



# Compliance Framework

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# Introduction

## Overview

The Waimakariri District Council is responsible for ensuring compliance with a variety of laws and regulations that are aimed at achieving positive community and environmental outcomes. A key role in ensuring compliance is carrying out compliance monitoring, and responding to notifications of potential breaches or incidents.

The Compliance Framework reflects the Council's commitment to the Local Government Excellence Programme and provides an overarching robust framework that ensures compliance is owned and understood by the Council and our dealings are fair and equitable.

This Compliance Framework aims to provide an informative reference document for the public and Council staff when Council is considering undertaking compliance monitoring and enforcement action in the Waimakariri district.

The district has seen substantial growth over the past two decades with an increased demand for smaller lifestyle blocks since the Canterbury seismic events of 2010 and significant growth in demand for residential housing and new commercial development. Key themes that drive compliance within the district currently are:

- There is increasing recognition of the need to manage the effects of urban growth on the rural environment (commonly known as reverse sensitivity issues).
- Community surveys have shown that the quality of the environment is the key element of what is liked most about resident's present properties.
- Like many districts in New Zealand, housing affordability is a key challenge for some within the community. There is a lack of overall national direction for communities in the provision of less traditional housing typologies such as tiny homes.
- The district's location, close to Christchurch City, makes it attractive for businesses to be located within the area; particularly industries that need space to operate. The rural zones are seen as attractive locations to set up premises, which can create friction.
- The district has been a tier 1 growth Council within the National Policy Statement for Urban Development for a number of years. The resulting growth of new subdivisions has led to a significant amount of localised environmental change.
- Approximately 15,000 new households may be required to meet population growth by 2048. There are 13,000 registered dogs, which is showing an increase of approximately 2% growth per year bringing with it an associated increase in complaints.
- Parking issues have risen approximately 60% in the last 5 years.

In summary, in a growth district where intensification is occurring, there is likely to be increased need for education through to enforcement to manage the amenity values that are highly regarded by the Waimakariri Community. Managing the effects of change will be key to ensuring that community outcomes outlined in the Long Term Plan are achieved.

The Compliance Framework is aligned to the Canterbury Strategic Compliance Framework adopted by the Canterbury Chief Executives Forum on 6 August 2018.

# About us

We aim to be a community that holds true to the values that collectively define what is important to us in the Waimakariri District. Our Mission and Values are:

<b>Tā mātou mauri</b> Our principles <i>Ngā mātāpono</i>			
<b>Our purpose</b> <i>Tā mātou kaupapa</i>	To make Waimakariri a great place to be, in partnership with our communities. <i>Kia mahitahi ki te hāpori kia whakanui ake te rohe o Waimakariri.</i>		
<b>Our vision</b> <i>Tā mātou anamata</i>	We are a respectful, progressive team delivering value for our customers. <i>Kia pono, kia tika tā mātou mahi mō te hāpori</i>		
<b>Our values</b> <i>Tā mātou uara</i>	We will... <i>Ka pēnei mātou</i>		
	Act with integrity, honesty and trust <i>Mahi pono</i>		Keep you informed <i>Tauākī mahi</i>
	Do better every day <i>Whaia te tika</i>	Take responsibility <i>Takohanga rato</i>	Work with you and each other <i>Mahitahi</i>
<b>Our customer promise</b> <i>Tā mātou taurangi kiritaki</i>	We will be professional, approachable and solutions-focused. <i>Ina he pātai tāu, mā te ringa manaaki, te ringa ngaio e kimi te whakautu tika</i>		

## What does Waimakariri District Council (WDC) do?

Waimakariri District Council is responsible for the administration and regulation of a wide range of functions across the district. The primary purpose of these functions is to protect the public, the environment, and groups. WDC is responsible for promoting, monitoring, and enforcing various legislation, which include, but are not limited to:

- Local Government Act 2002
- Resource Management Act 1991
- Building Act 2004
- Sale and Supply of Alcohol Act 2012
- Food Act 2014
- Health Act 1956
- Litter Act 1979
- Dog Control Act 1996
- Reserves Act 1977
- Land Transport Act 1998
- Camping Ground Regulations 1985
- Bylaws, Council Plans and Regulations.

The Council will give effect to the principles of the Treaty of Waitangi and endeavours to collaborate with various stakeholders, statutory organisations, voluntary groups, individuals and non-governmental organisations to achieve high levels of compliance with the various regulatory requirements.

The WDC Compliance Framework sets out the general principles that guide WDC in relation to its regulatory functions.

# Our Purpose

This Compliance Framework aims to provide an informative reference document for the public and Council staff when considering undertaking enforcement action in the Waimakariri District and ensures a consistent approach to:

- Monitoring compliance
- Encouraging compliance
- Dealing with non-compliance
- Reviewing each of these components.

This document promotes self-compliance as well as outlining the Council's approach to undertaking enforcement action. When compliance is not achieved, that action encompasses education through to enforcement by legal means.

The enforcement options outlined in this document are considered alongside other important principles such as interagency collaboration, fairness, and proportionate compliance, to ensure that the Council has a consistent and fair approach to its compliance framework.

The compliance option of prosecution undertaken by the Council, or on its behalf (e.g. by the New Zealand Police), is to be conducted consistently with the Compliance Framework, Prosecution Policy and the Solicitor General's prosecution guidelines.

This framework should be viewed alongside other relevant Council documents.

There are a number of compliance/service requests that the Council has no legislative powers to assist with. A set of Frequently Asked Question (FAQs) has been added to the Council's website to assist residents at the initial enquiry stage to find out if their issue is one that the Council can assist with, or if not, directs them to advice and support.

If customers remain unsure they can speak to compliance officers who will assist them and may undertake an initial site visit if required. Some common examples of service requests/complaints which fall outside the Council's ability to assist include:

- Fire Hazards such as an overgrown vacant section – Fire and Emergency New Zealand (FENZ)
- Asbestos removal – now FENZ or if it involves personal/contractors onsite Worksafe NZ
- Rubbish dumped at the river – Environment Canterbury (ECAN) have a 0800 hotline
- Fencing – Civil/Fencing Act. Remedies and actions taken are documented in this Legislation
- Overhanging trees on private property encroaching a neighbour, including tree roots – A civil matter between the parties that may need to be resolved by the Courts
- Any Dust/Discharge to air – ECan are the appropriate entity and have a 0800 hotline (common examples include air pollution from fires during winter).

# Goals and desired outcomes

## Objective

To encourage voluntary compliance through effective and appropriate engagement and education, and to take appropriate compliance measures should they be necessary.

## 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 the Council will enforce laws in a timely, effective, and fair manner.

## Strategy

This Compliance Framework adopts the following operating principles:

<b>Transparent</b>	We provide clear information and explanation to the regulated community about the standards and requirements for compliance.
<b>Consistency of process</b>	Our actions are consistent with the legislation and within our powers. Compliance and enforcement outcomes are consistent and predictable for similar circumstances. We ensure that our staff have the necessary skills and that there are effective systems and policies in place to support them.
<b>Fair, reasonable, and proportional approach</b>	We apply regulatory interventions and actions appropriate for the situation. We use our discretion justifiably and ensure our decisions are appropriate to the circumstances, that our interventions and actions will be proportionate to the risks posed to people, the environment, and the seriousness of the non-compliance.
<b>Evidence based and informed</b>	We use an evidence-based approach to our decision-making. Our decisions are informed by a range of sources, including sound science, information received from other regulators, members of the community, industry, and interest groups.
<b>Collaborative</b>	We work with and, where possible, share information with other regulators and stakeholders to ensure the best compliance outcomes for our region. We engage with the community and consider public interest, those we regulate, and government to explain and promote environmental requirements, and achieve better community safety and environmental outcomes.
<b>Lawful, ethical and accountable</b>	We conduct ourselves lawfully and impartially and in accordance with these principles, relevant policies, and guidance. We document and take responsibility for our regulatory decisions and actions. We measure and report on our regulatory performance.
<b>Targeted</b>	We focus on the most prominent issues and problems to achieve the best outcomes, and on those that pose the greatest risk to the community
<b>Responsive and effective</b>	We consider all alleged non-compliance to determine the necessary interventions and action to minimise impacts on the environment and the community and maximise deterrence. We respond in an effective and timely manner in accordance with legislative and organisational obligations.

## How does the framework work?

This Compliance Framework ensures that the appropriate resources are allocated to activities by determining the monitoring frequency and intervention method, dependant on the risk to the environment, community, and individuals from that activity.

This program includes:

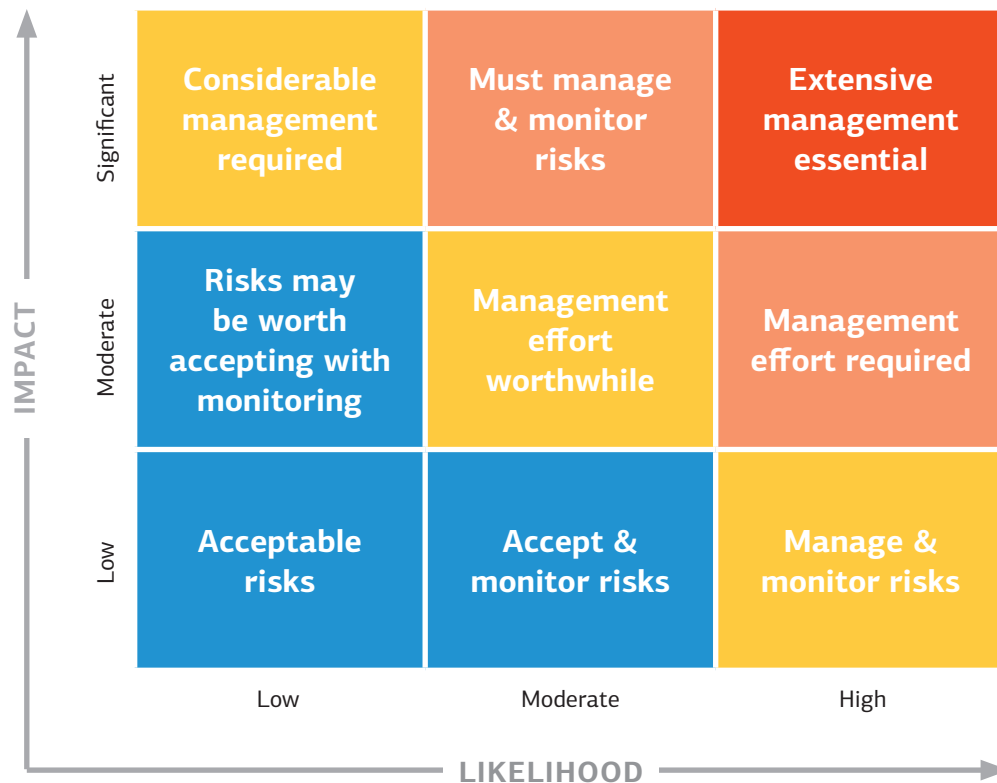
- Using criteria to assess the likelihood and consequences of non-compliance occurring
- Defining an appropriate compliance monitoring priority list
- Defining type/level of intervention according to risk profile
- Defining monitoring frequencies
- Defining procedures, charging regime, and database recording system.

Compliance monitoring can be conducted in many ways including:

- Site visits
- Desktop audit
- Patrolling
- Inspections
- Community reports, complaints or notifications
- Pro-active campaigns.





The Council use a risk assessment method to determine priority areas. Applying a risk-based approach enables monitoring efforts to be focused on the biggest risks to the environment and community and target areas where businesses and people are less likely to comply. A risk matrix is used for focusing monitoring efforts and is not an enforcement decision making tool.

## Risk assessment



## The four components for effective compliance

The Council takes a comprehensive approach to encourage the highest levels of compliance through developing understanding and sustained behaviour change. Different components are conducted by various parts of the organisation; however it is vital that each component is coordinated and an elevated level of communication is maintained to ensure that full effect is being achieved. Each of the components is explained in more detail below.

<b>Engage</b> 	<p>Consult with regulated parties, stakeholders and community on matters that may affect them. This requires maintaining relationships and communication until final outcomes have been reached. This facilitates greater understanding of challenges and constraints, engenders support and identifies opportunities to work with others.</p>
<b>Educate</b> 	<p>Alert regulated parties to what is required to be compliant and where the onus lies to be compliant. Education is utilised to inform community and stakeholders about what regulations are in place around them, so that they will better understand what is compliant and what is not.</p>
<b>Enable</b> 	<p>Provide opportunities for regulated parties to be exposed to industry best practice and for what is required to be compliant. Link regulated parties with appropriate industry advisors. Promote examples of best practice.</p>
<b>Enforce</b> 	<p>When breaches of regulation or noncompliance are identified an array of enforcement tools are available to bring about positive behaviour change. Enforcement outcomes should be proportional to individual circumstances of the breach and culpability of the party.</p>

## Dealing with non-compliance

When non-compliant activities are identified there is an explicit response that is proportionate to the overall circumstances of the offending. The response will be clear and be able to be understood by the regulated party as well as the community. The Council strives to ensure that responses are consistently applied.

### Enforcement Options and Enforcement Tools

	Discussion/ Education	Written Warning	Notice to Fix	Infringement notice	Abatement Notice	Enforcement Order	Prosecution
<b>Buildings</b>	✓	✓	✓	✓			✓
<b>Resource consents</b>	✓	✓		✓	✓	✓	✓
<b>District Plan</b>	✓	✓		✓	✓	✓	✓
<b>Environmental health</b>	✓	✓					✓
<b>Alcohol</b>		✓		✓			✓
<b>Litter</b>	✓	✓		✓			✓
<b>Parking</b>	✓			✓			✓
<b>Noise</b>		✓			✓		✓
<b>Dog control</b>	✓	✓		✓	✓		✓
<b>Bylaws</b>	✓	✓					✓
<b>Local Govt Act</b>	✓	✓					✓



## Enforcement response guidelines

Decisions regarding the Council's enforcement responses will take into account the attitude towards compliance and be:

- Logical, timely and considered
- Evidence based
- Made impartially and without fear, favour, bias, prejudice or improper motive
- Sufficiently robust and well-documented to withstand the prosecution process and judicial review
- Proportionate to the risk posed by the non-compliant behaviour and the attitude towards compliance
- Consistent with the law, the public interest and the Council's strategic objectives.

Enforcement responses follow a model of voluntary, assisted, directed or enforced compliance (The VADE). This model is based on recognised behaviours that guide the delivery of the appropriate interventions.

The factors for consideration are set out below. Application of these factors requires expertise and experience to be applied in the process of weighing up which compliance tools might be most applicable.

### Extent of harm or risk of harm:

This includes harm or potential harm to the community and environment. Actions that create risks but do not actually lead to harm occurring can still be serious and require a firm response.

- There is minimal or no harm or risk of harm. Some examples include:
  - A member of the public has submitted a service request regarding a noise complaint. The Council responds but determines the noise is not excessive.
  - A vehicle is reported as being abandoned. The Council checks the vehicle and contacts the registered owner or removes the vehicle.
- Harm is, or would likely be easily remedied. Some examples include:
  - A tree branch is overhanging a footpath and is obstructing movement. The Council removes the branch.
  - A neighbour's outside light is directing glare over into a complainant's bedroom, causing sporadic minor sleep deprivation. The Council makes contact with and visits the neighbour to advise them to adjust the glare to downward facing.
- Harm is, or would likely be restricted in scale or effect. An example might include:
  - A dog attacks another dog. The Council classifies the dog as menacing requiring the dog to wear a muzzle when in public areas.
- There is significant or widespread harm or potential for such harm. Some examples include:
  - A restaurant does not follow good practice food handling guidelines increasing the risk of food borne illness. The Council conducts regular inspections and follows a strict verification process to ensure food safety.
  - A group of BMX riders want to host an annual demonstration event on a rural property by invite only for an estimated 2-300 people, with potential for traffic, noise, food and safety issues. The Council requires the organisers to provide the necessary traffic, noise, food and health safety management plans and other authorisations, for approval prior to the event.
- Harm is actually or potentially caused to a vulnerable section of the community/environment. Some examples include:
  - A premises is selling alcohol to minors. The Council discovers this during a controlled purchase operation and files for a suspension of the managers certificate.
  - A landowner continues to allow the removal of vegetation within a defined vegetation site or Significant Natural Area (SNA). Council investigates the degree of deliberateness before considering prosecution.

**Conduct:**

Conduct in this context means the behaviours, intent and capability of the person/organisation whose actions are being considered.

- It is first-time or one-off behaviour
- The conduct is accidental or resulted from momentary carelessness or the result of a limited understanding of the law
- Mitigating factors exist
- The behaviour is deliberate, reckless or involving consistent carelessness
- The conduct is repeated, ongoing
- There is a serious departure from expected lawful behaviour
- Aggravating factors exist.

**Public Interest:**

Public interest can be described as something being in the interest of the wider public or of public importance. It is more than simply interest from the public or expectation from the public of action. Considerations include responsibility to victims, the need to clarify the law and whether the matter at hand reflects a widespread problem that can be usefully addressed by highlighting the need for compliance. Factors we may consider include:

- The conduct occurred some time ago and has ceased
- The legal principles involved are well-established and do not require clarification in court
- The conduct involves a new or significant service to a large travelling public
- Action is necessary to avoid setting a negative precedent
- Action is necessary to clarify a grey area in the law
- Action is necessary to deter others from similar conduct.

**Attitude to compliance:**





Typically, the nature of the responses will be informed by and tailored to the attitude of individuals or organisations involved towards compliance. This helps ensure that the intervention(s) chosen will have the desired effect, but does not prevent significant action being taken for other reasons.

- Willing and able to comply
- Willing but not able to comply
- Reluctant to comply
- Unwilling to comply
- Actively and intentionally non-compliant
- Available enforcement responses.

Assessment against the factors above and attitude to compliance will support a decision about the appropriate course of action.

There is a range of possible enforcement responses available from an approach based on information, education and engagement, to support and encourage compliance; to an approach that may lead to enforcement interventions such as infringement notices, or other civil or criminal action under applicable law. Multiple interventions may be appropriate and applied together.

The following table reflects the intended method of weighing up the relevant factors and attitude to compliance to determine the appropriate response including some common examples. Please note this is not an exhaustive list.

	Description of compliance behaviour	Example	Likely scenario	Likely compliance approach
<b>Voluntary</b> 	Persons seek to voluntarily comply and be informed about their legal obligations. The activities that they undertake are compliant and cause no related nuisance. Such people know and are aware of their obligations and make every effort to consciously comply.	Undertake consented activities in a careful and considerate manner, considering the needs of the local community and environment.  Example: Ensures swimming pool fencing meets the requirements of the Act.	Most likely	Praise  Education/advice where required
<b>Assisted</b> 	People are attempting to comply but are uninformed about their legal obligations or responsibilities. They will alter unintentional nonconforming behaviour when educated.	Unintentionally undertakes an activity that contravenes their consent approvals and/or underlying application. Minor potential for environmental or community impact.  Example: A restaurant owner is not familiar with the food verification process and the requirement to keep a record of cooking temperatures. This is discovered during an inspection and the chef is advised to maintain the records.	Most likely	Education/advice (verbal and collateral)
<b>Directed</b> 	People take advantage of the opportunity not to comply with their legal obligations or responsibilities. They know the rules but will take the opportunity to avoid compliance. Likely to challenge Officer requests. May alter behaviour when educated.	Does not always complete required actions in manner agreed because of a quicker or less costly alternative. Disregards any potential impact for environmental or community impact. Risks for environmental or community impact are medium to high.  Example: A homeowner is hosting a party and has been playing loud music. A noise complaint has been filed and they have been asked to turn the volume down. An hour later another noise complaint is filed and an Enforcement Order is issued requiring them to reduce the volume.	Less likely	Education  Verbal and collateral  Warnings  Infringement notices  Enforcement order  Abatement notice
<b>Enforced</b> 	People deliberately, and without any regard, undertake non-complying activity in breach of known obligations and responsibilities. Recidivist activities. Knows the rules and associated parameters/ conditions and has complete disregard for operating within these. Very likely to challenge Officer requests.	Deliberately undertakes non-consented activities; Deliberately disregards impact for local environment and communities. Risks for environmental or community impact are high.  Example: A Significant Natural Area (SNA) such as a piece of native flora on a property has been deliberately cleared for pasture	Least likely	Infringement notice  Abatement notice  Enforcement order  Prosecution (gross breaches)

## Reporting and review

Regulatory compliance best practice principles require robust compliance frameworks to include a reporting system. These systems enable compliance monitoring activities and interventions to be measured and the level of compliance within our regulated communities to be tracked. The Unit reports on regulatory compliance activities via agreed levels of service identified as part of the annual and long term planning processes set out under the Local Government Act 2002. In addition to these reporting requirements, the Unit will develop reporting functions to collect and analyse data across our regulatory compliance responsibilities in order to:

- Identify trends in non-compliance
- Use and target resources effectively
- Target high risk activities
- Assess the performance of targeted compliance programmes
- Inform the ongoing development of policies and guidelines.

### Review

An initial review of the effectiveness of this compliance framework will be undertaken at least every three years to address any operational or implementation issues, ensure the framework is achieving its purpose and recognise any relevant legislative amendments. This framework may be reviewed on a more regular basis as required, or as legislation changes are introduced.

# Policy

## Questions

Any questions regarding this document should be directed to the General Manager Planning, Regulation and Environment in the first instance.

## Effective date

February 2022

## Review date

February 2025

## Approval

Approved:



Tracy Tierney

**General Manager Planning, Regulation and Environment**

Waimakariri District Council

# Appendix 1 - Prosecution

## Introduction

This Policy sets out principles and guidelines that the Council should consider when deciding whether or not to initiate criminal proceedings for offences under the legislation and regulations it is responsible for enforcing.

Prosecutions are a serious response to non-compliance. Prosecutions should be used in a deliberate and considered manner and denounce offending and hold the offender accountable for harm to the victim, environment and community by the offending.

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 consistently with this Prosecution Policy, the Councils' Compliance Framework and the Solicitor General's prosecution guidelines.

## Solicitor-General's prosecution guidelines

In summary, those guidelines provide that prosecutions ought to be initiated or continued only where the prosecutor is satisfied that the following test for prosecution is met:

1. The evidence which can be adduced in Court is sufficient to provide a reasonable prospect of conviction (the Evidential Test); and
2. Prosecution is required in the public interest (the Public Interest Test).

Factors that are relevant to the Evidential Test include:

- That there is an identifiable offender
- That there is credible evidence
- That the evidence will be available and admissible
- That there is an objectively reasonable prospect of a conviction on the evidence; and
- The evidence will meet the criminal standard (i.e. beyond reasonable doubt).

Factors that are relevant to the Public Interest Test, include, but are not limited to:

- The seriousness of the offence
- Whether the offence is likely to be continued or repeated
- Whether or not the defendant has relevant previous convictions, has been the subject of previous enforcement action or has been given any prior warnings
- The potential penalty for the offence bearing in mind the adverse effects of the offending and the degree of carelessness or deliberateness
- Whether another prosecuting agency has or will bring criminal proceedings in relation to the same subject matter as the Council's potential prosecution.

## Independence and impartiality of decision-making in considering a prosecution

The central element of a prosecution system under the rule of law in a democratic society is the independence of the prosecutor from persons or agencies that are not properly part of the prosecution decision-making process.

To ensure decisions on prosecutions are independent and impartial:

- All staff who are involved in the investigation, preparation, or conduct of a prosecution will act fairly, promptly, without any actual or potential conflict of interest and in accordance with the law
- Any decision on a prosecution will be free from undue or improper pressure from any source, political or otherwise
- Before a decision is made on a prosecution, the investigating officer's report and recommendation will be reviewed by the prosecution panel
- Before the decision is made to prosecute, the unit manager will obtain legal advice about the merits of the prosecution.

## Decision making framework

The decision making framework sets out the criteria for determining when non-compliance is so egregious that enforcement action is necessary and how enforcement will be given effect to.

### Procedure

Where the act or omission has been carried out wilfully and with little or no regard to the impact on an individual, the community or the flora, fauna and water bodies etc a Council officer may recommend enforcement action.

The officer will provide evidence of non-compliance and discuss the particulars of the case with their unit manager. Where the unit manager and investigating officer support a recommendation for enforcement the Council officer will present the evidence to the Council's prosecution panel for consideration.

### Prosecution Panel

The prosecution panel will consist of the General Manager, Planning, Regulation and Environment, one other general manager and a legal advisor if required. The unit manager is responsible for organising the meeting and recording of the minutes. These panels will be convened on an as needs basis.

### Decision to prosecute

If the prosecution panel is satisfied that both the evidential and public interest tests are met, a decision of "recommend prosecution" can be made, together with a list of the appropriate charges. This recommendation will be recorded in writing. The prosecution panel will refer this recommendation together with the investigation file to the Council's legal representative for review.

### Decision not to prosecute

If the prosecution panel or the Council's legal representative determines that there is insufficient evidence a "no prosecution" recommendation can be made. This recommendation will be recorded in writing. If there is sufficient evidence to provide a reasonable prospect of conviction, the next consideration is whether a prosecution is in the public interest. Again, if not, a recommendation not to prosecute may be made. This will be recorded in writing. A decision of "no prosecution" does not preclude a re-consideration of a case if new or additional information becomes available, or a review of the original decision is appropriate.

### Charges

Where a decision has been made to commence a prosecution, the unit manager will (with the assistance of a legal representative) prepare and file a charging document. The legal representative 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 legal representative will make the necessary arrangements.

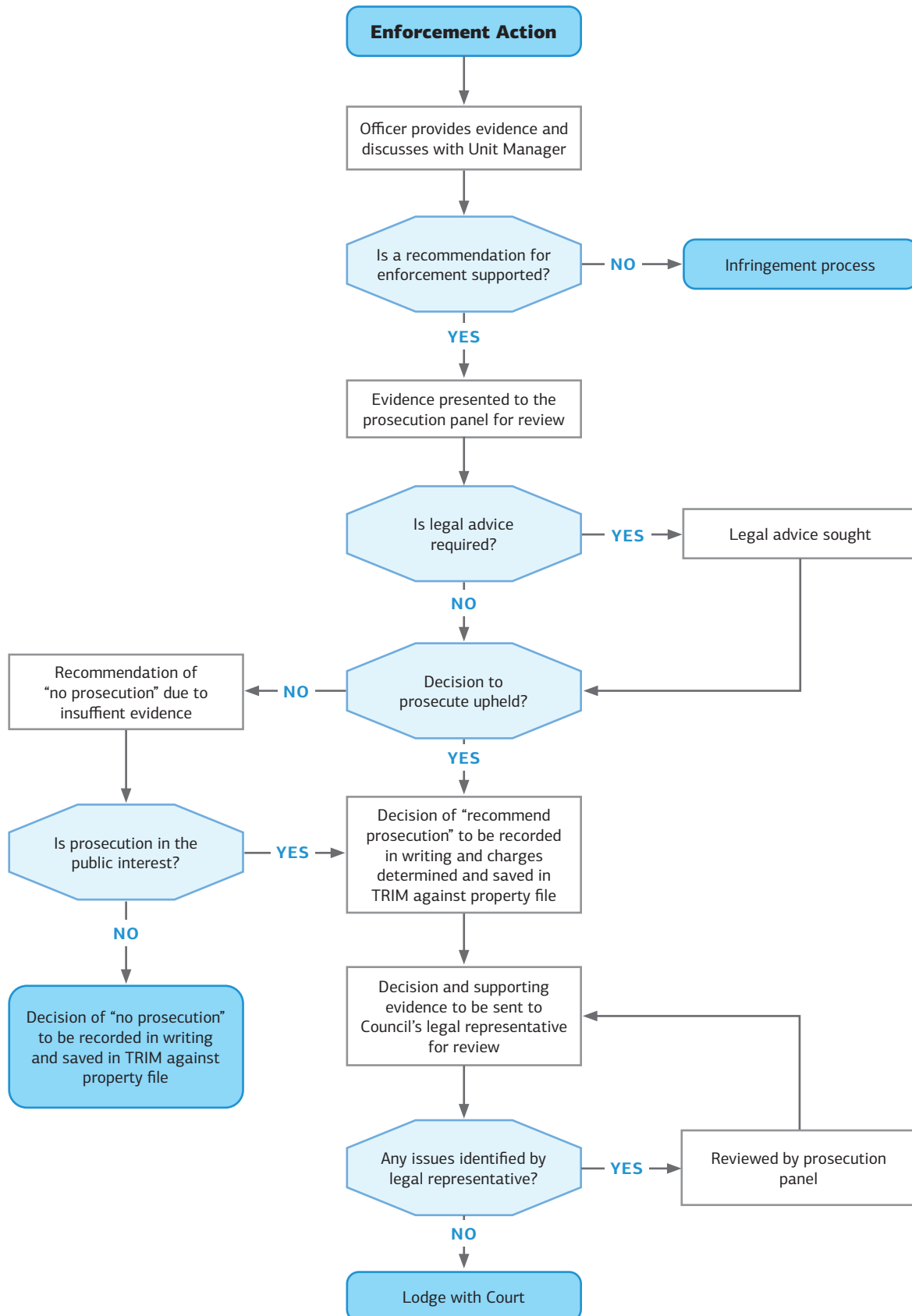
### Infringements

Where prosecution is deemed unnecessary an infringement fine may be recommended. The officer will provide evidence of non-compliance and discuss the particulars of the case with their unit manager. Where the unit manager and investigating officer support a recommendation for an infringement the Council officer will issue the infringement notice.

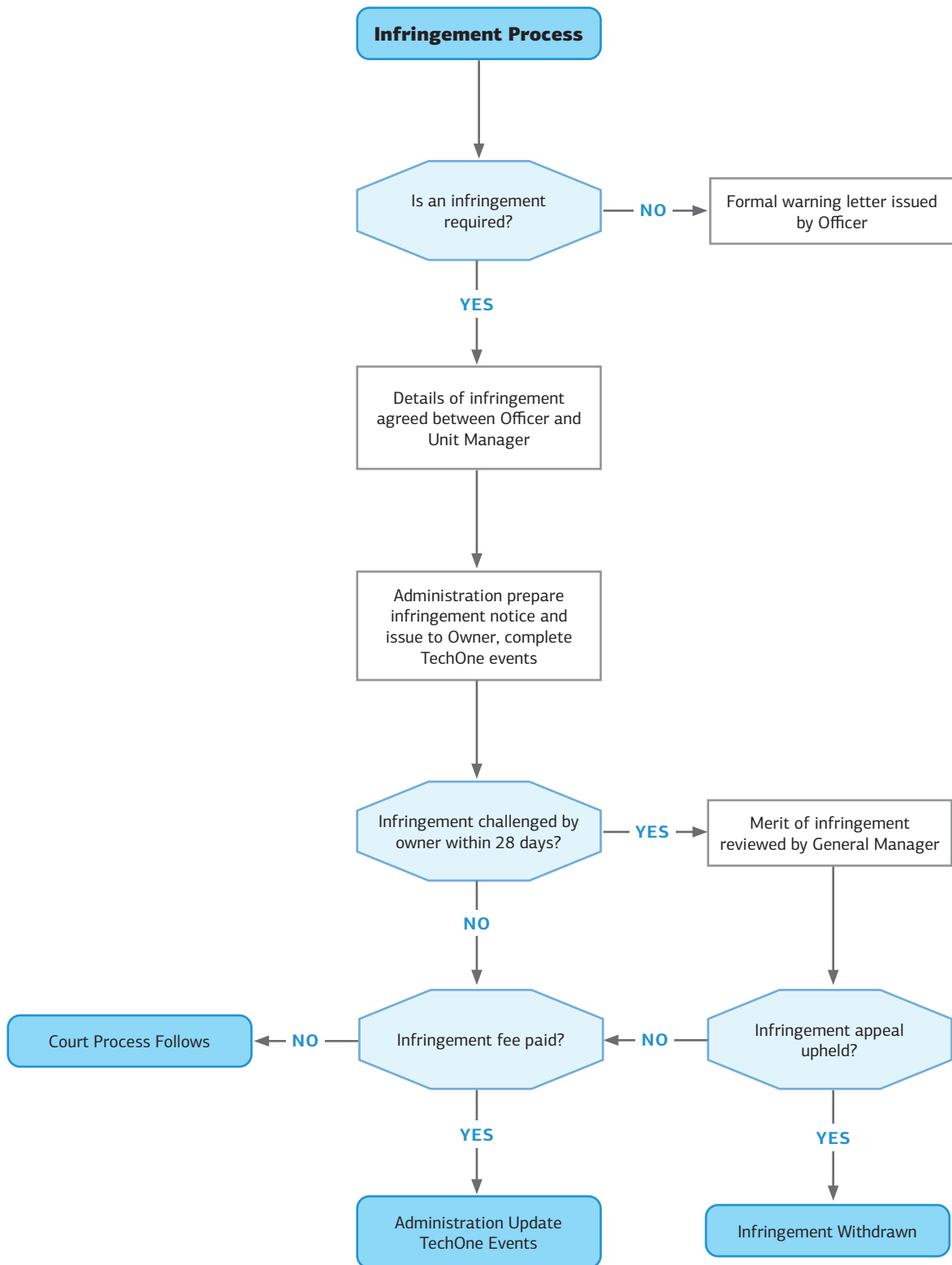
## Contesting an infringement

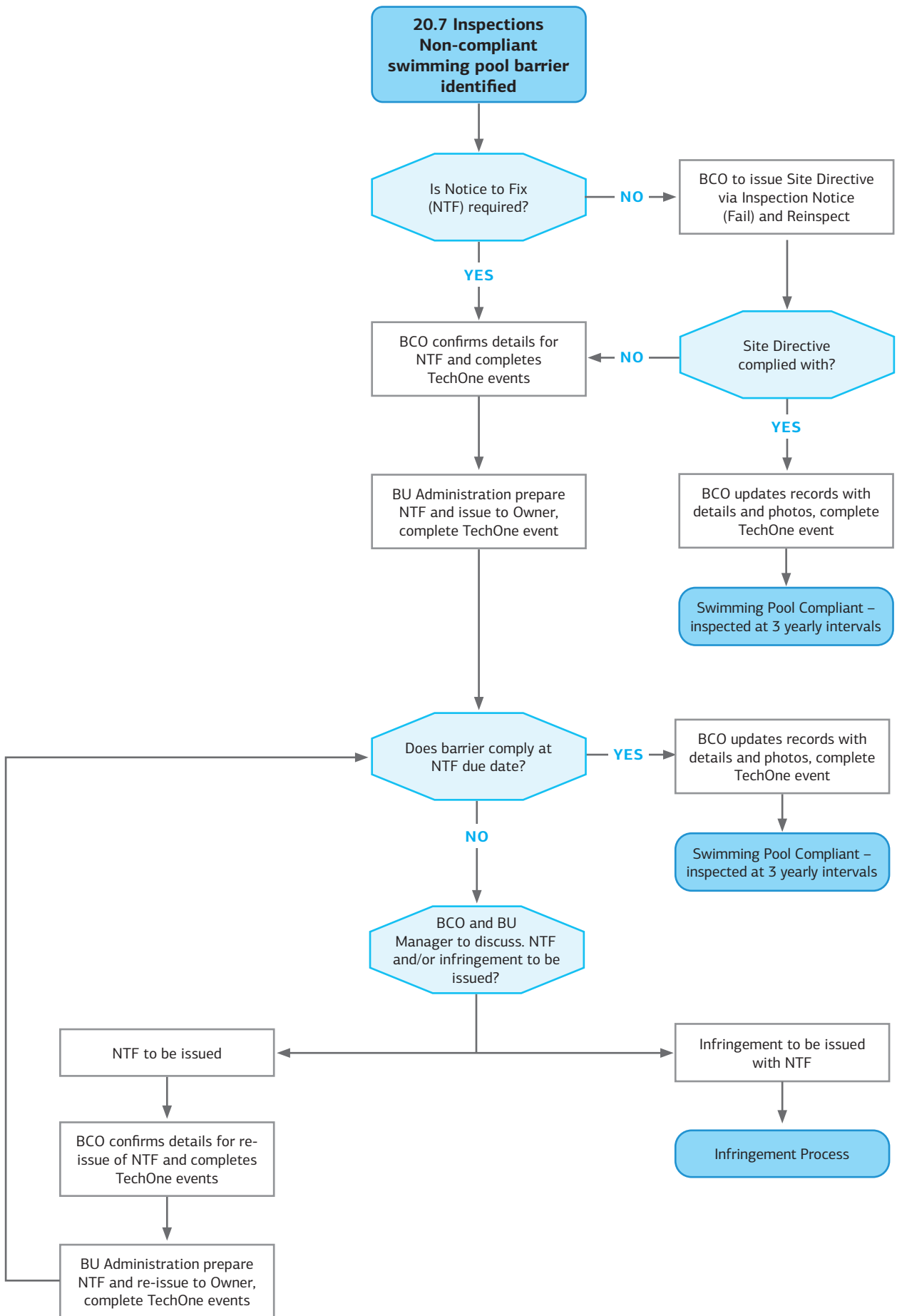
An infringement fee can be contested by contacting the relevant unit manager. Requests to withdraw an infringement fee will be reviewed by the appropriate general manager. The outcome of the review will be recorded in writing.

## Decision making workflows









# Appendix 2 - Enforcement Response Guidelines

## Alcohol licensing and monitoring

### Legislation

- Sale and Supply of Alcohol Act (SSAA) 2012
- Sale and Supply of Alcohol (Fees) Regulations 2013
- Alcohol Control Bylaw 2018.

### Common breaches of this legislation

- Unpaid annual fees (s 287 of SSAA, regulation 16)
- Breach of Alcohol Control Bylaw 2018.

Action	Description	Potential effects on the liable party	When this action might be appropriate
<b>Education</b>	Education involves explaining requirements under the Act or Bylaw or identifying that a minor breach has occurred and advising of the proper course of action.	The breach will be filed and considered if any further offending occurs.	If a minor offence has occurred, or there are mitigating factors, education may be appropriate in the first instance.
<b>Formal Warning</b>	Formal warnings are written warnings that identify to the offender that a breach of the relevant legislation has occurred and that they are liable for that breach.	Non-compliance with the formal warning may be considered if, and when, escalating enforcement action.	A formal warning may be appropriate any time there is a breach of the legislation (depending on the circumstances). This may be appropriate if education has been provided or if it is a more serious breach.
<b>Infringement Notice</b>	An infringement is a monetary fine imposed on an Individual when a breach of the relevant legislation has occurred. Typically infringements are issued by Police.	An infringement notice will be issued to the individual, and will be taken into consideration in the future, if further noncompliance is identified.  Non-payment of the infringement notice will result in the recipient being referred to court.	An infringement notice may be issued if there is a breach of the bylaw.

Action	Description	Potential effects on the liable party	When this action might be appropriate
<p><b>Suspension of Licence/Certificate</b></p>	<p>Any constable or inspector may apply to the Alcohol Regulatory and Licensing Agency (ARLA) to suspend a licence for a period, not exceeding 6 months, if there are any breaches of the Act or bylaw or a breach of licence/certificate conditions, any criminal offending, or failure to pay prescribed fees.</p>	<p>The licence holder is not able to sell or supply alcohol until the suspension period is complete. A note of all suspension details is made in the licence holders file.</p> <p>A suspension forms part of the history of non-compliance and may be considered if there are future incidents of non-compliance.</p> <p>A negative holding also increases the premises risk rating score by 10 points for each holding (up to a maximum of 3). This increases the fees the licensee must pay for any renewal application or annual fees due within the 18 months for the life of the holding.</p>	<p>A licence/certificate may be suspended if there is a breach of the Act or bylaw, the licensee has shown they are not suitable to hold a licence, there is a breach of licence/certificate conditions, any criminal offending, or failure to pay prescribed fees.</p>
<p><b>Cancellation of Licence or Manager's Certificate</b></p>	<p>Any constable or inspector may apply to the Alcohol Regulatory and Licensing Agency (ARLA) to cancel a licence or certificate if there are any breaches of the Act or bylaw or a breach of licence/certificate conditions, or any criminal offending.</p> <p>ARLA may also cancel a licence/certificate if 3 negative holdings are received in 3 years.</p>	<p>If ARLA finds that there is sufficient evidence, they will cancel a manager's certificate or a premises licence.</p> <p>A licence cannot be applied for again for a period of 5 years.</p> <p>A note of all cancellation details is made in the licence holder's file.</p>	<p>A licence/certificate may be cancelled if there is a serious breach of the Act or bylaw, a breach of licence/certificate conditions, or any criminal offending.</p> <p>A licence/certificate may also be cancelled if 3 negative holdings are received in 3 years.</p>

## Dog control

### Legislation

- Dog Control Act 1996
- Dog Control Bylaw 2019
- Local Government Act 2002
- Impounding Act 1955.

### Common breaches of this legislation (Dog Control Act 1996)

- Dogs attacking persons or animals (s 57)
- Dogs rushing at persons, animals, or vehicles (s 57A)
- Dogs causing significant injury (s 58)
- Offence of failing to keep dog under control (s 53).

Action	Description	Potential effects on the liable party	When this action might be appropriate
<b>Education</b>	Education involves explaining the nature of the breach that has occurred under the relevant legislation.	A note will be recorded on the Service Request and considered if any further offending occurs.	If a minor offence has occurred, or there are mitigating factors, education may be appropriate in the first instance.
<b>Formal Warning</b>	Formal warnings are written warnings that identify to the offender that a breach of the relevant legislation has occurred and that they are liable for that breach.	A note will be recorded on the file of the dog and considered if any further offending occurs.  Non-compliance with the formal warning will be considered if/when escalating enforcement action.	A formal warning may be appropriate any time there is a breach of the legislation (depending on the circumstances).
<b>Penalty</b> (at renewal time)	A penalty is issued when payment of registration is not received by the due date.	A formal file note will be recorded on the file of the dog.  50% of the registration fee is added to the cost of registrations.	A penalty may be appropriate if the registration fees are not paid within the appropriate timeframes.
<b>Infringement</b>	An infringement is a monetary fine imposed on an individual/s and or companies.	A note will be recorded on the file of the dog. An infringement notice will be filed and it will be taken into consideration in future, if further non-compliance is identified.	An infringement may be appropriate any time there is a breach of the Dog Control Act or Dog Control Bylaw. (depending on the circumstances).
<b>Menacing classification</b> (s 33A)	The dog is classified as menacing.  'Menacing' includes where a dog may pose a threat to any person, stock, poultry, domestic animal or wildlife because of its reported behaviour, or characteristics typically associated with the dog's breed or type.	A note will be recorded on the file of the dog.  Effects of menacing dog classification can be found in s 33E.	A classification may be appropriate any time there is a breach of the Dog Control Act (depending on the circumstances).

Action	Description	Potential effects on the liable party	When this action might be appropriate
<b>Dangerous classification (s 31)</b>	<p>The dog is classified as dangerous.</p> <p>‘Dangerous’ includes where a dog has attacked a person or animal, or rushes at persons, animals or vehicles in a certain manner.</p>	<p>A note will be recorded on the file of the dog.</p> <p>Effects of dangerous dog classification can be found in s 32.</p>	A classification may be appropriate any time there is a breach of the Dog Control Act (depending on the circumstances).
<b>Entry onto premises</b>	An animal management officer, or dog ranger, who has reasonable grounds to suspect an offence, against this act or against any bylaw under this act, is being committed may enter at any reasonable time on the land or premises (other than a house) on which the dog is kept to inspect the conditions in which the dog is kept.	A warning, infringement notice, or abatement notice may be issued or if authorised under the Act to seize the dog.	An animal management officer, or dog ranger, has received a complaint and has reasonable grounds to believe an offence against this act or against any bylaw under this act is being committed may enter onto any land or premises (other than a house).
<b>Abatement notice (for barking dogs – s 55)</b>	An abatement notice is issued to the owner requiring the remediation of loud and persistent barking within 7 days or as prescribed within the notice.	<p>The owner has 7 days to remediate the issue.</p> <p>Infringements may be issued for any breach of the abatement notice.</p>	An abatement notice might be appropriate where the animal management officer, or dog ranger has reasonable grounds for believing the dog is creating a nuisance by loud and persistent barking or howling.
<b>Impounding/removal of dog (s 69)</b>	The dog is impounded/removed.	<p>The liable party loses ownership of their dog.</p> <p>This does not relieve the former owner of the dog of any fees payable under this Act.</p>	Removal of the dog is sought when an offence has taken place and if applicable, other enforcement options have been exhausted and/or considered.
<b>Disposal of dog (s 64, 69,71a)</b>	<p>Impounded dogs not claimed after 7 days may be disposed of as council sees fit; either rehomed or euthanised.</p> <p>After written notice, or order of the Court, the dog is rehomed, destroyed, or otherwise disposed.</p>	<p>The liable party loses ownership of their dog.</p> <p>This does not relieve the former owner of the dog of any fees payable under this Act.</p>	Disposal of the dog is sought when a serious incident occurs and there are no factors to minimise the future risk.
<b>Prosecution</b>	A prosecution is sought when an offence has taken place, serious injury has occurred and there are no factors to minimise the future risk.	<p>If convicted, court must order the destruction of the dog unless there are exceptional circumstances.</p> <p>A monetary fine is imposed by the court which varies depending on severity of instance.</p>	A prosecution may be appropriate any time there is a serious incident or major breach of the Dog Control Act or Bylaw.

## Building

### Legislation

- Building Act 2004.

### Common breaches of this legislation

- Unlawful building works undertaken where building consent is required (s 40)
- Non-compliance with Notices to Fix (NTF)
- Failure to provide a Building Warrant of Fitness to the Territorial authority
- Willfully obstructing, hindering, or resisting a person executing powers conferred under the Building Act or its regulations.

Action	Description	Potential effects on the liable party	When this action might be appropriate
<b>Education</b>	Education involves explaining the nature of the breach that has occurred under the relevant legislation.	This will be recorded against the offender and considered if any further offending occurs.	If a minor offence has occurred, or there are mitigating factors, education may be appropriate in the first instance.
<b>Formal Warning</b>	Formal warnings are written warnings that identify to the offender that a breach of the relevant legislation has occurred and that they are liable.	Non-compliance with the formal warning will be considered if, and when, escalating enforcement action.	Formal warnings may be appropriate any time there is a breach of the legislation (depending on the circumstances).
<b>Infringement</b>	An infringement is a monetary fine imposed on an individual/s and or companies.  An infringement is issued when an offence under the relevant legislation has occurred.	Receipt of infringement and paying the infringement.  An infringement notice will be filed, and it will be taken into consideration in the future, if further non-compliance is identified.	An infringement may be appropriate any time there is a breach of the Building Act (depending on the circumstances).
<b>Notice to fix (NTF)</b>	A notice to fix is a formal written directive issued under the Building Act instructing an individual or company to remediate a breach of the Building Act or regulations under the Act. The form, content, and scope of a notice to fix is prescribed in statute.	A breach of a notice to fix is an offence under the Building Act.  The offender may then be liable to a fine of up to \$200,000 and a further fine of up to \$20,000 for each day or part of a day that the notice is not complied with.	A notice to fix may be appropriate any time there is a breach of the Building Act or regulations under the Act (depending on the circumstances).
<b>Dangerous / Insanitary / Affected Building Notice</b>	These notices are a formal written directive instructing an individual or company to remedy an important safety issue and/or restrict access to the building.	A breach of these building notices is an offence under the Building Act.  The offender may then be liable to a fine of up to \$200,000 and a further fine of up to \$20,000 for each day or part of a day that the notice is not complied with.	A dangerous /insanitary / affected building notice may be appropriate any time that a building has been deemed dangerous under s 121 and 123 of the Building Act.

Action	Description	Potential effects on the liable party	When this action might be appropriate
<b>Prosecution</b>	A prosecution is a process taken through the criminal courts to establish guilt or innocence and, if appropriate, the court will impose sanctions. All criminal evidential rules and standards must be met in a Building Act prosecution.	<p>A successful prosecution will generally result in a conviction, a penalty imposed and consideration to costs of the investigation.</p> <p>A prosecution forms part of the history of non-compliance and will be considered if there are future incidents of non-compliance.</p>	A prosecution may be considered appropriate when the offence indicates that the matter is sufficiently serious to warrant the intervention of criminal law and the evidentiary and public interest tests are met.

## Environmental Health

### Legislation

- Food Act 2014
- Health Registration of Premises Regulations 1966
- Health Act 1956
- Healthy (Drinking Water) Amendment Act 2007
- Drinking Water Standards for NZ 2008
- Health Act (Hairdresser Regulations) 1980
- Waste Minimisation Act 2008
- Food Regulations 2015
- Camping-Grounds Regulations 1985
- Health (Burial) Regulations 1946.

### Common breaches of this legislation

- Food Act 2014 and Food Regulations 2015
  - Concerns regarding Food Safety and Suitability
  - The premise failing to have the required registration in place
- Health Act 1956
  - Nuisance
  - Insanitary Buildings.

### Food Act 2014

Action	Description	Potential effects on the liable party	When this action might be appropriate
<b>Education</b>	Food safety officers and environmental health officers provide food safety coaching.	All education is registered on Titiro MPI online enforcement recording system and remains on registration records detailing education provided.	This would be appropriate if there have been no previous issues, it is considered low risk, it is not in the public interest and the operator is willing and able to comply.
<b>Warning Letter</b>	Formal letter – issued when improvement notice is not appropriate or warranted in the first instance.	<p>All warning letters are registered on Titiro MPI online enforcement recording system and remains on registration records detailing action taken.</p> <p>Failure to comply with the warning letter will result in escalated legal action being taken.</p>	Assessed using the VADE model – this would be appropriate if no previous issues and low/medium risk and when an improvement notice is not warranted.



Action	Description	Potential effects on the liable party	When this action might be appropriate
<b>Improvement notice</b>	Under s302, a food safety officer can issue an improvement notice where the officer reasonably believes that the person is failing or has failed to comply with one or more applicable requirements of the Act.  This is a first level enforcement tool.	Registered on Titiro MPI online enforcement recording system and remains on registration records detailing action taken.  Failure to comply with the Improvement Notice will result in further serious legal action being taken.	Assessed using the VADE model.  Often used to ensure operator addresses food safety or suitability issues.  May be served with a Notice of Direction.
<b>Infringement notices</b>	Infringements issued for offences identified in the Food Act 2014 or Food Regulations 2015.	A breach of a notice to fix is an offence under the Building Act.  The offender may then be liable to a fine of up to \$200,000 and a further fine of up to \$20,000 for each day or part of a day that the notice is not complied with.	An infringement may be appropriate for any breach of the Food Act).
<b>Notice of direction</b>	Formal notice to direct the operator – for instance power to interrupt operations, powers to seize, condemn and require disposal and power to restrict use or close place.	Registered on Titiro MPI online enforcement recording system and remains on registration records detailing action taken.  Failure to comply with the Notice of Direction will result in further serious legal action being taken.	Assessed using the VADE model. The Direction order is used to direct an operator to ensure the safety and suitability of food. May be served with an improvement notice.  There are also powers under the Food Act to take, purchase and sample, to seize, condemn and require disposal.
<b>Powers to restrict use or close a place</b>	A food safety officer may restrict the use of, or close, a place for non-compliance with the Act and where they believe food may be unsafe or unsuitable.	Registered on Titiro MPI online enforcement recording system and remains on registration records detailing action taken.  Failure to comply with the notice will result in escalated legal action being undertaken.	If there are immediate food safety issues, or as a result of non-compliance with the Act, other enforcement, or where food may be unsafe or unsuitable.
<b>Prosecution</b>	A criminal prosecution is taken to establish guilt or innocence and, if appropriate, the Court will impose sanctions.	A successful prosecution will generally result in a conviction, a penalty imposed and consideration to costs of the investigation.  A prosecution forms part of the history of non-compliance and will be considered if there are future incidents of non-compliance.	A prosecution may be considered appropriate when the offence indicates that the matter is sufficiently serious to warrant the intervention of criminal law and the evidential and public interest tests are met.

## Health Act 1956

Action	Description	Potential effects on the liable party	When this action might be appropriate
<b>Warning letter</b>	Formal direction or notice notifying of actions required to address the nuisance.	Non-compliance with the formal warning will be considered if and when escalating enforcement action.	Formal warning may be appropriate any time there is a breach of the legislation.
<b>Nuisance – Abatement Notice</b>	Formal notice issued to address the nuisance.	Non-compliance to an abatement notice will be escalated to an abatement without notice.	When the premises has been advised about the nuisance and been given opportunity to abate.
<b>Nuisance – Powers to abate without Notice (s34)</b>	Council may enter a premises and take action to abate the nuisance without notice.	All expenses incurred to abate the nuisance are the responsibility of the liable party.	Used for very serious health issues.
<b>Compliance order</b>	Apply to the District Court to stop or prohibit an action.	Would be an offence under the Act if the premise did not comply.  Infringements and related costs may be issued to the premise.	When an operator is not complying with any of the above actions.
<b>Prosecution</b>	A criminal prosecution is taken to establish guilt or innocence and, if appropriate, the court will impose sanctions.	A successful prosecution will generally result in a conviction, a penalty imposed and consideration to costs of the investigation.  A prosecution forms part of the history of non-compliance and will be considered if there are future incidents of non-compliance.	A prosecution may be considered appropriate when the factors listed above indicate that the matter is sufficiently serious to warrant the intervention of criminal law.
<b>Powers to restrict use or close a place</b>	A food safety officer may restrict the use of, or close, a place for non-compliance with the Act and where they believe food may be unsafe or unsuitable.	Registered on Titiro MPI online enforcement recording system and remains on registration records detailing action taken.  Failure to comply with the notice will result in escalated legal action being undertaken.	If there are immediate food safety issues, or as a result of non-compliance with the Act, other enforcement, or where food may be unsafe or unsuitable.
<b>Prosecution</b>	A criminal prosecution is taken to establish guilt or innocence and, if appropriate, the Court will impose sanctions.	A successful prosecution will generally result in a conviction, a penalty imposed and consideration to costs of the investigation.  A prosecution forms part of the history of non-compliance and will be considered if there are future incidents of non-compliance.	A prosecution may be considered appropriate when the offence indicates that the matter is sufficiently serious to warrant the intervention of criminal law and the evidential and public interest tests are met.

## Health (Registration of Premises) Regulations 1966

Registration of Offensive Trades, Hairdressers, Camping Grounds and Health (Burial) Regulations.

Action	Description	Potential effects on the liable party	When this action might be appropriate
<b>Warning letter</b>	Formal letter notifying of actions required to address non-compliance.	Non-compliance with the formal warning will be considered when escalating enforcement action.	Formal warning may be appropriate any time there is a breach of the legislation.
<b>Serving of Notice</b>	Notice to take remedial action – served when any premises does not comply with any enactment or with any condition of registration.	First notice to advise that the registration of the premises will be revoked unless the notice is complied with.  Second notice requiring information on why the registration should not be revoked.	Served when the premises registered does not comply with the registration requirements.
<b>Revoking of the registration</b>	The registration is revoked.	The premise will be restricted from operating.  Infringements may be issued.	Non-compliance with the notice above.

## Litter

### Legislation

- Litter Act 1979.

### Common breaches of this legislation

- Depositing of litter in a public place (s 10, s 15).

Action	Description	Potential effects on the liable party	When this action might be appropriate
<b>Education</b>	Education involves explaining the nature of the breach that has occurred under the relevant legislation.	This will be recorded against the offender and considered if any further offending occurs.	If a minor offence has occurred, or there are mitigating factors, education may be appropriate in the first instance.  When insufficient details regarding the incident have been provided to Council.
<b>Notice requiring removal of litter on private land (s 10)</b>	Council may serve on the occupier of any private land vested in or controlled by the crown or any local authority, a notice in writing requiring the occupier to clear away, remove or clean up or screen, cover or otherwise obscure from view, such litter.	Occupier may commit an offence under the Act if they fail to comply with issued notice.  Every person receiving a notice may object to the requirements of the notice on the grounds that the requirements are unreasonable.	When litter, in the opinion of the Council, tends to grossly deface or defile the area in which the land is sited.  If the offender is convicted of an offence against s 10.
<b>Notice ordering an area to be cleared (s 20)</b>	The offender is ordered to clear up and remove the deposited litter within a certain period.	The offender may be liable to a fine not exceeding \$500 if the order is not complied with.	If the offender is convicted of an offence against s 10, 15 or 16.

Action	Description	Potential effects on the liable party	When this action might be appropriate
<b>Prosecution</b>	A prosecution is a process taken through the criminal courts to establish guilt or innocence and, if appropriate, the court may impose sanctions.	<p>A successful prosecution will generally result in a conviction, a penalty imposed, and consideration to costs of the investigation.</p> <p>A prosecution forms part of the history of non-compliance and will be considered if there are future incidents of non-compliance.</p>	A prosecution may be considered appropriate when the factors listed above indicate that the matter is sufficiently serious to warrant the intervention of criminal law.

## Local Government Act

### Legislation

- Local Government Act (LGA) 2002.

### Common breaches of this legislation

- Damage to Council assets (e.g. road reserves and storm water infrastructure)
- Breach of bylaws.

Action	Description	Potential effects on the liable party	When this action might be appropriate
<b>Education</b>	Education involves explaining the nature of the breach that has occurred under the relevant legislation.	This will be recorded against the offender and considered if any further offending occurs.	If a minor offence has occurred, or there are mitigating factors, education may be appropriate in the first instance.
<b>Formal warning</b>	Formal warnings are written warnings that identify to the offender that a breach of the relevant legislation has occurred and that they are liable.	Non-compliance with the formal warning will be considered when escalating enforcement action.	Formal warning may be appropriate any time there is a breach of the legislation.
<b>Recovering costs</b>	Recovery of costs associated with the offence is sought from the offender.	The offender will receive an invoice.	When a person willfully or negligently destroys, damages, stops, obstructs, or otherwise interferes with any works or property owned, constructed, acquired, or used by a local authority.
<b>Prosecution</b>	A criminal prosecution is taken to establish guilt or innocence and, if appropriate, the court will impose sanctions.	<p>A successful prosecution will generally result in a conviction, a penalty imposed and consideration to costs of the investigation.</p> <p>A prosecution forms part of the history of non-compliance and will be considered if there are future incidents of non-compliance.</p>	A prosecution may be considered appropriate when the offence is sufficiently serious to warrant the intervention of criminal law.

## Local Government Act – Bylaws

Bylaws are created under the Local Government Act 2002 to reduce nuisance effects on general public. Each bylaw has different enforcement provisions available.

### Waimakariri District Council Bylaws

As at: August 2021

- Commercial Charity Bylaw 2017
- Dog Control Bylaw 2019
- Fire Control Bylaw 2014
- Alcohol Control Bylaw 2018
- Northern Pegasus Bay Bylaw 2016
- Parking Bylaw 2019
- Property Maintenance Bylaw 2020
- Stormwater Drainage and Watercourse Protection Bylaw 2018
- Signage Bylaw 2019
- Solid Waste and Waste Handling Licensing Bylaw 2016
- Speed Limit Bylaw 2009
- Stockwater Race Bylaw 2019
- Stock Movement Bylaw 2020
- Vehicle Crossing Bylaw 2019
- Wastewater Bylaw 2015
- Water Supply Bylaw 2012.

## Parking

### Legislation

- Land Transport Act 1998
- Land Transport (Road User) Rule 2004
- Local Government Act 1974
- Local Government Act 2002.

### Common breaches of this legislation

- Stationary Vehicle Offences
- Expired Registration and Warrant of Fitness
- Abandoned Vehicles.

Action	Description	Potential effects on the liable party	When this action might be appropriate
<b>Education</b>	<p>Education involves explaining the nature of the breach that has occurred under the relevant legislation.</p> <p>Usually a flyer would be attached to a vehicle. There may also be a media release, if it is deemed appropriate.</p>	<p>This will be recorded against the offender and considered if any further offending occurs.</p>	<p>If a minor offence has occurred, or there are mitigating factors, education may be appropriate in the first instance (depending on the circumstances).</p> <p>Education is usually provided with any new parking restrictions and to notify the public on bylaws that are in place.</p>
<b>Infringement</b>	<p>An infringement is a monetary fine imposed on an individual/s and or companies.</p> <p>An infringement is issued when an offence under the relevant legislation has occurred.</p>	<p>Receipt of infringement and payment of infringement.</p> <p>An infringement notice will be filed, and it will be taken into consideration in the future, if further non-compliance is identified.</p>	<p>An infringement may be issued any time there is a breach of the Land Transport Act 1998 (depending on the circumstances).</p>

Action	Description	Potential effects on the liable party	When this action might be appropriate
<b>Removal and disposal of vehicle</b>	A vehicle may be towed if it is considered 'inconsiderate' or 'abandoned' by the Parking team.	There is a towing fee. There may be storage fees. The vehicle may be disposed of if it is not claimed.	A vehicle may be moved if it is inconsiderate to other road users (eg dangerous, blocking access).  A vehicle may be removed from the road if it is legally 'abandoned' (Local Government Act 1974).

## Reserves

### Legislation

- Reserves Act 1977
- Reserves (Infringement Offences) Regulations 2019.

### Common breaches of this legislation

- Damages to Council reserves
- Planting on reserves
- Occupation of reserves.

Action	Description	Potential effects on the liable party	When this action might be appropriate
<b>Education</b>	Education involves explaining the nature of the breach that has occurred under the relevant legislation.	This will be recorded against the offender and considered if any further offending occurs.	If a minor offence has occurred, or there are mitigating factors, education may be appropriate in the first instance.
<b>Formal warning</b>	Formal warnings are written warnings that identify to the offender that a breach of the relevant legislation has occurred and that they are liable.	Non-compliance with the formal warning will be considered when escalating enforcement action.	Formal warning may be appropriate any time there is a breach of the legislation.
<b>Infringement</b>	An infringement is a monetary fine imposed on an individual/s and or companies.  An infringement is issued when an offence under the relevant legislation has occurred.	Receipt of infringement and paying the infringement.  An infringement notice will be filed and it will be taken into consideration in the future, if further non-compliance is identified.	Any breaches of s 105B of the Reserves Act 1977.
<b>Prosecution</b>	A prosecution is a process taken through the criminal courts to establish guilt or innocence and, if appropriate, the court will impose sanctions.	A successful prosecution will generally result in a conviction, a penalty imposed, and consideration to costs of the investigation.  A prosecution forms part of the history of non-compliance and will be considered if there are future incidents of non-compliance.	A prosecution may be considered appropriate when the offence is sufficiently serious to warrant the intervention of criminal law.

## Resource Management Act (RMA) 1991 (Excluding excessive noise)

**Please note:** The RMA requires territorial authorities to create and implement a District Plan to assist in conducting the territorial authority's functions to achieve the purpose of this Act.

### Common breaches of this legislation

- District Plan rule breaches:
  - Breach of earthworks standards within District Plan
  - Number of flats/units exceeding what is permitted within the Zone
  - Commercial activity operating from residential properties
- Non-compliance with resource consent conditions
  - Environmental Management Plan (EMP) related conditions (dust and sediment leaving site, failing to submit an EMP).

Action	Description	Potential effects on the liable party	When this action might be appropriate
<b>Education</b>	Education involves explaining the nature of the breach that has occurred under the relevant legislation.	This will be recorded against the offender and considered if any further offending occurs.	If a minor offence has occurred, or there are mitigating factors, education may be appropriate in the first instance.
<b>Formal warning</b>	Formal warnings are written warnings that identify to the offender that a breach of the relevant legislation has occurred and that they are liable.	<p>Non-compliance with the formal warning will be considered when escalating enforcement action.</p> <p>No further action will be taken in respect of that breach. However, the warning forms part of a history of non-compliance and will be considered if there are future incidents of non-compliance.</p>	Formal warning may be appropriate any time there is a breach of the legislation.
<b>Infringement</b>	<p>An infringement is a monetary fine imposed on an individual/s and or companies.</p> <p>An infringement is issued when an offence under the relevant legislation has occurred.</p>	<p>Receipt of infringement and paying the infringement.</p> <p>An infringement notice will be filed and it will be taken into consideration in the future, if further non-compliance is identified.</p>	An infringement may be appropriate any time there is a breach of the RMA.
<b>Abatement notice</b>	<p>An abatement notice is a formal, written direction that there has been a contravention of the RMA.</p> <p>The notice instructs an individual or company to comply with the RMA and will outline the steps required to gain compliance. Usually it includes requiring an activity to cease, requiring the offender to take action or prohibiting an activity.</p>	<p>A direction given through an abatement notice is legally enforceable.</p> <p>To breach an abatement notice is to commit an offence against the RMA and it can lead to further enforcement action.</p> <p>These notices can be appealed by the recipients.</p>	An abatement notice may be appropriate, when the council has previously requested the offender take action and/or cease an action within a certain timeframe and this has not been complied with.

Action	Description	Potential effects on the liable party	When this action might be appropriate
<b>Enforcement order</b>	<p>An enforcement order can direct a party to take particular action (similar to an abatement notice).</p> <p>An application for an enforcement order must be made to the Environment Court, but can also be made during the course of an RMA prosecution.</p>	<p>A direction given through an enforcement order is legally enforceable.</p> <p>To breach an enforcement order is to commit an offence against the RMA and it can lead to further enforcement action.</p>	<p>An application for an enforcement order may be appropriate any time there is a risk of further breaches of environmental regulation, or remediation or mitigation is required because of non-compliance.</p>
<b>Prosecution</b>	<p>A criminal prosecution is taken to establish guilt or innocence and, if appropriate, the court will impose sanctions.</p> <p>RMA matters are heard by a District Court Judge with an Environment Court warrant.</p> <p>All criminal evidential rules and standards must be met in an RMA prosecution.</p>	<p>A successful prosecution will generally result in a conviction, a penalty imposed, and consideration to costs of the investigation.</p> <p>A prosecution forms part of the history of non-compliance and will be considered if there are future incidents of non-compliance.</p>	<p>A prosecution may be considered appropriate when the factors listed above indicate that the matter is sufficiently serious to warrant the intervention of criminal law, as well as the evidential and public interest tests being met.</p>

## Resource Management Act 1991 - Excessive Noise

### Common breaches of this legislation

- Loud stereo noise
- Excessive noise.

Action	Description	Potential effects on the liable party	When this action might be appropriate
<b>Education</b>	<p>Education involves explaining the nature of the breach that has occurred under the relevant legislation.</p>	<p>This will be recorded against the offender and considered if any further offending occurs.</p>	<p>If a minor offence has occurred, or there are mitigating factors, education may be appropriate in the first instance.</p>
<b>Excessive Noise Direction (END)</b>	<p>An END is a formal verbal* or written directive instructing an offender to reduce the noise to a reasonable level.</p> <p>*In practice we only issue written warnings.</p>	<p>The offender must reduce the noise to a reasonable level for 72 hours.</p> <p>A breach of an END is an offence against the RMA and may result in the offending equipment being seized and may incur a \$500 infringement.</p>	<p>If a minor offence has occurred, or there are mitigating factors, education may be appropriate in the first instance.</p>
<b>Formal warning</b>	<p>Formal warnings are verbal* or written warnings that identify to the offender that a breach of the relevant legislation has occurred and that they are liable.</p> <p>*In practice we only issue written warnings.</p>	<p>Non-compliance with the formal warning will be considered when escalating enforcement action.</p>	<p>Formal warning may be appropriate any time there is a repeated breach of the legislation.</p>

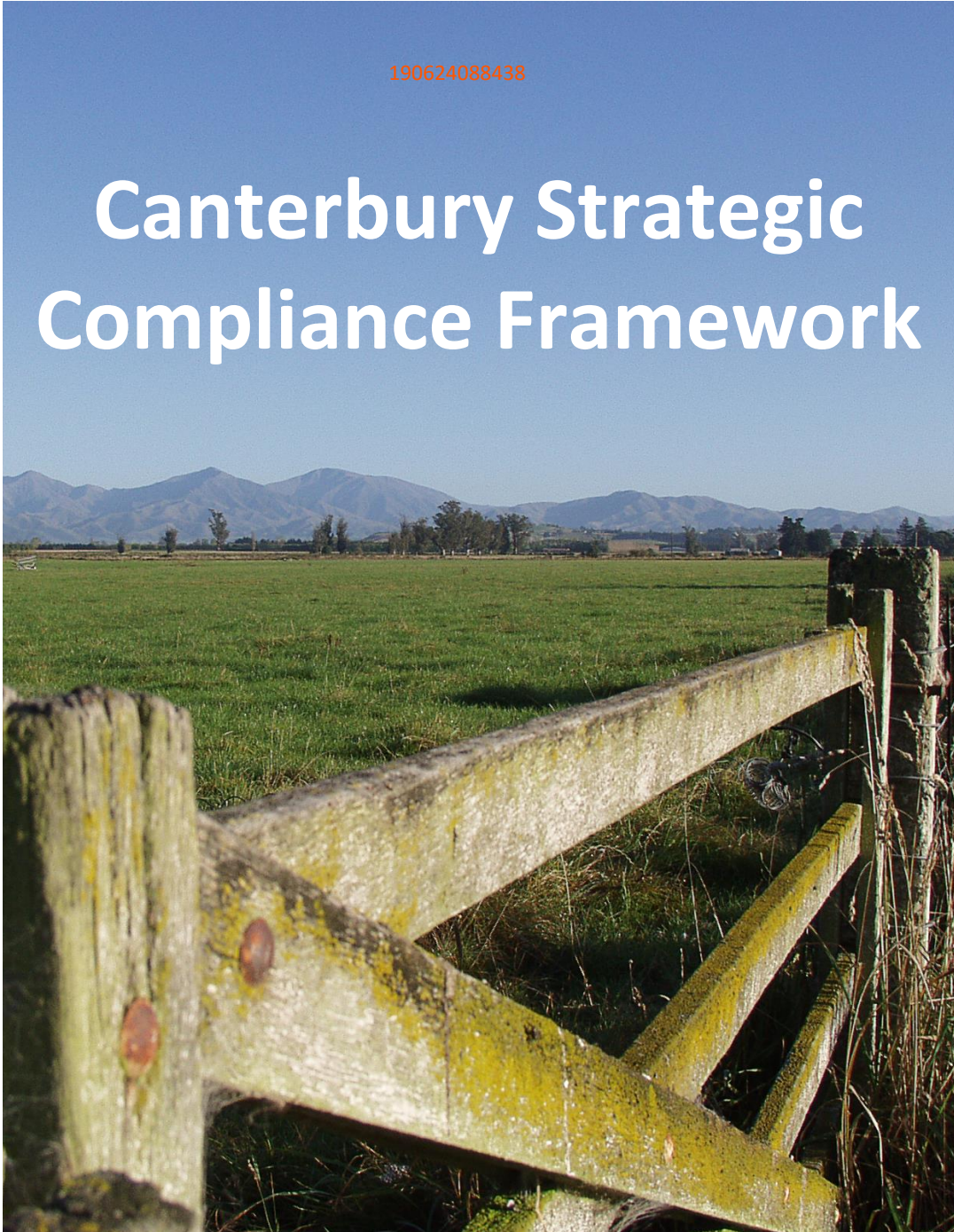


Action	Description	Potential effects on the liable party	When this action might be appropriate
<b>Infringement</b>	An infringement is a monetary fine imposed on an individual/s and or companies. An infringement is issued when an offence under the relevant legislation has occurred.	Receipt of infringement and paying the infringement.  An infringement notice will be filed and taken into consideration in the future, if further non-compliance is identified.	An infringement may be appropriate any time there is non-compliance with an Excessive Noise Direction (END) or an Abatement Notice.
<b>Abatement notice (to abate excessive noise)</b>	An abatement notice is a formal, written direction that there has been a contravention of the RMA.  The notice instructs an individual or company to comply with the RMA and will outline the steps required to gain compliance. Usually it includes requiring an activity to cease, requiring the offender to take action or prohibiting an activity.	To breach an abatement notice is to commit an offence against the RMA and it can lead to further enforcement action.  Failure to comply with an Abatement Notice may result in immediate seizure of equipment and a possible \$750 infringement.	An abatement notice may be appropriate, for example when Council has previously educated and requested the offender take action, and/or cease an action, within a certain timeframe and this has not been complied with.
<b>Prosecution</b>	A criminal prosecution is taken to establish guilt or innocence and, if appropriate, the court will impose sanctions.  RMA matters are heard by a District Court Judge with an Environment Court warrant.  All criminal evidential rules and standards must be met in an RMA prosecution.	A successful prosecution will generally result in a conviction, a penalty imposed and consideration to costs of the investigation.  A prosecution forms part of the history of non-compliance and will be considered if there are future incidents of non-compliance.	A prosecution may be considered appropriate when the factors listed above indicate that the matter is sufficiently serious to warrant the intervention of criminal law, as well as the evidential and public interest tests being met.

# Appendix 3: Canterbury Strategic Compliance Framework

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## Canterbury Strategic Compliance Framework



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## Introduction

The Canterbury Chief Executives Forum agreed to the formation of a regional Compliance, Monitoring and Enforcement (CME) Working Group in May 2017 to share advice and guidance on compliance, monitoring and enforcement of environmental law across the region. The working group agreed that they would use the *Regional Sector Strategic Compliance Framework 2016-2018* as the base of their strategy and only make changes where there were Canterbury specific reasons to do so. This document also incorporates the Ministry for the Environment *Best Practice Guidelines for Compliance, Monitoring and Enforcement*.

While the key driver for adoption of this strategy is to advance compliance, monitoring and enforcement of environmental law, the Canterbury (CME) Working Group includes Territorial Local Authorities (TLAs) whose regulatory responsibilities extend much wider than this. Therefore this strategy has been tailored to meet the needs of TLAs while remaining complementary to the Regional Compliance Monitoring, Incident Response and Enforcement Guidelines used by the Canterbury Regional Council. It will act as a guide for a wide range of CME activities so some of the changes made to the *Regional Sector Compliance Framework 2016-2018* are a reflection of this wider purpose. Elements of the *Draft Christchurch City Council Regulatory Compliance Unit – Compliance Strategy* have also been incorporated into this strategy to reflect the wider scope.

Local Government in New Zealand is responsible for ensuring compliance with a variety of laws and regulations that are aimed at achieving positive community and environmental outcomes. A key role in ensuring compliance is carrying out compliance monitoring, and responding to notifications of potential breaches or incidents. This role triggers a range of associated interventions to ensure that individuals and organisations adhere to these rules and regulations for the ‘public good’.

Applying a strategic approach to ensuring others are compliant enables councils to focus their compliance related programmes and interventions on the most ‘important problems’ – based on a range of risk based factors.

Councils within the Canterbury group have varied experience levels, resourcing challenges, limited systems and processes which impacts on their ability to achieve compliance consistently. Many TLAs are only able to be reactive with CME usually in response to complaints.

There has been no overarching, robust framework that can be shared and applied across the region. The absence of such a framework not only reduces opportunities for Councils to effectively focus resources on important compliance priorities, but also allows for inconsistent approaches between councils to be highlighted and criticised, limiting the collective effectiveness of Local Government. The purpose of this document is to address the absence of an overarching framework.

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The Canterbury CME Working Group acknowledges each council has the autonomy to develop its own approach to giving effect to the framework achieving or ensuring compliance. It is appropriate that individual councils tailor their strategies and policies to meet their own needs and resources. However, we strongly advocate that individual compliance strategies should be within, and linked to, this framework.

The Canterbury CME Working Group will continue to work together to share advice, guidance, resources and training on compliance, monitoring and enforcement across the region using this framework as its guide.

## Purpose and overview

This document sets out a Strategic Compliance Framework (SCF) to assist Canterbury Councils to develop a consistent approach to:

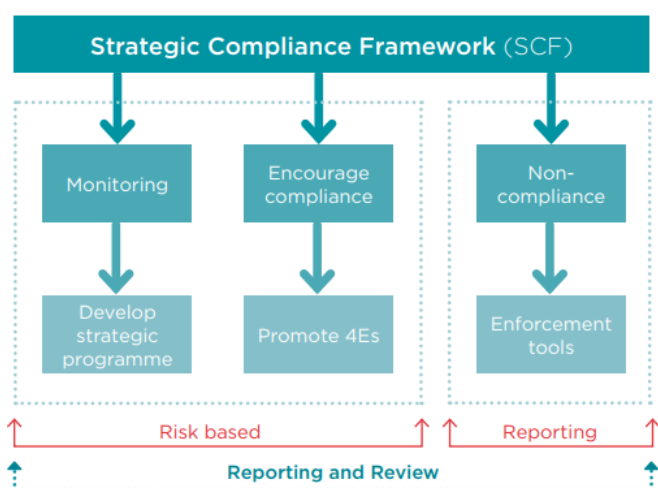
- monitor compliance (i.e. what is the state of compliance)
- encourage compliance (i.e. achieving the highest levels of compliance)
- deal with non-compliance (i.e. use of enforcement tools to bring about behaviour change)
- review each of these components (i.e. to gauge the effectiveness of the SCF).

Figure 1 shows the different elements of the SCF and how they relate. There are three major components to the SCF:

1. **Monitoring** - this includes developing strategic programmes
2. **Encouraging Compliance** – using the proactive 4Es model (refer page 9)
3. **Non-compliance** – using enforcement tools to deal with non-compliance

Monitoring and encouraging compliance employs a risk-based approach in its execution (it's about prioritising resources based on risk) and dealing with non-compliance using a 'toolbox' of enforcement tools. A key component of any SCF is the requirement to report and review.

**Figure 1: Elements of a Strategic Compliance Framework**



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## **Principles to guide compliance operations**

The implementation of a Strategic Compliance Framework should adopt the following operating principles. These principles should guide how we develop strategic compliance programmes:

### **Transparent**

We will provide clear information and explanation to the regulated community about the standards and requirements for compliance.

### **Consistency of process**

Our actions will be consistent with the legislation and within our powers. Compliance and enforcement outcomes will be consistent and predictable for similar circumstances. We will ensure that our staff have the necessary skills and are appropriately trained, and that there are effective systems and policies in place to support them.

### **Fair, reasonable, and proportional approach**

We will apply regulatory interventions and actions appropriate for the situation. We will use our discretion justifiably and ensure our decisions are appropriate to the circumstances, that our interventions and actions will be proportionate to the risks posed to people, the environment, and the seriousness of the non-compliance.

### **Evidence based, informed**

We will use an evidence-based approach to our decision-making. Our decisions will be informed by a range of sources, including sound science, information received from other regulators, members of the community, industry, and interest groups.

### **Collaborative**

We will work with and, where possible, share information with other regulators and stakeholders to ensure the best compliance outcomes for our region. We will engage with the community and consider public interest, those we regulate, and government to explain and promote environmental requirements, and achieve better community safety and environmental outcomes.

### **Lawful, ethical and accountable**

We will conduct ourselves lawfully and impartially and in accordance with these principles, relevant policies, and guidance. We will document and take responsibility for our regulatory decisions and actions. We will measure and report on our regulatory performance.

### **Targeted**

We will focus on the most important issues and problems to achieve the best environmental outcomes, and on those that pose the greatest risk to the community. We will apply the right tool for the right problem at the right time.

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**Responsive and effective**

We will consider all alleged non-compliance to determine the necessary interventions and action to minimise impacts on the environment and the community and maximise deterrence. We will respond in an effective and timely manner in accordance with legislative and organisational obligations.



## Developing a strategic compliance monitoring programme

As part of the monitoring component of the SCF, a Strategic Compliance Monitoring Programme ensures that the appropriate resources are allocated to activities by determining the monitoring frequency and intervention method, dependant on the risk to the environment, community and individuals from that activity.

This programme may include:

- Using criteria to assess the likelihood and consequences of non-compliance occurring. These could include:
  - Council priority areas
  - Community and tāngata whenua expectations
  - Sensitive or endangered environments
- Determining a compliance monitoring priority list appropriate to each TLA
- Determining type/level of intervention according to risk profile
- Determining resourcing to match combination of interventions that apply
- Determining monitoring frequencies
- Developing procedures, charging regime, database recording system

### Compliance monitoring methods

Compliance monitoring can be carried out in various ways including:

- **Site visits** - to assess compliance, at a moment in time, against consent / licence conditions and rules e.g. Controlled Purchase Operation
- **Desk top audit** - based on data provided by the consent / licence holder
- **Patrolling** – to proactively monitor areas or activities e.g. Parking, Animal Control
- **Inspections** – to check compliance with consents / licenses e.g. Building, Food Act 2014
- **Community reports, complaints or notifications** – feeds into the risk assessment and frequency of interventions
- **Pro-active campaigns** – targets particular activity types

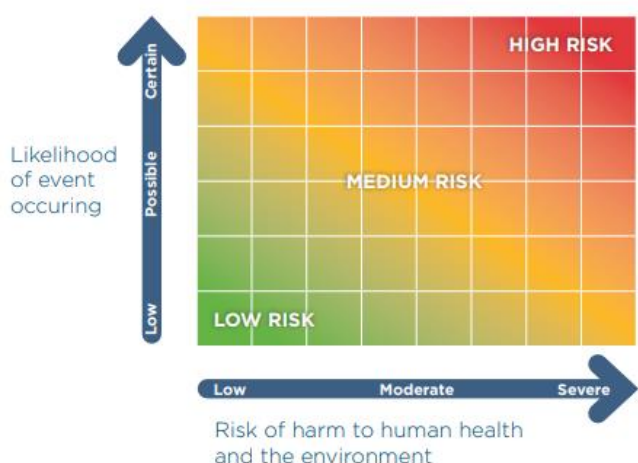
## Prioritise resources using a risk based methodology

The most common and effective way to set up a compliance monitoring programme is to use a risk assessment method to determine priority areas. The Government expects that 'Departments...will maintain a transparent, risk-based compliance and enforcement strategy'<sup>1</sup>.

In the context of compliance monitoring, risk is traditionally calculated using the likelihood of a non-compliance occurring and the consequent magnitude of harm to human health and the environment (including cultural, social and economic effects). The ranking/level of risk calculated informs development of an appropriate compliance monitoring response that considers the appropriate frequency, type and scale of monitoring.

Applying a risk based approach enables monitoring efforts to be focused on the biggest risks to the environment and community and target areas where businesses and people are less likely to comply. It is important to remember that a risk matrix should be used for focusing monitoring efforts and is not an enforcement decision making tool.

**Figure 2: Generic Risk Matrix**



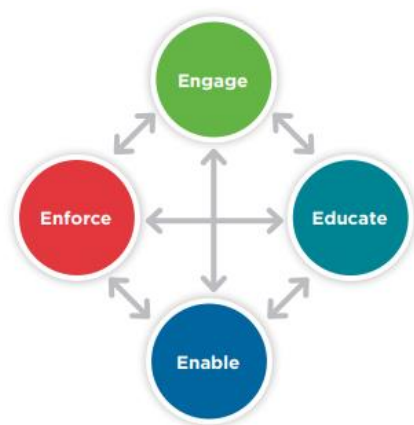
<sup>1</sup> New Zealand Productivity Commission. Regulatory institutions and practices 2014

## Encouraging compliance

It is important to take a comprehensive ‘spectrum’ approach to encourage the highest levels of compliance through developing understanding and sustained behaviour change.

The 4Es Model<sup>2</sup> is a helpful way of displaying the four components that a comprehensive strategy should have. The 4Es: Engage, Educate, Enable and Enforce are not exclusive of each other. It is recognised that different components of the model may be carried out by different parts of an organisation. Regardless of who has responsibility for implementing each component of the model it is vital that they are coordinated and a high level of communication is maintained to ensure that full effect is being achieved.

**Figure 3: The 4Es**



The resource and emphasis put into any one “E” will be determined by an individual council or part of the council responsible for ensuring compliance with a particular activity. It may be that councils put more emphasis on different components over time and that the use of the 4Es is dynamic and changes, but in a coordinated and planned fashion. Each of the components is explained in more detail:

**Engage** – consult with regulated parties, stakeholders and community on matters that may affect them. This will require maintaining relationships and communication until final outcomes have been reached. This will facilitate greater understanding of challenges and constraints, engender support and identify opportunities to work with others.

**Educate** – alert regulated parties to what is required to be compliant and where the onus lies to be compliant (i.e. with them!) Education should also be utilised to inform community and stakeholders about what regulations are in place around them, so that they will better understand what is compliant and what is not.

<sup>2</sup> Adapted from Zaman 2015

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**Enable** – provide opportunities for regulated parties to be exposed to industry best practice and for what is required to be compliant. Link regulated parties with appropriate industry advisors. Promote examples of best practice.

**Enforce** – when breaches of regulation, or noncompliance are identified, then an array of enforcement tools are available to bring about positive behaviour change. Enforcement outcomes should be proportional to individual circumstances of the breach and culpability of the party.

## Dealing with non-compliance

When non-compliant activities are identified there needs to be an explicit response that is proportionate to the overall circumstances of the offending. The response should be clear, and be able to be understood by the regulated party as well as the community. Councils must strive to ensure that responses are not inconsistently applied.

*A proportionate, risk-based compliance strategy*

*“A successful and cost effective compliance strategy will draw on a range of options for responding to non-compliance. Responses can range from encouraging and assisting an individual or business to comply where the risk presented is minor, to revoking an operating licence and bringing criminal or civil court action in cases of serious risk and deliberate non-compliance.”*

*CCCP – Achieving Compliance; A Guide for Compliance Agencies in New Zealand June 2011; page 172*

In the TLA context we have a broad range of enforcement obligations and various enforcement tools available to ensure compliance for each activity undertaken as shown in the table below.

	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
Noise	x	x			x		x
Animal Control	x	x		x			x
District Plan	x	x		x	x	x	x
Bylaws	x	x					x

Taking any kind of enforcement action can have a profound impact on the subject of the action and cannot be taken lightly. Decisions on enforcement action must be based

on reliable and correctly obtained information<sup>3</sup> so that an informed decision can be made. This information will not only determine whether a breach has occurred but also how serious the breach is.

Below are two enforcement approaches, the first is specific to the RMA, the second for all other TLA responsibilities.

### 1. Enforcement options – RMA specific approach

The RMA and case law provide the formal enforcement tools that are available to the Sector. It may be that individual agencies also develop informal tools which can be effective when used appropriately. It will be important to ensure these informal tools are consistent with the principles and purpose of the Strategic Compliance Framework.

Enforcement tools can be categorised into two main functions. **Directive** actions are about looking forward and righting the wrong. **Punitive** actions are about looking back and holding people accountable for what they have done. These actions are described in more detail at Appendix 3.

*“... where a regulated entity deliberately or persistently fails to comply, it is vital that the agency take swift and firm enforcement action. Failing to do this will:*

- *Unfairly advantage those who are noncompliant, as against those who comply voluntarily*
- *Undermine incentives for voluntary compliance*
- *Damage the agency’s credibility with the regulatory sector and the wider public, who will perceive that the agency allows deliberate offenders to ‘get away with it’*
- *Undermine the agency’s own internal morale”*

*CCCP – Achieving Compliance; A Guide for Compliance Agencies in New Zealand June 2011; page 181 14*

### Decision making – factors to consider

The courts have provided helpful guidelines<sup>4</sup> as to what factors are appropriate to consider in RMA cases to determine the seriousness of a breach. These factors should be adopted be used to guide their enforcement decision making:

- What are the actual adverse effects that have occurred from the breach?
- What are the likely or potential adverse effects arising from the breach?
- What is the value or sensitivity of the environment affected by the breach?

<sup>3</sup> It is expected that the Regional Sector will gather information in keeping with best practise detailed in Basic Investigative Skills for Local Government ISBN 978-0-9876661-9-2

<sup>4</sup> Machinery Movers Limited –v Auckland [1994] 1 NZLR 492 & Selwyn Mews Ltd –v- Auckland City Council HC Auckland CRI -2003-404-159

- Was the breach a result of deliberate, negligent or careless behaviour?
- What degree of care was taken by the culpable party and how foreseeable was the incident?
- What efforts were made by the culpable party to remedy or mitigate the effects of the breach?
- How effective was that remediation or mitigation?
- Was any profit or benefit gained from the breach by the culpable party?
- Is this incident a repeat non-compliance by the culpable party, or has previous enforcement action been taken against the party for the same or similar breach?
- Has the culpable party failed to act on prior instructions, advice or notice?

If prosecution is being considered then three additional factors should be considered:

- What degree of deterrence is required in relation to the culpable party?
- What degree of general deterrence is required for the wider industry or community?
- Have the Solicitor Generals Prosecution Guidelines prerequisites for prosecution been satisfied?

Not every factor will be relevant every time. On occasion one single factor may be so overwhelmingly aggravating, or mitigating, that it may influence the ultimate decision. It is inappropriate to take a matrix or numerical approach to weighing and balancing these factors. Each case is unique and the individual circumstances need to be considered on each occasion to achieve a fair and reasonable outcome. The discretion to take enforcement action, or not, sits solely with the prosecuting agency<sup>5</sup>.

An example of an RMA Prosecution Policy is included in Appendix 3. This Policy sets out principles and guidelines to follow when deciding whether or not to initiate criminal proceedings for offences under the RMA.

## **2. Enforcement options – general TLA approach**

When breaches and non-compliance activities are identified, we will respond in a way that is consistent with and proportionate to the overall circumstances of the breach / non-compliance.

Enforcement responses follow a model of voluntary, assisted, directed or enforced compliance (VADE). This model is based on recognised behaviours that guide the delivery of the appropriate intervention. It is suitable for use across all TLA regulatory areas.

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<sup>5</sup> New Zealand Law Commission [http://www.nzlii.org/nz/other/nzlc/report/R66/R66-5\\_.html](http://www.nzlii.org/nz/other/nzlc/report/R66/R66-5_.html)

The VADE model recognises that most people and businesses are willing to voluntarily comply with their regulatory obligations, or can be encouraged to do so. Enforcement responses escalate depending on the seriousness of the conduct, extent of the harm and public interest factors.

The table below illustrates this VADE model.

	<b>Description of compliance behaviour</b>	<b>Example</b>	<b>Likely scenario</b>	<b>Likely compliance / enforcement approach</b>
Voluntary	Persons seek to voluntarily comply and be informed about their legal obligations. The activities that they undertake are compliant and cause no related nuisance. Such people know and are aware of their obligations and make every effort to consciously comply.	Undertake consented activities in a careful and considerate manner taking into account the needs of the local community and environment. Ensures swimming pool fencing meets the requirements of the Act.	Most likely	Praise Education / advice where required
Assisted	People are attempting to comply but are uninformed about their legal obligations or responsibilities. They will alter unintentional nonconforming behaviour when educated.	Unintentionally undertakes an activity that contravenes their consent approvals and/or underlying application Minor potential for environmental or community impact	Most likely	Education / advice – verbal and collateral
Directed	People take advantage of the opportunity not to comply with their legal obligations or responsibilities. They know the rules but will take the opportunity to avoid compliance. Likely to challenge Officer requests. May alter behaviour when educated.	Does not always complete required actions in manner agreed because of a quicker or less costly alternative. Disregards any potential impact for environmental or community impact. Risks for environmental or community impact are medium to high.	Less likely	Education – verbal and collateral Warnings Infringement notices Enforcement order Abatement notice (where ‘near miss’ for significant environmental breach)
Enforced	People deliberately, and without any regard, undertake non complying activity in breach of known obligations and responsibilities. Recidivist activities. Knows the rules and associated parameters/conditions and has complete disregard for operating within these. Very likely to challenge Officer requests.	Deliberately undertakes non-consented activities; Deliberately disregards impact for local environment and communities. Risks for environmental or community impact are high.	Least likely	Infringement notice Abatement notice Enforcement order Prosecution (Gross breaches)



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## Reporting and reviewing

### Reporting

To assist with assessing the effectiveness of the strategy it would be useful to have systems in place to capture sufficient, relevant and comparable data to inform any review.

In relation to the RMA Councils are already required to report on CME functions through the annual National Monitoring System to the Ministry for the Environment.

It may be that there is other information that would be useful to collect to support the scope of the Canterbury Compliance, Monitoring and Enforcement Working Group which includes:

- Establishing regional consistency regarding principles and approach to compliance, monitoring and enforcement
- Sharing advice, guidance, resources and training on compliance, monitoring and enforcement
- Incorporating best practice approaches across the region
- Identifying and addressing emerging issues, risks, limitations and/or barriers

Systems should be in place to capture sufficient data to enable reliable trend based information to inform any review of this strategy.

### Reviewing

The purpose of review is to ensure the effectiveness of a SCF, in terms of its individual components and the overall framework. A review of this strategy will be undertaken every three years to address any operational or implementation issues, ensure the strategy is achieving its purpose and recognise any relevant legislative amendments.

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## Appendix 1: Application of a risk based approach – an RMA example

A risk matrix is a front-end tool that can be used to assess the risk of an activity. This assessment impact on the frequency as detailed in the tables below. The factors likely to be relevant to compliance monitoring are:

### Factors to assess consequence/harm

- The environmental media involved
- The impact on the environment from the operation when it operates within the conditions of the consent
- The impact on the environment when the operation does not operate within the conditions
- The sensitivity of the local environment, such as the proximity to residential premises or waterways, or areas of cultural significance

### Factors to assess likelihood of non-compliance

- The scale and complexity of the activity
- The historical compliance history of similar activities
- The compliance history of the business or person being regulated

### Other factors could include:

- District Plan Priorities
- Science monitoring programme priorities
- National regulations
- Council and community priorities
- Stakeholder priorities to determine

The risk matrix shown in Table 1 (page 17) is a generic example; it can be used to semi qualitatively assess the level of risk associated with different consented activities. The numbers assigned are a guideline and can be varied to accommodate individual council's requirements.

**Table 1: Risk assessment matrix**

		Consequence of Environmental/Human Effect caused by non-compliance				
		Insignificant (1)	Minor (2)	Moderate (3)	Major (4)	Severe (5)
Likelihood of non-compliance (%)	40+ (5)	Minor	Moderate	Moderate	High	High
	30-40 (4)	Minor	Minor	Moderate	Moderate	High
	20-30 (3)	Low	Minor	Minor	Moderate	Moderate
	10-20 (2)	Low	Minor	Minor	Minor	Moderate
	0-10 (1)	Low	Low	Low	Minor	Minor

Activities that are likely to be compliant, and where the impact of non-compliance is expected to be insignificant or minor, have a low level of risk (green shading). Conversely, activities have a high level of risk (red shading) where non-compliance is more likely, and the impacts of non-compliance may be severe.

The resultant risk score is then used to set the compliance monitoring frequency using Table 2.

**Table 2: Monitoring frequency ranges**

Risk Score	Monitoring Frequency Ranges
13+	Less than 1 yearly
9-12	1 to 3 years
4-8	3 to 5 years
1-3	Greater than 5 yearly

The compliance monitoring frequencies can also be influenced by national requirements (for example the water regulations) and the nature of the consent conditions; some resource consents will specify a monitoring frequency. In addition some resource consents require the submission and review of various monitoring reports on an annual (or more frequent) basis.

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## Appendix 2: Application of the a VADE based approach – a general regulatory example

### Enforcement response guidelines

#### *Guiding principles for decision-making on enforcement responses*

Decisions regarding the Council's enforcement responses will take into account the attitude towards compliance and be:

- logical, timely and considered
- evidence-based
- made impartially and without fear, favour, bias, prejudice or improper motive
- sufficiently robust and well-documented to withstand judicial review
- proportionate to the risk posed by the non-complaint behaviour, and the attitude towards compliance
- consistent with the law, the public interest, and the Council's strategic objectives

#### *Factors for consideration*

Enforcement responses follow a model of voluntary, assisted, directed or enforced compliance (VADE). This model is based on recognised behaviours that guide the delivery of the appropriate interventions.

The factors for consideration are set out below.

Application of these factors requires expertise and experience to be applied in the process of weighing up which compliance tools might be most applicable.

**Extent of harm or risk of harm:** This includes harm or potential harm to the community and environment. Actions that create risks but do not actually lead to harm occurring can still be serious and require a firm response.

- There is minimal or no harm or risk of harm
- Harm is, or would likely be easily remedied
- Harm is, or would likely be restricted in scale or effect
- There is significant or widespread harm or potential for such harm
- Harm is actually or potentially caused to a vulnerable section of the community / environment

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**Conduct:** Conduct in this context means the behaviours, intent and capability of the person / organisation whose actions are being considered.

- It is first-time or one-off behaviour that is unlikely to be repeated
- The conduct is accidental or resulted from momentary carelessness or the result of a limited understanding of the law
- Mitigating factors exist
- The behaviour is deliberate, reckless or involving consistent carelessness
- The conduct is repeated, ongoing
- There is a serious departure from expected lawful behaviour
- Aggravating factors exist

**Public interest:** Public interest can be described as something being in the interest of the wider public or of public importance. It is more than simply interest from the public or expectation from the public of action. Considerations include responsibility to victims, the need to clarify the law, and whether the matter at hand reflects a widespread problem that can be usefully addressed by highlighting the need for compliance.

- The conduct occurred some time ago and has ceased
- The legal principles involved are well-established and do not require clarification in court
- A decision not to act would undermine public confidence in the maritime transport system, or a significant sector within the system
- The conduct involves a new or significant service to a large travelling public
- Action is necessary to clarify a grey area in the law
- Action is necessary to deter others from similar conduct

**Attitude to compliance:** Typically, the nature of the responses will be informed by, and tailored to, the attitude of individuals or organisations involved towards compliance. This helps ensure that the intervention(s) chosen will have the desired effect. This does not prevent significant action being taken for other reasons, even when attitude is good.

- Willing and able to comply
- Willing but not able to comply
- Reluctant to comply
- Unwilling to comply

- Actively and intentionally non-compliant
- Available enforcement responses

Assessment against the factors above, and attitude to compliance, will support a decision about the best course of action.

There is a range of possible enforcement responses available from: an approach based on information, education and engagement to support and encouraging compliance; to an approach (usually through investigation) that may lead to enforcement interventions such as infringement notices, or other civil or criminal action under applicable law. Multiple interventions may be appropriate and applied together.




The table below reflects the intended method of weighing up the relevant factors and attitude to compliance to determine the appropriate response:

	Description of compliance behaviour	Example	Likely scenario	Likely compliance / enforcement approach
Voluntary	Persons seek to voluntarily comply and be informed about their legal obligations. The activities that they undertake are compliant and cause no related nuisance. Such people know and are aware of their obligations and make every effort to consciously comply.	Undertake consented activities in a careful and considerate manner taking into account the needs of the local community and environment. Ensures swimming pool fencing meets the requirements of the Act.	Most likely	Praise Education / advice where required
Assisted	People are attempting to comply but are uninformed about their legal obligations or responsibilities. They will alter unintentional nonconforming behaviour when educated.	Unintentionally undertakes an activity that contravenes their consent approvals and/or underlying application Minor potential for environmental or community impact	Most likely	Education / advice – verbal and collateral
Directed	People take advantage of the opportunity not to comply with their legal obligations or responsibilities. They know the rules but will take the opportunity to avoid compliance. Likely to challenge Officer requests. May alter behaviour when educated.	Does not always complete required actions in manner agreed because of a quicker or less costly alternative. Disregards any potential impact for environmental or community impact. Risks for environmental or community impact are medium to high.	Less likely	Education – verbal and collateral Warnings Infringement notices Enforcement order Abatement notice (where ‘near miss’ for significant environmental breach)

	<b>Description of compliance behaviour</b>	<b>Example</b>	<b>Likely scenario</b>	<b>Likely compliance / enforcement approach</b>
Enforced	<p>People deliberately, and without any regard, undertake non complying activity in breach of known obligations and responsibilities.</p> <p>Recidivist activities.</p> <p>Knows the rules and associated parameters/conditions and has complete disregard for operating within these.</p> <p>Very likely to challenge Officer requests.</p>	<p>Deliberately undertakes non-consented activities; Deliberately Disregards impact for local environment and communities. Risks for environmental or community impact are high.</p>	Least likely	<p>Infringement notice</p> <p>Abatement notice</p> <p>Enforcement order</p> <p>Prosecution (Gross breaches)</p>

## Appendix 3: Enforcement tools - RMA




### Directive actions

ACTION	DESCRIPTION OF ACTION	POTENTIAL IMPACTS ON THE LIABLE PARTY	WHEN MIGHT THIS ACTION BE APPROPRIATE?
 <p><b>Letter of direction</b></p>	<p>To prevent further breaches, or to remedy or mitigate the effects of non-compliance, council can give a written direction for a party to take or cease a particular action.</p>	<p>Such a direction is not legally enforceable.</p>	<p>Letters of direction should be reserved for dealing with co-operative parties, who are motivated to follow the direction, and where the breach is of a minor nature, consistent with a breach that would perhaps also receive a formal warning.</p>
 <p><b>Abatement notice</b></p>	<p>An abatement notice is a formal, written directive. It is drafted and served by council instructing an individual or company to cease an activity, prohibit them from commencing an activity or requiring them to do something. The form, content and scope of an abatement notice are prescribed in statute.</p>	<p>A direction given through an abatement notice is legally enforceable.</p> <p>To breach an abatement notice is to commit an offence against the RMA and make liable parties open to punitive actions.</p>	<p>An abatement notice may be appropriate any time that there is a risk of further breaches of environmental regulation or remediation or mitigation is required as a result of non-compliance.</p>
 <p><b>Enforcement order</b></p>	<p>Like an abatement notice an enforcement order can direct a party to take particular action. However, an application for an enforcement order must be made to the Environment Court but can also be made during the course of a RMA prosecution.</p>	<p>A direction given through an enforcement order is legally enforceable.</p> <p>To breach an enforcement order is to commit an offence against the RMA and make liable parties open to punitive actions.</p>	<p>An application for an enforcement order may be appropriate any time there is a risk of further breaches of environmental regulation, or remediation or mitigation is required as a result of non-compliance.</p>

It is important to note that for every directive action, where a breach has been established that Council may also elect to take punitive action.



## Punitive actions

ACTION	DESCRIPTION OF ACTION	POTENTIAL IMPACTS ON THE LIABLE PARTY	WHEN MIGHT THIS ACTION BE APPROPRIATE?
 <p><b>Formal warning</b></p>	<p>A formal warning is documented by way of a letter to a culpable party informing them that an offence against the RMA has been committed, and that they are liable.</p>	<p>No further action will be taken in respect of that breach.</p> <p>However, the warning forms part of a history of non-compliance and will be considered if there are future incidents of non-compliance.</p>	<p>A formal warning may be given when:</p> <ul style="list-style-type: none"> <li>• an administrative, minor or technical breach has occurred; and</li> <li>• the environmental effect or potential effect, is minor or trivial in nature; and</li> <li>• the subject does not have a history of non-compliance; and</li> <li>• the matter is one which can be quickly and simply put right; and</li> <li>• a written warning would be appropriate in the circumstances.</li> </ul>
 <p><b>Infringement notice</b></p>	<p>An infringement notice is a written notice which requires the payment of a fine. The amount of the fine is set in law. Depending on the breach the fine will be between \$300 and \$1000.</p>	<p>No further action will be taken in respect of that breach. However, the Infringement notice forms part of the history of non-compliance and will be considered if there are future incidents of non-compliance.</p>	<p>An infringement notice may be issued when:</p> <ul style="list-style-type: none"> <li>• there is prima facie (on the face of it) evidence of a legislative breach; and</li> <li>• a one-off or isolated legislative breach has occurred which is of minor impact and which can be remedied easily; and</li> <li>• where an infringement notice is considered to be a sufficient deterrent.</li> </ul>
 <p><b>Prosecution</b></p>	<p>A prosecution is a process taken through the criminal courts to establish guilt or innocence and, if appropriate, the court will impose sanctions.</p> <p>RMA matters are heard by a District Court Judge with an Environment Court warrant.</p> <p>All criminal evidential rules and standards must be met in a RMA prosecution.</p>	<p>A successful prosecution will generally result in a conviction, a penalty imposed and consideration to costs of the investigation.</p> <p>A prosecution forms part of the history of non-compliance and will be considered if there are future incidents of non-compliance.</p>	<p>A prosecution may be considered appropriate when the factors listed above indicate that the matter is sufficiently serious to warrant the intervention of the criminal law.</p>

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## Appendix 4: Example of an enforcement strategy and prosecution policy



# Enforcement Strategy and Prosecution Policy

Adopted – Council 26 June 2014

## 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

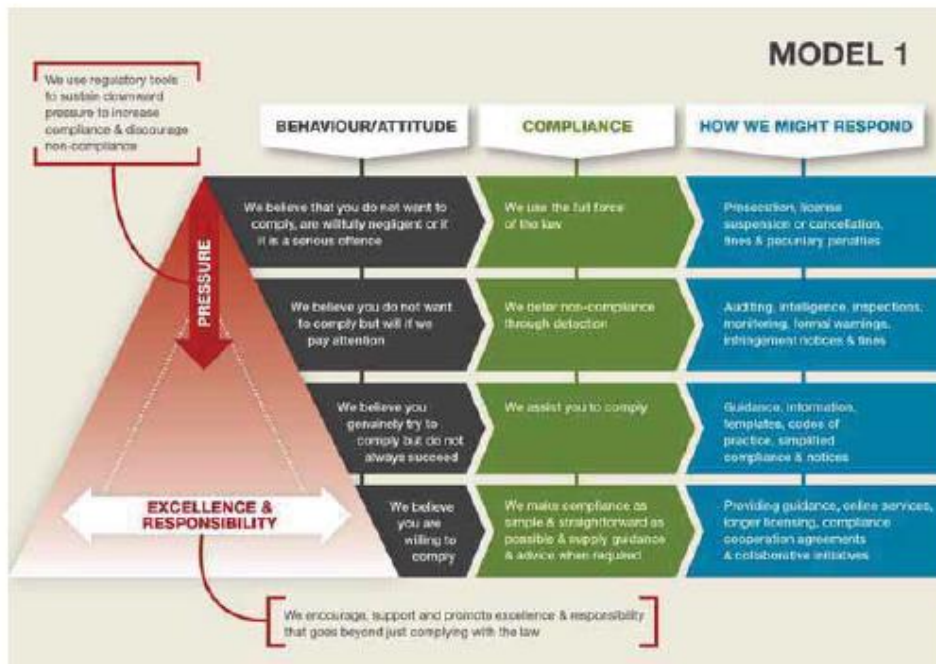
	Oral Warning	Written Warning	Notice to Fix	Infringement Notice	Abatement Notice	Enforcement Order	Prosecution
Building	x	x	x	x			x
Resource Consents	x	x		x	x	x	x
Environmental Health	x	x					x
Liquor	x	x		x			x
Parking	x			x			x
Waterways	x	x		x			x
Noise	x	x			x		x
Animal Control	x	x		x			x
District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

## Enforcement Strategy

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.*

## Enforcement Strategy

### STRATEGY

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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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## Enforcement Strategy

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 public perceive 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;
- Ongoing 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.

## Enforcement Strategy

### Areas of Enforcement & Operational Activities

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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)

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#### 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 have 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 owners and other members of the public by minimising the incidence of roaming dogs and dogs not kept under effective control.*

## Enforcement Strategy

**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 against 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.



## Enforcement Strategy

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

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### 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.

## Enforcement Strategy

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 have confidence in the Council enforcing regulations to protect public health consistently.

In the last 3 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, in addition to ensuring freedom camping is only undertaken in permitted areas in self-contained vehicles.*

**Action:** (1) *To undertake daily patrols with sufficient regularity that voluntary compliance is the default behaviour of local residents and visitors.*  
(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.*

## Enforcement Strategy

The primary focus of our waterways enforcement is safety. The principle issue we encounter is people not wearing life jackets on vessels less than 6 meters and not carrying a life jacket for each passenger on vessels over 6 meters. 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 Council's stance regarding excessive noise,  
(2) To provide a fast response to noise complaints.*

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

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

## Prosecution Policy

### Introduction

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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

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The Crown Law office has issued the Solicitor General's Prosecution Guidelines (SGPG)<sup>1</sup> 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

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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.

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<sup>1</sup> Dated 1 July 2013

## Prosecution Policy

### *Decision to prosecute*

If a prosecutor<sup>2</sup> 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 their 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 their 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 their 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.

<sup>2</sup> 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.

## Prosecution Policy

### Conduct of prosecution and case management

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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 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 require 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.

## Prosecution Policy

### 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

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

### Other Relevant Policies and Documents

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#### *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

## ENFORCEMENT ACTION PLAN

### Goal

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

### Regulatory Community Outcomes

Encourage Compliance

User friendly

Protect the interests of the District

Cost effective and achieve regulatory objectives

### Strategic Outcomes

To ensure the community know the rules

To provide a regulatory system that is easy to comply with

Increase the level of compliance of the community

Increase in community confidence of QLDC to undertake enforcement action

### Operational Activities

All figures compare activities from 2012/2013 to 2013/2014

Parking	Animal Control	Alcohol	Waterways	Noise
<ul style="list-style-type: none"> <li>The number of parking infringements issued has remained consistent.</li> <li>Freedom Camping offending initially</li> </ul>	<ul style="list-style-type: none"> <li>Dog attack levels have remained consistent.</li> <li>Roaming Dog complaints have increased significantly (128%)</li> <li>Barking dog complaints have</li> </ul>	<ul style="list-style-type: none"> <li>Number of suspensions for managers and licenced premises has increased.</li> <li>Levels of opposition has increased significantly</li> <li>The number of</li> </ul>	<ul style="list-style-type: none"> <li>There has been an increased level of media regarding waterway safety this year</li> <li>The number of infringements issued has reduced by 70%</li> <li>The first hearing for</li> </ul>	<ul style="list-style-type: none"> <li>The level of noise complaints is consistent.</li> <li>The number of Excessive Noise Directions issued is constant i.e. 10% of complaints received.</li> <li>The level of seizures</li> </ul>
<p>increased, but has reduced by 16%.</p> <ul style="list-style-type: none"> <li>The number of illegally parked vehicles towed has increased by 32%</li> </ul>	<p>increased (136%)</p> <ul style="list-style-type: none"> <li>Dog fouling complaints have increased (21%)</li> <li>The number of infringements issued has increased (29%)</li> </ul>	<p>hearings has increased significantly following the introduction of the Sale and Supply of Alcohol Act 2012.</p>	<p>not wearing a life jacket was successfully upheld</p> <ul style="list-style-type: none"> <li>Targeted increased seasonal patrolling was undertaken on Lakes Wakatipu and Lake Wanaka.</li> </ul>	<p>remains at a low level.</p>
Building	Resource Consents	District Plan	Environmental Health	Bylaws/Legislation
<ul style="list-style-type: none"> <li>There has been a 140% increase in the number of retrospective Certificates of Acceptance issued reflecting the issue of unconsented building work being undertaken</li> <li>The number Building Consent applications received have increase by approximately 30%</li> </ul>	<ul style="list-style-type: none"> <li>There is anecdotal evidence of non-compliance with conditions of consent</li> <li>There has been an increase (20%) in the number of consent applications received and a 9% increase in the number of consents issued</li> </ul>	<ul style="list-style-type: none"> <li>Accommodation providers are dis-satisfied with the inconsistent application of the rules regarding Visitor Accommodation</li> <li>Complaint levels are consistent</li> </ul>	<ul style="list-style-type: none"> <li>Every registered business is inspected annually</li> <li>There has been a steady increase in the number of food businesses signing up to Food Control Plans, which has improved standards</li> <li>Corrective Action Requests numbers have reduced as standards have improved</li> <li>The level of Food Grading's (A or B) continues to improve.</li> </ul>	<ul style="list-style-type: none"> <li>There is a scheduled review of all Bylaws</li> <li>There is an increasing number of permit applications for buskers</li> <li>The number of fire permit applications continues to increase</li> <li>There is increasing concerns over the levels of littering in the CBD.</li> </ul>

### What we will do

Queenstown Lakes District Council's Areas of focus and Priorities for enforcement over the next 3 years

### Primary Areas of Focus

Alcohol	Dogs	Littering	Planning & Development
Minimise alcohol related harm as a consequence of excessive or inappropriate consumption of alcohol	Ensure a safe environment from roaming and aggressive dogs for our community	To provide a litter free district that our community is proud of for all to enjoy	Provide a high quality natural and built environment



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## Priorities

### In the next three years we will focus on the following:

Ensure standards are observed for the Sale and Supply of Alcohol	To have all dogs that live in the district registered	Instil pride in our community not to litter	Ensure consent conditions are pro-actively monitored
Avoid and reduce the risk of alcohol related harm to our community	Ensure all dogs are kept under control at all times	Improved identification of littering offenders and responses	Collaborative departmental responses to breaches identified
Protect the image of Queenstown Lakes District	Reducing ignorance and apathy of dog owners to their responsibilities	Increase community awareness of littering issues	Improve the effectiveness of enforcement for unconsented building works.

## Secondary Areas of Focus

Environmental Health	Waterways	Parking	Noise
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Improve and maintain hygiene standards of business to protect public health	Patrolling the lakes and rivers across the Queenstown Lakes District to promote safe boating and self - compliance with national and local rules.	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.	Reducing the incidence of excessive noise nuisance across the district to enable our community to enjoy a noise nuisance free environment.
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## Priorities

### In the next three years we will focus on the following:

Annual inspection of all registered businesses	Targeted patrolling, increasing in the summer season to promote voluntary compliance.	Daily patrols with sufficient regularity that voluntary compliance is the default behaviour of local residents.	Increased media regarding noise and enforcement consequences
Promotion of voluntary documented Food Control Plans in food businesses	Increased media regarding wearing of lifejackets	To ensure that signage if sufficiently clear and prominent that visitors to the District are aware of the parking rules.	Enforcing the Resource Management Act
	Increase signage at all boat ramps to educate visitors and residents of the boating rules.		Fast responses to noise complaints

## How will we do it:

### Actions to implement the Areas of focus

## Education and Advertising Programmes

Increased cross skilling of departments and teams to provide more effective staff and contractor resources

Targeting key issues and enforcement areas

Increased media publicity for focus area issues and results



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