

Enforcement Policy



Approved by: Timaru District Council – Environmental Services Committee

Date approved:

1. Purpose

The purpose of this policy is to:

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

2. Background

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

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

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

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

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

3. Legal Status

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

4. Principles

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

4.3.1. **Fairness and Proportionality**

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

4.3.2. **Consistency**

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

4.3.3. **Transparency**

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

4.3.4. **Targeted**

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

4.3.5. **Responsiveness and Effectiveness**

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

4.3.6. **Cooperation**

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

4.3.7. **Legality and Ethicality**

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

4.3.8. **Evidence-based approach**

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

4.3.9. **Community Engagement with Compliance**

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

5. Enforcement Process

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

5.2. Response to Effects

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

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

5.3. Gathering Information

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

5.4. Evaluating the Enforcement Response Option(s)

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

that had facilitated the occurrence of the breach.

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

5.5. Determining the Enforcement Response

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

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

6. Enforcement Options

6.1. Enforcement Tools

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

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

6.2. Enforcement Options

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

7. Council Obligations to Complainant

- 7.1. To initiate an enforcement investigation, complaints should be made via the standard form which can be found on the Council website, or at the Council offices, or be sent out to complainants if requested.
- 7.2. To assist the investigation, maximal information should be provided when the initial enquiry is made. This should include the identity and address of complainant, the address at which the alleged breach has taken place, a description of the unauthorised activities and the harm that is considered to be caused. Complainants will also be encouraged to send in dated photographs of the alleged breach in order to assist the investigation.
- 7.3. In respect of complaints received, the following standards apply:

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

8. Council Obligations to Individuals in Breach

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

9. Prosecution Guidelines

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

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

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

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

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

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

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

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

10. Policy Review

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

Delegations, References and Revision History

Delegations

Identify here any delegations related to the policy for it to be operative or required as a result of the policy

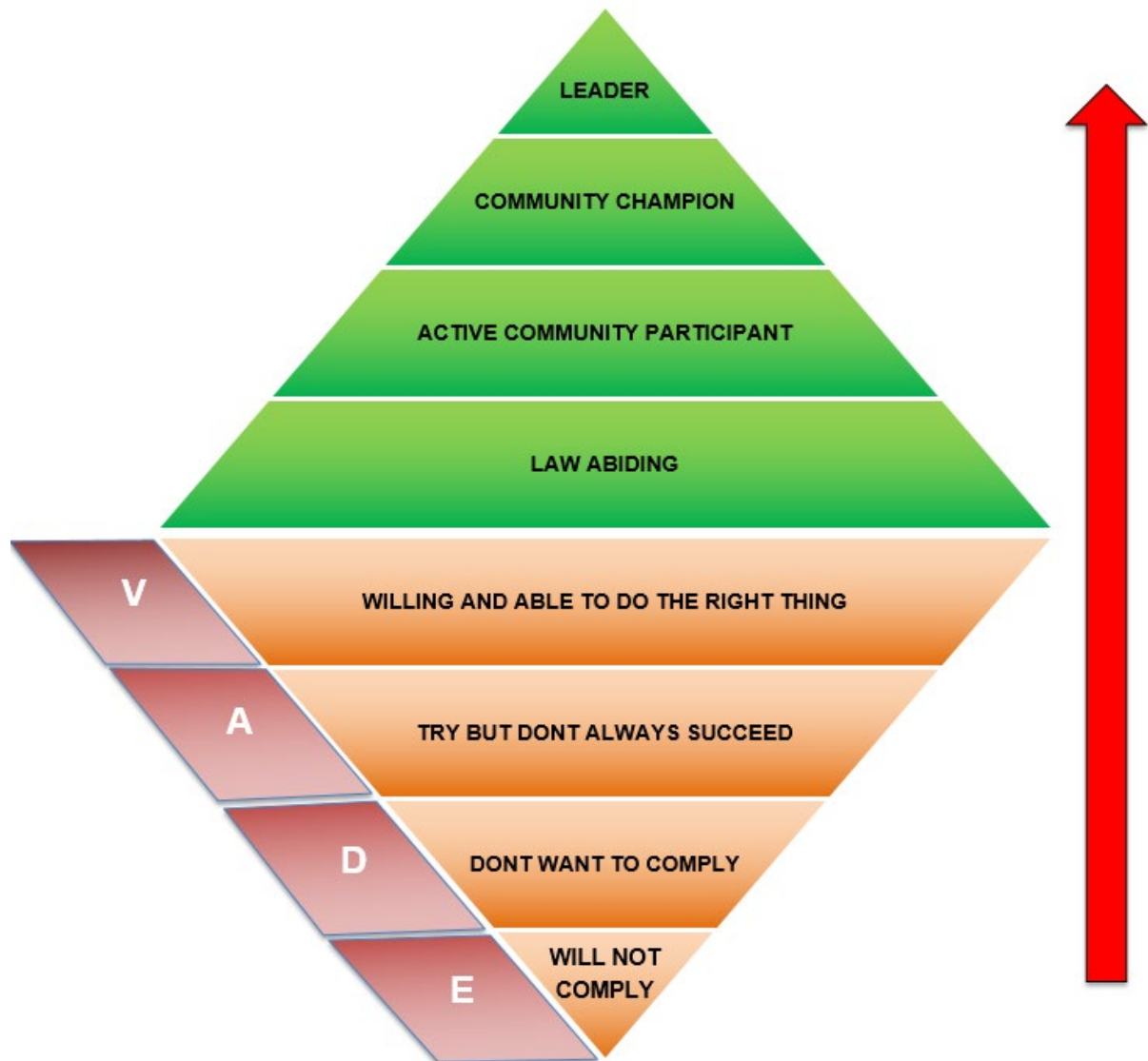
Delegation	Delegations Register Reference

Revision History

Summary of the development and review of the policy

Revision	Owner	Date Approved	Approval By	Next Review	Doc Ref
1.0	Environmental Services Group Manager	TBC	Environmental Services Committee	2026	#1457105

Appendix (i) Regulatory Compliance Diamond



V – compliance achieved voluntarily

A – compliance achieved with assistance

D – compliance achieved when directed

E – enforcement required

Appendix (ii) Enforcement Process

NOTIFICATION
 [Non-compliance or breach may be detected via complaints, monitoring, and/or the occurrence of major incidents]



REGULATORY OFFICER ASSIGNED TO INVESTIGATE



INFORMATION GATHERING
 [Investigation may be conducted via site inspection, measuring, sampling, photographing, obtaining expert advice, and/or interviews]

RECOMMENDATION FOR OPTIONS EXCLUDING PROSECUTION
 [Each case discussed with Environmental Services Group Manager]

RECOMMENDATION FOR PROSECUTION
 [Final decision made by the Enforcement Panel comprised of 3 from the following roles: Senior Leadership Team, Risk & Assurance Manager and a qualified lawyer on staff if available]

REGULATORY OUTCOME
 Outcomes may include:

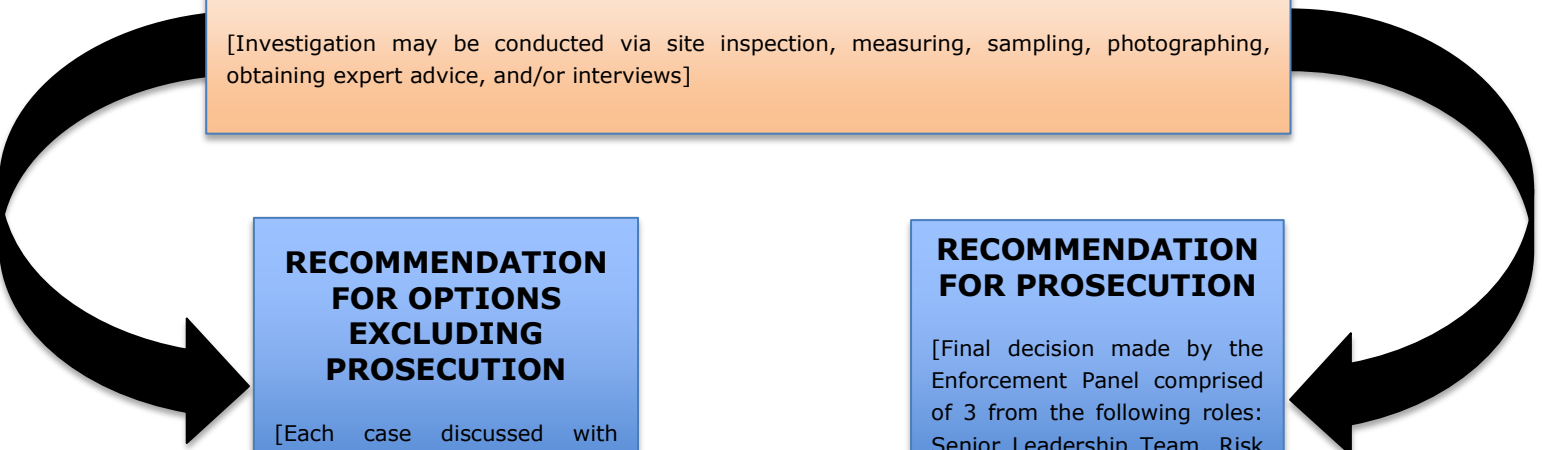
- No further enforcement action
- Letter of direction
- Abatement notice
- Formal warning
- Infringement

PANEL RECOMMENDATION FOR PROSECUTION

INDEPENDENT LEGAL REVIEW




PROCEEDINGS

The Enforcement Panel may recommend other regulatory outcomes






Appendix (iii) Directive and Punitive 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 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 is required as a result of non-compliance.</p>

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

Punitive actions

ACTION	DESCRIPTION OF ACTION	POTENTIAL IMPACTS ON THE LIABLE PARTY	WHEN MIGHT THIS ACTION BE APPROPRIATE?
 <p>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>