



POLICY

Compliance and Enforcement

Approval and review details

Approval authority	Chief Executive	Effective date	1 August 2024
Administrator	GM Regulatory & Growth	Next review date	1 August 2026

Version History

Date	Version	Changes	By	Date Adopted
	1.0	Draft presented for consideration	GM R&G	23 July 2024

Overview

Purpose

- a. Formalise the principles that underpin how Ōtorohanga District Council applies regulatory compliance and enforcement.
- b. Set out Council's approach to compliance and enforcement in the Ōtorohanga District while informing how Council resources these functions.
- c. Provide consistent, integrated and fair compliance and enforcement in terms of approach, processes, procedures, and decisions.
- d. Achieve good outcomes by ensuring that private activities do not give rise to adverse public effects.

Key Points

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.

Ōtorohanga District Council has statutory obligations relating to implementation of its compliance and enforcement activities. This policy ensures appropriate public outcomes from private activities.

Review

Every two years on the anniversary date.

1. Purpose

The purpose of this policy is to:

- a. Formalise the principles that underpin how Ōtorohanga District Council applies regulatory compliance and enforcement.
- b. Set out Council's approach to compliance and enforcement in the Ōtorohanga District while informing how Council resources these functions.
- c. Provide consistent, integrated and fair compliance and enforcement in terms of approach, processes, procedures, and decisions.
- d. Achieve good outcomes by ensuring that private activities do not give rise to adverse public effects.

Based on the Ministry for the Environment Best Practice Guidelines for Compliance, Monitoring and Enforcement Under the Resource Management Act, the principles represented in this policy are equally applicable across the range of enforcement activities under different legislation.

2. Encouraging Compliance

Ōtorohanga District Council has statutory obligations to ensure the public comply with regulations and legislation which is administered by the Council. However, we are not resourced to undertake

proactive enforcement. Ōtorohanga District Council may employ different strategies to promote compliance. These include (in order of preferred actions):

- a. Engagement with people, stakeholders and the community on legislative requirements to promote greater understanding of the challenges and constraints; engender support; and identify opportunities.
- b. Education for those who are unaware of the rules and regulations or need reminding of their obligations, and to provide the public with information about what rules and regulations are in place acceptable outcomes.
- c. Enabling individuals and stakeholders to develop best practice e.g. by linking with resources and advice and promoting examples of best practice.
- d. Enforcement when breaches of rules and regulations are identified using the range of enforcement tools council has available to it to bring about positive change.

3. Why Enforce?

Enforcement is an integral part of the implementation and administration of the legislation that Council is obligated to implement, on behalf of the communities it represents. As an agency bound by legislation, Council has responsibility to ensure compliance with a range of laws.

Compliance and enforcement is related to matters of health, safety, and environmental protection.

Enforcement mechanisms aim to have three interrelated outcomes, these are:

- a. Avoidance, mitigation or remedying of adverse effects
- b. Compliance promotion
- c. Deterrents and restitution.

Typically, the process of undertaking enforcement is a staged escalation of: firstly, promoting awareness and providing assistance; then issuing warnings; issuing of enforcement / abatement notices; and in serious and rare cases, prosecution.

4. Conflicts of Interest

Ōtorohanga District Council will carry out all enforcement functions in accordance with the Conflict of Interest Policy to:

- a. Avoid actual or perceived conflict of interest
- b. Minimise the risks where a conflict of interest exists
- c. Ensure staff are free from any personal, commercial, financial, political, or other pressures that might affect their actual or perceived ability to make independent decisions.

5. Policy Clarification and Breaches

5.1 Clarification

Clarification regarding this policy can be sought from the Ōtorohanga District Council Group Manager Regulatory and Growth.

5.2 Breaches

The Ōtorohanga District Council Group Manager Regulatory and Growth is responsible for monitoring compliance with this policy.

5.3 Exceptions

Any deviations from this policy will be authorised by the Ōtorohanga District Council Group Manager Regulatory and Growth.

6. Our Compliance and Enforcement Principles

6.1 We will be targeted and focus our effort on outcomes according to risk and available resourcing.

Table 1: Our Compliance and Enforcement Focus

	Light touch Hand ←				→ Heavy			
	Council's Focus area				Only if/as necessary	Absolute	Last resort	
Action	Do nothing ¹	Recognise & reward ²	Inform and advise	Warning	Infringe	Abate	Prosecute	
Outcome	No action	Promote best practice	Education	On-notice	Fine	Stop doing	Conviction	

- a. We will target enforcement at recidivist poor performers and highest risk.
- b. We will use right tool/for the right problem/at the right time, within our available resources and capacity, and appropriate, recognise and reward best proactive and proactive compliance (e.g. profiling best practice / company via our newsletters)
- c. Low level “nuisance” non-compliance may not be enforced if we do not have capacity.

¹ “Do nothing” only where the risk or outcome is negligible or very low e.g. nuisance only incidents

² “Recognise and reward” best practice and proactive compliance

6.2 Our response and response times will be based around our capacity.

Where a compliance or enforcement response is deemed necessary, we will investigate and respond as soon as practicable, within our available capacity, resourcing, priorities, and any third party responder contractual response terms and conditions.

6.3 We will be cost effective.

Compliance and enforcement comes at a cost to the public. Full costs of compliance and enforcement are rarely recovered from the offender. We will therefore:

- apply compliance and enforcement tools in a way that is cost effective
- only undertake compliance investigation:
 - in response to formal complaints³ received; or
 - where enforcement staff observe activities that result in, or have high likelihood of, serious or significant harm to people, property or environment.

6.4 We will be transparent.

We will provide clear information and explanation about the standards and requirements for compliance.

6.5 We will be collaborative.

We will work with and where possible, share necessary information with other regulators and stakeholders to ensure the best outcomes (subject to any limitations around providing sensitive or private information).

6.6 We will be consistent.

- a. Our actions will be consistent with the legislation and within our powers.
- b. Compliance and enforcement will be consistent and predictable for similar circumstances.
- c. We will ensure that our staff have the necessary skills and training, with effective systems and policies in place to support them.

6.7 We will act lawfully.

We will conduct ourselves lawfully and impartially and in accordance with legislation and Council's powers.

³ "Formal complaints" means complaints received through any of Council's official contact pathways (email to info@otodc.govt.nz; phone call to 07 873 4000; or incident log via the Antenna App) and logged as a service request. Council will not investigate complaints that provide insufficient details, are anonymous, or have not come through Council's official communication pathways (e.g. complaints on social media).

6.8 We will be fair, reasonable and proportional.

- a. We will use our discretion justifiably.
- b. Our interventions and actions will be proportionate to the breach and the risks posed to people, property and the environment.

6.9 Actions and decisions will be evidence-based and informed.

- a. We will use an informed and evidence-based approach to our decision making.
- b. Our decisions will be informed by a range of sources, including sound science, the regulated parties, information received from other regulators, members of the community, industry and interest groups.

7. Enforcement Tools

Enforcement “tools” can be categorized into three main types:

- a. Informal Actions
- b. Focused on providing education and incentive-based responses to allow the person to become better-informed and to develop their own means to improve compliance.
- c. Directive Actions
- d. These are about looking forward and giving direction and righting the wrong.
- e. Punitive Actions
- f. These are about looking back and holding people accountable for what they have done.

The primary purpose of the informal and directive actions is to encourage compliance via engaging, educating, and enabling stakeholders, while the punitive action focuses on using enforcement tools to deal with non-compliances. The following Enforcement Matrix represents enforcement tools available to the Council in response to designated breaches.

Table 2: Enforcement Matrix

	First offence Our Focus Area			Second offence or higher risk		Third / repeat offence or significant consequences	
	Oral Warning	Written Warning	Notice to Fix	Infringement Notice	Abatement Notice	Enforcement Order	Prosecution
Animal Control	✓	✓	n/a	✓	✓	Dog Seizure	✓
Building	✓	✓	✓	✓	n/a	n/a	✓
Bylaws	✓	✓	n/a	✓	n/a	n/a	✓

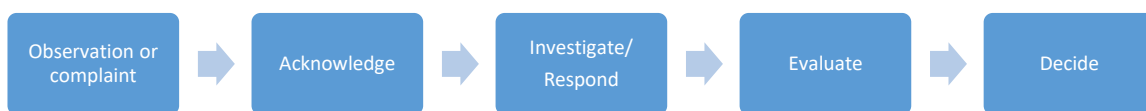
	First offence Our Focus Area			Second offence or higher risk		Third / repeat offence or significant consequences	
District Plan	✓	✓	n/a	✓	✓	✓	✓
Environmental Health	✓	✓	n/a	n/a	n/a	n/a	✓
Freedom camping	✓	✓	n/a	✓	n/a	n/a	✓
Liquor	✓	✓	n/a	✓	n/a	n/a	✓
Noise	✓	✓	n/a	✓ Excessive noise direction	✓	Equipment seizure	✓
Parking	n/a: Parking is enforced on a case by case basis						
Resource Consents	✓	✓	n/a	✓	✓	✓	✓

The enforcement tool used to achieve compliance is dependent upon factors such as:

- a. The nature, scale and risk of the harm caused by the breach
- b. Which penalty is likely to be most effective in ensuring compliance or acting as a deterrent
- c. Whether there is general public awareness of the regulation
- d. Any history of previous breaches, for the same activity

8. Enforcement Process

The following section outlines the enforcement process that the Council undertakes from the point of discovering an offence throughout to the decision to take enforcement action.



8.1 ACKNOWLEDGE: within one working day of receiving the complaint

Upon receiving a complaint (via a Service Request), the complaint will be acknowledged as being received.

8.2 INVESTIGATE/RESPOND: within five working days of receiving the complaint (unless other response times apply)

Investigation which would include reviewing past history, reviewing file documents, gathering evidence, speaking to witnesses, obtaining explanations, and other specific considerations such as cultural / iwi considerations and impacts on other agencies (e.g. public health, State Highway).

NOTE – where a location or activity involves cultural sensitivity for Māori, Council's Kaitakawaenga (Iwi Relations Advisor) will be engaged to assist and provide advice. The purpose of this is to find out whether, how, and why the breach has occurred and to enable informed decisions to be made. The depth and scope of an investigation and response is constrained by Council's capacity to respond, and dependent on the risk arising.

If the complaint relates to a matter that is outside the statutory function of Ōtorohanga District Council, the complainant will be referred to the correct agency and the complaint will be closed.

Council will not:

- follow up or facilitate a complaint falling to another agency, on behalf of the complainant
- investigate or respond to cases where:
 - complaints or allegations are made on social media;
 - there is a recorded history of complaints where no enforcement action has been justified;
 - complaints relate to a civil matter and not a Council responsibility;
 - no adverse effects are likely;
 - any proven complaint would justify no more than minor action;
 - the complaint is vexatious or frivolous

High risk breaches may require a response prior to any other action. Examples include:

- To prevent further serious environmental damage from starting or continuing; actions may include abatement notice (to stop an activity and/or apply for necessary approval), enforcement, or interim enforcement order.
- An immediate closure in the case of a serious food hygiene risk.
- Seizure of an offending animal in the case of a dog attack.

8.3 EVALUATE OPTIONS

Determining the correct enforcement response requires good judgement, good information, and accurate interpretation 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 when determining the seriousness of a breach. General factors to consider are:

- a. The actual adverse effects
- b. The potential adverse effects
- c. Whether the breach was intentional or unintentional, or a repeat breach
- d. Foreseeability of incident
- e. The degree of value/sensitivity of affected area(s) including matters of significance to iwi/Māori, and impacts on third party agencies. NOTE – where a location or activity involves cultural sensitivity for Māori, Council’s Kaitakawaenga (Iwi Relations Advisor) will be engaged to assist and provide advice
- f. The response and attitude of the offender towards the breach
- g. Any effort made to avoid, remedy, and/or mitigate the adverse effects
- h. The effectiveness of any remediation or mitigation undertaken
- i. Any profit or benefit gained by alleged offender
- j. Any relevant special circumstances outside the control of the party involved that had facilitated the occurrence of the breach

There may be factors for specific breaches that are also prescribed in the governing legislation.

8.4 **DECIDE THE ACTION:** within 15 working days of receiving the complaint

Decisions will generally be made under staff delegated authority.

Prosecution is an absolute last resort. Decisions to prosecute will be in accordance with delegated authority (usually by the Chief Executive and/or Group Manager Regulatory and Growth) based on expert and legal advice, and the evaluation factors along with the prosecution guidelines under section 13.

9. Council Obligations to Complainant

To initiate an enforcement investigation, a request or complaint must have been received via the official Council contact pathways (email to info@otodc.govt.nz; telephone 07 873 4346; in person at the Council offices; via the Antenna app; or via the online complaint or service request form). Posts on social media, including Council’s Facebook page, or anonymous complaints, will not be investigated.

Full information should be provided when the initial enquiry is made. This should include:

- the identity and address of complainant

- the address, time and date at which the alleged breach has taken place
- a description of the unauthorised activities
- the harm that is considered to have been caused
- complainants will also be encouraged to send in dated photographs of the alleged breach to assist the investigation.

In respect of complaints received, the following standards apply:

- a. All valid enquiries will be properly recorded and investigated.
- b. The personal details of the complainant will be held in the strictest confidence.
- c. Where resources allow, the enquirer / complainant will be updated on any subsequent action that may result, as soon as reasonably practicable. In some instances, there may be no follow-up other than the initial acknowledgement that the query/complaint has been received.
- d. The extent of investigation is dependent on Council resources and capacity.
- e. Staff will not take sides in a dispute; staff will however judge what action is appropriate according to the evidence, particular circumstances, impact on the environment and the community, relevant policies, and legislation.

10. Council Obligations to Individuals in Breach

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, and advice will be provided on what action is required to avoid, remedy and/or mitigate the environmental harm identified.

When breaches are found to have occurred, the Council officers will:

- a. Communicate clearly to the responsible party or their agent, identifying the problem and that they may need to undertake action to achieve compliance.
- b. Where officers consider there is a minimal effect, or effects are satisfactorily addressed by mitigation measures, a reasonable period of time will be allowed to comply (where this is an available course of action under the relevant piece of legislation).
- c. Initiate formal enforcement powers after being satisfied that there is a clear breach of the relevant piece of legislation.
- d. In the case of formal action being authorised, the right of appeal will be explained to those in breach.

11. Prosecution Guidelines

Council will adhere to the standards of good criminal prosecution practice expressed in the Solicitor-General's Prosecution Guidelines (2013 – refer Appendix A). These guidelines are a comprehensive 31-page document providing a detailed guide to evidential and public interest considerations. The Solicitor General's Prosecution Guidelines and the Media Protocol for Prosecutors (Crown Law 2013), while not binding on local authorities, represent best practice.

11.1 The Evidential Test

The first part of the test is the evidential test for prosecution and requires a legal assessment of whether:

- a. The evidence relates to an identifiable person (whether natural or legal).
- b. The evidence is credible.
- c. The Council can produce the evidence before the court, and it is likely it will be admitted by the court.
- d. The evidence can reasonably be expected to satisfy an impartial jury (or judge), beyond a reasonable doubt, that the individual has committed a criminal offence; the individual has given any explanations and, if so, whether the court is likely to find the explanations credible in the light of the evidence.
- e. There is any other evidence the Council should seek out which may support or detract from the case. Once it has been established that there is sufficient evidence to provide a reasonable prospect of conviction, the test for prosecution requires consideration of whether the public interest requires a criminal prosecution.

11.2 The Public Interest Test

The second part of the test for prosecution is the public interest test, which is important for ensuring that the discretion to prosecute is exercised in accordance with the rule of law and any relevant statutory requirements.

These considerations are not intended to be comprehensive or exhaustive. The public interest considerations that may properly be considered when deciding whether the public interest requires prosecution will vary from case to case.

In practice in New Zealand the independence of the prosecutor refers to freedom from undue or improper pressure from any source, political or otherwise.

12. Related Documents/Websites

Related Council policies and documents include:

- Delegations Manual
- Conflict of Interest Policy
- Schedule of Fees and Charges
- Bylaws

Relevant legislation and other resources include (but are not limited to):

- Biosecurity Act 1993
- Building Act 2004
- Dog Control Act 1996
- Food Act 2014
- Freedom Camping Act 2011
- 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 and the Local Government Act Amendment Act 2014
- Prostitution Law Reform Act 2003
- Regional Sector Strategic Compliance Framework 2016-2018
- Reserves Act 1977
- Resource Management Act 1991 and associated regulations and national direction
- Sale and Supply of Alcohol Act 2012
- Self-contained Motor Vehicles Legislation Act 2023
- Solicitor-General's Prosecution Guidelines 2013
- Transport Act 1998 Resource Management Act 1991
- Various other Acts, Regulations, Council plans and bylaws which may be in force or amended from time to time.

Appendix 1 – Legal Status and Limitations

This policy:

- a. Is not legally binding on Ōtorohanga District Council, any other organisations, such as government departments, the police, or individuals in the community.
- b. Is general in nature and does not exhaustively address all statutory limitations and considerations that may be relevant under legislation.
- c. Does not confine, restrain, or limit the discretion of Ōtorohanga District Council to take any action.
- d. Is not a substitute for legal advice or legal processes.
- e. Does not give rise to any act or omission of any officer of Ōtorohanga District Council being called into question or held to be invalid, on the basis of a failure to comply with this policy.
- f. Only applies to matters within Ōtorohanga District Council’s statutory powers. Examples of breaches that are outside Council’s powers, and will not be investigated, include but are not limited to:
 - g. All discharges to air, land or water (a Waikato Regional Council function).
 - h. All activities in the Coastal Marine Area below high tide (a Waikato Regional Council function).
 - i. All matters relating to state highways (a NZ Transport Agency function).
 - j. Fence disputes and private property covenants (a “civil matter” between neighbours).
 - k. Welfare of farm animals (a Ministry of Business, Innovation and Employment function).
 - l. Navigation and safety on waterways (administered by the Waikato Regional Council Harbourmaster).
- m. Healthy homes that are not dangerous or insanitary buildings⁴ (a Ministry of Business, Innovation and Employment function and Tenancy Services function).

⁴ Dangerous and insanitary buildings fall under Council’s functions.

Appendix 2 – Solicitor General Prosecution Guidelines

[Solicitor General Prosecution Guide crownlaw.govt.nz](https://www.crownlaw.govt.nz)

Matters will vary in each case according to the particular facts. Under the Solicitor-General's Prosecution Guidelines, a prosecution is more likely if:

- a. A conviction is likely to result in a significant sentence
- b. The offence caused significant harm or created a risk of significant harm
- c. The offence was committed against a person serving the public e.g., a Police or Council officer
- d. The individual was in a position of authority or trust
- e. The evidence shows that the individual was a ringleader or an organiser of the offence
- f. There is evidence that the offence was premeditated
- g. There is evidence that the offence was carried out by a group
- h. The victim of the offence was vulnerable, has been put in considerable fear, or suffered personal attack, damage, or disturbance
- i. The offence was committed in the presence of, or near, a child
- j. There is an element of corruption
- k. The individual's previous convictions or cautions are relevant to the present offence
- l. There are grounds for believing that the offence is likely to be continued or repeated for example by a history of recurring conduct
- m. The offence, although not serious, is widespread in the area where it was committed
- n. A prosecution would have a significant positive impact on maintaining community confidence
- o. The individual is alleged to have committed the offence while subject to an order of the court
- p. A confiscation or some other order is required, and a conviction is a prerequisite

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

- q. The court is likely to impose a nominal penalty
- r. 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
- s. The offence was committed because of a genuine mistake or misunderstanding (these factors must be balanced against the seriousness of the offence)
- t. The loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by a misjudgement
- u. 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

- v. 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
- w. 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
- x. 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)
- y. Where other proper alternatives to prosecution are available (including disciplinary or other proceedings).

Additional considerations for Council are:

- a. Strength of the evidence
- b. Alternative enforcement options.
- c. Risks of not prosecuting.
- d. Likelihood of a successful prosecution.
- e. Costs to run a prosecution case include monetary costs, staff resourcing costs, time costs.