it must be carried out; and
- Our 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.

Proportionate Enforcement

The Council has finite budget and staff resources to meet all of its regulatory enforcement activities. The Council needs to determine the most effective and cost-efficient method of enforcement for each regulatory activity. In determining how best to enforce various legislation Council officers will consider:

- The seriousness of the infringement/offending;
- Harm caused by the offending;
- Whether there has been previous infringing/offending;
- The level of penalty required to act as a deterrent;
- The standard penalty for a particular type of offending and whether it is a sufficient deterrent;
- Alternative penalties;
- Whether the offence has been prioritised by Council;
- The cost of various enforcement options;
- Any mitigating factors such as age or health of offender;
- Whether offending was inadvertent or calculated;
- The ease of voluntary compliance.

It will generally be appropriate for minor matters (e.g. parking) that Council issues infringement notices at the prescribed penalties. Such laws are usually well-understood and consistent enforcement is usually the most effective way that the social issue

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underlying the enforcement action (e.g. ensuring safe and smooth movement of traffic) is addressed.

A more discretionary and targeted approach is appropriate for more serious offending, where there may be differing levels of public understanding or where the cost of enforcement may be significant. In these situations (e.g. a breach of an abatement notice) Council may appropriately identify a suitable case of offending where significant resources will be applied and serious penalties sought. Such one-off cases of enforcement may then act as a sufficient deterrent to ensure general compliance for similar kinds of breaches.

In addition, just as Police target drivers with excess breath alcohol at certain times, Council may choose to prioritise certain enforcement areas and direct resources towards them on the basis those activities relate to social concerns that have particular importance at a given time or to a particular community within the District (e.g. enforcement of alcohol laws within Queenstown Central Business District).

Council may also adjust the allocation of resources based on changing circumstances or public concerns (e.g. increased patrolling where complaints have been received in relation to freedom camping.)

Interagency collaboration

In order to effectively achieve the desired outcomes some aspects of enforcement are likely to involve the Police. While the bulk of enforcement activities will not require Police assistance, it will be sought where there are safety risks to Council staff (e.g. aggressive behaviour) or necessary where Police powers are required (e.g. seizure of property).

For such action to be carried out cost-efficiently, Police will receive advance notice wherever feasible so that the collaboration can be co-ordinated with other Police work (e.g. monitoring of licensed premises).

Fairness

In enforcing laws the Council should strive to conduct itself in a manner that the public perceives to be fair and reasonable. This promotes public respect for the laws being enforced and increases levels of voluntary compliance. This can be achieved through:

- Consistency in enforcement;
- On-going education, and engagement with the public;
- Transparency in relation to the Council enforcement policies and priorities;
- Good use of judgment and discretion in determining the method of enforcement and (where applicable) suitable penalties; and
- Training to ensure that Council staff conduct themselves in a courteous, friendly and professional manner consistent with the regulations that they are enforcing.

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Areas of Enforcement & Operational Activities

The Council takes many steps every day to pursue self-compliance with national and local legislative requirements.

Many matters can be easily resolved through education and advice without the need for enforcement. However, we also have a responsibility to the community to ensure that where non-compliance does occur the appropriate enforcement action is undertaken.

The action taken will reflect two key enforcement activity streams:

- 1. Key Result Areas (Priority Activities)**
- 2. Supporting Enforcement Activities**

Key Result Areas (Priority Activities)

Alcohol

Objective: *To ensure legislative obligations are met and conditions of licences are adhered to, to minimise alcohol related harm through excessive or in appropriate consumption of alcohol.*

Action: (1) *To undertake regular monitoring of licensed premises to ensure that compliance with licence conditions and standards is the normal behaviour of licensees.*
(2) *To ensure the rules and consequences are communicated clearly to licensees.*

The introduction of the Sale and Supply of Alcohol Act 2012 increased the need to educate licensees regarding their legislative obligations. Non-compliance provides a risk to both public health and safety and to our reputation as a tourist destination, due to associated alcohol related violence and anti-social behaviour.

An increased level of monitoring of licensed premises to verify the level of compliance is a primary focus of Council, particularly for premises rated as high risk or very high risk.

It is important that the public has confidence in Council to uphold standards and to hold licensees accountable where standards or licence conditions are not met.

Council will increase the monitoring of promotional events to address an on-going issue of inappropriate promotions of alcohol and take appropriate enforcement ranging from warnings to seeking a suspension of a licence. Where continued issues remain and three suspensions in three years have been established, Council may seek a cancellation of a licence with the Alcohol Regulatory and Licensing Authority for a minimum of five years.

Dogs (Animal Control)

Objective: *Ensure that there is a safe recreational environment for both dog users and other members of the public by minimising the incidence of roaming dogs and dogs not kept under effective control.*

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Action: *(1) Maintain targeted patrolling to reduce the level of roaming dogs and reduce the potential for dog attacks;
(2) Responding quickly to any public complaints regarding roaming or aggressive dogs.*

Targeted areas:

The number of dog attacks (on other animals or people) fluctuates from year to year, but overall, levels remain steady. However, roaming dogs are an increasing problem which gives rise to a range of issues e.g. attacks, incidents of worrying stock, dog fouling and general nuisance.

While Council will provide a quick response to all general dog complaints, particular priority will be given to dog attacks to protect the public and to assist the public in a distressing situation. The Council will evaluate dogs involved in attacks to determine the most appropriate level of enforcement, including the need to classify a dog as menacing or dangerous.

Increased targeted patrolling will be undertaken early in the mornings and later in the evenings to reflect the trends of offending and complaints received. Dog owners appear to allow dogs to roam rather than being kept under control or confined to the property at those times.

To facilitate the enforcement of offending dog owners, it is important that all dogs within the Queenstown Lakes District are registered and where self-compliance is not undertaken the Council will enforce this legislative requirement.

The Council will carry out a joint visit with the Police to any premises where we need to seize a dog from inside a dwelling or where there is a threat to public safety.

Littering

Objective: *Providing a litter-free district that our community is proud of and our visitors admire.*

Action: *(1) Educating visitors and the wider community on Council's strong anti-littering stance;
(2) Improving the identification of littering offenders and enforcement responses.*

Targeted areas:

There has been an increase in littering within the Central Business District from commercial operators, who are not effectively managing their rubbish disposal. Rubbish bags and bins are left on Council land for long periods or left outside expected pick-up times. This rubbish can become a target in the evenings and be strewn over our streets.

An education programme will be undertaken to advise businesses of collection times, expectations on removing rubbish that has not been collected and the Council's strong anti-littering stance.

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Council will increase the enforcement against offenders where rubbish is left on Council land and utilise the custodian and parking officer resources to enable a more effective response to this issue.

Resource Management (Planning)

Objective: *To provide a high quality natural and built environment across the district.*

Action: *(1) To undertake the monitoring of resource consent applications with such regularity that compliance with the conditions is the default behaviour.*

Council will increase the frequency of monitoring resource consents to increase public confidence in Council and to promote self-compliance from consent holders.

Building (Development)

Objective: To protect the health and safety of all users of buildings and encourage a high level of self-compliance with the law.

Action: *(1) To ensure information is clear and easily available so applicants are aware of the building rules;*
(2) To review all Certificate of Acceptance applications to determine if enforcement action is necessary.

There has been a significant increase in the level of unconsented building works resulting in Certificate of Acceptance applications over the last year. This is not achieving the community outcomes as a result of Council not being able to inspect building works at the necessary stages.

To encourage self-compliance Council will increase the level of enforcement when processing Certificates of Acceptance for applications that should have had building consent.

Supporting Enforcement Activities

Environmental Health

Objective: To maintain and improve hygiene standards of businesses to protect public health.

Action: *(1) To undertake an annual inspection of businesses across the district.*
(2) To ensure businesses understand the standards and expectations of Council
(3) To publicise the grading of all food businesses.

Annual inspections are carried out in food businesses, hairdressers, camping grounds and funeral directors to ensure compliance with national legislation and local regulations. The majority of issues found relate to cleanliness, maintenance of the premises and knowledge of food safety in food businesses.

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Where business owners do not comply with the rules, this provides a risk to public health and consequently a risk to our reputation as a tourist destination. It is important that the public has confidence in the Council enforcing regulations to protect public health consistently.

In the last three years in anticipation of new legislation, Council has promoted the use of Food Control Plans (FCP) to raise standards in food businesses, which has reflected in the majority of premises being graded A or B. Council will continue to promote the use of FCP's, with additional re-visits where necessary for sub-standard businesses and the closing of businesses where necessary.

Council will continue to inspect food vendors at events to ensure public health standards are maintained.

Parking (including freedom camping)

Objective: *Ensure that parking across the district, and particularly the Central Business Districts, is within designated areas and for no longer than permitted to enable the safe and smooth flow of traffic.*

Action: (1) *To undertake daily patrols with sufficient regularity that voluntary compliance is the default behaviour of local residents.*
(2) *To ensure that signage is sufficiently clear and prominent that visitors to the District are aware of the parking rules.*

Targeted areas:

Patrols are undertaken seven days a week across the district to ensure compliance with national legislation and local regulation. The majority of parking issues involve overstaying time restricted parking and parking illegally e.g. across drives, on broken yellow lines, in loading zones etc. More recently issues have also arisen with buses parking in residential areas and cars parked 'for sale' for long periods of time in specific streets.

Parking signs have been increased to respond to the recent trends regarding buses parking in residential areas and cars for sale along Stanley Street, with further signage planned for Sydney Street. This is to be followed up with increased education and enforcement in the areas with additional signage.

The level of freedom camping offending has reduced over the last year due to very visible levels of enforcement. This will continue over key tourism peaks to ensure the public concerns associated with freedom camping are addressed.

Waterways

Objective: *To promote safe boating and compliance with national and local rules on Queenstown Lakes District lakes and rivers.*

Action: (1) *To undertake targeted patrolling particularly at peak seasons times with sufficient regularity that voluntary compliance by residents and visitors is the normal behaviour.*
(2) *To ensure that signage is sufficiently clear and prominent that waterways users are aware of the rules.*

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The primary focus of our waterways is safety. The principal issue we encounter is people not wearing life jackets on vessels less than 6 metres and not carrying a life jacket for each passenger on vessels over 6 metres. Other issues include boats travelling too fast in speed restricted areas, too close to other vessels or too close to the shore.

The level of targeted on-water patrolling and the number of enforcement officers will increase in the summer season to provide an increased visibility of enforcement officers to encourage self-compliance. In addition, the Council will increase the publicity of the key water safety messages in the media in advance of the peak season. To promote awareness, there will also be appropriate signage in key locations e.g. boating ramps

Noise

Objective: *To reduce the incidence of excessive noise nuisance across the district.*

Action: *(1) To educate residents and visitors on Councils stance regarding excessive noise,
(2) To provide a fast response to noise complaints.*

Council provides a 24/7 noise complaint service in response to anti-social behaviour regarding noise. The majority of complaints are regarding stereo noise and associated people noise.

Whilst people noise is Policing matter, Council works collaboratively in these situations and will seize stereos to abate the noise where necessary.

Prosecution Policy

Introduction

Prosecutions are a response to non-compliance which result in serious consequences for victims, witnesses and defendants. Prosecutions should be used in a deliberate and targeted manner to deter and denounce offending and hold the offender accountable for harm to the victim, environment and community caused by the offending.

Public confidence in the Council's administration of its enforcement duties relies on decisions to prosecute (or not to prosecute) being made in a transparent, consistent and fair manner.

Any prosecution undertaken by the Council or on its behalf (i.e. by the New Zealand Police) should be conducted in accordance with this prosecution policy, the Council's enforcement strategy and the Solicitor General's prosecution guidelines.

Solicitor General's Prosecution Guidelines

The Crown Law office has issued the Solicitor General's Prosecution Guidelines (SGPG)¹ to assist regulatory agency prosecutors in exercising their discretion to prosecute criminal cases.

The SGPG sets out a test for prosecution decision making. There are two limbs to that test:

- (i) The evidential test – whether there is a reasonable prospect of securing a conviction on reliable, available and admissible evidence;
- (ii) The public interest test – whether the public interest requires a prosecution.

Both limbs of that test must be met before a prosecution can be brought.

Queenstown Lakes District Council's Prosecution Decision Making Framework

Obtaining a conviction is a consequence but not the purpose of a prosecution. Factors that are relevant to a decision to prosecute includes whether:

1. The actual (or risk of) loss, harm or damage as a consequence of the non-compliance is significant;
2. The non-compliance is intentional or calculated;
3. The offender has a history or pattern of non-compliance;
4. There are no proper alternatives to prosecution.

Review by Prosecutor

An investigation file will be referred to either to a prosecuting solicitor or the New Zealand Police.

¹ Dated 1 July 2013

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Decision to prosecute

If a prosecutor² considers that both the evidential test and the public interest tests are met, a decision of “recommend prosecution” is made, together with a list of the appropriate charges. This decision will be recorded in writing.

The prosecutor will refer this decision together with the investigation file to the Council officer in charge (i.e. the officer with delegated authority to file a charging document with the Court). That officer will exercise his/her discretion whether or not to commence a prosecution.

Decision not to prosecute

If a prosecutor determines that either the evidential test or the public interest test set out in the SGPG are not met a “no prosecution” decision will be made. This decision will be recorded in writing. Where the evidential test is met, but the public interest test is not, the prosecutor will refer the decision together with the investigation file to the Council officer in charge (i.e. the officer with delegated authority to file a charging document with the Court). The officer will exercise his/her discretion whether or not to initiate a prosecution.

A decision of “no prosecution” does not preclude a re-consideration of an investigation where new and/or additional information is available. Additionally, a review of the decision not to prosecute may be initiated for the purpose of re- evaluating the public interest.

If the decision is not to commence a prosecution, the reasons for that decision will be recorded in writing. The file will be closed, but the decision not to proceed with the prosecution may still be reviewed.

Charges

If the officer in charge has exercised discretion to commence a prosecution, that officer will (with the assistance of the prosecutor) prepare and file a charging document in the appropriate court, for the charges recommended by the prosecutor.

The prosecutor will arrange for service of the charging document, together with a letter to the defendant. If any special procedure (such as obtaining the consent of the Solicitor General to lay charges) is required the prosecutor will make the necessary arrangements.

Disclosure and requests under the Local Government Official Information and Meetings Act 1987

Disclosure in prosecutions is governed by the Criminal Disclosure Act 2008. Disclosure and withholding of information is to be determined in accordance with the requirements of that Act. The conduct of a Council prosecution also occurs in the context of the Local Government Official Information and Meetings Act 1987. The making available of information on the matters concerning the prosecution may prejudice the maintenance of the law, particularly the investigation of offences or the right to a fair trial. Therefore good reason or conclusive reasons to withhold information may exist.

² For the purpose of this policy, a “prosecutor” is either a member of the New Zealand Police, Crown Solicitor or a solicitor (internal or external) instructed by the Council to act as the prosecutor in the case.

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Conduct of prosecution and case management

In the conduct of the prosecution, prosecutors are expected to consult closely with and take into account the views of the Council officer in charge of the prosecution but matters as to the conduct of the prosecution are matters solely for the prosecutor to decide.

A review of the charges should occur throughout the prosecution and consider whether other charges should be added or whether the existing charges should be amended to bring them into conformity with the evidence available. Withdrawal of a charge or charge(s) is to be a rare occurrence as it is expected that the charges will be laid fairly and properly reflect the nature of the offence.

The principal duty of a prosecutor is to perform the obligations of that office in a manner that is fair. The prosecutor must ensure the right to a fair trial is protected, and that victims and witnesses are treated with care and respect.

Victims

When conducting a prosecution, the role of the prosecutor is to act in the public interest, not in the capacity as an advocate for victims. Prosecutors should ensure victims have a clear understanding of the proper role of the prosecutor and that a referral to Court Services for Victims has been made. Where offending has caused distress to victims, the prosecutor has a role to play in minimising the additional distress of criminal proceedings. Victims' views may be obtained in the course of the prosecution, but such views will not be determinative of the conduct of the prosecution. The prosecutor will advise victims of the availability of any restorative justice conference.

Bail

Opposition to bail should only be considered on the basis of credible, cogent and relevant information that demonstrates that detention is necessary to prevent re-offending.

Sentencing

The prosecutor's role is to draw the Court's attention to the proven or accepted facts of the case and any relevant sentencing principles. The prosecutor should not advocate for a particular sentence, but may express a view on an appropriate sentencing range or tariff.

The prosecutor may obtain an impact statement from victims of the offending, or persons who have experienced adverse effects to assist the Court in reaching an appropriate sentence, including any sentence of reparation.

An expert report to inform the Court as to the significance of the offending may also be obtained.

The authorised enforcement officer is responsible for advising victims of the outcome of sentencing and fully explaining the reasons for the sentencing decision.

Appeals and Judicial Review

Victims should be notified of any appeal.

The SGPG requires that the Solicitor General's consent must be obtained for a prosecutor to lodge an appeal or judicial review of any decision of a Court. On the instruction of the Chief Executive of the Queenstown Lakes District Council, the prosecutor will make the necessary arrangements for the lodging of an appeal.

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Other Agencies

It is common that behaviour which amounts to offending within the Council's sphere of regulation may result in investigation by other agencies. For example, the incident may constitute a breach of both the District Plan and the Regional Plan. Both the Council and the Regional Council may investigate the incident.

Where possible, the Council will work collaboratively with other agencies to achieve the objectives of the investigation in an expedient and cost efficient manner. It may be possible for agencies to share the costs of analyses, undertake joint witness interviews or share the information held on investigation files with each other. Care is necessary to ensure that any collaboration does not compromise the integrity or the efficient conduct of the Council's investigation.

Council may, if it is considered practicable, obtain the views of other agencies prior to making its decision as to whether the public interest test for a prosecution is met. The Council may in its discretion consider those views when deciding if the public interest test for a prosecution is met, or in relation to the timing of any charges to be brought. For example, if another investigating agency is to lay more serious charges or duplicate charges, the public interest in the Council laying identical charges may be lower.

Policy Owner

The Enforcement Strategy and Prosecution Policy are the responsibility of the General Manager, Legal and Regulatory.

Other Relevant Policies and Documents

Policies, Guidelines, Practice Notes

Queenstown Lakes District Council Enforcement Strategy 1 July 2014

Media protocol for prosecutors, Crown Law Office, 1 July 2013

Solicitor General's Prosecution Guidelines, Crown Law Office, 1 July 2013

Victims of Crime – Guidance for Prosecutors, Crown Law Office, 1 July 2013

Bail Practice Note (Bail Act 2000), 7 February 2002, Chief District Court Judge

Legislation

Victims Rights' Act 2002

Bail Act 2000