


# Compliance & Enforcement Policy

2024

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## Foreword

Welcome to our Compliance and Enforcement Policy. This policy will articulate what and how we act as regulators within the Kāpiti District.

Why regulate? Quite simply, regulation seeks to influence the behaviour of individuals and collectives in order to make community interactions safe and predictable, reducing uncertainty by setting expectations and standards via rules and articulating consequences for not meeting those standards and rules. In short, regulation is part of our social glue, whether it is keeping our communities safe or protecting the taonga that is our environment, while providing the foundation for a vibrant and more resilient Kāpiti.

We start from a position of guardianship and stewardship when describing what and how we regulate. We are committed to protecting all that is special about Kāpiti by judiciously implementing and administering the various policy positions that central government and Council has adopted as our operating framework. Moreover, our stewardship approach to regulating seeks to include the oversight, monitoring, and care of our various regulatory systems, taking an end-to-end view and ensuring that all the different parts of the regulatory system work well together to achieve its goals and are fit for purpose over time. This requires us to be proactive, collaborative, analytical and open for change as we imbed good regulatory practice.

Our activities are varied and often challenging, yet critically important in delivering on our legislative responsibilities and on the community aspirations of Kāpiti, ensuring it remains a safe and healthy place with a thriving environment and vibrant economy.

Our operating environment is also full of complexities and challenges as communities experience more stress and tension. This is magnified by a central government change agenda that could have profound impacts on what and how we regulate.

I trust you find value in this document, that it clearly articulates my expectations of us as regulators and is a place that you can see and be proud of your positive contribution to our bigger picture of a safe, healthy, and vibrant Kāpiti.



**James Jefferson**

Group Manager of Regulatory & Environment Group

## Introduction

There are three types of environmental monitoring that councils are actively involved in:

1. State of the environment
2. Efficiency and effectiveness of regulation
3. Compliance, monitoring and enforcement of activities and development and the management of its impact.

This compliance and enforcement policy focuses on the third area, ensuring that the regulation of development and public spaces achieves the desired outcomes.

The policy provides direction at a high level and outlines our approach to regulating new development to manage its impact on the receiving environment and our community.

With more growth comes more built development, but also associated social impacts, such as more food and alcohol facilities, more noise, an increase in domesticated animals and a greater demand for the use of public spaces (including our beaches, freedom camping sites and availability of public car parking).

The responsibility for regulating and monitoring compliance of new development and associated activities sits with the Regulatory & Environment Group within our Council.

## Purpose

We want to prevent harm and influence people's behaviour to equitably comply with rules designed to keep us all healthy and safe. This supports our Council to deliver on the outcomes that have been set by the community and government.

Our regulatory compliance monitoring work includes:

- checking that consent holders/licensees are meeting the conditions of their consent/licence
- checking that registered users, premises and animals meet the conditions of their registration (administrative/process monitoring)
- checking that members of the public are complying with relevant legislation and bylaws relating to the use of public spaces and animal management
- reporting to the public about levels of compliance and reporting back to policy makers on the effectiveness of regulation.

We want to make it easy to comply and difficult not to.

## Outcomes

The wider Council outcomes that we contribute to are:

- Ensuring warm, dry and safe development occurs on the Kāpiti Coast by enforcing required minimum standards.
- Maintaining a healthy and natural environment, where the impact of intensification and development is actively managed and monitored to reduce harm to our Kāpiti Coast environment.
- Ensuring our communities are safe and healthy.
- Allowing people to make economic choices with more certainty by knowing what to expect when investing in the Kāpiti Coast.

If we aim for these outcomes then we can enable the Kāpiti Coast to grow well and remain a quality place to live, work and play.

We already have strong foundations in place to help us achieve this:



## Our principles

To achieve the outcomes that we seek, we will adopt the following principles<sup>1</sup>:

**Transparency** - we will provide clear information and explanations to our community about the standards and requirements for compliance and ensure that information about district issues and non-compliance is accessible. We will measure and report on our regulatory performance.

**Consistency of process** - our actions will be consistent with legislation and within our powers. Compliance and enforcement outcomes will be consistent and predictable for similar circumstances.

**Fairness and proportionality** - we will apply regulatory interventions and actions appropriate for the situation. We will use our discretion justifiably and actions will be proportionate to the risks posed to people and the environment and the seriousness of non-compliance.

**Based in evidence, led by intelligence** - we will use an evidence-based and intelligence-led approach to our decision-making.

**Collaborative approach** - we will work with and, where possible, share information with, other regulators and stakeholders to ensure the best compliance outcomes. We will consider the public interest and engage with the community, those we regulate, and central government, to explain and promote environmental requirements and achieve better community and environmental outcomes.

**Legal, accountable, and ethical** - we will conduct ourselves lawfully, ethically and in accordance with these principles, as well as relevant policies and guidance. Our intent is to do what is right as we operate within the parameters that are set for us. We will document and take responsibility for our regulatory decisions and actions.

**Outcomes-focused** - we will focus on the most important issues and problems to achieve the best outcomes. We will target our strongest regulatory interventions at behaviours that pose the greatest risk to 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 (considering all relevant factors) and actions to minimise impacts on the district, the community and to maximise deterrence. We will respond in an effective and timely manner in accordance with legislative and organisational obligations.

These principles will ensure that our actions are transparent, and our decision making remains without influence or bias.

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<sup>1</sup> Based on Ministry for the Environment. 2018. Best Practice Guidelines for Compliance, Monitoring and Enforcement under the Resource Management Act 1991

## Our authorising regulatory environment

We operate under a suite of legislation. Collectively this enables us to provide appropriate stewardship, leadership and oversight of our regulatory system.

### Authorising legislation

Building Act 2004	Gambling Act 2003	Reserves Act 1977
Dog Control Act 1996	Burial and Cremation Act 1964	Resource Management Act 1991
Fire and Emergency New Zealand Act 2017	Self-Contained Motor Vehicles Act 2023	Litter Act 1979
Food Act 2014	Freedom Camping Act 2011	Summary Proceedings Act 1957
Health Act 1956	Criminal Procedure Act 2011	Transport Act 1962
Impounding Act 1955	Local Government Act 1974	The Sale and Supply of Alcohol Act 2012
Land Transport Act 1998	Local Government Act 2002	Trespass Act 1980
	Public Works Act 1981	

### Kāpiti Coast District Council – policies, bylaws and plans

Policies	Bylaws	Plans
Development Contribution Policy 2021	Solid Waste Management and Minimisation Bylaw 2021	Kāpiti Coast District Plan 2021
Class 4 Gambling Policy 2019	Control of Alcohol in Public Places Bylaw 2018	Airport Noise Management Plan
Dangerous and Insanitary Buildings Policy 2018	Keeping of Animals, Bees and Poultry Bylaw 2021	
Dog Control Policy 2019	Dog Control Bylaw 2019	
Freedom Camping Policy 2012	Public Places Bylaw 2017	
	Beach Bylaw 2021	
	Trade Waste Bylaw 2019	
	Transport Bylaw 2022	

## Our current operating environment

### Economic pressures

We see the increase in financial pressure on our communities and the continued need for additional housing in the district. Building requires a big investment and supply costs are increasing rapidly. The land in Kāpiti can be challenging to develop with many natural hazards existing on our low-lying land and slopes that require additional work and monitoring. We want to grow well in Kāpiti with quality and safe buildings without contributing to increasing costs through excessive monitoring and compliance costs. We also need to consider whole-of-life costs, who pays and who is responsible long term - this is a form of economic fairness. If we let something slide today because it will cost too much but it will cost more in the future, then it is not a fair decision for future residents.

### Changing behaviour

We are experiencing an increase in challenging and aggressive behaviour towards Council members from people within our communities. In recent times, stress and pressure in all areas of life has also increased and this has taken a toll on our communities. This is reflected in rates of poor mental wellbeing rising significantly across many age groups.<sup>2</sup> A significant component considered in our response to any breaches of regulation is the willingness of the person to correct and comply. A negative attitude towards compliance may require a quicker and stronger response from Council.

We also anticipate that increased urban intensification in Kāpiti will be a significant change for our community as people adjust to living closer to each other. Increasingly, our compliance function is also being used by conflicting neighbours to make repetitive complaints and counter-complaints against each other. This use of our compliance service in this manner can be time consuming and resource-intensive for Council. There is little benefit to the outcomes that we seek to achieve, and it can have a negative impact on the wellbeing of our staff.

### Ability to comply

We perceive that there is an increased level of non-compliance with the regulations that we work under in the district, including undertaking work without obtaining any consents. This is partly due to the increased complexity of regulation and residents not fully understanding what is required of them to comply with a variety of legislation.

Kāpiti Coast has also been experiencing growth at a time where the cost of building has risen. As a result, our teams are witnessing an increase in actions that appear to be driven by a desire for efficiency but are leading to non-compliance with regulation, and in some cases increased costs. Examples are undertaking earthworks in winter months, low-quality information contained within consent applications and an increase in non-payment of licensing/registration fees.

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<sup>2</sup> General Social Survey (GSS) 2021, Stats NZ Tatauranga Aotearoa



### Central government involvement

There are significant changes from central governments reform agendas. These include the Water Services Reform, the Local Government Review, Resource Management Reform (including climate change and reducing carbon emission expectations), Building Systems Review and change in housing density and supply to address access to affordable housing. These changes are combined with central government's desire to introduce new regulations and requirements at pace. The development sector is already stretched and a lack of clear guidance on implementing these policy changes is having a negative impact on the people who need to deliver on the changes.

### Impacts of climate change

More frequent and intense extreme weather events like flooding, storm surges, drought, forest fires, tornadoes and ex-tropical cyclones are also likely to impact people's health and property. More coastal erosion and flooding will damage homes and infrastructure like pipes and roads. We are beginning to experience more frequent and intense weather events that are leading to increased damage and flooding to properties and the natural environment.

## Our response

### Customers

- Regularly engage with and seek feedback from our community to understand the impact of our work.
- Aim to innovate for our customers, with the resources that we have, with the aim to reduce burden.
- Develop material to guide complainants on the process, which includes:
  - what is in a council's jurisdiction and what is not
  - the kind of information to include when notifying the council of an incident
  - other sources of advice and assistance.
- Explore more opportunities to recognise and reward our champion customers (including self-monitoring options, if appropriate).

### Continuous Improvement

- Undertake regular reviews of our end-to end compliance systems (including our risk settings) and level of resourcing.
- Regularly review case study examples of when our work has gone well, and not so well, to learn and improve.
- Improve the level of compliance activity and resource for permitted activity monitoring to meet the challenges of increased intensification in our district.
- Develop an internal pathway and process for handling of repetitive complainants with a view to reducing time and resources spent where there is little impact.

### Collaboration

- Continue to build relationships with our key partners – this includes mana whenua, agencies who we need to work with on high risk/complex work and those that we work with frequently.
- Work across Council teams to use our channels to educate and enable our customers to understand what is required of them and to make it easy to comply.
- Explore initiatives to establish a community network of interested groups that could assist with compliance education and monitoring.
- Seek more administration support to allow our delegated teams a stronger focus on the work that they are delegated to do.

### Conversations

- Commit to improving our communication and stakeholder engagement skills and reducing the use of technical jargon.
- Maintain a clear separation between the enforcement and political arms of the Council. We will continue to advise and educate councillors on regulations and seek their feedback on future changes.
- Engage with mana whenua to integrate mātauranga Māori into our assessments, including seeking statements of values and harm as part of our compliance and enforcement investigations.

## Colleagues

- Ensure that our teams have the tools and support they need to do their work efficiently, effectively and safely.
- Provide opportunities and time for our people to remain highly skilled in a constantly evolving regulatory environment.
- Equip our staff with skills to deal with confronting customers and complex situations.
- Regularly talk about our wellbeing and take positive action to look after ourselves and each other.
- Improve the ability to share our information across the Council to keep our colleagues and community safe.

## Our partners

We recognise that we cannot do this work alone. We need to work alongside our partners to achieve the outcomes that we seek. Our partners include:

### Mana whenua

Mana whenua of the district comprises the iwi and hapū of Ngā Hapū o Ōtaki (Ngāti Raukawa), Ngāti Toa Rangatira and Ātiawa ki Whakarongotai Charitable Trust. Together forming the ART (Āti Awa, Toa, Raukawa) Confederation.

Council has a formal Memorandum of Partnership agreement with iwi. Te Whakaminenga o Kāpiti is the independent advisory forum for this partnership. Te Whakaminenga o Kāpiti stems from two core principles of the Treaty of Waitangi as identified and defined by the Court of Appeal and the Waitangi Tribunal. The first principle, 'partnership', obliges both parties 'to act reasonably, honourably and in good faith'. For that, consultation is vital. The second principle, 'active protection', requires the Crown to protect Māori in the use of their lands and waters to the fullest extent practicable.

Te Whakaminenga o Kāpiti has always been involved with issues to do with resource management and ensures that the Māori world view is better represented and understood in the broader community. From the beginning Te Whakaminenga o Kāpiti has focused on harmonising different cultural attitudes to resources and solve local issues according to national legislation.

Through this document, Council recognises that mātauranga Māori enhances our approach to resource management, particularly around environmental stewardship and kaitiakitanga. Mana whenua hold unique knowledge around active protection measures of our resources and the identification of values that may be at risk of harm due to poor regulatory behaviour.

Council staff will continue to work with mana whenua to ensure a strong and effective partnership is achieved on compliance and enforcement matters.

We also recognise that there are opportunities to strengthen our partnerships, such as:

- Developing a greater shared understanding of mātauranga Māori
- Partnering on decision-making on enforcement issues
- Working together on active protection
- Increasing the sharing of information to better enable compliance
- Sharing our networks to broaden our reach and influence
- Broadening our understanding of 'harm' to include the cultural and spiritual relationship of the tāngata whenua with the natural world
- Seeking advice from tāngata whenua on possible reparation options where significant harm has occurred.

## Local authorities

Our council neighbours, Wellington Region and other local authorities across Aotearoa New Zealand are all dealing with similar compliance and monitoring issues. We will commit to work with, learn from and take opportunities with local authorities to share our experiences and our resources where possible.

## Central government – ministries and agencies

From time to time, council staff may require assistance from the police to execute a search warrant or in relation to the health and safety of enforcement officers. WorkSafe New Zealand also plays a part in our health and safety.

Relevant ministries and agencies are often responsible for ensuring legislation is effectively administered under its regulatory stewardship role.

Councill staff may partner with these agencies on the following issues:

- managing water quality.
- working with public health units on pollution incidents.
- consent monitoring of nationally significant projects (for example, Kāpiti expressway projects).
- regulating forestry, agriculture and biosecurity.
- regulating building, construction and infrastructure.
- civil defence and emergency management.
- collecting fines and fees.
- roading and parking transport rules.
- freedom camping education.

## Mahi tahi – one council

At an organisational level, our structure and leaders will ensure that there is adequate separation between the Council's regulatory function and the Council's infrastructure/building and economic development activity, i.e. where Council projects are subject to Council consenting requirements. We will also work with other teams in our Council to deliver our compliance and enforcement functions.

## Communications team

We rely on good communication to be effective. An example may be that we use a public campaign to educate on a compliance issue in our district, or that we may require a media release to outline the reasons for our actions. For these approaches to be successful, we need to work with our Communication and Engagement team to seek advice and assistance to improve understanding of the behaviours that we seek and actions that we take.

## Legal team

Our regulatory response requires the input of our legal experts into decision-making to ensure that the right approach is taken for the right outcome. Our legal team will become more involved when prosecutions and complex investigations occur but will also assist in ensuring that we use our principles and operate within our powers. The legal team will provide independent legal advice and, where necessary, instruct external legal specialists.

### **Information management team**

Our record keeping systems are essential to enable us to record, monitor and analyse activities. Technology can assist us by identifying emerging trends and turn our information into useful intelligence. Our systems and processes will ensure that the information is collected and used appropriately, and people's privacy is maintained.

### **Policy team**

As regulators of legislation, strategies, policies and bylaws, our compliance and monitoring regulatory function is well placed to provide feedback and evidence on the effectiveness of these regulatory instruments. We will work with our policy teams to provide feedback with a view to improving legislation and supporting regulation and its implementation.

### **Elected members**

Our councillors play an important governance role in setting the desired local outcomes that can assist us in prioritising our resources to deliver on these outcomes. Councillors also indicate the risk settings for our compliance and monitoring function and provide corresponding resources through the organisation's financial allocation processes. Reporting back to councillors on our compliance and monitoring function is also a requirement.

## Our people and their role

### Monitoring officers

People across our teams engage in consenting, licensing, inspecting, monitoring, and auditing to ensure compliance with legislation. Generally, the regulatory system is mandatory. Our monitoring officers ensure that customers participating within the regulatory system comply with the necessary rules/laws.

### Investigating officers

Where information about a compliance issue or incident comes to our attention, the relevant Council investigating officer will conduct the initial investigation. The powers that may be exercised by investigating officers are prescribed in their position descriptions or in formal delegations (for statutory powers) and vary according to the area for enforcement and the nature of the enforcement option.

### Compliance team leaders and compliance managers

The compliance team leaders and compliance managers will provide day-to-day advice on compliance and enforcement options to investigating officers. They will ensure that the right tool is used at the right time. They are also responsible for the ongoing reporting on compliance and enforcement activity within the Kāpiti Coast District.

### Council's legal team

The Council's legal team will provide independent legal advice to Council staff and may instruct external legal specialists.

### Quarterly enforcement meetings

A quarterly meeting is held with the regulatory services leadership team to offer guidance and advice on day-to-day compliance and enforcement decision-making.

### Council's enforcement decision group

The enforcement decision group will make all decisions on whether to commence a prosecution or make an application to the Court, on our behalf. This group will comprise a panel of at least two of Council's group manager positions, a member of Council's legal team and a member of the Council's iwi partnerships group.

An additional person, with relevant experience, may be appointed as required. External appointments are made by the Chief Executive and all group members will hold the relevant delegations to perform the role outlined in this policy. The Enforcement Decision Group operates by consensus.

## Our risk model

As the Kāpiti Coast continues to experience growth, we may need to reprioritise the best use of our resources and allow for increasing development effects and public nuisance activity across our district.

To do this we will:

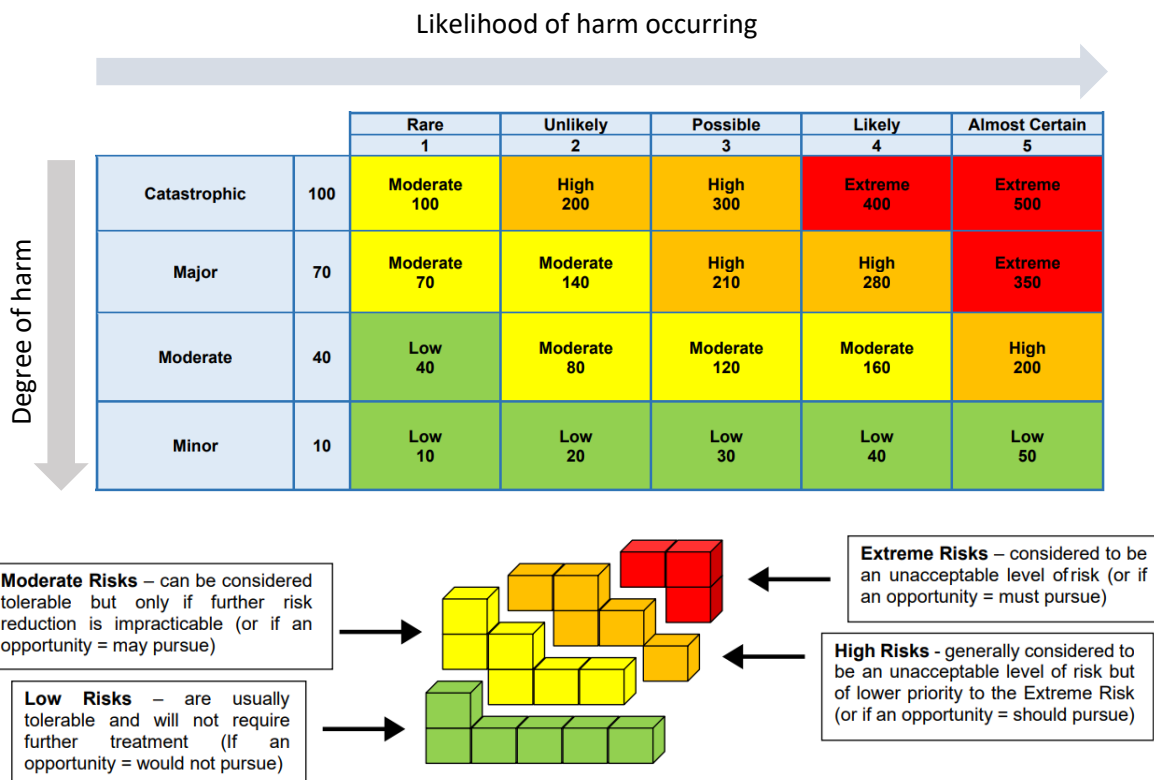
- assess the risk of harm from an activity.
- focus resources to where the risk is greatest and that may require active management.

When determining the extent of risk, we consider the:

- likelihood of harm occurring and
- the degree of that harm if it did occur.
- the outcome of this risk assessment then informs the extent/frequency of our monitoring efforts or action.

If we find that a breach of regulation is causing a consequence that is negligible and the likelihood of harm occurring is low, then we will provide that feedback to the rule or regulation makers.

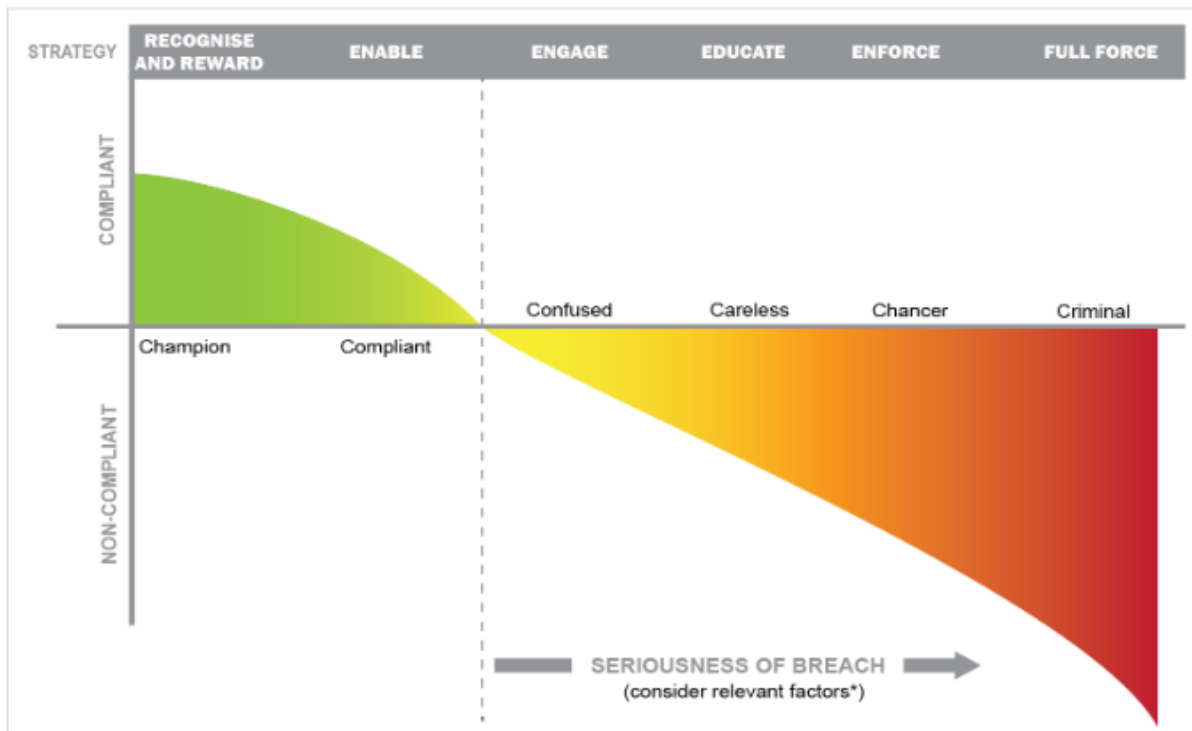
For low risks, a breach may be recorded and noted on property file, however further formal action may not be taken.





## Our compliance model

Our aim is to influence people's behaviour to comply using this model.<sup>3</sup>



Relevant factors when considering the seriousness of the breach:

- The extent of any breach
- Enforceability of the regulation
- Statutory defence
- Case law
- Behaviour/attitude
- Harm caused
- Public Interest
- Purpose of legislation
- Previous compliance history
- Statutory limitation period
- Repetitiveness of breach
- Cultural practice
- Standard of proof
- Solicitor-General Prosecution Guidelines
- Speed of action required.

<sup>3</sup> Ministry for the Environment. 2018. Best Practice Guidelines for Compliance, Monitoring and Enforcement under the Resource Management Act 1991

## Our approach – compliant behaviour

We seek to influence behaviours by using our suite of strategic tools<sup>4</sup>. We prefer compliance promotion (such as education, on-site directions, and awareness-raising) as the preferred method for encouraging compliance.

### Recognise and reward

For our champions in Kāpiti, we will recognise and reward their willingness to comply and 'do the right thing'.

An example of this is our approved owner status for dogs. If your dog is micro-chipped, your property is securely fenced, you have paid a previous registration fee and have no reported dog incidents then we can assign you an approved owner status on our records and offer a discounted dog registration fee.

### Enable

We understand the importance of people having access to good quality information and guidance on how to comply with regulatory requirements. The regulations can be confusing, and we will make it clear to people what action they need to take to comply. Advice and guidance material can take many forms including verbal or written advice, or reference to other sources of compliance information such as the Council website, FAQs, alerts, leaflets, newsletters, and posters. We want to make it easy to comply and difficult not to.

We undertake permitted activity monitoring to see the level of voluntary compliance that is occurring. This involves monitoring of activities that do not require specific Council authorisations. These are often monitored from afar using other information sources and/or desktop assessments based on geo-spatial data. An example of this type of monitoring can include the checking of building consents for compliance with the district plan requirements.

We also license and consent activities and development using conditions to manage potential harm and to enable people to demonstrate compliance. These consent conditions are actively monitored by us, and inspections are undertaken to ensure compliance. Larger and more complex developments will generally require frequent and a greater number of monitoring visits.

The legislation that we operate under requires us to monitor the following:

- Inspections to ensure compliance with a building consent – These inspections are authorised under the Building Act 2004 to obtain a Code of Compliance Certificate for a building or structure. Inspections are booked and inspectors are often met on-site to view and discuss the building work undertaken in accordance with their building consent conditions.
- Inspections to ensure compliance with swimming pool fencing requirements, Building Warrant of Fitness - these inspections are mandatory under the Building Act 2004 and are charged to relevant owners in the interests of maintaining safe buildings and structures.
- Resource consents - we monitor subdivisions and land use activities for which resource consents have been issued. We also investigate breaches of District Plan rules that may not have the necessary consents.

<sup>4</sup> Based on Ministry for the Environment. 2018. Best Practice Guidelines for Compliance, Monitoring and Enforcement under the Resource Management Act 1991

- Animal management – registration and inspections may occur to ensure compliance with the Dog Control Act 1996 and other legislation and bylaws. The purpose is to ensure that the responsibilities of owners are being met.
- Health registered premises – under the Health Act, hairdressing facilities and funeral director premises are required to be registered and licensed by the Council (including an annual inspection).
- Food businesses – businesses operate under the requirements of the Food Act 2014 to ensure that all food sold is safe. Registration is mandatory and occurs with the Council or Ministry of Primary Industries. Registered parties need to operate under a set of food safety rules. These will be either a national programme (for low and medium risk businesses) or a food control plan (for higher risk businesses). These are audited and verified via a visit to the business to ensure compliance and to renew registration.
- Alcohol licensing – the Council administers the Sale and Supply of Alcohol Act 2012 and has appointed the Kāpiti Coast District Licensing Committee (DLC) to consider and determine applications for licences and managers' certificates, renewal of licences and managers' certificates, temporary authority orders and special licences. The purpose of licensing and monitoring is to ensure that hosts serve alcohol responsibly and to minimise potential harm from alcohol.
- Trading in public places – the rules for trading in public places are set out in the Council's Trading in Public Places Policy 2017. A licence from the Council is required to trade on public land.
- Gambling consents - operating gaming machines outside of casinos falls under the Gambling Act 2003. To operate gaming machines in the Kāpiti Coast District, a Class 4 consent from the Council must be obtained. Council is not involved in deciding how community funds are distributed by gaming societies.
- Campgrounds – premises need to be registered with the Council to ensure that the site is fit for purpose.
- Discharging trade waste - trade waste is controlled by laws to help protect wastewater system treatment plants. Businesses producing more liquid waste than a large household need a trade waste consent from the Council.
- Recreational water quality - we support Greater Wellington Regional Council to regularly monitor our swimming sites. We help by collecting samples at our recreational river sites and fourteen coast sites and provide information to the public if there is an unacceptable health risk.
- Excessive noise - noise is an inevitable part of living in a community, but with a little consideration and communication, noise can be managed so we can all live together peacefully. We step in when noise generated by members of the community is excessive and causing a disturbance to others.
- Patrolling of public spaces – these monitoring inspections and patrols are part of our everyday business and are not directly charged for as they serve a greater public good. We monitor public spaces, from our beaches and freedom camping sites to our public car parking spaces, to ensure that the relevant rules and bylaws are followed, and that any public nuisance is avoided.

## Our approach to non-compliant behaviour

This can be picked up through our monitoring work or may involve responding to an incident or complaint that comes to the Council and requires assessment, investigation, and an action/response by our people. Council officers are warranted to access properties for the purposes of this type of inspection.

A significant proportion of these incidents and complaints either result in no action or education around regulation or consent conditions. Most can be settled by a phone call or meeting.

### Engage

Most incidents are dealt with by means of informal action and would involve the Council Investigating Officer drawing the matter to the attention of the person responsible for the compliance issue or incident, and giving appropriate guidance.

A minor incident may result in an infringement being issued to deter behaviour, such as a parking ticket. Rarely will a minor or technical infringement result in more formal action being taken, particularly if it is capable of immediate rectification.

We can conduct more in-depth audits to determine compliance and record our findings.

### Educate

If previous advice has been ignored, or of there is another factor that warrants a formal response, the Investigating Officer may choose to act in a formal way.

A formal warning is documented by way of a letter to a person informing them that an offence has been committed, and that they are liable, but that no further action will be taken in respect of that offence. The person will also be informed that the formal warning will be documented and recorded by the Council and taken into consideration should there be further offending.

The types of situations where a formal warning may be given are when:

- an administrative, minor, or technical breach has occurred.
- the harm, or potential harm, is minor or trivial in nature.
- the person does not have a history of offending.
- the matter is one which can be quickly and simply put right.

### Enforce

At the other end of the scale, the Council may discover or be advised of a serious breach of regulation that could result in significant harm. There is a need to respond swiftly in these circumstances to ensure issues can be addressed as soon as possible to reduce the potential for harm arising from the non-compliance. Warning of a Council inspection may not always be appropriate or possible.

We have a range of statutory powers available to us under the authorising legislation outlined in the earlier section of this document. Some of the key statutory powers include the following:

### Compliance/directive notice (such as an abatement notice or notice to fix)

These notices are formal, written directives. They are written and served by Council staff 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 these notices is prescribed in statute. It is an offence to fail to comply with these notices.

### Cancel, amend, suspend or refuse to renew a licence, consent or permit

In some cases, we can cancel, amend or suspend (or apply for cancellation or suspension) of licences or consents where we believe:

- the grounds for being licensed are no longer met.
- the licence holder is failing (or has failed) to comply with the Act or the conditions of the licence or consent.
- false or misleading information has been provided.

### Infringement notice

An infringement notice is a written notice alleging that a person has committed an offence which requires the payment of a fine or the election to have the matter heard in court. The actual fine for each type of offending is set within a statutory schedule or bylaw. Payment of the fine does not lead to the recording of a criminal conviction.

The types of situations where an infringement notice may be issued are when:

- there is evidence of a regulatory breach.
- a one-off or isolated regulatory breach has occurred which is of minor impact and can be remedied.
- it is likely to be a sufficient deterrent.

### Full force

#### Court order or injunction

Like an abatement notice, an enforcement order can direct a person to cease an activity, or to take particular action. However, an application for an enforcement order must be made to the Environment Court. It is an offence to fail to comply with an enforcement order. In some of our regulatory roles, we can seek a court injunction to require a person to undertake something they have refused or previously failed to do. For example, an injunction may be granted to halt demolition of buildings to allow time for a hearing on the cultural and heritage values of the buildings.

#### Prosecution

A prosecution is initiated by laying criminal or summary charges in the District Court. The matter is then heard by a District Court Judge. All evidential rules and standards must be met in a prosecution. A successful prosecution will generally result in a conviction, and/or a penalty imposed.

A proposal for Council to pursue enforcement action that involves a prosecution or application to court must be referred to the Council's Enforcement Decision Group by the Compliance Team Leader or Compliance Manager. A report from the relevant Investigating Officer must be provided to the Group to assist with decision-making.

When making a decision, the Enforcement Decision Group must consider:

- whether the test for prosecution as set out in the Solicitor-General's Prosecution Guidelines (2013) is satisfied.
- whether there is sufficient evidence to lay charges (the evidential test)
- whether the charges are in the public interest (the public interest test)
- whether to undertake a prosecution in a specific case in accordance with relevant policies and strategies.
- what the impact or consequences of failing to prosecute may be.
- the alternatives to criminal prosecution.
- the outcomes sought by the relevant legislation.
- the expected cost of a prosecution (including the Council's resources and funding).
- whether another prosecuting agency has or may bring criminal proceedings in relation to the same incident.
- whether the decision is independent of any undue or improper pressures such as political pressures or pressures from elected members of the Council.

A decision not to prosecute does not preclude Council from further considering the case if new and additional evidence becomes available, or if a review of the original decision is required (provided always that we are within the applicable limitation period for bringing a prosecution).

### Negotiated settlements/restorative justice

Restorative justice is becoming increasingly popular in the wider criminal justice system and in Resource Management Act (RMA) offending in particular. Its main purpose in criminal justice is to:

- Provide an opportunity for the offender to understand the impacts of their offending, and for the offender to display remorse for the wrongdoing.
- Produce practical outcomes that restore harm done, educate the offender, and achieve a change in their attitude, and provide a basis for the community to begin to trust the offender again.

This is an alternative to traditional sentencing. It is intended to bring victims and the community together with the offenders to address the wrongdoing.

The Sentencing Act 2002 allows for restorative justice processes to occur when certain conditions are met. The Council is generally open to resolving non-compliance by agreement where a remedy is possible, and where those requirements are fulfilled.

A negotiated settlement typically requires all or some of the following - the person to admit that they are likely to have breached the law, to cease the non-compliant conduct, undertake suitable reparation measures, pay compensation, pay our costs, and may involve some publicity. Any restorative justice measures agreed to by the parties may be considered by the Court in sentencing<sup>5</sup>.

A negotiated settlement will only be agreed to if it is in the public interest. For example, we are unlikely to agree to a negotiated settlement where the non-compliance has caused serious harm or the person is a repeat offender, lacks contrition or actively resists compliance.

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<sup>5</sup> Best Practice Guidelines for Compliance, Monitoring and Enforcement under the Resource Management Act 1991

## Communication

### Elected Members

If a prosecution is initiated, the Mayor, Councillors, iwi representatives, and any relevant community board members should be advised of the identity of the parties being prosecuted and the nature of the charges. This will ensure that they are aware of the prosecution and be able to avoid being drawn into any media comment or improper contact with the individuals that could jeopardise the right to a fair trial.

This is for information purposes only on a “no surprises” basis and is not providing an opportunity for elected members to comment to council or more widely on whether or not a prosecution should proceed. It is important to note that names of defendants and other parties must not be released to the public or to media.

### Media

Public scrutiny is beneficial to the administration of justice and the community has a right to accurate information, subject to lawful restrictions and the individual’s right to a fair trial.

However, it is of primary importance that any public statements do not prejudice an individual’s right to a fair trial. An individual’s right to a fair trial under the New Zealand Bill of Rights Act 1990 is fundamental.

### Release of information to the media

Only the Chief Executive or the relevant Group Manager can release information to the media about enforcement incidents. Before providing any information to the media the relevant Group Manager must first discuss with Council’s legal team the information that is proposed to be released.

In prosecutions before the Courts the rule of sub judice applies, which means that while a matter is under judicial consideration public comment on the case is prohibited, as the matter has yet to be decided by the Court.

As the media often report about matters prior to the Court making a decision, any press releases about enforcement matters should be restricted to the simple fact that Council is undertaking enforcement action in respect of an alleged breach.



## Regulatory complaint/incident grading

Each regulatory complaint or incident that the Council discovers or is advised of will be assessed by a Compliance and Monitoring Officer. An assessment will include the relevant factors shown in our compliance model:

- The extent of any breach
- Enforceability of the regulation
- Any relevant statutory defence
- Case law
- Behaviour/attitude
- The level of harm caused (including victims and the environment)
- Public interest
- Purpose of legislation/regulation breached
- Previous compliance history
- Statutory limitation period
- Repetitiveness of breach
- Standard of proof required
- Solicitor-General prosecution guidelines
- Speed of action required
- Cultural practice.

Once an assessment/investigation has been made the Compliance Officer must allocate a colour-coded compliance grade<sup>6</sup> as shown in the table below.

	<b>Regulatory compliance grade</b>
	FULL COMPLIANCE: with all relevant conditions of consent, licence or registration, all rules, regulations, and bylaws.
	LOW RISK NON-COMPLIANCE: compliance with most consent conditions, licence, or registration and/or rules, regulations and bylaws. Non-compliance carries a low risk of harm or is technical in nature (for example, failure to submit a monitoring report).
	MODERATE NON-COMPLIANCE: Non-compliance with some consent conditions, licence, or registration, and/or rules, regulations and bylaws – where there is some consequential harm and/or there are some risks of negative effects.
	SIGNIFICANT NON-COMPLIANCE: Non-compliance with many consent conditions, licence, or registration, and/or rules, regulations and bylaws – where there is a high level of consequential harm and/or a high risk of negative effects.

<sup>6</sup> Ministry for the Environment. 2018. Best Practice Guidelines for Compliance, Monitoring and Enforcement under the Resource Management Act 1991



The appropriate compliance grade will be recorded and reported.

Consistent grading of the incidents/complaints that we receive will inform our risk assessments and enable us to improve reporting on our compliance, monitoring and enforcement function and progress towards achievement of our desired outcomes.

Our reporting may include:

- numbers of sites with significant non-compliance, moderate non-compliance, low-risk non-compliance, and compliance.
- types of incident notifications received and council responses to these incidents, including time taken to respond.
- number of consents, and percentage of total consents that are monitored per fiscal year.
- number of enforcement actions taken, by action type (such as, prosecution, abatement notice, infringements issued), and percentage of total non-compliance.

This information will also contribute to assessment and monitoring of the effectiveness of Council's policies (such as the Freedom Camping Policy, Dog Control Policy and Trading in Public Places Policy).

## Reporting

We will commit to reporting on our compliance, monitoring and enforcement activities through the following channels:

### Council reporting

- Long-term Plan – annual and quarterly reporting
- Committee and Sub-Committee – issues and risk reporting, as required
- Senior Leadership Team – reporting on prosecutions and serious breaches
- Regulatory Services Group – monthly reporting
- Regulatory Services Leadership Team – ongoing monitoring and issues escalation

### National reporting

- Ministry for the Environment's National Monitoring System reporting
- Ministry for the Environment's Resource Management Act Surveys of Local Authorities
- Animal Management annual report, as required by section 10A of the Dog Control Act 1996
- Annual report of alcohol licensing income and costs – Ministry of Justice.