

QLDC Council
29 April 2021**Report for Agenda Item | Rīpoata moto e Rāraki take : 5****Department: Finance, Legal & Regulatory****Title | Taitara Enforcement Strategy and Prosecution Policy (ESPP)****PURPOSE OF THE REPORT | TE TAKE MŌ TE PŪRONGO**

The purpose of this report is to recommend that Council adopt the updated Enforcement Strategy and Prosecution Policy 2021 (ESPP).

EXECUTIVE SUMMARY | WHAKARĀPOPOTOTANGA MATUA

The ESPP is an organisational strategy and policy required to provide Council staff with transparent and consistent guidelines for determining enforcement outcomes relating to Council regulatory legislation. This is a reference document that Council staff and the general public can refer to. The document was last adopted by Council 26 June 2014. It has been considered appropriate to review and update this document to ensure it is fit for purpose and that it remains relevant for all users. The Monitoring and Enforcement Team have undertaken a review of the ESPP. During this process, informal consultation has been undertaken with different departments within the Queenstown Lakes District Council (QLDC).

RECOMMENDATION | NGĀ TŪTOHUNGA

That Council:

1. **Note** the contents of this report;
2. **Adopt** the updated Enforcement Strategy and Prosecution Policy 2021.

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12/04/2021

Reviewed and Authorised by:



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12/04/2021

CONTEXT | HOROPAKI

- 1 The ESPP is an organisational strategy and policy that has been reviewed to provide Council staff with transparent and consistent guidelines for determining enforcement outcomes relating to Council regulatory legislation.
- 2 The purpose of the strategy and policy is to provide an informative reference document for Council staff and the general public, when Council is considering undertaking enforcement action in the Queenstown Lakes District.
- 3 The existing ESPP was adopted by Council on 26 June 2014 and it is now considered to be outdated.
- 4 The Monitoring and Enforcement Team note that the existing ESPP adopted on 26 June 2014, focussed on enforcement matters that were specific to 2014 and did not encompass the ever-changing enforcement priorities addressed by QLDC when undertaking regulatory functions.
- 5 Informal consultation was undertaken with the key stakeholders within QLDC. This informal consultation was undertaken between January 2020 – December 2020. Feedback received within QLDC suggested a greater focus within the revised ESPP on common breaches within the District, inclusion of the environmental guidelines and recognition of QLDC addressing damage to Council assets. This feedback was considered and incorporated during the review process where appropriate.
- 6 A revised ESPP was presented to the Executive Leadership Team (ELT) on the 17th February 2021. ELT provided support for the revised document with suggestions of minor changes that were subsequently updated within the ESPP.
- 7 The ESPP was then presented at a Council Workshop on the 4th March 2021 which resulted in the suggestion to include the following;
 - a. Provide reference to QLDC’s Vision Beyond 2050 work.
 - b. Incorporate Te Reo within the document.
- 8 The suggested inclusions above from the ELT meeting and Council Workshop were incorporated within the updated ESPP.

ANALYSIS AND ADVICE | TATĀRITANGA ME NGĀ TOHUTOHU

- 9 The Monitoring and Enforcement Team undertook a review of the existing ESPP and produced an updated document that considered the feedback provided through informal consultation. The revised document remains largely the same as the existing ESPP aside from the following key changes;
- 10 QLDC’s visions and values were included.

- 11 Removal of key result areas from the existing ESPP and an emphasis on proportionate enforcement. This allows the ability to develop 'key result areas' independently within the organisation and used in conjunction with the revised ESPP.
- 12 Inclusion of a user-friendly diagram outlining how the enforcement strategy works.
- 13 Addition of enforcement options (Appendix 1) that allows the document to be user friendly to the public and include common breaches within the District, specific to the legislation in question.
- 14 General amendments of minor spelling and grammar.
- 15 Council has compliance officers that monitor and enforce, where appropriate, the legislation that the ESPP governs. Feedback from these officers indicate that they believe the foundations, that have remained the same from the existing ESPP to the revised ESPP, are effective in applying legislation in a fair and reasonable manner.
- 16 From the feedback received, it is considered that the existing ESPP has worked effectively in relation to achieving its purpose. As previously stated within this report, the intention of reviewing the document is to update the outdated existing ESPP to ensure it remains relevant.

17 **Option 1** Adopt the proposed Enforcement Strategy and Prosecution Policy

Advantages:

- 18 The revised document has been created to improve the user-friendly aspect for Council staff and the general public when enforcement action is being considered.
- 19 In removing the key result areas that were relevant in 2014, the revised document can remain relevant and up-to-date.
- 20 The increased focus on proportionate enforcement allows the document to be used in conjunction with any focus areas developed alongside the document.
- 21 The public can access a document that outlines a clearer process to QLDC's approach when considering enforcement action.

Disadvantages:

- 22 Community resistance to regulatory management.

23 **Option 2** Keep the existing Enforcement Strategy and Prosecution Policy last adopted on 26 June 2014

Advantages:

- 24 There are no advantages identified.

Disadvantages:

- 25 The existing document will remain outdated.
- 26 Council staff will be basing enforcement decisions off a document that does not incorporate QLDC's flexibility to adapt.
- 27 The community will be apprehensive and question QLDC's integrity if referring to a document that is no longer relevant.
- 28 Less transparency for the general public.
- 29 **Option 3** Remove the Enforcement Strategy and Prosecution Policy
- Advantages:*
- 30 The general public may perceive QLDC as being less bureaucratic.
- Disadvantages:*
- 31 Council staff and public will not have a reference document when considering enforcement action.
- 32 The community may feel they are being treated unfairly.
- 33 There will not be a consistent approach when undertaking enforcement action.
- 34 The community will not be able to have access to a document that outlines the process and reasoning considered when enforcement action is being considered.
- 35 This report recommends **Option 1** for addressing the matter because the revised document considers the shortfalls of the existing document in a positive manner that makes the document more transparent and consistent for Council staff and the community.
- 36 The proposed ESPP is a continuation of the current document with minor adjustments to improve the strategy and policy. There is unlikely to be any impact on the public in adopting the revised ESPP.
- 37 It is therefore proposed to accept Option 1 and adopt the revised ESPP that retains the foundations of the existing ESPP, with some minor amendments.

CONSULTATION PROCESS | HĀTEPE MATAPAKI:

> SIGNIFICANCE AND ENGAGEMENT | TE WHAKAMAHI I KĀ WHAKAARO HIRAKA

- 38 This matter is of medium significance, as determined by reference to the Council's Significance and Engagement Policy. This is because the level of community interest and importance to the District's environment in relation to this document, is considered to be high. Simultaneously, the revised document is considered to be consistent with existing policies and strategies and has a low impact on Council's capability and capacity. Overall, the proposed ESPP is considered to be a matter of medium significance.

39 The persons who are affected by or interested in this matter are:

- Council staff
- Residents/Ratepayers
- Any person/persons undertaking unlawful action within the District
- Complainants

40 The Council has undertaken proactive informal consultation with key stakeholders as well as engaged with Council in a workshop in March 2021 to outline the intention to propose the adoption of the revised strategy and policy. Stakeholders consulted to date have been in support of adopting a revised ESPP.

41 The Council's Significance and Engagement policy provides the Council does not generally consult on decisions in relation to regulatory and enforcement activities (refer page 6 of the policy). Public consultation is not considered to be necessary in this case given that the ESPP document remains largely the same, is primarily used as an internal document by Council staff, and because the foundations of the document are similar to all enforcement strategies used across New Zealand.

> MĀORI CONSULTATION | IWI RŪNANGA

42 The Council has not consulted on the revised ESPP with iwi and this relates to the assessment that the matter is of medium significance and because Council policy provides that Council does not generally consult on regulatory matters. However, the individual pieces of legislation encompassed within the ESPP have considerations of iwi in that respect.

RISK AND MITIGATIONS | NGĀ RARU TŪPONO ME NGĀ WHAKAMAURUTANGA

43 This matter relates to the Regulatory/Legal/Compliance risk category. It is associated with RISK00031 Ineffective management and governance over legislative compliance within the QLDC Risk Register. This risk has a moderate inherent risk rating in the register however with the use of the current ESPP and adoption of the proposed ESPP (Option One) it is considered the risk overall is low.

44 The adoption of the recommended option one will support the Council by allowing us to retain the risk at its current level. This shall be achieved by maintaining an effective strategy for QLDC staff and public to use as a reference document.

FINANCIAL IMPLICATIONS | NGĀ RITENGA Ā-PŪTEA

45 Current budgets have provided expenditure associated with the legal review and Te Reo translation required to support the updated ESPP. No further costs are anticipated.

COUNCIL EFFECTS AND VIEWS | NGĀ WHAKAAWEAWE ME NGĀ TIROHANGA A TE KAUNIHERA

46 The following Council policies, strategies and bylaws were considered:

- Incorporation of QLDC's Vision Beyond 2050: <https://www.qldc.govt.nz/vision-beyond-2050/>
- QLDC Enforcement Strategy and Prosecution Policy adopted 26 June 2014: <https://www.qldc.govt.nz/media/vxrm3wws/qldc-enforcement-strategy-and-prosecution-policy.pdf>
- Significance and Engagement Policy <https://www.qldc.govt.nz/media/5dkns4jx/qldc-significance-and-engagement-policy-aug18.pdf>
- QLDC's delegation register <https://www.qldc.govt.nz/media/43bfshpz/delegations-register-march-2021.pdf>

47 The recommended option, Option 1, is consistent with the principles set out in the named policy/policies.

48 This matter is included in the Ten Year Plan/Annual Plan

- Volume 1 – Regulatory Functions and Services

LEGAL CONSIDERATIONS AND STATUTORY RESPONSIBILITIES | KA TURE WHAIWHAKAARO, ME KĀ TAKOHAKA WAETURE

49 The following legislation was considered when reviewing the ESPP;

- The Local Government Act 2002
- 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 December 2014
- Bail Practice Note (Bail Act 2000), 7 February 2002, Chief District Court Judge
- Victims Rights' Act 2002
- Bail Act 2000
- Criminal Procedure Act 2011

LOCAL GOVERNMENT ACT 2002 PURPOSE PROVISIONS | TE WHAKATURETURE 2002 O TE KĀWANATAKA Ā-KĀIKA

50 The recommended option:

- Will help meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses by creating a refreshed and user friendly document to aid Council staff and the public when considering enforcement action;
- Can be implemented through current funding under the Ten Year Plan and Annual Plan;
- Is consistent with the Council's plans and policies; and

- Would not alter significantly the intended level of service provision for any significant activity undertaken by or on behalf of the Council, or transfer the ownership or control of a strategic asset to or from the Council.

ATTACHMENTS | NGĀ TĀPIRIHANGA

A	Enforcement Strategy and Prosecution Policy adopted 26 June 2014
B	Proposed Enforcement Strategy and Prosecution Policy 2021