



Waimate
District Council



13 December 2022

Enforcement Policy 325

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POLICY OVERVIEW

1.0 Purpose

- 1.1 The present policy formalises the Waimate District Council's (the Council) regulatory compliance and enforcement procedures, and, furthermore, it outlines those principles that the Council adheres to within its regulatory decision-making. The specific purposes of the policy are:
- a. To inform the general public of the Council's approach to the compliance and enforcement of the legislation it is responsible for enforcing;
 - b. To outline the possible enforcement actions able to be administered by the Council;
 - c. To guide and assist the Council regulatory officers in the pursuit of their compliance, enforcement, and prosecution functions; and,
 - d. To ensure consistent and appropriate decision-making on all regulatory matters related to compliance, enforcement, and prosecution.

2.0 Scope

- 2.1 The Council is responsible for the administration and regulation of a wide range of activities, as listed below, for the purpose of protecting the public and the environment in the Waimate District:
- Building and resource consents
 - Animal control
 - Noise management
 - Bylaws enforcement
 - Liquor licensing
 - Environmental health
 - Parking
 - Waimate District Plan
- 2.2 Among the main statutes under which the Council has responsibilities for enforcing regulatory requirements are:
- Biosecurity Act 1993
 - Building Act 2004
 - Dog Control Act 1996
 - Freedom Camping Act 2011

- Food Act 2014
- Forest and Rural Fire Act 1977
- 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
- Prostitution Law Reform Act 2003
- Reserves Act 1977
- Resource Management Act 1991
- Sale and Supply of Alcohol Act 2012
- Transport Act 1998
- Waimate District Consolidated Bylaws 2018
- Waimate District Council's public policies
- Waimate District Council's Plans

3.0 Principles

- 3.1 The regulatory activities for which the Council is responsible for provide a range of environmental and health and safety-related benefits for residents of the Waimate District. The requirements to monitor and ensure compliance with the law is a mandatory obligation of most of the Acts that the Council administers. Such Acts provide the specific legislative framework for the Council to enforce the rules and regulations.
- 3.2 While these Acts provide the enforcement tools, the manner which the Council chooses to enforce remain at its 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. Such discretion is exercised by the Council via the systematic application of principles listed below on all instances of regulatory decision-making:

3.2.1 Fairness and Proportionality

- a. The Council utilises regulatory interventions and actions most appropriate for any given situation. The Council uses its discretion justifiably and ensures that its decisions are appropriate to the circumstances, and that its interventions and actions will be proportionate to the risks posed to the community and/or the environment, and that such actions are proportionate to the intensity of the breach.

3.2.2 Consistency

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

3.2.3 Transparency

- a. The Council provides clear information and explanation to the community in general, and to the regulated individuals in particular, regarding standards and requirements for compliance, and regarding the enforcement mechanism utilised by the Council.

3.2.4 Targeted

- a. The Council focuses on the most important issues and problems 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.

3.2.5 Responsiveness and Effectiveness

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

3.2.6 Cooperation

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

3.2.7 Legality and Ethicality

- a. The Council conducts itself lawfully and impartially and in accordance with the outlined principles, relevant policies, and guidelines. The Council will document and take responsibility for its regulatory decisions and actions.

3.2.8 Evidence-based Approach

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

PROCEDURES

4.0 Enforcement Matrix

4.1 The following chart represents enforcement options available to the Council in response to designated breaches.

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

4.2 The enforcement tool used to achieve compliance is dependent upon factors such as:

- a. The nature and scale of the harm caused by the breach;
- b. The nature of the penalty which is likely to be most effective in ensuring compliance or acting as a deterrent;
- c. Whether the offending relates to a Council priority for greater compliance;
- d. Whether there is general public awareness of the regulation; and
- e. Whether there has been previous breaches.

4.3 The relationship of the relevant factors, which assist in determining the appropriate course of action, is depicted in Appendix 1. It must be noted that in certain circumstances, legislation will dictate the appropriate response/penalty.

5.0 Enforcement Process

5.1 The following section outlines the enforcement process that the Council undertakes from the point of discovering an offence throughout to the decision to take enforcement action. The response upon the discovery of an offence will be largely dependent on several factors, including the need to deal with any ongoing adverse environmental effects, the risk of recurring breach, and the seriousness of the breach. It is expected that the response will take the sequential approach discussed below:

5.1.1 Response to Effects

- a. Upon discovery, the initial response will be to assess the actual or potential effects, if any, resulting from the contravention. Significant adverse effects will require an immediate response prior to any other action. This may include:
 - To prevent further serious environmental damage from starting or continuing; actions may include abatement notice, enforcement, or interim enforcement order.
 - An immediate closure in the case of a serious food hygiene risk.
 - Seizure of an offending animal in the case of a dog attack.

5.1.2 Gathering Information

- a. Once the Council is made aware of an alleged breach, the next stage is to conduct investigations- which would include gathering evidence, speaking to witnesses, and obtaining explanations. The purpose of this is to find out whether, how, and why the 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.
- b. In less serious matters, it may be sufficient to write to the offending party, or parties, requiring written explanations as to why the breach has occurred and as to circumstances surrounding the breach, and then to determine an appropriate response.
- c. In more serious matters, it is expected that the investigation will be more in depth and that detailed witness statements will be obtained and that liable parties will be interviewed under formal caution.
- d. Regardless of the level of offending, a response will ordinarily be sought from an offender. The exception to this would be matters of a very minor nature with nil environmental or other detrimental effects, or where the person has responded such that the effects are remedied and officers involved are assured that the matter will not occur again.
- e. Upon receipt of any explanation, the next and final stage is one of deciding on an appropriate response to the breach via a sound decision-making process.

5.1.3 Evaluating the Enforcement Response Option(s)

- a. Determining the correct enforcement response requires considerable skill. It also requires a good knowledge, and accurate interpretation, of the relevant legislation involved. It is widely accepted across agencies that the Courts have provided helpful guidelines as to what factors are appropriate to consider in order to determine the seriousness of a breach. Factors to consider are:
 - The actual adverse effects
 - The potential adverse effects
 - Whether the breach was deliberate or incidental
 - 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
- b. It must be noted that 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.

5.1.4 Determining the Enforcement Response

- a. To maximize objectivity and fairness, an oversight panel reviews recommendations made by the authorising officer toward court proceedings. The panel of three requires consensus in order to proceed to prosecution, and is comprised of the following Council officers:
- The Chief Executive
 - Regulatory & Compliance Group Manager
 - Asset Group Manager

5.2 For a visual representation of the enforcement process, see Appendix 2.

6.0 Enforcement Options

6.1 The Council regulatory officers have a broad range of enforcement options available to them to address matters of non-compliance. The tools that apply to the different regulatory functions are illustrated in the table below. These tools can be categorized into three main types, and are compatible with the Canterbury Strategic Compliance Framework: a) informal actions, b) directive actions, and c) punitive actions. 'Informal actions' are focused 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' are about looking forward and giving direction and righting the wrong (See Appendix 3). 'Punitive actions' are about looking back and holding people accountable for what they have done (See Appendix 4). The primary purpose of the informal and directive actions is to encourage compliance via engaging, educating, and enabling stakeholders, while the punitive action focuses on using enforcement tools to deal with non-compliances. The following matrix provides an overall view of the enforcement options available to the Council:

	Building	Planning and Resource Consents	Environmental Health	Liquor	Noise	Animal Control	Bylaws
Education and incentive							
Education and Engagement	•	•	•	•	•	•	•
Directive actions							
Letter of Direction	•	•	•	•	•	•	•
Excessive Noise Direction					•		
Notice to Fix	•						
Abatement Notice		•			•	•	
Enforcement Order		•					
Negotiated Settlements	•	•	•	•	•	•	•
Punitive actions							
Formal Warning	•	•	•	•	•	•	•
Infringement Notice	•	•		•		•	•
Prosecution	•	•	•	•	•	•	•

7.0 Council Obligations to Complainant

- 7.1 To initiate an enforcement investigation, complaints should be preferably made via the standard form which can be found on the Council website, or at the Council offices, or alternately they can be sent out to complainants if requested.
- 7.2 In order to assist the investigation, we ask that maximal information 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. In respect of complaints received, the following standards apply:
- All valid enquiries will be properly recorded and investigated;
 - The personal details of the new enquirer will be held in the strictest confidence;
 - Other than cases where immediate or urgent action may be required, an initial investigation is to be undertaken within five working days of receipt.
 - In cases of involving a 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.

- e. The enquirer will be updated on any subsequent action that may result as soon as reasonably practicable.
- f. Staff will not take sides in a dispute; staff will however judge what action is appropriate according to the evidence, particular circumstances, impact on the environment and the community, relevant policies, and legalisation.

8.0 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. 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. When breaches are found to have occurred, the Council officers will:
- a. Communicate clearly to the responsible party or their agent, identifying the problem and that they may need to undertake action to achieve compliance.
 - b. 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 regularise an activity (where this is an available course of action under the relevant piece of legislation).
 - c. Initiate formal enforcement powers 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.
 - d. In the case of formal action being authorised, the rights of appeal will be explained to those in breach.

9.0 Prosecution Guidelines

- 9.1 The 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, represent best practice.
- 9.2 The Solicitor-General's Prosecution Guidelines is a comprehensive 31-page document providing a detailed guide to evidential and public interest considerations, and the list below is illustrative only and not a comprehensive list of the matters to be considered. Matters will vary in each case according to the particular facts.
- 9.3 Under the Solicitor-General's Prosecution Guidelines a prosecution is more likely if:
- a. A conviction is likely to result in a significant sentence;
 - b. The offence caused significant harm or created a risk of significant harm;
 - c. The offence was committed against a person serving the public e.g. a police officer or a Council officer;
 - d. The individual was in a position of authority or trust;
 - e. The evidence shows that the individual was a ringleader or an organiser of the offence;

- f. There is evidence that the offence was premeditated;
- g. There is evidence that the offence was carried out by a group;
- h. The victim of the offence was vulnerable, has been put in considerable fear, or suffered personal attack, damage or disturbance;
- i. The offence was committed in the presence of, or in close proximity to, a child;
- j. There is an element of corruption;
- k. The individual's previous convictions or cautions are relevant to the present offence;
- l. There are grounds for believing that the offence is likely to be continued or repeated for example by a history of recurring conduct;
- m. The offence, although not serious in itself, is widespread in the area where it was committed;
- n. A prosecution would have a significant positive impact on maintaining community confidence;
- o. The individual is alleged to have committed the offence while subject to an order of the court;
- p. A confiscation or some other order is required, and a conviction is a pre-requisite.

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

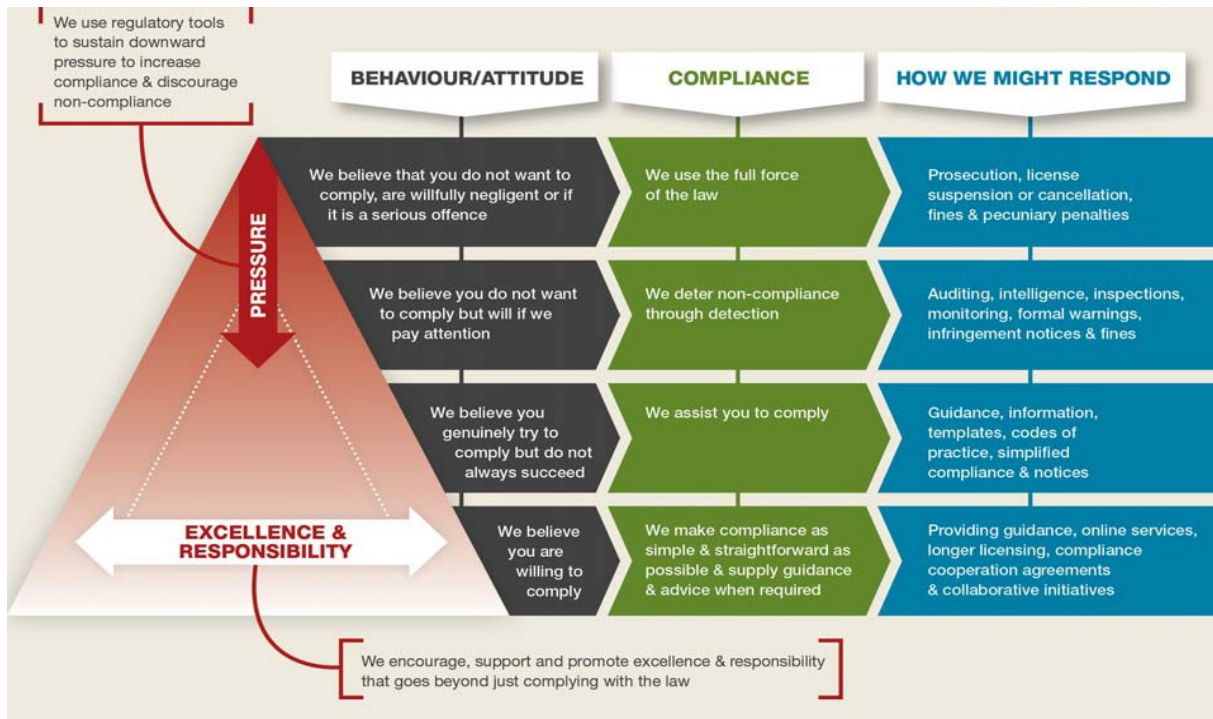
- a. The court is likely to impose a nominal penalty;
- b. The individual has already been made the subject of a sentence and any further conviction would be unlikely to result in the imposition of an additional sentence or order;
- c. The offence was committed as a result of a genuine mistake or misunderstanding (these factors must be balanced against the seriousness of the offence);
- d. The loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by a misjudgement;
- e. 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;
- f. 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;
- g. 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;
- h. 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);
- i. Where other proper alternatives to prosecution are available (including disciplinary or other proceedings).

- 9.5 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.

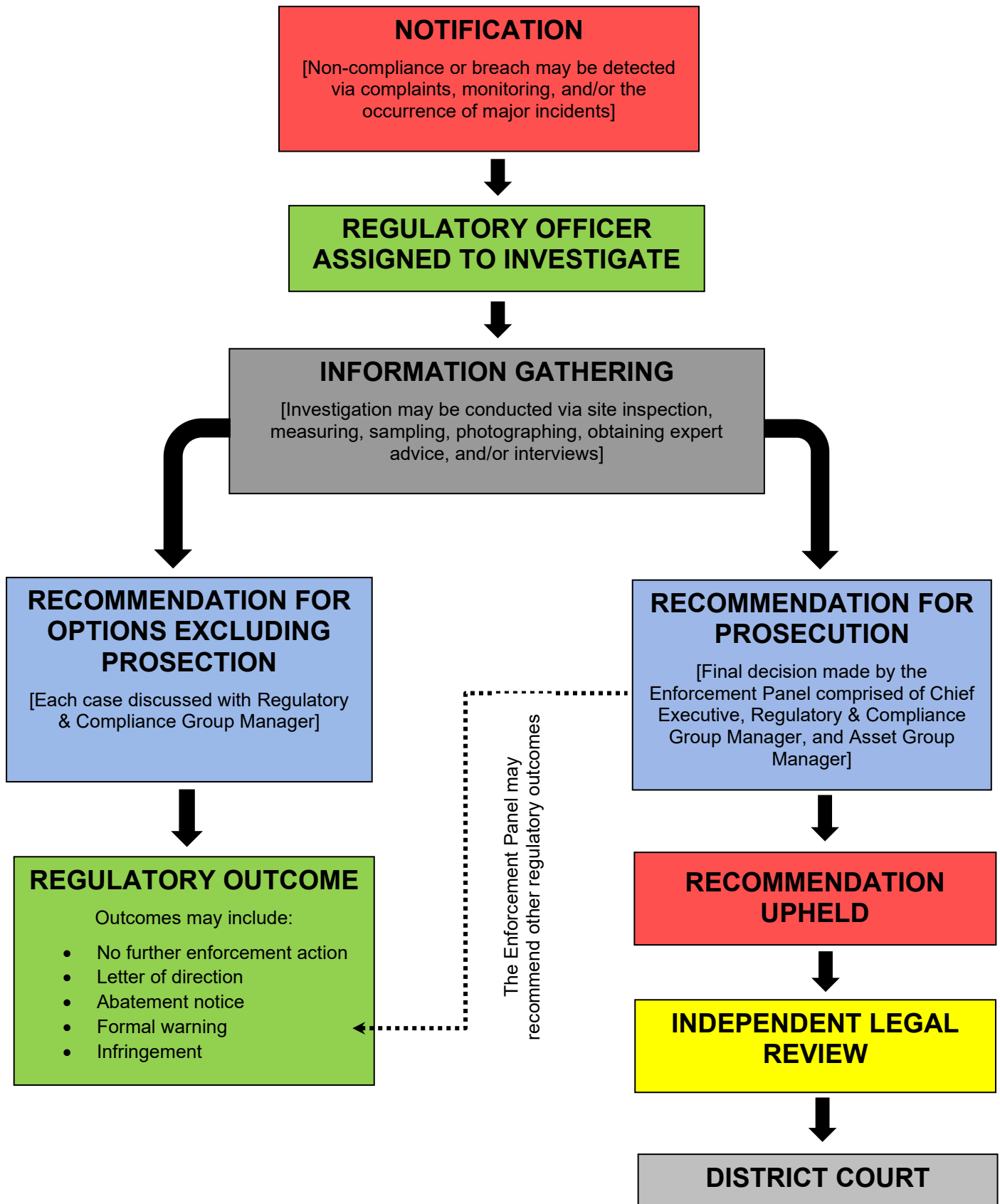
10.0 Document Control

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Appendix 1 – Enforcement Factors






Appendix 2 – Enforcement Process



Appendix 3 – Directive Actions




Directive actions

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

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

Appendix 4 – Punitive Actions

Punitive actions

ACTION	DESCRIPTION OF ACTION	POTENTIAL IMPACTS ON THE LIABLE PARTY	WHEN MIGHT THIS ACTION BE APPROPRIATE?
 <p>Formal warning</p>	<p>A formal warning is documented by way of a letter to a culpable party informing them that an offence against the RMA has been committed, and that they are liable.</p>	<p>No further action will be taken in respect of that breach.</p> <p>However, the warning forms part of a history of non-compliance and will be considered if there are future incidents of non-compliance.</p>	<p>A formal warning may be given when:</p> <ul style="list-style-type: none"> • 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.
 <p>Infringement notice</p>	<p>An infringement notice is a written notice which requires the payment of a fine. The amount of the fine is set in law. Depending on the breach the fine will be between \$300 and \$1000.</p>	<p>No further action will be taken in respect of that breach. However, the infringement notice forms part of the history of non-compliance and will be considered if there are future incidents of non-compliance.</p>	<p>An infringement notice may be issued when:</p> <ul style="list-style-type: none"> • 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.
 <p>Prosecution</p>	<p>A prosecution is a process taken through the criminal courts to establish guilt or innocence and, if appropriate, the court will impose sanctions.</p> <p>RMA matters are heard by a District Court Judge with an Environment Court warrant.</p> <p>All criminal evidential rules and standards must be met in a RMA prosecution.</p>	<p>A successful prosecution will generally result in a conviction, a penalty imposed and consideration to costs of the investigation.</p> <p>A prosecution forms part of the history of non-compliance and will be considered if there are future incidents of non-compliance.</p>	<p>A prosecution may be considered appropriate when the factors listed above indicate that the matter is sufficiently serious to warrant the intervention of the criminal law.</p>