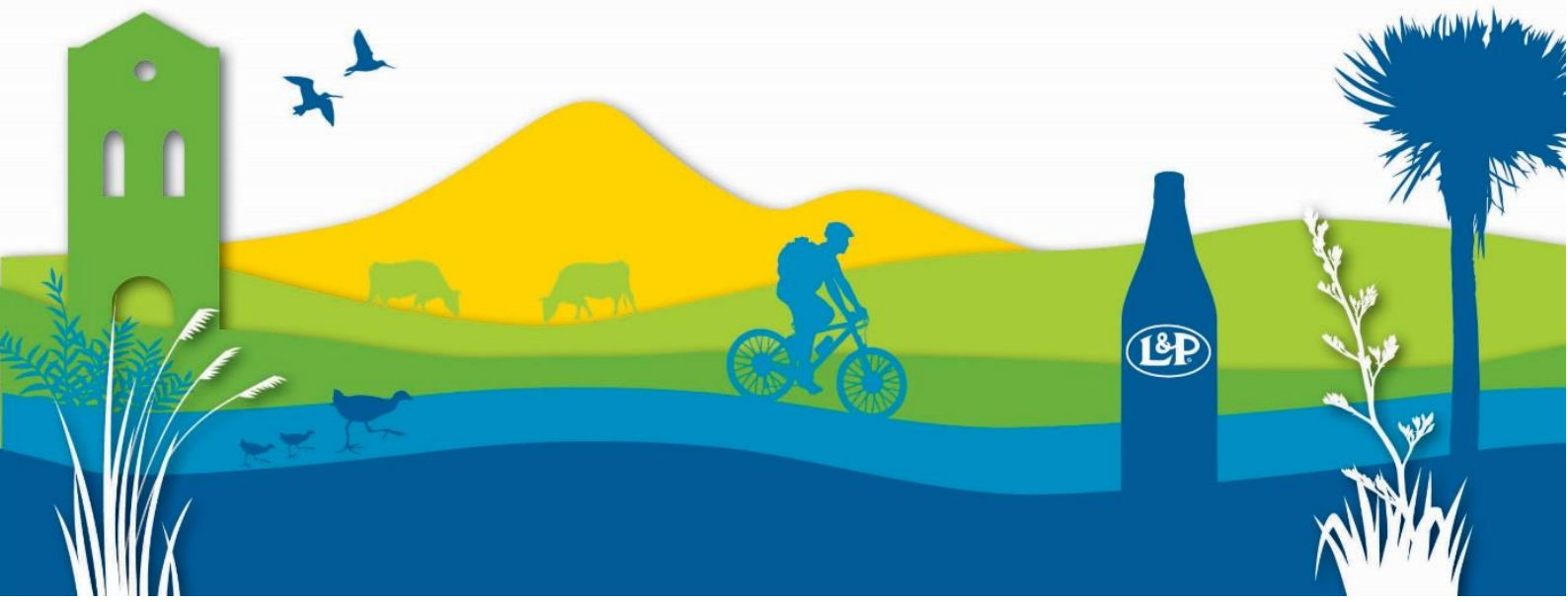




# 2022 Compliance, Monitoring and Enforcement Policy

Resource Management Act 1991

our home, our future  
tō tātou rohe kāinga, tō tatou ao tūroa



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## 1. Introduction

Councils have a responsibility to implement the Resource Management Act 1991 (RMA). Territorial authorities, including the Hauraki District Council, carry out compliance, monitoring and enforcement in relation to the effects of land use, noise, subdivision, and the effects of activities on the surface of rivers and lakes.<sup>1</sup>

How councils choose to monitor compliance and undertake enforcement action remains at their discretion. This policy creates a framework for good decision-making that will avoid actual or perceived conflicts of interest.

This policy is generally made in accordance with national guidelines and sector best practice.<sup>2</sup>

## 2. Council objectives

The Council has the following objectives in relation to compliance, monitoring and enforcement:

- Encourage high rates of voluntary public compliance with a rule, condition, standard, direction or regulation made under the RMA.
- Maintain public health and safety and achieve good environmental outcomes through active, fair and consistent monitoring and enforcement action.
- Deter people from taking action that does not comply with the RMA, encourage people to rectify action that does not comply with the RMA, and reduce persistent re-offending.

## 3. Guiding principles

Compliance, monitoring and enforcement will be undertaken in line with the following guiding principles:

- We will use an informed evidence-based approach to our decision-making.
- We will take a fair, reasonable and proportionate approach to regulatory interventions, our actions will be appropriate for the situation.
- Compliance and enforcement outcomes will be consistent and predictable for similar circumstances.
- We will be transparent by providing clear information and explanation to the community, and those being regulated, about the standards and requirements for compliance.
- We will work with and, where possible, share information with other regulators and stakeholders to ensure the best compliance outcomes for our district.

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<sup>1</sup> Section 31, Resource Management Act 1991.

<sup>2</sup> Ministry for the Environment, 2018, Best Practice Guidelines for Compliance, Monitoring and Enforcement under the Resource Management Act 1991

## 4. Promoting compliance

- 4.1 The Council will proactively promote compliance where possible, including:
- Providing signage and using print and electronic communication channels to inform people of the rules and standards.
  - Providing advice and guidance on how people can comply.
  - Carrying out targeted projects to promote voluntary compliance, for example linking a business with appropriate industry advisors or running education sessions.
- 4.2 Fair and consistent monitoring of compliance will also be undertaken to promote compliance.

## 5. Monitoring compliance

- 5.1 Frequency of compliance monitoring will depend on the type of activity the consent is issued for, the risk profile associated with it, and the compliance history of the consent holder. See **Schedule One** for the risk profile matrix.
- 5.2 The Council will undertake routine monitoring of conditions of high-risk resource consents, and most medium-risk resource consents.
- 5.3 Complaints can be made to the Council via a number of methods, including phone and email. It helps to provide as many details as possible. These include the address at which the alleged breach has taken place, a description of the unauthorised activity, and the harm that is considered to be caused. Complainants may also be encouraged to send in dated photographs of the alleged breach as required.
- 5.4 The Council will ensure that:
- All valid complaints are properly recorded and investigated.
  - The personal details of the complainant are held in the strictest confidence.
  - In cases involving a serious and/or irreversible harm to a person, animal or the environment, the complaint is investigated as a matter of priority, as soon as possible.
  - The complainant is updated on any subsequent action that may result as soon as reasonably practicable.
  - Council remains neutral in a dispute; however will take what action is appropriate according to the evidence, particular circumstances, impact on people and the built or natural environment, relevant policies, and legislation.

## 6. Investigation of non-compliance

- 6.1 If non-compliance, or suspected non-compliance, is witnessed by Council staff or reported to the Council, information is gathered to ascertain how and why the non-compliance occurred. The purpose of an investigation is to establish the truth of what has occurred and enable informed decisions for a resolution to be made.

The depth and scope of the investigation will depend on the seriousness of the incident.

6.2 Investigation activities may include (but are not limited to):

- Visiting property, including private property, to collect information or potential evidence like samples, photographs, measurements, or ecological assessments.
- Arranging for expert inspection such as engineers, building practitioners, Fire and Emergency New Zealand, consultants to attend and assist in gathering information.
- Talking to people about what they know about the incident. People interviewed may be witnesses to an incident or potentially liable parties. These conversations are recorded in writing or by electronic means.
- Seeking input from iwi and hapū representatives on how the non-compliance has impacted them.
- For serious matters, interviews of suspects are conducted in accordance with the appropriate legislative requirements for gathering evidence.

6.3 Council staff must ensure that all entry to private property is done so lawfully. A warranted enforcement officer (as per the Council’s Delegations Manual) has the ability to enter private property, not including a private dwelling, for the purpose of assessing compliance. If the officer has reasonable grounds to believe that non-compliance exists, they cannot return on site for the purpose of searching for further evidence without the permission of the property owner or occupier. If permission is not given, a search warrant will be needed.

## 7. Enforcement tools

When non-compliance is identified, an array of enforcement tools are available. 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. It is important to note that for every directive action there should be a corresponding punitive action.

7.1 Where the level of risk to health and safety and the environment is low, and it is legally appropriate, enforcement will be carried out by way of a graduated approach with the focus on encouraging voluntary compliance. The initial response would likely involve non-statutory tools, starting with the least serious tools or a combination of tools.

Non-Statutory Enforcement Tool	Description
Verbal or written direction	Advice (either verbal or written) that a breach of the RMA has occurred (or may occur) and that the offending party needs to take or cease a particular action. Verbal or written directions are usually reserved for cooperating parties and where there is a likelihood that the breach will not continue.
Formal warning letter	A formal warning letter informs a person/company that they have breached the RMA and to request compliance. This is for minor breaches. The letter forms part of the formal history of non-compliance, which can be used to inform future enforcement decisions, and can also be used as evidence in Court, if a prosecution is later taken.

7.2 If the non-compliance has re-occurred or it poses a high level of risk to health and safety or the environment, and the Council has strong grounds for taking formal enforcement action, the following may occur:

<b>Statutory Enforcement</b>	<b>Description</b>
Abatement Notice  Sections 322– 325B of the RMA	An abatement notice is a formal written direction, requiring certain actions to be taken or to cease within a specified time. Generally, abatement notices are used when non-compliance has been detected and the offender needs to 'avoid, remedy or mitigate' the damage to the environment. The abatement notice itself does not carry a penalty, but breach of an abatement notice is a prosecutable offence under section 338(1) of the RMA.
Excessive Noise Direction  Sections 326– 328 of the RMA	An enforcement officer (or constable) may issue an excessive noise direction after investigating a noise incident and forming an opinion the noise is excessive. An excessive noise direction directs the occupier of the place from which the sound is being emitted, or any other person who appears to be responsible for causing the excessive noise, to immediately reduce the noise to a reasonable level. The excessive noise direction does not carry a penalty, but breach of an excessive noise order is a prosecutable offence under 338(2)(a).
Infringement notice  Sections 343A– 343D of the RMA; and Resource Management (Infringement Offences) Regulations 1999	An infringement notice is a written notice accompanied by a fee, which informs a person that an offence has been committed under the RMA. The purpose of infringement fees is to deter conduct that is of relatively low seriousness and that does not justify the full imposition of the criminal law. No criminal convictions can be imposed through infringement notices. Fines currently range between \$300–\$1,000, as set out in Schedule 1 of the Resource Management (Infringement Offences) Regulations 1999 (except under section 360(1)(bb) in relation to stock exclusion, where the fine can be up to \$2,000). Infringement Notices are issued in accordance with the Summary Proceedings Act, which determines the process.
Application for enforcement order  Sections 314– 319 and 321 of the RMA.	An enforcement order is an order made by the Environment Court that requires certain actions to be taken or activities to cease within a specified time, where the Environment Court believes the activity breaches or is likely to breach the RMA. An application for an enforcement order can be made by any person to the Environment Court. The Environment Court may direct the offender to pay costs to 'avoid, remedy or mitigate' the damage to the environment. Breach of an enforcement order is a prosecutable offence under section 338(1).
Application for interim enforcement order  Section 320 (and 314–319 and 321 on enforcement orders)	An interim enforcement order is similar to an enforcement order and is used in circumstances where the need for the order is urgent. Applications are usually dealt with by the Environment Court without a hearing and without serving notice on the other party, although a substantive hearing is scheduled for a later date. The Environment Court may direct the offender to pay costs to 'avoid, remedy or mitigate' the damage to the environment.

<b>Statutory Enforcement</b>	<b>Description</b>
<p>Prosecution</p> <p>Section 338 of the RMA. Many other sections are also relevant.</p>	<p>A prosecution establishes the guilt or innocence of an accused party and, if necessary, results in a sanction imposed by the Courts. This process is administered within the criminal jurisdiction, and offences carry criminal penalties. RMA prosecutions are considered in the District Court by District Court judges who also hold office as an environment judge. Charges must be filed in the District Court within six months of 'the time when the contravention giving rise to the document first becomes known, or should have become known.'<sup>3</sup> There are varying levels of maximum fine available to be imposed by the District Court on conviction.</p>

7.3 In general the Council will only revert to prosecution for those serious or persistent offenders or where the effect of the offending is severe. Prosecution is conducted by lawyers, on the Councils behalf.

## 8. Enforcement decision-making

8.1 When determining the most appropriate enforcement response to a particular situation, investigators weigh all competing considerations and exercise judgement. Much will depend on the circumstances of the case and the willingness and responsiveness of the parties involved to remedy the situation. The courts have provided helpful guidelines as to what factors are appropriate to consider in RMA cases to determine the seriousness of a breach.<sup>4</sup> Each case is unique and the individual circumstances need to be considered on a case-by-case basis to achieve a fair and reasonable outcome. The factors that will be considered in determining an appropriate response include, but are not limited to:

- The actual adverse effects, or potential adverse effects on the environment.
- The value or sensitivity of the receiving environment or area affected, including whether it has significance to iwi/Māori.
- Whether the breach was a result of deliberate, negligent or careless behaviour.
- The degree of due care taken by the culpable party, and how foreseeable the incident was.
- Efforts made by the culpable party to remedy or mitigate the effects of the breach and the effectiveness of the remediation or mitigation.
- Whether the incident is a repeat non-compliance by the culpable party or whether previous enforcement action has been taken against the party for the same or similar breach.
- Whether they have a defence. In the RMA, statutory defences are provided for under sections 340 and 341 for offences against the Act.
- Whether the statute of limitations applies.

<sup>3</sup> Resource Management Act 1991, section 338(4)

<sup>4</sup> Machinery Movers Limited -v- Auckland [1994] 1 NZLR 492 & Selwyn Mews Ltd -v- Auckland City Council HC Auckland CRI-2003-404-159

- 8.2 See **Schedule 2** for the decision-making matrix that can assist staff make a decision on the appropriate level of response.
- 8.3 A warranted officer cannot make a statutory enforcement decision in isolation.
- 8.4 For minor breaches (weighing up the decision-making enforcement factors above), the decision on the non-statutory enforcement response may be made by the frontline enforcement officer, in consultation with his or her Team Leader.
- 8.5 Where the breach is significant (taking into account the decision-making enforcement factors above) and an excessive noise direction, abatement notice and/or an infringement notice is contemplated as a response, the decision must be referred to the Team Leader and Group Manager.
- 8.6 Where the breach is significant (taking into account the decision-making enforcement factors above) and an enforcement order or prosecution is contemplated as a response, the decision must be referred to the Team Leader, Group Manager and Chief Executive Officer. It must also be referred to suitably qualified Councillors that are on the Hearings and Judicial Committee.
- 8.7 If prosecution is being considered then the authority to proceed is conditional on the matter being subjected to independent legal review. The review applies two tests: the evidential test and public interest test. These tests are separately considered and must both be satisfied before a prosecution is initiated.
- 8.8 The enforcement action taken by the officer will be in line with their enforcement manual outlining the procedures necessary when undertaking the enforcement.
- 8.9 There are different standards of proof that require consideration in any enforcement decision process. Before any action is taken, the sufficient existence of these levels of proof must be established.

<b>Enforcement Tool</b>	<b>Standard of Proof</b>
Infringement notice	An enforcement officer 'has reasonable cause to believe'. In such cases any individual issued with an infringement notice still has the right of appeal to the District Court, where any evidence would be weighed by the presiding Court Officers.
Application for enforcement order or appeal against abatement notice	Is 'beyond reasonable doubt'. A 'reasonable doubt' is a doubt that would prevent a reasonable and just judge or jury from coming to a conclusion.
Prosecution	Is 'on the balance of probabilities'. This means that once both sides have presented their evidence, the Judge will find for the party who, on the whole, has a stronger case.

## 9. Cost recovery

The Council endeavours to make all reasonable efforts to ensure that the cost of compliance is met by the person or company responsible for the non-compliance and not by the district ratepayers.



There are no fines attached to abatement notices. However, the Council will recover costs where the non-compliance relates to the 'administration, monitoring or supervision' of resource consents, including for the issuing of abatement notices, as set out in section 36(1)(c) of the RMA. This will be included in the Councils Schedule of Fees and Charges.

Infringement fees are attached to infringement notices, and are fixed according to the Resource Management (Infringement Offences) Regulations 1999. This fee is paid directly to the council.

## 10. Related documents

For further information on enforcement processes see the Ministry for the Environment (2018) Best Practice Guidelines for Compliance, Monitoring and Enforcement under the Resource Management Act 1991.<sup>5</sup>

The Solicitor-General's Prosecution Guidelines (2013)<sup>6</sup> and the Media Protocol for Prosecutors (2013)<sup>7</sup> while not binding on local authorities, represent best practice for prosecution matters.

## 11. Glossary

Unless the context requires otherwise, the definitions of words or terms used in this policy are those outlined below.

<b>Act or RMA</b>	Is the Resource Management Act 1991.
<b>Non-compliance</b>	Means any breach of a rule, condition, standard, direction or regulation made under the Act.
<b>Enforcement</b>	The action taken by Council to respond to non-compliance. The Act provides enforcement tools that are either punitive (infringement notice and prosecution), or directive (abatement notice and enforcement order). Enforcement can also be non-statutory including written or verbal directions, further inspections, and written or verbal warnings.
<b>Enforcement Officer</b>	A Council officer authorised in accordance with section 38 of the Act. Only enforcement officers can issue an infringement or abatement notice.
<b>Monitoring</b>	The activities carried out by Council to assess compliance with a rule, condition, standard, direction or regulation made under the Act. This can be proactive (e.g., resource consent or permitted activity monitoring) or reactive (e.g., investigation of suspected offences).
<b>Regulations</b>	Includes the Resource Management (Forms, Fees and Procedure) Regulations 2003, and Resource Management (Infringement Offences) Regulations 1999, and any other Regulations made in accordance with the Act.

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<sup>5</sup> [Best practice guidelines for compliance, monitoring and enforcement under the Resource Management Act 1991 | Ministry for the Environment](#)

<sup>6</sup> [Microsoft Word - 2162439\\_1 \(crownlaw.govt.nz\)](#)

<sup>7</sup> [Microsoft Word - 2028293\\_1 \(crownlaw.govt.nz\)](#)

## 12. Review

This policy will be reviewed within five years after the first policy is adopted by the Council and then at intervals determined by the Council.

## 13. Document management and control

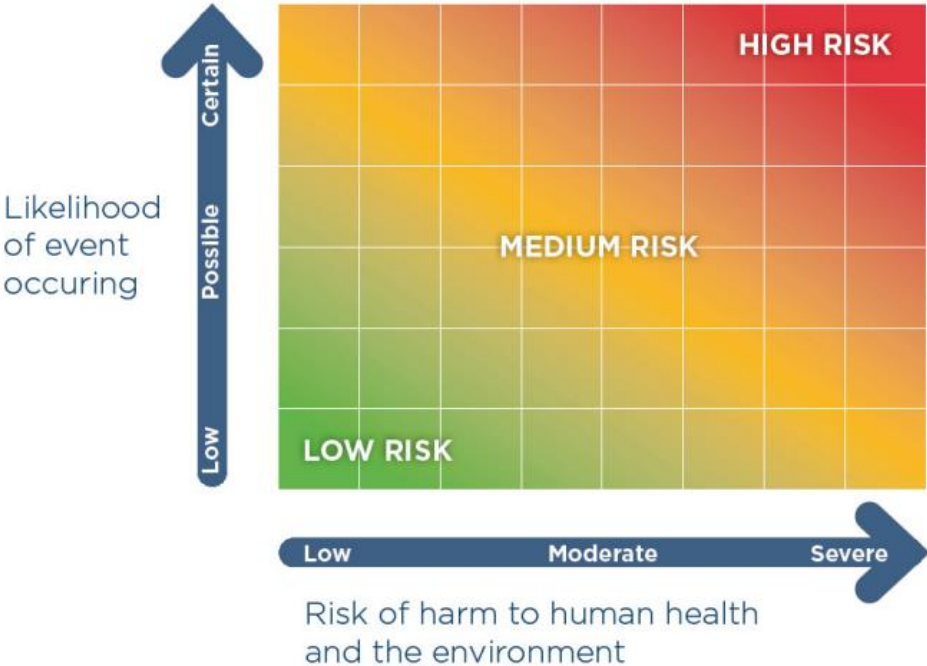
<b>Title</b>	Compliance, Monitoring and Enforcement Policy 2022
<b>Sponsor</b>	Strategic Planning
<b>Approved by:</b>	Group Manager Community Development
<b>Adoption date:</b>	25 May 2022
<b>Review by:</b>	25 May 2027
<b>File ref:</b>	2858355

Property of Hauraki District Council

# Schedule 1: Risk-based approach to compliance monitoring

The risk-based approach should determine the method and frequency that specific activities or consents in a high, medium, or low risk category are monitored. To determine the risk associated with a consent, the Council applies a risk matrix, which also takes into account the public interest in monitoring the consent (publicly notified, limited notified, affected parties, no affected parties), the activity status (non-complying, discretionary, restricted discretionary or controlled), and the environmental effects (major, medium, minor, less than minor).

**Figure 1: Risk-based Compliance Monitoring Matrix**



Source: Ministry for the Environment Best Practice Guidelines

Where a consent is granted for a high risk activity (e.g., a discharge of a contaminant to land into a sensitive receiving environment) it might be monitored on a monthly, or even more frequent, basis. Tailor-made, site-specific monitoring programmes might be needed for large activities or those with the potential to generate significant adverse effects, for example a monitoring programme for a large roading project being completed over several years.

Where a consent has been granted for a low risk activity, this may only be scheduled for monitoring once every two to three years. One-off monitoring might be all that is required for activities with minor effects or effects that are limited to the time of construction, for example installation of a culvert. Regular inspections might be appropriate for activities of an ongoing nature, for example the use of land, where the activity is not a permitted one, without a resource consent.

## Schedule 2: Decision-making matrix for graduated response

The matrix can be used as an aid for having conversations (e.g., by the enforcement officer, team leader and Group Manager) on the appropriate response to non-compliance, and should not be used as a formula for determining the appropriate response in every case.

**Figure 2: Enforcement Decision-making Matrix**

### Decision Matrix

Possible effect of Offence	(Unlikely to happen again)	Potential to occur again)	Subsequent Offence	Knowingly Negligent
No personal or environmental effects	Note on file and no further action	Warning letter and preventative action plan	Infringement fine	Infringement fine
Minor personal or environmental effects (able to be remedied)	Warning letter	Warning letter and preventative action plan	Abatement notice requiring action and infringement fine	Abatement notice requiring action and infringement fine
Minor personal or environmental effects (unable to be remedied)	Warning letter	Warning letter and preventative action plan	Preventative abatement notice and infringement fine	Preventative abatement notice and infringement fine
Moderate personal or environmental effects (able to be remedied)	Abatement notice requiring action and/or infringement fine	Abatement notice requiring action and/or infringement fine	Abatement notice requiring action and infringement fine	Abatement notice requiring action and infringement fine
Moderate personal or environmental effects (unable to be remedied)	Infringement fine	Preventative abatement notice and/or infringement fine	Infringement fine or prosecution depending on circumstances	Infringement fine or prosecution depending on circumstances
Significant personal or environmental effects (able to be remedied)	Abatement notice requiring action and/or infringement fine	Abatement notice requiring action and/or infringement fine	Enforcement order and/or prosecution	Enforcement order and/or prosecution
Significant personal or environmental effects (unable to be remedied)	Infringement fine or prosecution depending on circumstances	Infringement fine or prosecution depending on circumstances	Prosecution	Prosecution



For more information:

- **W** [www.hauraki-dc.govt.nz](http://www.hauraki-dc.govt.nz)
- **E** [info@hauraki-dc.govt.nz](mailto:info@hauraki-dc.govt.nz)
- **P** 07 862 8609 or 0800 734 834 (from within District)

Visit us at one of our offices:

- Paeroa: 1 William Street
- Ngatea: 84 Orchard West Road
- Waihi: 40 Rosemont Road