



# **AGENDA**

## **Environmental Services Committee Meeting**

**Tuesday, 23 November 2021**

**Date Tuesday, 23 November 2021**

**Time 9.30am**

**Location Council Chamber  
District Council Building  
King George Place  
Timaru**

**File Reference 1462606**

## **Timaru District Council**

**Notice is hereby given that a meeting of the Environmental Services Committee will be held in the Council Chamber, District Council Building, King George Place, Timaru, on Tuesday 23 November 2021, at 9.30am.**

### **Environmental Services Committee Members**

Barbara Gilchrist (Chairperson), Gavin Oliver (Deputy Chairperson), Cr Allan Booth, Cr Peter Burt, Cr Richard Lyon, Cr Paddy O'Reilly, Cr Sally Parker, Cr Stu Piddington, Cr Steve Wills, Tewera King (Mana Whenua) and Mayor Nigel Bowen

Quorum – no less than 2 members

### **Local Authorities (Members' Interests) Act 1968**

Committee members are reminded that if you have a pecuniary interest in any item on the agenda, then you must declare this interest and refrain from discussing or voting on this item, and are advised to withdraw from the meeting table.

Paul Cooper

**Group Manager Environmental Services**

**Order Of Business**

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- 1      Apologies**
- 2      Identification of Items of Urgent Business**
- 3      Identification of Matters of a Minor Nature**
- 4      Declaration of Conflicts of Interest**
- 5      Chairperson's Report**

## **6 Confirmation of Minutes**

### **6.1 Minutes of the Environmental Services Committee Meeting held on 12 October 2021**

**Author:** Andrew Feary, Governance Advisor

#### **Recommendation**

That the Minutes of the Environmental Services Committee Meeting held on 12 October 2021 be confirmed as a true and correct record of that meeting and that the Chairperson's electronic signature be attached.

#### **Attachments**

- 1. Minutes of the Environmental Services Committee Meeting held on 12 October 2021**



# **MINUTES**

## **Environmental Services Committee Meeting Tuesday, 12 October 2021**

**Ref: 1462606**

**Minutes of Timaru District Council  
Environmental Services Committee Meeting  
Held in the Council Chamber, District Council Building, King George Place, Timaru  
on Tuesday, 12 October 2021 at 9.30am**

**Present:** Barbara Gilchrist (Chairperson), Gavin Oliver (Deputy Chairperson), Cr Allan Booth, Cr Peter Burt, Cr Richard Lyon, Cr Paddy O'Reilly, Cr Sally Parker, Cr Stu Piddington, Cr Steve Wills, Mayor Nigel Bowen

**In Attendance:** Bede Carran (Chief Executive), Erik Barnes (Acting Group Manager Commercial & Strategy), Alison Talbot (Temuka Community Board – via Zoom), Wayne O'Donnell (Geraldine Community Board), Hannah Goddard-Coles (Director Engagement & Culture), Josie McNee (Transport Procurement Advisor), Symon Leggett (Group Manager Recreational & Cultural Services), Paul Cooper (Environmental Services), Mark Low (Strategy & Corporate Planning Manager), Nicole Timney (Manager of Property Services & Client Representative), Jayson Ellis (Building Control Manager)

**1 Apologies**

There were no apologies.

**2 Identification of Items of Urgent Business**

There were no items of urgent business.

**3 Identification of Matters of a Minor Nature**

There were no matters of a minor nature.

**4 Declaration of Conflicts of Interest**

There were no declarations of conflicts of interest.

**5 Chairperson's Report**

Since the last Environmental Services Committee meeting on the 31 August 2021, the chairperson has attended the following events:

- Youth Initiatives Committee
- Donations & Loans Committee
- People & Performance Committee
- Three Waters webinar
- Two OTOP meetings
- Variety of Council workshops
- Theatre Royal & Heritage Hub Stakeholder meeting
- City Hub Steering Group Meeting
- Regional Bio-diversity Champions meeting

**Motion****Resolution 2021/13**

Moved: Chairperson Barbara Gilchrist

Seconded: Mayor Nigel Bowen

That the Chairpersons report be accepted.

**Carried**

**6 Confirmation of Minutes****6.1 Minutes of the Environmental Services Committee Meeting held on 31 August 2021****Motion**

Moved: Cr Paddy O'Reilly

Seconded: Cr Sally Parker

That the Minutes of the Environmental Services Committee Meeting held on 31 August 2021 be confirmed as a true and correct record of that meeting and that the Chairperson's electronic signature be attached.

**7 Reports****7.1 Earthquake-prone Building Fee Review**

The Building Control Manager & Group Manager Environmental Services spoke to the committee on this report. This report highlights the issues surrounding Council's Fees and Charges pertaining to the statutory functions relating to the implementation and ongoing management of the Earthquake-prone Buildings (EQPB) legislation.

The report provides an opportunity for the Environmental Services Committee to test if the current approach still aligns with the view previously formed by governance, and to recommend to Council any changes to these fees and charges, should they be deemed necessary.

The Building Unit has been working through the Earthquake Prone Building Project for just over 4 years.

There was concern a change in strategy may be required due to the large number of building owners who had not engaged and the large number of building stock on Stafford Street alone that are potentially earthquake prone. Discussions have occurred with various community groups and building owners to bring this matter to the Committee and collaborate a way forward.

Other ideas are being considered, such as an alternative to incentivise building owners include providing a "middle" person with knowledge of the building sector and relevant legislation to provide one on one advice for building owners. It is intended that this idea and other potential ideas could be discussed in a future workshop.

**Resolution 2021/14**

Moved: Cr Allan Booth

Seconded: Cr Steve Wills

That the Environmental Services Committee recommend to Council that Council retain the fee for the registration and maintenance of the Earthquake-prone Buildings Register of \$420.00 and provide a discount for the same amount on the cost of the building consent application for the seismic strengthening work.

**Carried**

**8 Consideration of Urgent Business Items**

There were no items of urgent business.

**9 Consideration of Minor Nature Matters**

There were no matters of minor nature.

**The Meeting closed at 0947.**

.....  
**Barbara Gilchrist**  
**Chairperson**

## 7 Reports

### 7.1 Adoption of Timaru District Council Enforcement Policy

**Author:** Paul Cooper, Group Manager Environmental Services

**Authoriser:** Bede Carran, Chief Executive

#### Recommendation

1. That the Council adopt the Enforcement Policy and in so doing align Council's approach to enforcement with current best practice; and
2. That the Chief Executive be enabled to make amendments of a minor nature to the policy if required.

#### Purpose of Report

- 1 The purpose of this report is to present a Draft Timaru District Council Enforcement Policy for adoption or amendment and adoption.

#### Assessment of Significance

- 2 The adoption of the District Enforcement Policy has been assessed as being of low to medium significance in terms of Council's Significance and Engagement Policy. The adoption of the policy will not have a significant impact on the majority of the community. It does have some significance in defining Council's approach to enforcement matters, and in so doing provides increased assurance regarding the fairness of the approach for those involved. The policy formally aligns Council's practice with the Solicitor General's Prosecution Guidelines.

#### Background

3. This report describes the background and context leading to the case for adopting an enforcement policy. There are several factors driving toward it, not least being the fact that central government has indicated in reasonably direct terms that it wants to see significant improvement in the Compliance, Monitoring and Enforcement (CME) function across the local government sector, better consistency in approach, shared resourcing between councils and increased levels of professionalism.
4. Compliance, Monitoring and Enforcement are functions that are carried out by territorial authorities under statute to protect our people in the community and our environment. The pre-eminent statute directing CME functions is the Resource Management Act 1991 (RMA); however there are several other statutes, plans and bylaws that also require a Council CME function.
5. Central government through the Ministry for the Environment (MfE) is encouraging the local government sector to increase and lift its CME capability, particularly as it relates to the RMA. The *Last Line of Defence* report by Doctor Marie Brown published in 2017 comprehensively described the poor state of CME in the local government sector, detailed the issues and provided the platform for MfE to push for sector improvements. The report stated that (at the time it was released) 10 territorial authorities in New Zealand did not have any dedicated resource for CME work, while many had a part time resource and others

had dedicated full time CME staff. Today the situation remains similar in that CME is under resourced in many districts and its resourcing varies widely across the country.

6. The Canterbury councils developed and adopted a Canterbury Strategic Compliance Framework (Strategic Framework), and it is timely for Council to adopt a policy that aligns with the Strategic Framework and more importantly with the Solicitor General's Prosecution Guidelines. The adoption and implementation of an enforcement policy will formalise an approach that already exists informally within Council. It will support our CME activities alignment with other Canterbury councils' for regional consistency and provide assurance to our community, elected members and Council officers carrying out the CME function that there is an objective standard and graduated approach which provide for fairness, consistency and transparency.
7. In response to the signals from the MfE a number of other councils, including Timaru, have increased their resourcing in this area.
8. A further factor to consider is that the natural tension between an elected members' obligation to fairly represent the individuals in the community who have concerns in relation to a particular CME issue, and the respect for officials' impartiality and integrity as referenced in the elected members code of conduct.
9. The perception of interference is often examined by a third party such as the wider community or a judicial officer in the later stages of the enforcement process. This is one of the issues highlighted in Doctor Brown's report, although not present in this organisation, it does exist as an issue within several councils and is a behaviour that puts an organisation with a CME function at increased risk.
10. For elected members to feel a degree of comfort about the enforcement process there needs to be strong reassurance from the organisation that there is a robust principled approach to CME that ensures fairness, transparency and natural justice.
11. The implementation of the enforcement policy provides elected members and Council officers with a reference to share with the community. It provides the decision making framework for the delivery of CME that Council can be accountable against.

## Discussion

12. The enforcement policy in its current form is drafted at a reasonably high level in order to enable sufficient flexibility so that it can be applied across all Council enforcement activities. In the absence of a prescribed response in statute to a particular set of circumstances, it will provide the philosophy in approach to all enforcement matters.
13. It formally states Council's approach, which largely reflects the Solicitor General's Prosecution Guidelines and sector best practice.
14. The policy also introduces something new for Timaru District Council, that being the Enforcement Panel. The introduction of this step is to provide increased objectivity in the assessment of facts and is an extra layer of risk management in this regard.
15. The panel of three from a pool of four roles within Council (a mix of Senior Leadership Team members including if available legally qualified officers and risk and assurance officers), will convene to consider enforcement action where an officer has made a recommendation for prosecution through the Court. The panel will arrive at a consensus as to whether a matter proceeds to legal independent review on a pathway to prosecution, or should be referred



back to the officer for some other regulatory outcome such as an infringement fine (if available) or restorative mediation.

16. The enforcement policy will champion consistency in approach that is transparent, fair and principle based for all parties involved in the process.
17. If adopted several operational guidelines at unit level may require very minor adjustments to align fully with the enforcement policy. This may be as simple as referencing the enforcement policy in the particular operational guideline. In addition the delegations policy will need to reflect the policy and those changes will be made as required.

### **Options and Preferred Option**

18. That Council adopts the enforcement policy in its current form, or with some minor amendments. In so doing Timaru District Council will be aligned with the Canterbury Strategic Compliance Framework and with current best practice. This is the preferred and recommended option.
19. The alternative option is for Council to maintain the status quo and continue to have an informal but less visible and transparent approach to CME matters that generally follows best practice.

### **Consultation**

20. The Timaru District Council Draft Enforcement Policy has been developed in consultation with the Senior Leadership Team, Unit Managers across the Council and key enforcement practitioners within Council. The draft policy has been considered by elected members at a workshop and has been subject to legal review. The Policy has been drafted to reflect the Solicitor-General's Prosecution Guidelines to ensure it reflects best practice. Should Council adopt the Policy a communication plan will accompany its implementation to support informing the community and provide visibility of its intent, purpose and how it will be applied.

### **Relevant Legislation, Council Policy and Plans**

21. The Solicitor-General's Prosecution Guidelines, MfE guidance on CME activity and Canterbury Strategic Compliance Framework.

### **Financial and Funding Implications**

22. There are no financial or funding implications in adopting the enforcement policy.

### **Attachments**

1. **Enforcement Policy - Draft for Adoption November 2021** [!\[\]\(05a3150ca7eafd44fce8deaa48838121\_img.jpg\)](#) 
2. **Canterbury Strategic Compliance Framework** [!\[\]\(9bc524f09d89ff34ea77fbf6b37ad4f3\_img.jpg\)](#) 

# Enforcement Policy



**Approved by:** Timaru District Council – Environmental Services Committee

**Date approved:**

## 1. Purpose

The purpose of this policy is to:

- 1.1. Ensure consistent and appropriate decision-making on regulatory matters related to compliance, enforcement, and prosecution.
- 1.2. Detail the high level process Council regulatory officers (and other authorised officers of Council) use in the delivery of compliance, enforcement and prosecution functions.
- 1.3. Outline possible enforcement actions available to Council.
- 1.4. Inform the public of the Council's approach to compliance with and enforcement of the rules it is responsible for under a variety of statutes, bylaws, plans and policies.

## 2. Background

2.1. Council is responsible for the administration and regulation of a wide range of activities for the purpose of protecting the public and the environment in the Timaru District, including but not limited to:

- Alcohol Licensing
- Animal Control
- Building and Resource Consents
- Bylaws
- Environmental Health
- Noise Control
- Parking
- Resource management
- Airport operation

2.2. Key statutes, plans and policies include but are not limited to:

- Biosecurity Act 1993
- Building Act 2004
- Civil Aviation Act 1990
- Dog Control Act 1996
- Freedom Camping Act 2011
- Food Act 2014
- Gambling Act 2003
- Hazardous Substances & New Organisms Act 1996
- Health Act 1956

- Impounding Act 1955
- Land Transport Act 1998
- Litter Act 1979
- Local Government Act 2002
- Local Government Act 1974
- Prostitution Law Reform Act 2003
- Reserves Act 1977
- Resource Management Act 1991
- Sale and Supply of Alcohol Act 2012
- Timaru District Consolidated Bylaw 2018
- Timaru District Plan

### 3. Legal Status

- 3.1. This policy is not legally binding on Council, or any other organisation such as government departments, the police, or individuals in the community.
- 3.2. This policy is general in nature and does not exhaustively address all of the specific statutory limitations and considerations that may be relevant under the legislation, bylaws, plans or policies administered by Council. It does not confine, restrain or limit the discretion of the Council to take action.
- 3.3. This policy is not intended to be viewed as a substitute for legal advice or legal processes.
- 3.4. This policy does not supersede any legislative requirement of Council or any member of the public but describes principles and the Council approach to enforcement matters.

### 4. Principles

- 4.1. The requirement to monitor and ensure compliance with the law is a mandatory obligation within most of the statutes Council administers. The statutes provide the specific legislative framework for Council to enforce the rules and regulations.
- 4.2. While statutes and regulations provide the enforcement tools, the manner in which Council chooses to enforce is at Council's discretion. This is necessarily so when considering that compliance and enforcement are complex notions in law and often gain further complexity via the effect of supplementary factors.
- 4.3. In the absence of a prescribed statutory response, Council will apply a graduated response model, proportionate to the circumstances in each case. Such discretion is exercised by Council using the systematic application of the following principles in all instances of regulatory decision making:

#### 4.3.1. Fairness and Proportionality

Council will utilise the regulatory interventions and actions most appropriate for any given situation. Council will use its discretion justifiably and ensure that decisions are appropriate to the circumstances, and that interventions and actions are proportionate to the risks posed to the community and/or the environment, and that such actions are proportionate to the intensity of the breach.

**4.3.2. Consistency**

Council's actions will be consistent with legislation, and shall remain within the Council's defined authority. Compliance and enforcement outcomes will be consistent and predictable for similar circumstances. Council will ensure that its regulatory officers or authorised officers are appropriately trained and in possession of all necessary skills, and that there are effective systems and policies to support such officers.

**4.3.3. Transparency**

Council will provide clear information and explanations to the community in general, and to the regulated individuals in particular, regarding standards and requirements for compliance, and the enforcement mechanisms utilised by Council.

**4.3.4. Targeted**

Council will focus on the most important issues in order to achieve the best environmental outcomes, and on those matters that pose the greatest risk to the community. The Council applies the right tool, for the right problem, at the right time.

**4.3.5. Responsiveness and Effectiveness**

Council will assess all alleged non-compliance incidents to determine the most optimal course of action to minimise adverse impacts on the environment and the community, and to maximise deterrence. Council will respond in an effective and timely manner in accordance with legislative and organisational obligations.

**4.3.6. Cooperation**

Council will cooperate with and, where statute permits, share information with other regulators and stakeholders to ensure the best compliance outcomes for the Timaru District. Council will engage with the community and will consider public interest and those it regulates, in order to explain and promote environmental requirements, and to achieve better community safety and environmental outcomes.

**4.3.7. Legality and Ethicality**

Council will conduct itself lawfully and impartially and in accordance this policy. Council will document and take responsibility for its regulatory decisions and actions.

**4.3.8. Evidence-based approach**

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

**4.3.9. Community Engagement with Compliance**

Using the principles of the "Regulatory Compliance Diamond" Appendix (i) Council will foster community engagement with the enforcement process.

## 5. Enforcement Process

- 5.1. The response to an offence will be largely dependent on factors such as the need to deal with risks to public safety, protection of public and private property, any ongoing adverse environmental effects, the risk of a recurring breach, and the seriousness of the breach. It is expected that the response will take the sequential approach.

### 5.2. Response to Effects

Upon discovery of an offence, the initial response will be to assess the actual or potential effects if any, resulting from the contravention. Actions and/or omissions that present an immediate and potentially serious risk to public safety, protection of public and private property and significant and/or ongoing adverse environmental effects may require an immediate response prior to any other action. This may include:

- 5.2.1. An abatement notice, enforcement, or interim enforcement order to prevent further serious environmental damage from starting or continuing.
- 5.2.2. Immediate closure in the case of a serious food hygiene risk.
- 5.2.3. Seizure of an offending animal in the case of a dog attack.

### 5.3. Gathering Information

- 5.3.1. Once Council is made aware of an alleged breach, investigations will commence including gathering evidence, speaking to witnesses, and obtaining explanations to establish whether, how, and why the alleged breach has occurred and to enable informed decisions to be made. The depth and scope of an investigation will be dependent on the seriousness of the incident.
- 5.3.2. In less serious matters, it may be sufficient to write to the offending party, or parties, requiring written explanations as to why the alleged breach has occurred and the circumstances surrounding the breach, and then to determine an appropriate response.
- 5.3.3. In more serious matters, an in depth investigation it is expected including detailed witness statements and interviews with liable parties under formal caution.

### 5.4. Evaluating the Enforcement Response Option(s)

- 5.4.1. Determining the factors to be considered and the correct enforcement response will be based on accurate interpretation of relevant legislation and guidelines that have been provided by the Courts. Factors to be considered include:
  - The actual adverse effects.
  - The potential adverse effects.
  - Whether the breach was deliberate or accidental.
  - Foreseeability of incident.
  - The degree of value/sensitivity of affected area(s).
  - The attitude of the offender towards the breach.
  - Any effort made to avoid, remedy, and/or mitigate the adverse effects.
  - The effectiveness of any remediation or mitigation undertaken.
  - Any profit or benefit gained by alleged offender.
  - Any relevant special circumstances outside the control of the party involved

that had facilitated the occurrence of the breach.

- 5.4.2. Not every factor will be relevant in every given situation. On occasion, one single factor may be so overwhelmingly aggravating, or mitigating, that it may influence the ultimate decision. Each case is unique, and individual circumstances need to be considered on each occasion in order to achieve a fair and reasonable outcome.

**5.5. Determining the Enforcement Response**

- 5.5.1. To optimise objectivity and fairness, an Oversight Panel will review recommendations made by the authorising officer toward court proceedings. If Council has a qualified lawyer on staff, it is preferred that this person be included on the panel where possible. The panel of three requires consensus in order to proceed to prosecution, and is comprised of three of the following Council officers:

- Members of the Senior Leadership Team
- Risk & Assurance Manager where available
- Qualified lawyer on staff where available

Visual representation of the enforcement process - Appendix (ii).

**6. Enforcement Options**

**6.1. Enforcement Tools**

Council regulatory officers have a range of enforcement tools available to address non-compliance. These include:

- *Informal Actions* - focus on providing education and incentive-based responses to allow the person to become better-informed and to develop their own means to improve compliance
- *Directive Actions* - looking forward, giving direction and righting the wrong (Steps outlined in Appendix iv)
- *Punitive Actions* - looking back and holding people accountable for what they have done (See Appendix iv)

**6.2. Enforcement Options**

	Building	District Planning and resource consents	Environmental Health	Liquor	Noise	Animal Control	Bylaws	Parking	Other
<b>Education and Incentive</b>									
Education and Engagement (including verbal warning)	★	★	★	★	★	★	★	★	★
<b>Directive Actions (Appendix (iii) for detailed description)</b>									
Letter of Direction	★	★	★	★	★	★	★		★
Excessive Noise Direction					★				
Notice to Fix	★								
Abatement Notice		★			★	★			
Enforcement Order		★							
Negotiated settlements	★	★	★	★	★	★	★		★
<b>Punitive Actions (Appendix (iii) for detailed description)</b>									
Formal Warning	★	★	★	★	★	★	★		★
Infringement Notice	★	★		★		★	★	★	
Prosecution	★	★	★	★	★	★	★	★	★

**7. Council Obligations to Complainant**

7.1. To initiate an enforcement investigation, complaints should be made via the standard form which can be found on the Council website, or at the Council offices, or be sent out to complainants if requested.

7.2. To assist the investigation, maximal information should be provided when the initial enquiry is made. This should include the identity and address of complainant, the address at which the alleged breach has taken place, a description of the unauthorised activities and the harm that is considered to be caused. Complainants will also be encouraged to send in dated photographs of the alleged breach in order to assist the investigation.

7.3. In respect of complaints received, the following standards apply:

- 7.3.1. All valid complaints will be properly recorded and investigated.
- 7.3.2. The personal details of the complainant will be held in the strictest confidence unless legislation or the Court directs otherwise;
- 7.3.3. Other than cases where immediate or urgent action may be required, an initial investigation is to be undertaken within five working days of receipt of the complaint.
- 7.3.4. In cases of involving serious and/or irreversible harm, the complaint will be investigated as a matter of priority, usually within 24 hours of receipt. Urgent action will be instigated to stop unlawful activity of a severe nature.
- 7.3.5. The complainant will be updated on any subsequent action that may result as soon as reasonably practicable.
- 7.3.6. Staff will not take sides in a dispute and remain impartial, with any subsequent action or inaction based on established facts.
- 7.3.7. Staff will judge what action is appropriate according to the evidence, particular circumstances, impact on the environment and the community, relevant policies, and legislation.

## **8. Council Obligations to Individuals in Breach**

- 8.1. Under normal circumstances, prior to taking formal enforcement action, the officer concerned will fully and openly discuss the circumstances of the breach with those involved.
- 8.2. Those in breach will be contacted as soon as possible following the site visit, and advice will be provided on what action is required to avoid, remedy and/or mitigate the environmental harm identified.
- 8.3. When breaches are found to have occurred, the Council officers will:
  - 8.3.1. Communicate clearly to the responsible party or their agent, identifying the problem and advising that they may need to undertake action to achieve compliance.
  - 8.3.2. Where officers consider there is a minimal effect, or effects are satisfactorily addressed by mitigation measures, a reasonable period of time will be allowed for the submission of a retrospective application to regulate an activity (where this is an available course of action under the relevant piece of legislation).
  - 8.3.3. Initiate formal enforcement action after being satisfied that there is a clear breach of the relevant piece of legislation, and there has been an adverse impact on the environment.
  - 8.3.4. In the case of formal action being authorised, the rights of appeal will be explained to those in breach.

## **9. Prosecution Guidelines**

- 9.1. Council will adhere to the standards of good criminal prosecution practice expressed in the Solicitor-General's Prosecution Guidelines (2013). The Solicitor-General's Prosecution



Guidelines and the Media Protocol for Prosecutors (Crown Law 2013), while not binding on local authorities, do represent best practice.

- 9.2. The Solicitor-General's Prosecution Guidelines provides a detailed guide to evidential and public interest considerations. The list below is illustrative and not a comprehensive list of the matters to be considered. Matters will vary in each case according to the particular facts.

Under the Solicitor-General's Prosecution Guidelines a prosecution is more likely if:

- 9.2.1. A conviction is likely to result in a significant sentence;
- 9.2.2. The offence caused significant harm or created a risk of significant harm;
- 9.2.3. The offence was committed against a person serving the public e.g. a police officer or a Council officer;
- 9.2.4. The individual was in a position of authority or trust;
- 9.2.5. The evidence shows that the individual was a ringleader or an organiser of the offence;
- 9.2.6. There is evidence that the offence was premeditated;
- 9.2.7. There is evidence that the offence was carried out by a group;
- 9.2.8. The victim of the offence was vulnerable, has been put in considerable fear, or suffered personal attack, damage or disturbance;
- 9.2.9. The offence was committed in the presence of, or in close proximity to, a child;
- 9.2.10. There is an element of corruption;
- 9.2.11. The individual's previous convictions or cautions are relevant to the present offence;
- 9.2.12. There are grounds for believing that the offence is likely to be continued or repeated for example by a history of recurring conduct;
- 9.2.13. The offence, although not serious in itself, is widespread in the area where it was committed;
- 9.2.14. A prosecution would have a significant positive impact on maintaining community confidence;
- 9.2.15. The individual is alleged to have committed the offence while subject to an order of the court;
- 9.2.16. A confiscation or some other order is required, and a conviction is a pre-requisite.

- 9.3. Under the Solicitor-General's Prosecution Guidelines a prosecution is less likely if:

- 9.3.1. The court is likely to impose a nominal penalty;
- 9.3.2. The individual has already been made the subject of a sentence and any further conviction would be unlikely to result in the imposition of an additional sentence or order;

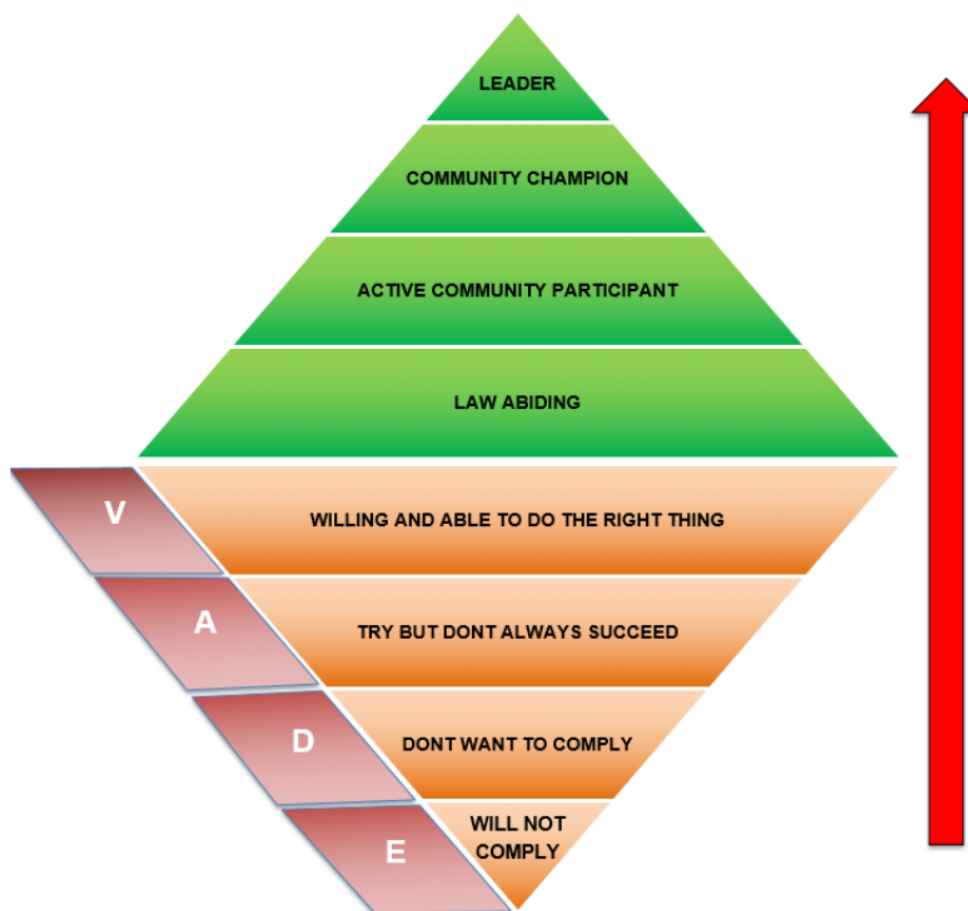
- 9.3.3. The offence was committed as a result of a genuine mistake or misunderstanding (these factors must be balanced against the seriousness of the offence;
  - 9.3.4. The loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by a misjudgment;
  - 9.3.5. There has been a long delay between the offence taking place and the date of the trial, unless: the offence is serious, the delay has been caused in part by the individual, the offence has only recently come to light, or the complexity of the offence has meant that there has been a long investigation;
  - 9.3.6. A prosecution is likely to have a bad effect on the physical or mental health of a victim or witness, always bearing in mind the seriousness of the offence;
  - 9.3.7. The individual is elderly or very young or is, or was at the time of the offence, suffering from significant mental or physical ill health, unless the offence was serious or there is real possibility that it may be repeated;
  - 9.3.8. The individual has put right the loss or harm that was caused (but individuals must not avoid prosecution or diversion solely because they pay compensation);
  - 9.3.9. Where other proper alternatives to prosecution are available (including disciplinary or other proceedings.
- 9.4. These considerations are not intended to be comprehensive or exhaustive. The public interest considerations that may properly be taken into account when deciding whether the public interest requires prosecution will vary from case to case.

## 10. Policy Review

- 10.1. This Policy will be reviewed at least every five years by the Environmental Services Committee, or at any time, on the recommendation of the Environmental Services Group Manager
- 10.2. The Policy does not cease to have affect because it is due for review or being reviewed.

Delegations, References and Revision History					
<b>Delegations</b> Identify here any delegations related to the policy for it to be operative or required as a result of the policy					
<b>Delegation</b>		<b>Delegations Register Reference</b>			
<b>Revision History</b> Summary of the development and review of the policy					
Revision	Owner	Date Approved	Approval By	Next Review	Doc Ref
1.0	Environmental Services Group Manager	TBC	Environmental Services Committee	2026	#1457105

## Appendix (i) Regulatory Compliance Diamond



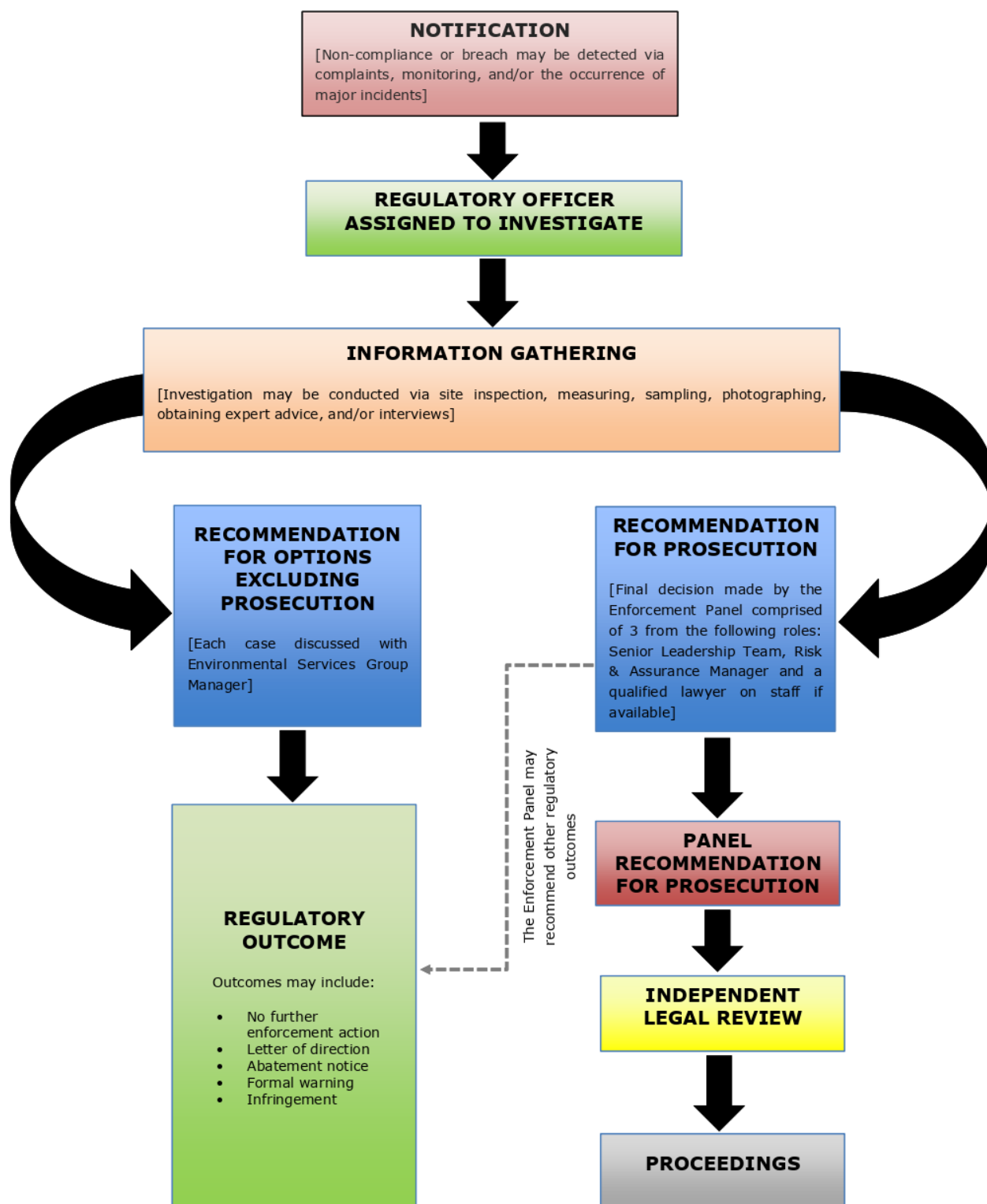
V – compliance achieved voluntarily

A – compliance achieved with assistance

D – compliance achieved when directed

E – enforcement required

## Appendix (ii) Enforcement Process






#1457105  
Enforcement Policy

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## Appendix (iii) Directive and Punitive Actions

## Directive actions

ACTION	DESCRIPTION OF ACTION	POTENTIAL IMPACTS ON THE LIABLE PARTY	WHEN MIGHT THIS ACTION BE APPROPRIATE?
 <b>Letter of direction</b>	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.	Such a direction is not legally enforceable.	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.
 <b>Abatement notice</b>	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.	A direction given through an abatement notice is legally enforceable.  To breach an abatement notice is to commit an offence against the RMA and make liable parties open to punitive actions.	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.
 <b>Enforcement order</b>	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.	A direction given through an enforcement order is legally enforceable.  To breach an enforcement order is to commit an offence against the RMA and make liable parties open to punitive actions.	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.

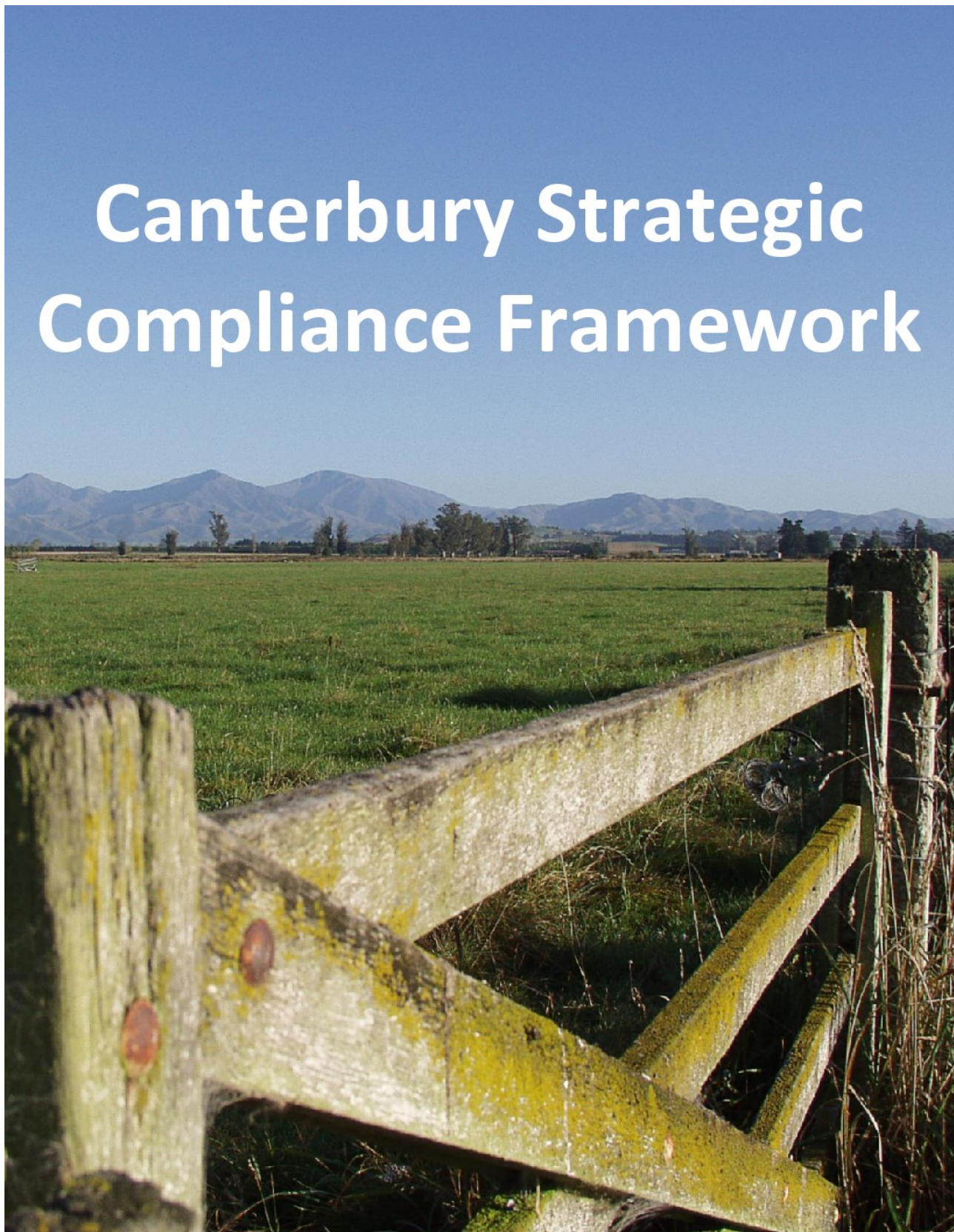
It is important to note that for every directive action, where a breach has been established that Council may also elect to take punitive action.

## Punitive actions

ACTION	DESCRIPTION OF ACTION	POTENTIAL IMPACTS ON THE LIABLE PARTY	WHEN MIGHT THIS ACTION BE APPROPRIATE?
<b>Formal warning</b>	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.	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.	A formal warning may be given when: • an administrative, minor or technical breach has occurred; and • the environmental effect or potential effect, is minor or trivial in nature; and • the subject does not have a history of non-compliance; and • the matter is one which can be quickly and simply put right; and • a written warning would be appropriate in the circumstances.
<b>Infringement notice</b>	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.	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.	An infringement notice may be issued when: • there is prima facie (on the face of it) evidence of a legislative breach; and • a one-off or isolated legislative breach has occurred which is of minor impact and which can be remedied easily; and • where an Infringement notice is considered to be a sufficient deterrent.
<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.  RMA matters are heard by a District Court Judge with an Environment Court warrant.  All criminal evidential rules and standards must be met in a 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 the criminal law.



# Canterbury Strategic Compliance Framework



#1174963

Endorsed by the Canterbury Chief Executives Forum – 6 August 2018



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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.

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## Purpose and overview

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

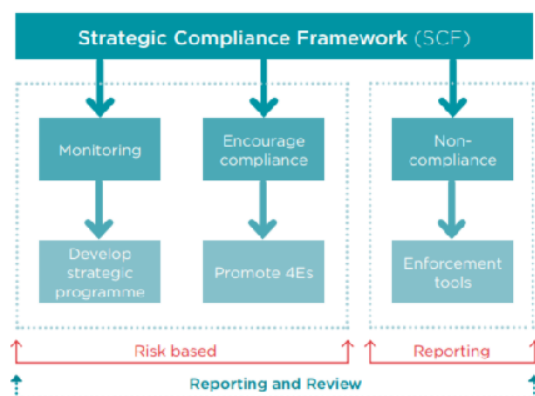
- monitor compliance (i.e. what is the state of compliance)
- encourage compliance (i.e. achieving the highest levels of compliance)
- deal with non-compliance (i.e. use of enforcement tools to bring about behaviour change)
- review each of these components (i.e. to gauge the effectiveness of the SCF).

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.

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## 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

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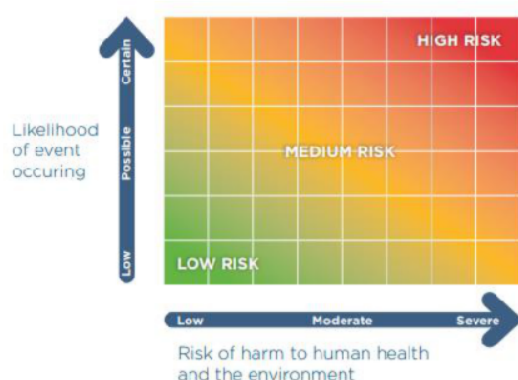
**Prioritise resources using a risk based methodology**

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**



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

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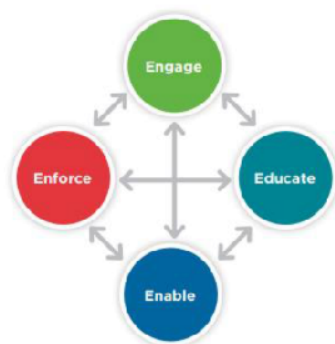


## Encouraging compliance

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.

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<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.

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## 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.”*

*CCCC – 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

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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

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- 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)

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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.

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**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 (%)	>0+ (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

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- 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)

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	Description of compliance behaviour	Example	Likely scenario	Likely compliance / enforcement approach
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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## Appendix 3: Enforcement tools - RMA

### Directive actions

ACTION	DESCRIPTION OF ACTION	POTENTIAL IMPACTS ON THE LIABLE PARTY	WHEN MIGHT THIS ACTION BE APPROPRIATE?
 Letter of direction	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.	Such a direction is not legally enforceable.	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.
 Abatement notice	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.	A direction given through an abatement notice is legally enforceable.  To breach an abatement notice is to commit an offence against the RMA and make liable parties open to punitive actions.	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.
 Enforcement order	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.	A direction given through an enforcement order is legally enforceable.  To breach an enforcement order is to commit an offence against the RMA and make liable parties open to punitive actions.	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.

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.

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## Punitive actions

ACTION	DESCRIPTION OF ACTION	POTENTIAL IMPACTS ON THE LIABLE PARTY	WHEN MIGHT THIS ACTION BE APPROPRIATE?
<b>Formal warning</b>	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.	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.	A formal warning may be given when: <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>
<b>Infringement notice</b>	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.	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.	An infringement notice may be issued when: <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>
<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.  RMA matters are heard by a District Court Judge with an Environment Court warrant.  All criminal evidential rules and standards must be met in a 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 the criminal law.

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



# **Enforcement Strategy and Prosecution Policy**

Adopted – Council 26 June 2014

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Endorsed by the Canterbury Chief Executives Forum – 6 August 2018



## 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

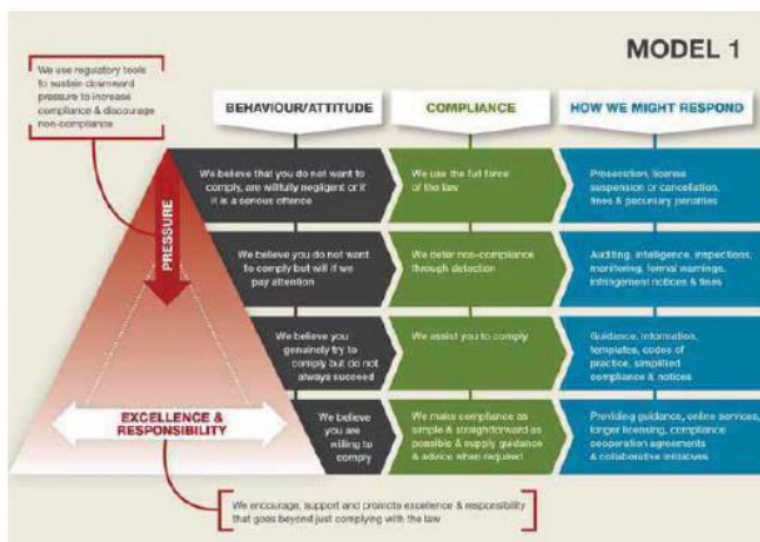
	Oral Warning	Written Warning	Notice to Fix	Infringement Notice	Abatement Notice	Enforcement Order	Prosecution
Building	x	x	x	x			x
Resource Consents	x	x		x	x	x	x
Environmental Health	x	x					x
Liquor	x	x		x			x
Parking	x			x			x
Waterways	x	x		x			x
Noise	x	x			x		x
Animal Control	x	x		x			x
District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

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

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

The action taken will reflect two key enforcement activity streams:

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

### Key Result Areas (Priority Activities)

#### Alcohol

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

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

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

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

It is important that the public 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

### 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.*



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*(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

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

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

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

### Solicitor General's Prosecution Guidelines

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

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.

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

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## 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**

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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.

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<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.

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## 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.



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## 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>
<ul style="list-style-type: none"> <li>Increased, but has reduced by 16%.</li> <li>The number of illegally parked vehicles towed has increased by 32%</li> </ul>	<ul style="list-style-type: none"> <li>Increased (136%)</li> <li>Dog fouling complaints have increased (21%)</li> <li>The number of infringements issued has increased (29%)</li> </ul>	<ul style="list-style-type: none"> <li>hearings has increased significantly following the introduction of the Sale and Supply of Alcohol Act 2012.</li> </ul>	<ul style="list-style-type: none"> <li>not wearing a life jacket was successfully upheld</li> <li>Targeted increased seasonal patrolling was undertaken on Lakes Wakatipu and Lake Wanaka.</li> </ul>	<ul style="list-style-type: none"> <li>remains at a low level.</li> </ul>
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 dissatisfied 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>

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

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**How will we do it:****Actions to implement the Areas of focus**

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**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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- 8      Consideration of Urgent Business Items**
- 9      Consideration of Minor Nature Matters**