

POLICY	STATUS	AT	DATE	DOC ID
<i>Compliance and Enforcement Policy</i>	<i>Adopted</i>	<i>A127909</i>	<i>15/09/2026</i>	<i>A127909</i>



OPOTIKI DISTRICT COUNCIL

COMPLIANCE AND ENFORCEMENT POLICY

AMENDMENTS/REVIEW

No:	Amendment(s)/Review	Date	Carried out by / Authority
0.1	Readopted	2018	
0.2	Reviewed	14/05/2026	Jessica H
0.3	Renewal	14/05/2026	Scott J

1. INTRODUCTION

- 1.1. Local Government in New Zealand is responsible for ensuring compliance with a variety of laws and regulations that are aimed at achieving positive community and environmental outcomes.
- 1.2. Ōpōtiki District Council is responsible for the administration and regulation of a wide range of activities. These include matters such as land use and development under the Operative Ōpōtiki District Plan, carrying out of building work, preparation of food for sale at cafes, restaurants and other outlets, controls on the sale and consumption of alcohol in public places, gambling, controls on dogs, littering, freedom camping and parking.
- 1.3. The primary purpose of these regulatory activities is to protect the public, the environment and groups such as consumers and residents. The main statutes under which the Council has responsibilities for enforcing regulatory requirements are listed below
- 1.4. The Enforcement Policy sets out the general principles that Council intends to follow in relation to its regulatory obligations.

2. PURPOSE

- 2.1. The Compliance and Enforcement Policy is an operational document and is not binding on the Council. Council has discretion as to how it exercises its enforcement functions, and this policy provides a guideline for the exercise of enforcement discretion.
- 2.2. The purpose of this policy is to:
 - Formalise the principles that underpin how the Council applies regulatory compliance and enforcement;
 - Inform the general public of Council's approach to the compliance and enforcement of the various legislation it is responsible for enforcing;
 - Outline the possible enforcement actions able to be administered by Council;
 - Guide and assist Council officers in the performance of their compliance and enforcement functions; and
 - Ensure consistent, appropriate and coordinated decision-making of compliance and enforcement matters.

3. OBJECTIVES

- 3.1. The regulatory activities Council is responsible for provide a range of health, safety and environmental benefits for the Ōpōtiki community. The key areas where Council has enforcement responsibilities are:
- 3.2. *Our environment* – We want everyone to be able to share in the benefits of living in a built and natural environment that contributes to the outcomes agreed in the Ōpōtiki District Plan.
- 3.3. *Buildings* – We want to have buildings that are compliant and provide the amenities expected by owners and users. We are concerned about buildings that expose owners, users and other affected parties to risks to their health or safety.
- 3.4. *Food* – We want to support local food businesses that meet the food safety standards and ensure people can enjoy food prepared and sold in the district. We are concerned about risks to people's

health that can arise from poor food quality and safety standards when preparing food for sale at cafes, restaurants or other outlets.

3.5. *Alcohol* – We want people to enjoy public events and public spaces without being confronted by anti-social behaviour caused by excessive consumption of alcohol or alcohol being consumed by persons who are under-age.

3.6. *Dogs* – We want people to have the confidence they can live and carry out their businesses in the district without being distressed or intimidated by dogs that are not being properly controlled by their owners.

4. DEFINITIONS

4.1. For the purposes of this policy the following definitions apply:

4.2. **Council** – Ōpōtiki District Council.

4.3. **Acts** – Legislation under which Council has regulatory enforcement responsibilities.

4.4. **Non-compliance** – The general failure to follow a requirement, standard, rule, or expectation. This is broad and often administrative or regulatory, and may be informal, low-level or correctable.

4.5. **Breach** – A violation of a legally binding obligation, most commonly a contract, statutory duty or a license or permit condition. This is more serious and concrete than a non-compliance which usually has legal consequences but does not necessarily mean a crime was committed.

4.6. **Offence** – An act or omission that is explicitly prohibited by law, usually under criminal or regulatory offence provisions. This is the most serious of the three and is clearly defined in legislation and may result in criminal prosecution.

4.7. **Violation** – Used when referring to a Non-compliance, Breach or Offence.

5. PRINCIPLES OF ENFORCEMENT

5.1. The requirement to monitor and ensure compliance with the law is a mandatory obligation of most of the Acts that Council is obligated to implement on behalf of the communities it represents. 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 largely at its discretion. This is necessarily so when considering that compliance and enforcement is complex in law and is usually complicated by many factors, which may have a bearing on an appropriate response. Council is accountable to the community for the manner in which it exercises this discretion.

5.2. A number of principles guide this exercise of discretion as follows:

- Fair, reasonable and proportional approach
- Consistency of process
- Transparent and collaborative
- Targeted
- Responsive and effective
- Evidence-based
- Education

- 5.3. *Fair, reasonable and proportional approach* – Council will apply regulatory interventions and actions appropriate for the situation. Council will use its discretion justifiably and ensure its decisions are appropriate to the circumstances and that interventions and actions will be proportionate to the risks posed to people and the environment, and the seriousness of the violation.
- 5.4. *Consistency of process* – Council's actions will be consistent with the legislation and within its regulatory powers. Compliance and enforcement outcomes will be consistent and predictable for similar circumstances. Consistency of process does not mean uniformity, it means taking a similar approach in similar circumstances to achieve similar ends, while allowing for the flexibility of discretion for case-by-case scenarios.
- 5.5. *Transparent and collaborative* - Transparency is important in maintaining public confidence in the Council's ability to regulate. It is about helping those who are regulated and other members of the community, to understand what is expected of them and what they should expect from Council. An integral component of transparency is making clear why a Council officer intends to take or has taken enforcement action. It also involves distinguishing between statutory requirements and providing advice or guidance about what is desirable or good practice but is not necessarily compulsory. Council will, where possible, work with all parties including sharing information with other regulators and stakeholders to ensure the best compliance outcomes for the Ōpōtiki District.
- 5.6. *Targeted* – Council will focus on the most important issues and problems to achieve the best environmental outcomes. It will target its regulatory intervention at poor performers and illegal activities that pose the greatest risk to the environment. The Regulatory team will apply the right tool for the right problem at the right time.
- 5.7. *Responsive and effective* – Council will consider all alleged violations to determine the necessary interventions and action to minimise impacts on the environment and the community and maximise deterrence. The Council will respond in an effective and timely manner in accordance with its legislative and organisational obligations.
- 5.8. *Evidence-based* – Council will make decisions that are informed by a range of sources including best scientific practice, technology, and information received from members of the public, industry, other regulators, and interest groups.
- 5.9. *Education* - Education is a crucial factor in providing an effective enforcement service. Ongoing education ensures that the public is aware of the current regulations as well as increasing public confidence in the service to enforce them.

6. THE ENFORCEMENT PROCESS

- 6.1. The following section outlines the enforcement process Council will undertake from discovery of a violation through to deciding the enforcement response.
- 6.2. Violations can come to Council's attention in a variety of ways, including:
- Compliance monitoring (reactive or proactive)
 - Complaints from the public (in person, phone, email, Antenno app)
 - Incidents
- 6.3. The response upon discovery of a violation will be largely dependent on several factors, including the need to deal with any ongoing adverse environmental effects, risk of continued offending/repeat offending and the seriousness of the violation. It is expected that the response will take the following staged approach:

Step 1: Response to effects

- 6.4. Upon discovery, the initial response is to assess the actual or potential effects, if any, resulting from the violation. Significant adverse effects will require an immediate response prior to any other action. This may include:
- Prevention of further serious environmental damage from occurring. This may include issuing an abatement notice, infringement notice, enforcement, or interim enforcement order.
 - An immediate closure of the food premise, in the case of a serious food hygiene risk.
 - Seizure of an offending animal, in the case of a dog attack.

Step 2: Gathering information and evidence

- 6.5. Following any urgent intervention to deal with effects, the next stage is to conduct a formal investigation, including gathering information and evidence, interviewing witnesses and alleged offender/s.
- 6.6. The purpose of this is to determine how and why the violation occurred and to enable an informed enforcement decision to be made. The depth and scope of an investigation will be dependent upon the seriousness of the incident.
- 6.7. In less serious matters, it may be sufficient to write to the offending party or parties requiring written explanation as to why the violation occurred and the circumstances behind it and then determine an appropriate enforcement response.
- 6.8. In more serious matters, it is expected that the investigation will be more in depth and that detailed witness statements will be obtained and that liable parties will be interviewed under formal caution.
- 6.9. In some situations, the interview with an alleged offender may be recorded. In this case the Council officer must seek the permission of the interviewee prior to recording the interview.
- 6.10. Regardless of the level of violation, a response will ordinarily be sought from an offender. The exception to this would be matters of a very minor nature with nil environmental or other negative effects, or the person has confirmed that the effects have been remedied and it will not reoccur.
- 6.11. Upon receipt of any explanation, the final stage is to decide on an appropriate response to the violation through a sound decision-making process.

Step 3: Deciding the enforcement response

- 6.12. Providing the correct enforcement response, requires considerable skill. It also requires a sound knowledge or understanding of the relevant legislation involved. It is widely accepted across agencies that the Courts have provided helpful guidelines as to what factors are appropriate to consider determining the seriousness of a violation. Factors to consider are:
- The actual adverse effects (effects that have occurred);
 - Any likely adverse effects (potential effects);
 - Whether it was deliberate, negligent or an accidental action;
 - The degree of due care taken/foreseeability of incident;
 - The value or sensitivity of the area affected;
 - The attitude of the offender toward the violation;

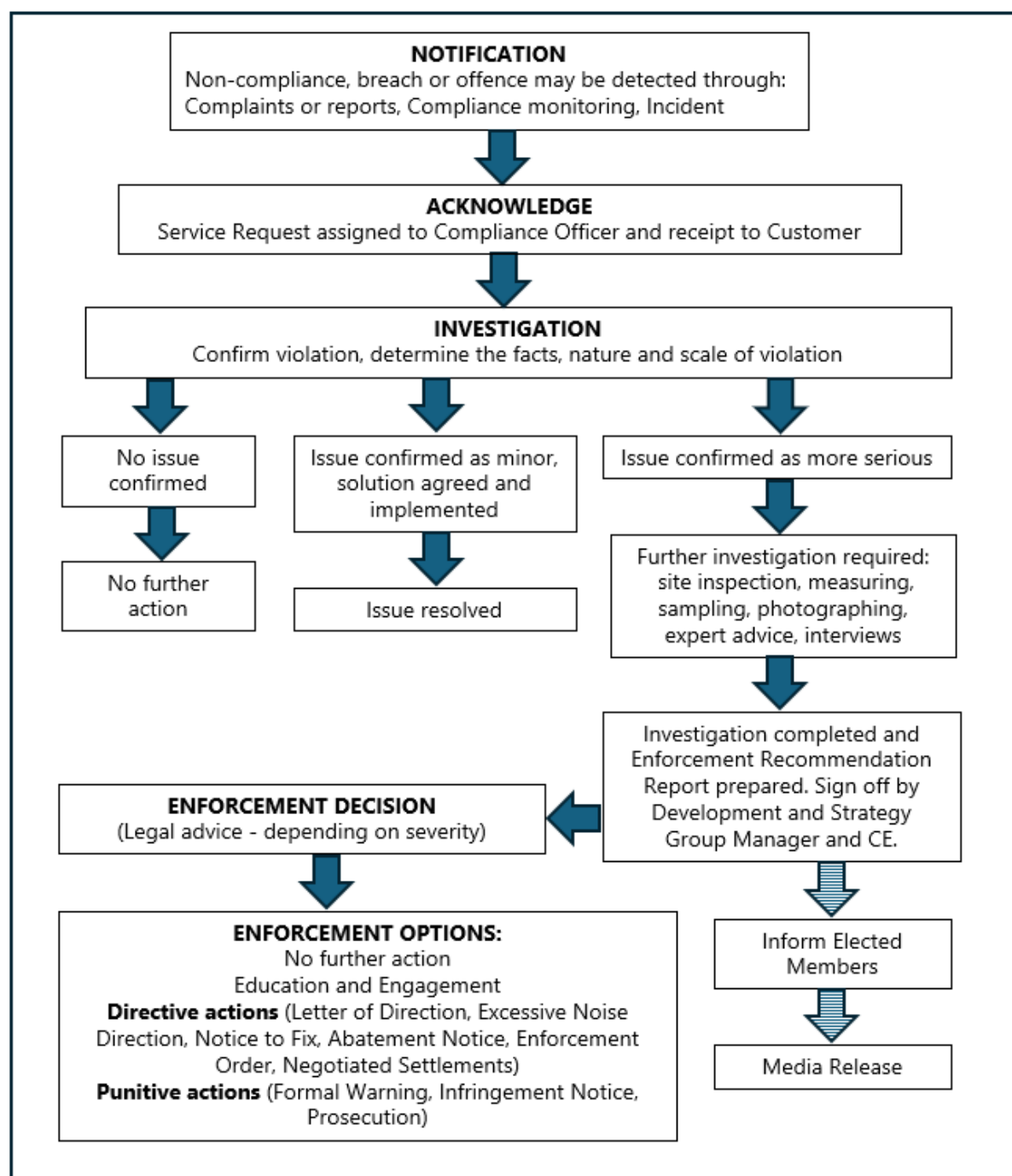
- Whether it was a repeat violation or if previous enforcement action was needed for a similar situation;
- Any effort made to avoid, remedy and/or mitigate the adverse effects;
- The effectiveness of any remediation or mitigation undertaken;
- Any profit or benefit gained by the alleged offender;
- Any relevant special circumstances – e.g. extreme weather event or other event outside the control of the party involved.

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

6.14. If the decision is to proceed to prosecution, Council will adhere to the standards of good criminal prosecution practice as outlined in the Solicitor-General's Prosecution Guidelines 2024 (Crown Law).

6.15. Depending on the type and severity of the violation and enforcement recommendation, the Chief Executive may need to brief the Elected Members of the situation, and a media release may be required. Figure 1 outlines the Enforcement Process.

Figure 1: The Enforcement Process



7. ENFORCEMENT OPTIONS

7.1. Council's Compliance Officers have a broad range of enforcement options available to them to address any violations. The tools that apply to the different regulatory functions are provided in Table 1 below. These tools can be categorised into three main types; informal, directive and punitive actions.

- *Informal* actions are focussed on providing education and incentive based responses to allow the person to become better informed and develop their own means to improve compliance.
- *Directive* actions are typically used when education or voluntary compliance is insufficient, and Council needs to give direction to manage risk or ensure compliance.
- *Punitive* actions are measures imposed by Council to penalise a violation with the aim of holding the parties accountable and deterring future violations.

Table 1: Type of Action by Regulatory Area

	Building	Planning and resource consents	Environmental Health	Liquor	Noise	Animal control	Bylaws
Education and Incentive							
Education and Engagement	X	X	X	X	X	X	X
Directive Actions							
Letter of Direction	X	X	X	X	X	X	X
Excessive Noise Direction					X		
Notice to Fix	X						
Abatement Notice		X			X	X	
Enforcement Order		X					
Negotiated settlements	X	X	X	X	X	X	X
Punitive Actions							
Formal Warning	X	X	X	X	X	X	X
Infringement Notice	X	X		X		X	X
Prosecution	X	X	X	X	X	X	X

7.2. Selecting the appropriate enforcement response will depend on such factors as the seriousness of the violation, the significance of adverse effect on people and/or the environment, and the level of remorse shown by the offender. A brief description of each of the relevant tools, impacts on the liable party, and the circumstances when Council might use these tools are described below in Table 2.

Table 2: Enforcement Response

<i>Education and Incentive</i>			
Action	Description of action	Potential impacts on the liable party	When might this action be appropriate
Education and Engagement	To prevent further breaches, or to remedy or mitigate the effects of non-compliance, Council can provide information or guidance around rules and regulations or aid and enable parties to achieve compliance.	This is an informal process and as such has no legal implications.	Education and other incentive-based interactions are reserved for dealing with cooperative parties, who are motivated to do the right thing but lack the knowledge or skills necessary to achieve and maintain compliance.
<i>Directive Actions</i>			
Action	Description of action	Potential Impacts of the liable party	When might this action be appropriate
Letter of Direction	To prevent further breaches, or to remedy or mitigate the effects of non-compliance, Council can give a written direction for a party to take or cease a particular action.	Such a direction is not legally enforceable.	Letter of directions should be reserved for dealing with cooperative 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.
Excessive Noise Direction	These binding notices require excessive noise to be reduced to a reasonable level and can apply for a period of up to 72 hours. Directions can be given verbally or in writing.	If a direction is not complied with, officers can seize and remove, render inoperable or make unusable, any device causing excessive noise. Seizure of stereo equipment is usually conducted with the assistance of the Police.	Used in urgent cases where noise is causing immediate nuisance. Usually in response to complaint from neighbour or member of the public where, for example, a burglar alarm is sounding continuously, or a noisy party continues to an unreasonable hour.
Notice to Fix	A notice to fix is a formal, written directive. It is drafted and served by council instructing a specified person to correct an instance of non-compliance with the Building Code and/or Building Act. The form and content of the notice are specified in the Building Act.	A direction given through a notice to fix is legally enforceable. To breach a notice to fix is to commit an offence and make liable parties open to punitive actions or fines.	A notice to fix may be appropriate where a building warrant of fitness and/or compliance schedule requirements in the Building Act have not been adhered to or when Building Consent is not obtained for building work that requires a consent.

Abatement Notice	An abatement notice is a formal, written directive. It is drafted and served by Council instructing an individual or company to cease an activity or requiring them to do something (act). The form, content and scope of an abatement notice are prescribed in statute.	A direction given through an abatement notice is legally enforceable. To breach an abatement notice is to commit an offence and make liable parties open to punitive actions.	An abatement notice may be appropriate any time that there is a risk of further breaches of environmental regulation, remediation or mitigation is required as a result of non-compliance.
Enforcement Order	Enforcement orders offer more options than an abatement notice, including the ability to recover clean-up costs incurred or likely to be incurred in avoiding, remedying or mitigating any adverse effect on the environment.	To breach an enforcement order is to commit an offence and make liable parties open to punitive actions.	An enforcement order may be appropriate when an abatement notice has not been complied with as another way of achieving compliance.
Negotiated settlements	A person may approach Council with a proposal for settlement. Council are open to resolving non-compliance by agreement where a remedy is possible and where this is prompt, easily implemented and in the public interest.	A negotiated settlement typically requires the following – the person to admit that they have breached the law, to cease the non-compliant conduct, pay compensation, pay Council costs and may involve some publicity	A negotiated settlement will only be agreed to if it is in the public interest. Council is unlikely to agree to a negotiated settlement where the non-compliance has caused serious harm, the person is a repeat offender or activity resists compliance.
Punitive Actions			
Action	Description of action	Potential impacts on the liable party	When might this action be appropriate
Formal Warning	A formal warning is documented by way of a letter to a culpable party informing them that an offence against an Act or regulation has been committed, and that they are liable.	No further action will be taken in respect of that breach. However, the warning forms part of a history of non-compliance and will be considered if there are future incidents of non-compliance.	A formal warning may be given when: ○ An administrative, minor or technical breach has occurred; and ○ The environmental effect, or potential effect, is minor or trivial in nature; and ○ The subject does not have a history of non-compliance; and ○ The matter is one which can be quickly and simply put right; or

			○ A written warning would be appropriate in the circumstance.
Infringement Notice	An infringement notice is a written notice which requires the payment of a fine. The amount of the fine is set in law.	No further action will be taken in respect of that breach. However, the infringement forms part of a history of non-compliance and will be considered if there are future incidents of non-compliance.	An infringement notice may be issued when: ○ There is prima facie (on the face of it) evidence of a legislative breach; and ○ A one-off or isolated legislative breach has occurred which is of minor impact, and which can be remedied easily; and ○ Where an infringement notice is considered to be a sufficient deterrent.
Prosecution	A prosecution is a process taken through the criminal courts to establish guilt or innocence and, if appropriate, the court will impose sanctions. Matters are heard in either the District Court or Environment Court depending on the Act. All criminal evidence rules and standards must be met.	A successful prosecution will generally result in a conviction, a penalty imposed and consideration of the costs of the investigation. A prosecution forms part of a history of non-compliance and will be considered if there are future incidents of non-compliance.	A prosecution may be considered appropriate when the factors listed above indicate that the matter is sufficiently serious to warrant the intervention of the criminal law. Consideration will be given to the Solicitor-General's Prosecution Guidelines (2024).

8. COUNCIL OBLIGATIONS TO COMPLAINANT

8.1. Concerns or complaints can be received by Council through a variety of methods. This may be by presenting in person, phoning to Council offices, email or via the Antenno on-line app. Council will not follow up on social media complaints.

8.2. A service request is assigned to the Regulatory team for action. A Compliance officer will contact the complainant and ascertain the scale and nature of the alleged violation to determine the type of response required. In the event of an anonymous complaint a Council officer will act on the information received and follow up as required.

8.3. In order to triage a complaint, Council requires as much information as possible to be provided when the initial complaint is made. This should include the identity and address of complainant, the address at which the alleged violation has taken place, a description of the unauthorised activities and the harm that is considered to be caused.

8.4. Complainants will also be encouraged to send in dated photographs of the alleged violation in order to assist any investigation. In respect of complaints received, the following standards apply:

- All valid enquiries will be properly recorded through Council generated Service Request and investigated.
- Council uses a risk-based process to identify and assess the likelihood and potential impact of adverse effects resulting from the violation and prioritise the response accordingly. The personal details of the complainant will remain confidential.
- In cases of involving a serious and/or irreversible harm, the complaint will be investigated as a matter of priority, usually within 24 hours of receipt. Urgent action will be instigated to stop unlawful activity.
- Other than cases where immediate or urgent action may be required (see step 1 of the Enforcement Process above), an initial investigation is to be undertaken within five working days of receipt.
- The complainant will be updated as necessary.
- Staff will not take sides in any dispute; staff will however judge what action is appropriate according to the evidence, particular circumstances, impact on the environment, relevant policies, and legislation.
- Other agencies may be brought in to support Council as required e.g. Department of Conservation or Bay of Plenty Regional Council.

9. COUNCIL'S OBLIGATIONS TO OFFENDER

9.1. Under normal circumstances, prior to taking formal enforcement action, the officer concerned will fully and openly discuss the circumstances of the violation with those involved.

9.2. The alleged offender(s) will be contacted as soon as possible to discuss the alleged complaint. Generally, if a site visit is required the alleged offender(s) will be invited to attend so that Council Compliance Officers can discuss the situation with them. Compliance Officers may at this point provide direction on what action is required to avoid, remedy and/or mitigate the environmental harm identified. Further action may be required.

9.3. The officer will:

- Communicate clearly to the responsible party (or their agent), identifying the issue and that they may need to undertake action to achieve compliance, or remedy or mitigate the negative effects.
- Undertake an investigation to determine the level of enforcement action (if any) required.
- Where Compliance Officers consider there is a minimal effect, or the effects are satisfactorily addressed by mitigation measures, a reasonable period of time will be allowed for the submission of a retrospective consent application for the activity e.g. building consent, resource consent.
- Initiate formal enforcement action after being satisfied that there is a clear violation of the relevant piece of legislation, and/or there has been an adverse impact on the environment.
- In the case of formal action being authorised, the right of appeal will be explained to those in violation.

10. INFORMING THE PUBLIC

10.1. In the event of a prosecution the "Public Interest Test", as outlined in the Solicitor-Generals Prosecution Guidelines (2024), is important for ensuring that the discretion to prosecute is exercised in accordance with the rule of law and any relevant statutory requirements.

10.2. Council is committed to educating and informing members of the public in relation to the work carried out by its Regulatory Team. Council will attempt to strike a balance between informing the public about regulation through publishing articles in newsletters as well as publicising when formal

action is taken via the media. Any media release must be authorised by the Strategy and Development Group Manager or the Chief Executive and must follow the requirements of the relevant Council's Communications and Social Media Policies.

10.3. It is considered important to highlight action that has been taken to discourage others from breaching regulations and to ensure the public have confidence in the Regulatory Team.

10.4. From time-to-time pro-active campaigns will be used to educate the public in relation to the targeted breaches of the specific regulations through Council publications and press releases. Local community groups may also be encouraged to assist in targeted campaigns in their particular area.

11. RELEVANT LEGISLATION

11.1. This policy relates to the exercise of Council's compliance and enforcement functions under various Acts, regulations, bylaws and other statutory instruments for which it has responsibility.

12. REVIEW

12.1. This policy will be reviewed every three years. Refer to policy index for policy owner.

Name of Document: Enforcement PolicySummary of proposed changes made:

- Shift to a compliance-focused approach. The policy has been reframed from a primarily enforcement-based tool to a Compliance and Enforcement Policy, placing greater emphasis on education, prevention, and achieving sustained compliance outcomes, rather than reacting to the breaches after they occur.
- A structured hierarchy of non-compliance, then breach, then offence has been introduced. This provides clearer thresholds for decision-making and ensures both staff and the public understands how matters escalate in seriousness and response.
- More structured, risk-based enforcement process. The policy strengthens the enforcement framework by embedding a risk-based staged process including:
 - A defined 'response to effects' step prioritising immediate harm mitigation.
 - Greater emphasis on risk, impact, and repeat behaviour in decision-making. Reflecting a more modern, proportionate regulatory mode.
- The updated policy introduces clearer oversight provisions including:
 - The ability to brief elected members on significant cases.
 - Media engagement protocols requiring senior management approval. This strengthens transparency, accountability, and management of reputational risk.