

West Coast Regional Council

Compliance and Enforcement Policy

March 2018

Foreword

The West Coast Regional Council manages the effects of using freshwater, land, air and coastal water, by developing rules and policy direction within regional plans and, when relevant, issues resource consents and enforces compliance with those consents. River management, soil mitigation and flood control are also managed by the West Coast Regional Council, including the monitoring of any associated adverse effects on the environment.

This Compliance and Enforcement Policy sets a framework for how the Council will handle incidents, complaints and any subsequent investigations into breaches of the Resource Management Act 1991 (RMA).

It will clearly set out the background to Compliance and Enforcement, the scope of enforcement powers and the aims of the Regional Council. This Compliance and Enforcement Policy sets out a framework of priorities for responses to complaints and clarifies the responses, including timescales, by Compliance (Regulatory Enforcement) Officers. This policy document also seeks to formalise how members of the general public will be kept up to date in relation to the work being carried out by Council.



Principles of Enforcement

The Council has a responsibility to enforce compliance with the RMA. While a target of total compliance is desirable, it is recognised that this is sometimes an unrealistic ideal. Although Council has some discretion over how it enforces the RMA, it is also accountable to the community for the manner in which it exercises this discretion. A number of principles guide this exercise of discretion as follows:

- Proportionality in the approach of the law and in securing compliance.
- Consistency of approach.
- Transparency about how the service operates and what those regulated may expect from the service.
- Targeted monitoring and education.

Proportionality: Proportionality is a component of the severity of the event and in particular the adverse effects of that event on the surrounding environment. The West Coast community anticipate that the action taken by the Council is in proportion to the seriousness of the breach.

Consistency: Consistency of approach 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. The Council aims to

achieve consistency in advice given, the response to incidents and the use of its power of decision on whether to prosecute.

Compliance Officers need to take into account many variables including:

- The scale of the environmental impact.
- Matters of fact and degree.
- The history of previous incidents or breaches.

Decisions on enforcement action are a matter of professional judgement and discretion needs to be exercised in a consistent manner.

Transparency: 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 the Council. An integral component of transparency is making clear why an 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.

Targeted monitoring and education: The Council takes a risk based approach to monitoring compliance with resource consents and permitted activity rules. The targeting of monitoring, enforcement action and

the education of it are crucial factors in an effective enforcement service. They ensure that the public is aware of the current regulations as well as increasing public confidence in the service to enforce them.



The Council's approach to enforcement

The West Coast Regional Council believes in a rational and principled approach to regulation. In general, the Council advocates a policy of education and co-operation towards compliance where an offence causes only minor adverse environmental effects. However, the Council recognises that there are times when the use of punitive measures is necessary.

As it is the responsibility of the Council primarily, to ensure that any adverse environmental effects are appropriately avoided, remedied and/or mitigated, it will depend on the nature of each specific incident as to what form of enforcement action will be undertaken. For minor, one off incidents, it is likely that a formal warning will be issued. However if the incident is of an ongoing nature and/or has been repeated a number of times it is likely that abatement and infringement notices will be issued. If it is deemed the incident has caused significant adverse environmental effects, or breaches are having a cumulative effect on the environment, it would be likely that Compliance Officers will recommend prosecution to management.

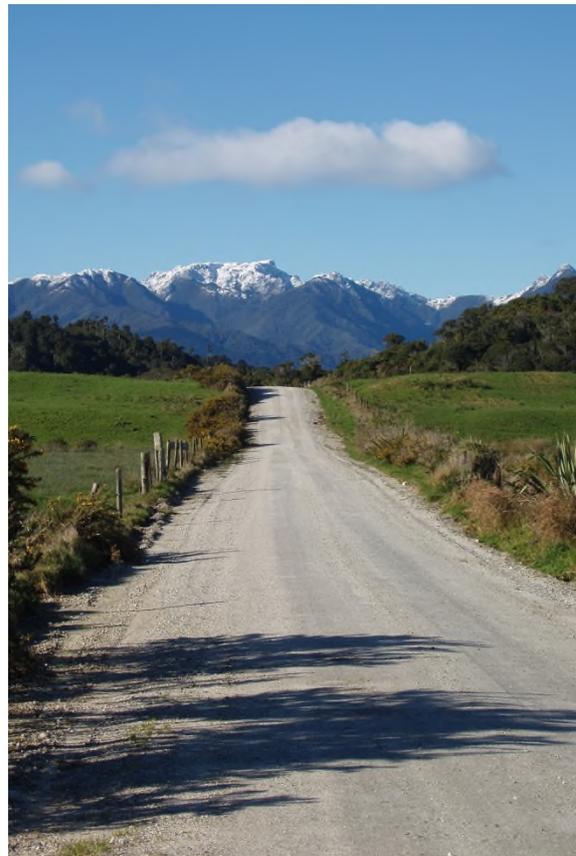
There will be some occasions when enforcement action cannot be taken for activities that cause adverse environmental effects such as when they are being undertaken in accordance with the RMA, a permitted activity rule in a regional plan, or in accordance with the conditions of resource consent.



Factors to consider when undertaking enforcement action

When deciding to undertake enforcement action there are a number of criteria that need to be considered, which are listed below:

- The actual adverse effects (effects that have occurred)
 - Any likely adverse effects (potential effects)
 - Whether it was deliberate or an accidental action
 - The degree of due care taken/foreseeability of incident
 - The value or sensitivity of the area affected, including any significant cultural values
 - The attitude of the offender toward the offence
 - Whether it was a repeat non-compliance 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 alleged offender
 - The degree of deterrence required in relation to the party involved
- Any degree of general deterrence required
 - Any relevant special circumstances – e.g. extreme weather event or other event outside the control of the party involved



What the complainant can expect from the enforcement service

To initiate a compliance enforcement investigation, complaints can be made to Council via a number of methods. For urgent matters, phone is the preferred method in order to gather the correct information.

In order to assist the investigation Council ask that as much information is provided as possible when the initial complaint is made. It would be useful if all details are given including 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 may also be encouraged to send in dated photographs of the alleged breach, in order to assist the investigation. In respect of complaints received, the following service standards apply:

- All valid complaints will be properly recorded and investigated
- The personal details of the complainant will be held in the strictest confidence.
- Other than cases where immediate or urgent action may be required (see below) initial investigation is to

be undertaken within five working days of receipt.

- In cases of involving a serious and/or irreversible harm, the complaint will be investigated as a matter of priority, usually within 24 hours of receipt. Urgent action will be instigated to stop unlawful activity.
- The complainant will be updated on any subsequent action that may result as soon as reasonably practicable.
- We will not take sides in a dispute; we will however judge what action is appropriate according to the evidence, particular circumstances, impact on the environment, relevant policies, and legalisation.

What those in breach can expect from the enforcement service

Under normal circumstances, prior to taking formal enforcement action, the officer concerned will fully and openly discuss the circumstances of the breach with those involved. Those in breach will be contacted as soon as possible following the site visit having been undertaken advising them that they are required to avoid, remedy and/or mitigate the environmental harm identified. When breaches are found to have occurred Compliance Officers will:

- Communicate clearly to the responsible party or their agent, identifying the problem and that they may need to undertake action to achieve compliance.
- Where officers consider there is a de minimis effect on the environment or effects are satisfactorily addressed by mitigation measures, a reasonable period of time will be allowed for the submission of a retrospective resource consent application to regularise an activity that would otherwise require resource consent.
- Initiate formal enforcement powers after being satisfied that there is a clear breach of the RMA and there

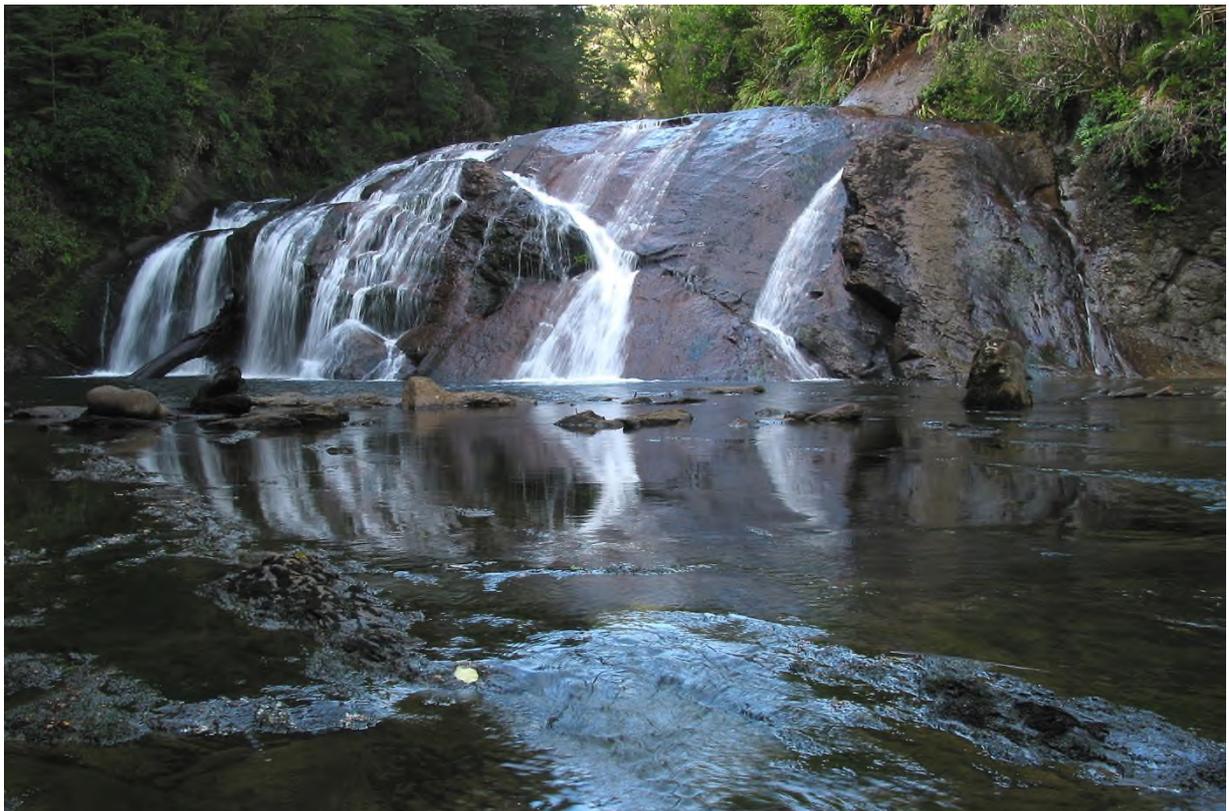
has been or there is the possibility of an adverse impact on the environment.

- In the case of formal action being authorised the contravener's rights of appeal will be explained to them.
- Persistent offenders and those who seek to exploit the compliance process at the expense of others will be dealt with using appropriate action.

Cost recovery

Where monitoring costs are incurred in relation to a specific consent, these costs will be recovered from the Consent Holder in accordance with the Council's general charging policy and the provisions of the RMA.

Where the Council incurs costs associated with undertaking work in avoiding, remedying, or mitigating adverse effects caused by or on behalf of any person, or in relation to any land owned by such a person, from contravention of the RMA, regional rules, a resource consent, or a National Policy Statement, that person will be invoiced to recover any reasonable costs incurred by the Council.



Overview of compliance process



Enforcement options

The RMA provides the formal enforcement tools that are available to deal with breaches of the RMA. It is important to ensure these tools are applied consistently across the myriad of activities and resource use across the region.

Enforcement tools can be categorised into two main functions. **Directive** actions are about looking forward and giving direction to right the wrong. **Punitive** actions are about looking back and holding people accountable for what they have done. These actions are described in the following tables:

Directive Actions			
Action	Description of Action	Potential Impacts on 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, a 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 co-operative parties, who are motivated to follow the direction, and where the breach is of a minor nature and an educative approach is considered appropriate.
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. 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 against the RMA 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 or 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 against the RMA 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.
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 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: <ul style="list-style-type: none"> • The environmental effect, or potential effect, is minor 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. Depending on the breach the fine will be between \$300 and \$1000	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: <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.
Prosecution	A prosecution is a process taken through the criminal courts to establish guilt or innocence and, if appropriate, the court will impose sanctions. Most RMA offences carry a penalty of up to two years imprisonment, or a fine of up to \$300,000 or \$600,000 against a company.	<p>A successful prosecution will generally result in a conviction and a penalty imposed.</p> <p>A prosecution forms part of a history of non-compliance and will be considered if there are future incidents of non-compliance.</p>	<p>A prosecution will be considered when:</p> <ul style="list-style-type: none"> • There has been a wilful or negligent breach of the RMA; and • When infringement notices are considered not to be a sufficient deterrent or not appropriate under the circumstances. <p>Note: Any previous history of recorded breaches of the RMA will also be a factor, but not having a recorded history will not preclude a decision to prosecute where other factors are significant.</p>

Alternative Justice

The alternative environmental justice approach is designed so the West Coast Regional Council can exercise prosecutorial discretion to resolve environmental offending without the offender gaining a conviction or criminal record. The purpose is to facilitate the resolution of the offending to a standard that it is no longer in the public interest to proceed with a prosecution.

Alternative justice is offered as a pathway at the time charges are laid with the Court in cases where defendants are considered eligible for this pathway. Charges are not withdrawn until all agreed actions are complete and the defendant is liable for costs associated with the facilitation of alternative justice.

The defendant must intimate a guilty plea to be considered for alternative justice. Other eligibility criteria include:

- The scale of the environmental impact
- The attitude of the defender to their offending
- Culpability, the level of intent involved in the offence
- The compliance history of the defendant
- The defendants personal factors (i.e. age and health)
- The views of any victim directly affected by the offending

Informing the public

The Council is committed to educating and informing members of the public in relation to the work carried out by its Compliance Team. The Council will attempt to strike a balance between informing the public about planning regulation through publishing articles in bi-annual newsletters as well as publicising when formal action is taken via the media if considered appropriate. It is considered important to highlight action that has been taken to discourage others from breaching planning regulations and

to ensure the public have confidence in the compliance team.

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

As part of the Council's commitment to being open and accountable a compliance monthly report will be presented to the Resource Management Committee.

Our services provide a range of supplementary consent documents, design guidelines, compliance information and forms.

Contacts and further information

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