

Waitaki District Council

Compliance and Enforcement Policy

Contents

Introduction	2
Encouraging Compliance.....	2
Enforcement Principles.....	3
Council obligations to complainant	4
Transparency.....	4
Consistency of process.....	4
Fair, reasonable and proportional approach	5
Evidence based, informed.....	5
Collaborative	5
Lawful, ethical and accountable	5
Targeted	5
Responsive and effective	5
The Enforcement Pathway.....	5
Gathering information	6
Selecting an Enforcement Response.....	6
Compliance Triangle (Braithwaite and Ayres model)	7
Prosecution Guidelines	7
Enforcement Matrix.....	8
Review.....	9

Introduction

Waitaki 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 but are not limited to:

- Alcohol
- Animal Control
- Building
- Bylaws
- District Plan
- Environmental Health
- Litter
- Noise
- Parking
- Resource Consents
- Waterways

While intended primarily for enforcement staff, this policy also provides other staff in Council and the general public with an understanding of the purpose and principles to be applied in monitoring and enforcing rules and regulations in the Waitaki District. It also provides insight into the range of enforcement tools available to Council and the processes undertaken to achieve desired outcomes. This policy will be reviewed and updated as required under legislation.

Enforcement is an integral part of the implementation and administration of the law. Council has broad-ranging environmental, planning, and development control responsibilities. This includes the statutory obligation to enforce its legal duties and responsibilities under the wide range of Acts it administers.

The reason Council is required to enforce the law is essentially related to matters of health, safety and environmental protection. These are matters that Parliament has deemed to be of sufficient public interest to merit Government intervention.

The need to take enforcement action may arise following routine monitoring or complaint investigation. In both instances, the need to take enforcement action will arise because a breach has arisen.

We can broadly categorise enforcement mechanisms as being concerned with three interrelated outcomes. These are:

- Avoidance, mitigation or remedying of adverse effects;
- Compliance awareness;
- Deterrents and restitution.

Typically, the process of undertaking enforcement is a staged one of promoting awareness and providing assistance, warnings, issuing of enforcement notices and in serious cases, prosecution, although this may vary from time to time. This spectrum approach encourages positive behaviour change thus ensuring highest levels of compliance.

Encouraging Compliance

It is important that Territorial Authorities take a comprehensive 'spectrum' approach to encourage the highest levels of compliance through developing and understanding and sustained behaviour change.

The 4E's Model is a helpful way of displaying the four components that a comprehensive strategy should have. The 4E's: 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 the organisation. It is vital that the implementation of each component of the model is coordinated and communicated well.

The resource and emphasis put into anyone '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

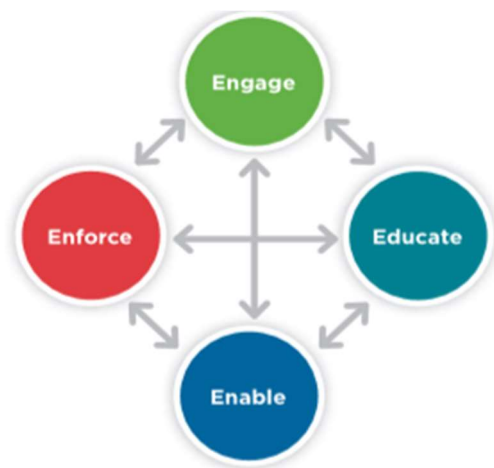
more emphasis on different components over time and the use of the 4Es is dynamic and changes, but in a coordinated and planned fashion. Each of the components is explained in more detail:

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.

Enable – provide opportunities for regulated parties to be exposed to industry best practice and regulatory requirements. Link regulated parties with appropriate industry advisors. Promote examples of best practice.

Enforce – when breaches of regulation, or no-compliance 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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Enforcement Principles

The requirement to monitor and ensure compliance with the law is a mandatory obligation of most of the Acts that Council administers. These Acts provide the specific legislative framework for Council to enforce the rules and regulations. While these Acts provide the enforcement tools, how Council chooses to enforce remains at its discretion. This is necessary, so when considering that compliance and enforcement is complex in law and usually complicated by many factors, all having a bearing one way or another on an appropriate response.

Despite this, there are clearly established sets of guidelines and principles for enforcement. Council will apply and adhere to these principles when carrying out enforcement activities.

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

- 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
- Waitaki District Bylaws
- Waitaki District Council's public policies
- Waitaki District Council's plans

Council obligations to complainant

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.

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 the 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 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.
- The enquirer will be updated on any subsequent action that may result as soon as reasonably practicable.
- 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 legislation.

Transparency

We will provide clear information and explanation to the regulated community about the standards and requirements for compliance. We will ensure that the community has access to information as well as actions taken by us to address environmental issues and non-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 and that our interventions and actions will be proportional to the risks posed to health, safety and environmental protection, 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* and 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 district. We will engage with the community and consider public interest, those we regulate, and government to explain and promote regulatory requirements, and achieve better community outcomes.

Lawful, ethical and accountable

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

Targeted

We will target our regulatory interventions on non-compliant activities that pose the greatest risk to community and the environment. We will apply the right tool for the right problem at the right time.

Responsive and effective

We will consider all alleged non-compliance to determine the necessary interventions and action to minimise impacts on the community and the environment. We will respond in an effective and timely manner in accordance with legislative and organisational obligations. In some instances, Council may decide to take no further action. This means that we have not been able to find sufficient evidence, or it is not in the public interest to intervene. The decision to take no further action will be recorded.

The Enforcement Pathway

The following section outlines the enforcement pathway expected to be undertaken from discovery of an offence through to the decision to take enforcement action.

The response upon discovery of an offence will largely be dependent on several factors, including the need to deal with any ongoing adverse environmental effects, risk of continued offending, and the seriousness of the offence. It is expected that the response will take the staged approach outlined below.

* "Sound science" is not a synonym of "good science" practices, but rather it is an ideological policy statement more about the criteria for the use of science in policy making. It is invoked mostly to call into question the validity of a given study or scientific statement.

Response to Effects

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:

- Issuing an excessive noise direction which – if not complied with – allows a Warranted Officer to enter a property and seize, remove, lock or render inoperable any instrument, appliance, vehicle, aircraft, train or machine that is producing or contributing to the excessive noise.
- An immediate closure of premises in the case of a serious food hygiene risk.
- Seizure or destruction of an offending animal in the case of a dog attack.
- Issuing of an 'Abatement notice' for non-compliant work

Gathering information

Following any urgent intervention to deal with effects, the next stage is to conduct investigations, including gathering evidence, speaking to witnesses, and obtaining explanations from relevant parties.

The purpose of this is to find out whether, how, and why the breach occurred and enable informed decisions to be made. The depth and scope of an investigation will be dependent on the seriousness of the incident.

In less serious matters, it may be sufficient to write to the alleged offending party or parties requiring written explanation as to why the offence occurred and the circumstances behind it, and then determine an appropriate response.

In more serious matters, it is expected that the investigation will be more in-depth and that detailed witness statements will be obtained and alleged offending parties will be interviewed under formal caution.

Regardless of the level of offending, a response will ordinarily be sought from an alleged offender. The exception to this would be matters of a very minor nature with nil environmental or other detrimental effects, or the person has responded such that the effects are remedied and it will not happen again.

Upon receipt of any explanation, the next and final stage is one of deciding on an appropriate response to the offence through a sound decision-making process.

Note: Notwithstanding the above, Council reserves the right to proceed directly to enforcement action, including prosecution, against parties where the circumstances support this.

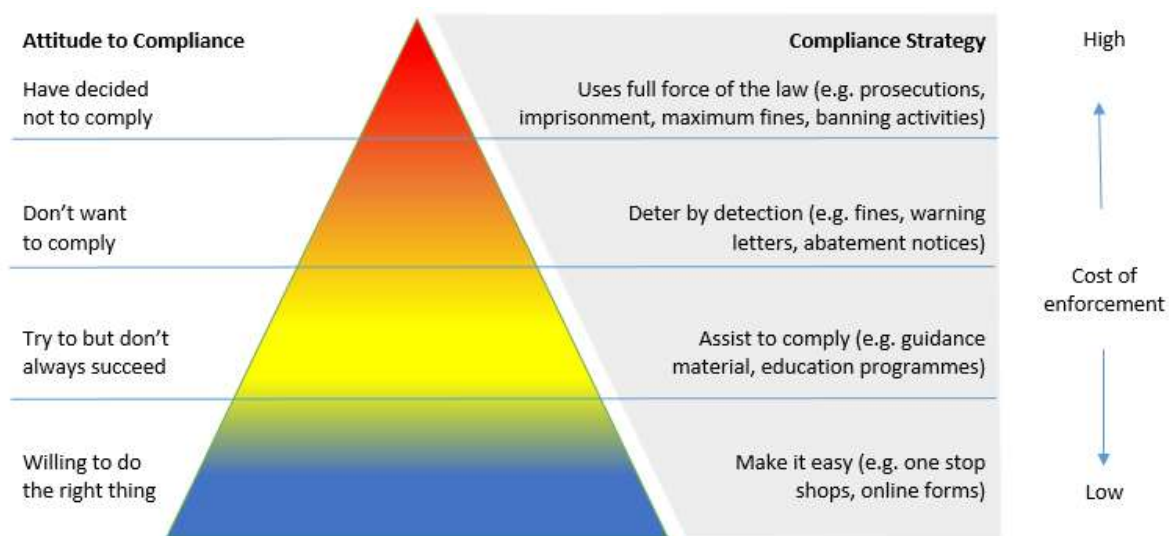
Selecting an Enforcement Response

Deciding on the appropriate enforcement response is often complicated by a range of factors. In order to make a sound and justifiable decision, it is essential that all relevant issues surrounding the matter are carefully considered prior to actual enforcement action being taken.

The Compliance Triangle (*Diagram 1*) is a widely used model for achieving positive behavioural change. At the bottom of the pyramid are those who are willing to comply; at the top are those who resist compliance. The pyramid is designed to create downward pressure – that is, to move non-compliant individuals and organisations down the pyramid to full compliance and to where lower level and less costly interventions can be utilised.

Compliance Triangle (Braithwaite and Ayres model)

Diagram 1



Prosecution Guidelines

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.

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.

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

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

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

- The court is likely to impose a nominal penalty;
- 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;
- The offence was committed as a result of a genuine mistake or misunderstanding (these factors must be balanced against the seriousness of the offence);
- 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;
- 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;
- 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;
- 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;
- 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);
- Where other proper alternatives to prosecution are available (including disciplinary or other proceedings).

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.

Applying the available enforcement options outlined in the matrix provides clear direction to individuals, stakeholders and the community on the expectations and likely response from Council to those failing to comply.

Enforcement Matrix

Council has various enforcement tools to ensure compliance for each activity undertaken.

Table 1: Enforcement Tools

	Oral Warning	Written Warning	Orders and Directions	Notice to Fix	Infringement Notice	Abatement Notice	Enforcement Order	Prosecution
Alcohol	X	X			X			X
Animal Control	X	X			X			X
Building	X	X		X	X			X
Bylaws	X	X			X			X
District Plan	X	X			X	X	X	X
Environmental Health	X	X	X					X
Litter	X	X			X			X
Noise	X	X	X			X		X
Parking	X				X			X
Resource Consents	X	X			X	X	X	X
Waterways	X	X			X			X

Review

Staff with delegated authority are empowered to make decisions they feel are appropriate. Where a prosecution or enforcement order is being considered, it should be reviewed for consistency against the principles and policies outlined in this document. The interim decision will be referred and made in consultation with the Group Manager prior to initiating any action.

Appeals

In order to comply with the rules of natural justice, an appeals process must be available to those who have had action taken against them. The response to such an appeal will be dependent on the original action by the Council. The table below indicates the level of response that would normally be considered appropriate; however, this is only for guidance and should not prevent an officer adjusting their response to a specific case:

Table 2:

Original Action Taken	Response(s)	Remarks
Warning – Oral or Written	Discuss with alleged offender and explain the purpose of the warning. Note their appeal on file.	No elevation of Response required. Inform manager if appropriate
Orders and Directions	In the case of an Excessive Noise Direction, no appeal process is shown within the RMA Act 1991. Further action by an officer is dependent on an individual not complying with the direction and either continuing or creating additional noise. As such, without that secondary action, no further action will be taken. Cleansing Order Sect 41 Health Act 41, Again no appeal is shown within the legislation. The issuing of a Cleansing order would have been made in conjunction with an individual. The individual on whom the order is served must comply with that order.	In the occasion of a compliant made in regard to the use of these powers, the manager will review actions taken and confirm to the individual that the officer has acted within the confines of the legislation used.
Infringement Notice	Alleged offenders have their summary of rights printed on the infringement notice. These rights allow them to contact the Council and deny liability and/or explain the reason for the offence. They may provide Council with an explanation of why the infringement should be withdrawn by the Council. This will be considered at the weekly Infringement Explanation Meeting (Policy to be developed) and a decision agreed. This would be either: 1. Not accept the explanation and refer the alleged offender to their rights as shown on the Infringement Notice. Or 2. Accept the appeal and cancel the Infringement Notice.	If the explanation is accepted, the Infringement will be withdrawn. However, if the explanation is refused, the alleged offender can request a court hearing or pay the infringement.
Notice – Notice to Fix or Abatement Notice	Any person on whom an abatement notice is served may appeal the notice. In the first instance, this can be directed to the Council, or it can be lodged directly with the Environment Court. An application to the Council must be made in writing to change or cancel the notice.	Abatement Notice – If withdrawn by the Council, written notice of the cancellation must be given to the person.

	Any person on whom a Notice to Fix is served may appeal the notice and request a determination by MBIE.	On receipt of a determination against the Council, the Notice to Fix will be cancelled and acknowledgment of this given to the alleged offender.
Enforcement Order	As the Council has applied to the Environment Court for this order, any appeal will need to be made through the court appeals process.	Information supplied to the alleged offender of how to complete the appeals process.
Prosecution	<p>As the process has been lodged with the court, any appeal should be heard by the court.</p> <p>This does not prohibit Council from taking into account any information provided by an alleged offender which could have an effect on any outcome in a court proceeding.</p> <p>The Council may withdraw the matter from the court if an alleged offender provides such information that makes it clear they were not responsible for the offence or admits to the offence and suitable alternatives to continuing prosecution are considered appropriate and are available to be taken.</p>	Confirmation to the alleged offender that the matter has been withdrawn in writing and full facts of the decision recorded on file.

Evaluating Effectiveness

All enforcement action undertaken by officers should be evaluated for effectiveness in achieving the desired outcome. In both successful and unsuccessful actions where further enforcement action was required, it is useful to examine what was effective or not, and what could have been improved or changed to make the process more effective.

Interagency Response

Where a breach involves both the District Plan and a Regional Plan, the relevant Regional Council may need to be involved. 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.

Some aspects of enforcement are also likely to involve the Police. Police assistance 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 coordinated with other Police work (e.g. monitoring of licensed premises).

Collaboration with other agencies may be required and the same principles apply.

Referring to Representative Bodies

In certain situations, we may refer to or refer a member of the public to certain representative professional bodies for determination or action. Such situations would typically be to consider a code of conduct, ethics or technical breach. Representative bodies may include but are not limited to:

- Building Practitioner Board
- New Zealand Plumbers, Drainlayers and Gasfitters Association
- South Island Independent Qualified Persons (IPQ) Registration Panel

Referral action is exclusive of any action deemed appropriate by this policy. Referral action may be the result of a single event or a result of multiple events over time. We will also work with such representative professional bodies if requested to provide information for events that may not have previously been brought to the attention of Council. In this circumstance, further action by Council under this policy may or may not be appropriate.