

## Otago Regional Council's Enforcement Process

The Otago Regional Council ("Council") is a legislated regulator responsible for enforcement, including prosecution. This article sets out the process that Council follows in assessing a file for prosecution, and how prosecution decisions are made.

### Objectives of the Council's prosecution activity

The Council enforces many pieces of legislation including the Resource Management Act 1991, the Local Government Act 2002 and the Biosecurity Act 1993. As such, the objectives of particular prosecutions may vary depending on the purpose of the legislation that the prosecution is brought under.

There are some general objectives that apply across all of Council's prosecutions which should be read in conjunction with specific objectives relating to prosecutions under specific enactments.

The general objectives that apply across all prosecutions taken by the Council are to:

- a. Ensure that appropriate and proportionate enforcement action is taken in response to breaches of the law;
- b. Ensure, where appropriate, an adequate deterrence and denunciation of offending;
- c. Ensure appropriate charges are laid under the appropriate legislation;
- d. Promote fair trial processes;
- e. Act rationally, impartially, fairly and in accordance with the Solicitor-General's Prosecution Guidelines; and
- f. Underpin the Council's compliance objectives.

An example of some specific objectives that apply to prosecutions brought under the Resource Management Act 1991 include:

- i. Hold those who commit offences accountable;
- ii. To punish where appropriate; and
- iii. To protect or restore the environment.

### Process for assessment of a file for prosecution

The ORC Environmental Services unit is responsible for investigating offences. Investigations are carried out by warranted enforcement officers.

If a file is considered for prosecution, a full investigation will be undertaken by an enforcement officer. If offending is detected, the file will be referred to the Enforcement Decision Group ("EDG"), with an accompanying memorandum from the enforcement officer.

Every memorandum is individually assessed by the EDG to ensure an appropriate level of formal enforcement action.

If the event or incident warrants consideration for prosecution, the EDG meet to discuss the matter. The file is reviewed for evidential sufficiency and the public interest considerations are assessed. Only the Chief Executive has the delegated authority to commence a prosecution.

All files authorised for prosecution by the Chief Executive are reviewed by instructed external Legal Counsel before charges are filed.

### Evidential sufficiency

When assessing evidential sufficiency, Council must apply the test in the Solicitor-General's Prosecution Guidelines, that the admissible evidence is sufficient to provide a reasonable prospect of conviction.

### Public interest

If there is sufficient admissible evidence, then it must be considered whether a prosecution is required in the public interest.

Consideration of public interest will include any relevant factors in the Solicitor-General's Prosecution Guidelines.

### Prosecution decision making

The Solicitor-General's Prosecution Guidelines emphasise that prosecution decisions must be free from political influence. The independence of the prosecutor is described as "*the universally central tenet of a prosecution system under the rule of law in a democratic society*"<sup>1</sup>.

Decisions must be made independently and be free from any undue or improper pressure.

If the test in the Solicitor-General's Prosecution Guidelines is not met, a decision of "no prosecution" must be taken.

If the prosecution does not meet the evidential standard for prosecution, the EDG may direct the enforcement officer to continue the investigation.

### Additional consultation for particular types of prosecutions

For investigations into offences against the Building Act 2004, the EDG may seek expert advice from Council's Director Engineering Hazards and Science before approving a prosecution.

For investigations into offences against the Biosecurity Act 1993 and the Maritime Transport Act 1994, the EDG may seek expert advice from Council's Director Environmental Monitoring and Operations before approving a prosecution.

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<sup>1</sup> Advice from Auditor-General provides that "*councillors should not be involved either in decisions to prosecute or to investigate or hear grievances about cases*".