

**Mayor and Councillors**  
COUNCIL

26 JUNE 2014

Meeting Status: **Public**

Purpose of Report: For Decision

## **NEW PROSECUTION PROCEDURE**

### **PURPOSE OF REPORT**

- 1 This report provides the Council with details of a new Prosecution Procedure that outlines the duties of staff with prosecution decision making.

### **SIGNIFICANCE OF DECISION**

- 2 This report does not trigger the Council's Significance Policy.

### **BACKGROUND**

- 3 Council, as a regulator, is responsible for a wide-ranging list of statutes. At times the Council is required to take prosecutions against individuals or entities that fail to comply with aspects of the various statutes that Council is obliged to manage as a Territorial Authority.
- 4 Staff, in particular those in the Regulatory Services Group, investigate breaches of the law and prepare, where appropriate, the case for enforcement action. The way this enforcement function is performed has come under recent scrutiny.
- 5 Both the Council and the Chief Executive are in agreement that they wish to see a higher level of authority applied to making any decision to prosecute.
- 6 The Chief Executive issued a verbal direction on 26 May 2014 to the Regulatory Services Management Team that, as of that date, there was an immediate change to prosecutions and none could be taken without his approval. In addition, the Chief Executive ordered a review of the enforcement processes and decision-making tools available to staff with a view to establishing an increased emphasis on risk. The Council will be updated on that work in August 2014.

### **CONSIDERATIONS**

- 7 The Council is provided by statute with a range of enforcement powers that include prosecutions, infringements and abatements.
- 8 In light of recent events, the Chief Executive intends to establish the following new Prosecution Procedure, effective 1 July 2014, to ensure that he has input into decisions to initiate prosecutions. It should be noted that for the purposes of this procedure, prosecution has been defined as when someone is alleged to have committed an offence under an enactment, and the Council seeks that person's conviction by the Court.

### Prosecution Procedure

- 8.1 Effective 1 July 2014 and until further notice, all staff will be instructed that no prosecution is to be initiated on behalf of the Council unless the Chief Executive has first given written approval to the prosecution.

Note: The Chief Executive will consult with the Mayor, Deputy Mayor and Chair of the Regulatory Management Committee before approving or rejecting any proposal to proceed with a prosecution.

- 8.2 This procedure will apply to any proposal to prosecute.
- 8.3 In order to enable the Chief Executive to consider prospective decisions to prosecute, staff will be required to provide him with sufficient information about the alleged offence, the strength of the intended prosecution which will include advice from an appropriate legal service provider, and any potential risks they have identified and mitigation options.
- 8.4 Staff will receive a copy of the Prosecution Procedure and will be required to return to the Chief Executive a signed acknowledgement to confirm their understanding of, and intent to comply with, the Prosecution Procedure that reads: *"I acknowledge and agree to comply with the Prosecution Procedure set out above. In particular, I will not commence any prosecution without first obtaining the written approval of the Chief Executive"*

Note: Each staff member has a copy of their Warrant of Appointment and Authorisation held on their Personal File. Their signed acknowledgement of the Prosecution Procedure will also be held on their Personal File.

- 9 From an organisational perspective this new Prosecution Procedure provides for an open and transparent process. It ensures the Chief Executive is fully informed of the staff judgment behind proposed prosecutions and in particular the consideration of risk. In turn, the Chief Executive's stated intention to consult with the Mayor, Deputy Mayor and Chair of the Regulatory Management Committee before approving or rejecting any proposal to prosecute will also inform Elected Members.

### Consideration of Risk in relation to the Enforcement

- 10 Staff in the Regulatory Services Group have a project underway to review enforcement processes and decision-making tools available to them. Council have been briefed on a risk assessment matrix that the Animal Control Team is currently trialling as a decision-making tool. The subject of risk is being researched as part of the project with a view to determining how risk, and the range of associated considerations, will be embedded into the enforcement work.
- 11 The intended project outcome is a draft Enforcement Policy that incorporates risk considerations and associated decision-making tools and processes that staff will follow. This Policy will apply to any enforcement action, i.e. will be organisation wide. Elected Members will be updated on this project in August 2014.

## Financial Considerations

- 12 There are no financial considerations associated with this new Prosecution Procedure.

## Legal Considerations

- 13 The new Prosecution Procedure has been reviewed by both Council's Senior Legal Counsel and Simpson Grierson.

## Delegation

- 14 The Council has authority to consider this matter.

## Consultation

- 15 There is no consultation required with what is essentially a corporate administrative procedure.

## Policy Implications

- 16 This changed approach to prosecutions sits across the entire organisation. As such the procedure will be published to all staff by the Chief Executive as a Corporate Policy, effective 1 July 2014. In addition, as part of the Regulatory Services Group best practice, reference to the Prosecution Procedure will be included in all relevant Quality Assurance Systems.

## Publicity Considerations

- 17 There is likely to be media interest in this new procedure. A media release will be prepared.

## **RECOMMENDATIONS**

- 18 That Council endorses the intention of the Chief Executive to establish, effective 1 July 2014, a new Prosecution Procedure that (a) details the duties of staff with prosecution decision making, (b) ensures no prosecution action will proceed without the Chief Executive's written approval, and (c) ensures the Chief Executive consults with the Mayor, Deputy Mayor and Chair of the Regulatory Management Committee before approving or rejecting any proposal to prosecute.
- 19 That Council notes that the Chief Executive has ordered a review of the enforcement processes and decision-making tools available to staff with a view to establishing a draft Enforcement Policy that incorporates risk considerations.

### **Report prepared by:**

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