

City Consenting and Compliance Unit

ENFORCEMENT AND COMPLIANCE POLICY

Version 11 updated, 20 October 2021.



Contents

Introduction	p.3
Purpose	p.3
Objectives	p.3
Principles	p.4
Policy	p.5
Enforcement Options	p.6
• Enforcement Strategy Matrix	p.6
• Informal Enforcement Measures	p.7
• Formal Enforcement Directive Measures	p.8
Punitive Actions	p.9
• Formal Warnings	p.9
• Infringement fines	p.9
• Prosecution	p. 11
Schedule 1: Specialist Advice and Compliance Team.	P.13
Schedule 2: Building Compliance	P:16
Schedule3: Health and Liquor Team	P.18
APPENDIX 1: Enforcement Schedule.	P.20
APPENDIX 2: Prosecution Guidelines - relevant public interest considerations	p.21
APPENDIX 3: The Principles of the Treaty of Waitangi	p.23
Appendix 4: Infringement Fine Details	p25

INTRODUCTION

The Wellington City Council is responsible for a wide range of functions across the district including ensuring compliance with a diverse range of laws, regulations and standards.

The Specialist Advice and Compliance Team (SAC), the Building Compliance Team (BC) and the Public Health Team investigate compliance and exercise enforcement powers on behalf of the Wellington City Council under the combined business unit City Consenting and Compliance (CCC).

The CCC undertake their compliance and enforcement duties pursuant to a broad range of legislation including the Local Government Act 2002, Resource Management Act 1991, The Building Act 2004, Sale and Supply of Alcohol Act 2012, Litter Act 1979, the Dog Control Act 1996, and the Health Act 1956. The specific functions of the teams are outlined in the relevant team schedules to this enforcement policy.

The Compliance and Enforcement Policy provides a guide for the exercise of enforcement discretion where appropriate. It also provides an insight into the range of enforcement tools available and the processes CCC will follow to enforce them.

PURPOSE

The purpose of the Compliance and Enforcement policy is to:

1. Provide guidance for enforcement officers to identify the factors that will assist in determining which enforcement tool, or combination of tools, is most appropriate so that enforcement functions are carried out in a consistent, effective and principled way.
2. To achieve collaboration amongst the three groups within CCC to ensure actions taken and advice given to the public is consistent.
3. Provide a publicly available statement of the objectives and principles that will guide the teams in the performance of its enforcement functions.

OBJECTIVES

The key objectives sought from the Compliance and Enforcement Policy is:

1. To achieve optimal compliance with:
 - The District Plan rules, Resource Management Act and with resource consents prepared or granted under this Act.
 - The Building Act 2004, building regulations, the building code and with building consents prepared or granted under this Act.
 - The Health Act 1956
 - Food Act 2014 and Food Regulations 2015

- The Sale and Supply of Alcohol Act 2012
 - Dog Control Act 1996
 - Litter Act 1979
 - The Hazardous Substances and New Organisms Act (HSNO Act)
 - Council's Bylaws and Policies
2. To educate and support people to comply. Where appropriate we give customers an opportunity to voluntarily put it right before we enforce.
 3. To ensure adverse effects caused by the offending are mitigated or remedied.
 4. To take a firm stance against repeat and/or deliberate offending, including the use of prosecution action where necessary to send a message to the community that repeat offending and deliberate, serious offences will not be tolerated. This may include offending of a minor nature, where the individual(s) may gain financially or in terms of a saving of time from the offence.

PRINCIPLES

The CCC unit will exercise its enforcement powers guided by the following principles:

- *Fairness:* CCC will take a fair but firm stance and will be guided by what is appropriate, practicable, and proportionate in specific circumstances.
- *Certainty:* CCC will endeavour to provide certainty and clarity as to what is acceptable and in the instance of noncompliance the likely course of enforcement action as outlined in this document.
- *Efficiency:* CCC will endeavour to undertake its responsibilities and duties in a timely manner that gives effect to the objectives and principles of this document whilst keeping costs to the rate payer to the most practical minimum.
- *Equity:* All consent and or license holders and every person carrying out an activity can expect to be fairly and impartially treated by the same process of enforcement regardless of the type and size of the activity.

INVESTIGATE COMPLIANCE

Gathering information

Noncompliance may be detected through either monitoring, a scheduled inspection, receipt of a complaint or alternatively from an incident occurring.

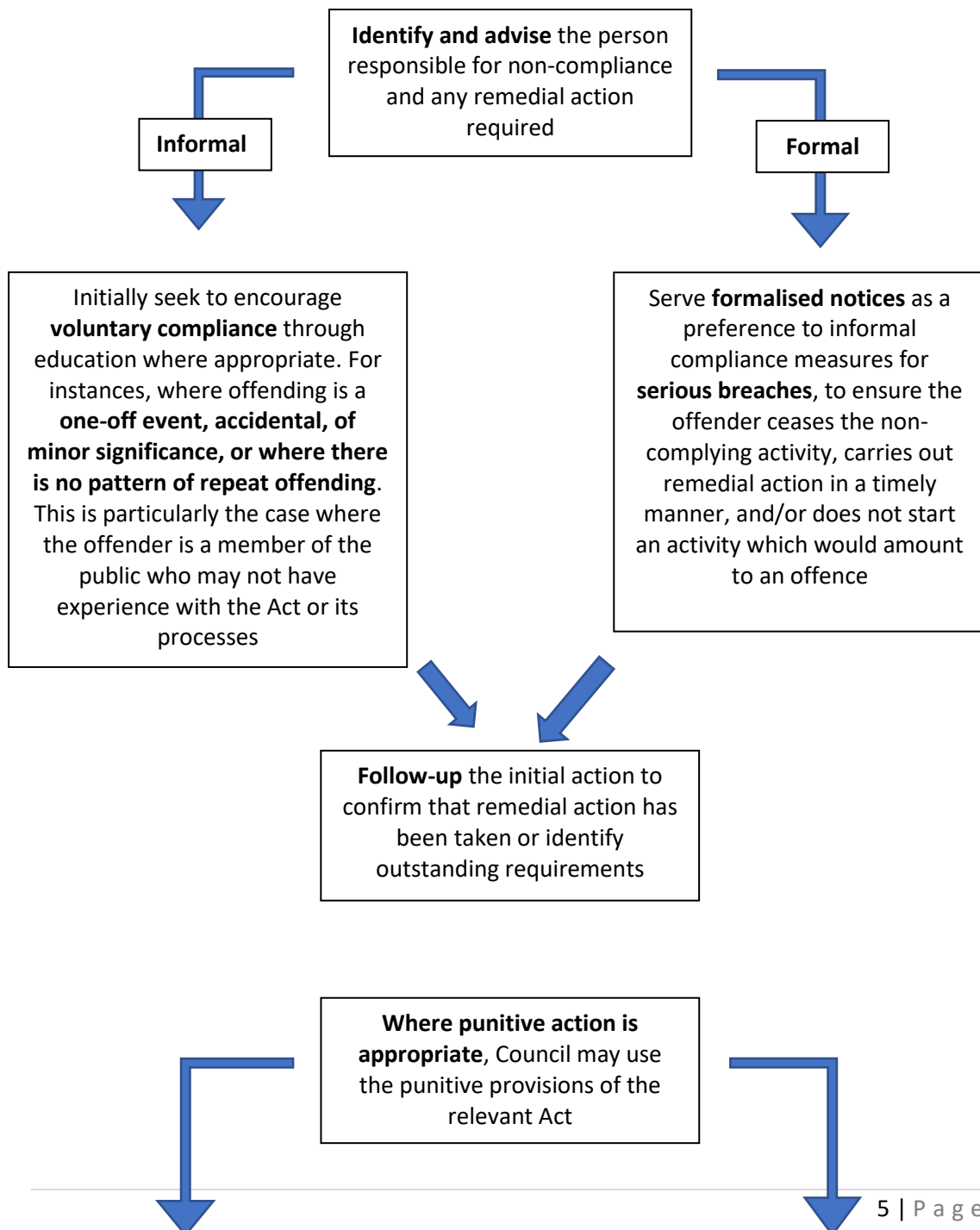
On being notified of potential noncompliance officers shall undertake an investigation.

This may include:

- Interviewing people
- Checking Council files
- Internet search
- Undertake a site visit
- Expert advice
- Measuring
- Photographing

Council's aim is to make compliance as simple as practicably possible.

Where noncompliance is identified the Council will be guided by the following process:



Consider serving **infringement notices** only for **minor offences** where prosecution action is not appropriate

Consider **prosecution** for **repeat, deliberate offending and /or serious offences**. This may include offending even when of a minor nature, where the individual(s) may gain financially or in terms of a saving of time from the offence

ENFORCEMENT OPTIONS

In many instances, the CCC unit has discretion as to what enforcement action if any is appropriate and proportionate, having regard to all the relevant circumstances.

The following is a summary of the enforcement options available, the advantages and disadvantages of each option, and situations where certain options are necessary. It is possible that a combination of enforcement options may be required.

The enforcement tools available under the Acts can be divided into two broad categories:

- Enforcement tools which seek to address the offending behaviour by ending the situation of non-compliance, remediating its adverse effects, and preventing its reoccurrence. Examples include enforcement orders and notices to fix.
- Enforcement tools which seek to punish the offender and deter future offending. Examples of such tools include infringement notices and prosecutions.

Enforcement Strategy Matrix

The CCC Unit's approach includes:

- enabling compliant activities,
- recognising and rewarding excellent performance,
- engaging and educating in the first instance where appropriate, and
- enforcing recidivist and deliberate offences

The increasing seriousness of the offence pushes Council's decisions towards enforcement options that provide full force.

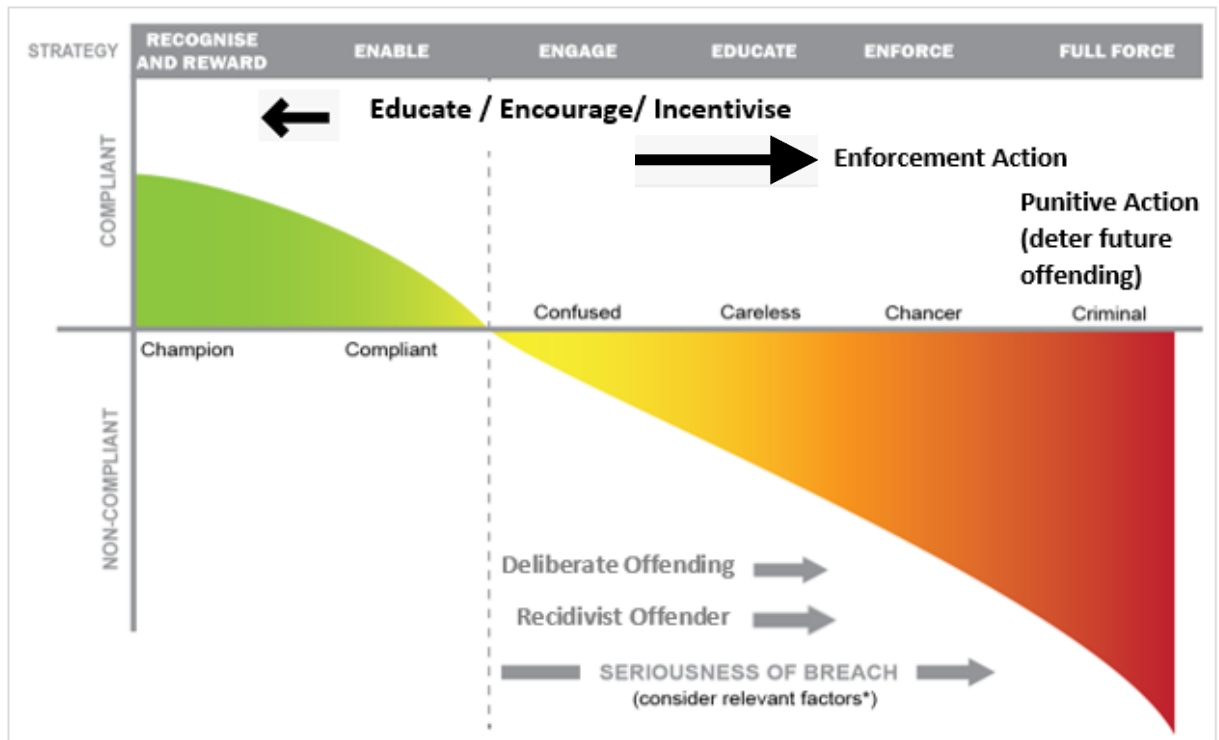


Figure1. Enforcement Strategy Matrix¹

Enforcement officers will consider the following factors when determining whether formal or informal enforcement directive measures are appropriate and what options are appropriate:

- The seriousness of the offence.
- Recidivist offending.
- Whether the offending is deliberate.
- Whether the offenders are co-operative
- Whether there is a failure to act on previous advice or direction.
- Whether the effects are widespread
- A lack of due care where an incident was foreseeable
- Whether an immediate or timely resolution is essential
- Whether any effort has been made to date to mitigate or rectify the effects of the offending

Informal measures to engage and educate

If appropriate, consistent with the enforcement strategy criteria and matrix in figure 1, CCC will consider the use of informal enforcement tools, such as education and correspondence.

¹ Drafted from the matrix on <https://www.mfe.govt.nz/sites/default/files/media/RMA/best-practice-guidelines-cme.pdf>

Correspondence to the individual or organisation responsible for the noncompliance acts as a written record that the offender has been notified of the offence, provided a timeframe to comply and warned of potential formal enforcement action if compliance is not achieved.

In some instances where a breach is of a very minor nature and where little or no mitigation work is required to rectify the problem a verbal direction with a file note may be appropriate.

Correspondence should include:

- A description of the offence including the legislation applicable.
- The action required to achieve compliance.
- The timeframe within which compliance must be achieved, including the date and if necessary, the relevant time of day.
- The potential formal enforcement action that may be taken if compliance is not achieved.
- An invitation to contact the writer or team for further information.

To ensure details are recorded for the purposes of formal enforcement action that might be required in the future, all officers will:

- take [contemporaneous notes](#)² during site visits, or shortly thereafter, and collate other evidence in the form of measurements, photographs or other details as appropriate.
- make a record of important phone calls and discussions.
- update all the above details into the Teamwork Complaint SR Diary.

Education encourages voluntary compliance and discourages further non-compliance. Education may include information provided on Council's website³, newsletters sent to stakeholders, letters, emails, or verbal explanations by officers on the phone or during a site visit.

Formal Directive measures

If appropriate, consistent with the enforcement strategy criteria and matrix in figure 1, CCC will consider the use of formal enforcement measures in the first instance.

The formal enforcement tools available to the different teams seek to address the offending behaviour by:

- Ending the situation of non-compliance; and
- Remediating its adverse effects; and
- Preventing its reoccurrence.

² Page 25 : <https://www.waikatoregion.govt.nz/assets/PageFiles/35153-basic-investigative-skills/5921-BIS-manual-2018WR.pdf>

³ <https://wellington.govt.nz/>

Details of formal directive measures are outlined for each team in the schedules attached to this enforcement policy

Schedule 1: Specialist advice and Compliance Team

Schedule 2: Building Compliance

Schedule 3: Public Health

Punitive Actions

In addition to formal directive enforcement measures, serious consideration will be given to prosecution action. On receipt of a complaint, or as a result of compliance monitoring, or as a result of inspections undertaken where repeat offending or a pattern of offences is identified or very serious offending occurs, a search of the offenders' names will be carried out in the relevant database records. Repeat offending shall be brought to the attention of the officer's team leader or manager. A decision on appropriate action will be made by the team leader with assistance from the officer.

Formal Warnings

A formal warning is sent in signed letter form to a culpable person or company informing them that an offence against an Act or regulation has been committed, and that they are liable.

Further action may not be taken in respect of that specific breach in some circumstances where a formal warning is issued. However, the warning will be considered when determining the appropriate action if there are future incidents of noncompliance.

A formal warning may be appropriate in the following circumstances:

There is no history of offence, and

- The breach is a technical breach only, or
- Effects / Impacts are negligible or minor or
- The matter can quickly or simply be put right.

A decision to issue such a warning will be made by the team leader (or manager) with assistance from the officer. A record shall be kept on the property/offenders file outlining why (in accordance with this policy) a warning was issued as opposed to issuing an infringement fine or recommending consideration for prosecution.

Infringement fines

The infringement notice process is designed as a fast, efficient, and inexpensive way to punish relatively minor offending. An infringement fine may be served on the approval of the relevant manager or team leader.

Infringement notices do not result in a criminal conviction.

Enforcement officers will consider the following factors when considering whether to issue an infringement notice, as opposed to initiating a prosecution:

- Whether it is an infringement offence as outlined in the appropriate legislation.
- Whether the offence is a one off (isolated) event or first offence, with no pattern of repeat offending.
- Consequences of the offence are minor
- Whether the offence has minor or no adverse environmental effects, and whether any such effects are temporary or permanent.
- Whether the offending was accidental, unintentional, and not deliberate.
- Whether the effects are limited and not widespread.
- Whether specific deterrence (i.e. to the defendant) or general deterrence (i.e. the public generally) is required.

Issuing of fines pursuant to the various Acts is outlined in Appendix 4

Prosecution

Prosecution action seeks to punish the defendant and acts as a deterrent but does not directly force the defendant to achieve compliance.

Decisions to take prosecution action shall be made on a case-by-case basis; however, a consistent approach is important. Recommendations to prosecute require the approval of the Manager of CCC prior to the commencement of any prosecution. Prosecution action seeks to punish the defendant and acts as a deterrent but does not directly force the defendant to achieve compliance. Prosecution action may be considered in addition to formal enforcement measures. In some instances, enforcement orders may be sought as a part of the penalty imposed after a prosecution results in conviction of the offender.

The Solicitor General's [Prosecution Guidelines](#) provide guidance on the 'test for prosecution' when enforcement agencies are deciding whether to commence a prosecution. The test involves:

1. an evidential test, and a
2. public interest test.

There must be sufficient evidence to lay charges (the evidential test) and that such charges are in the public interest (the public interest test). The circumstances will vary from case to case and must be determined based on a range of factors. Even if a matter meets the test for prosecution, all practical compliance responses will be considered. Prosecution action may be considered in addition to formal enforcement measures. The factors set out in the Crown Law Prosecution Guidelines are described in Appendix 2 of this policy (they include public interest considerations for and against prosecution).

The process involves:

- The enforcement officer discusses the non-compliance with the team leader and manager
- The enforcement schedule in Appendix One is completed.
- The public interest test is completed
- Legal advice is sought as to whether there is sufficient evidence to lay charges
- Permission is sought from the Manager of CCC.

SCHEDULE 1:

Specialist Advice and Compliance Team.

Role:

- resolving noise complaints
- resolving environmental complaints
- enforcing compliance with the Resource Management Act, including the general duties arising under sections 16 and 17 of that Act
- enforcing compliance with resource consent conditions
- enforcing compliance with District Plan rules, including rules in notified plan changes
- enforcing compliance with Wellington City Council bylaws

Formal Directive Enforcement Measures under the Resource Management Act 1991

Abatement Notices⁴

An abatement notice may be served to require a person to either do something, cease doing something or to not start doing something. Details are in section 322 of the Resource Management Act.

Abatement notices are inexpensive, quick and relatively straightforward to issue. In most cases, they have immediate effect. By serving an abatement notice the enforcement officer is indicating that the offence is of a level where some formal action is essential.

When an abatement notice is served by an enforcement officer:

- The standard abatement notice template shall be used.
- The notice shall be peer reviewed by another enforcement officer or by a Team Leader before it is served.
- Consideration should be given to whether complex notices need to be reviewed by the Council's solicitors.

Abatement notices can also be the subject of appeals or stay applications to the Environment Court by the non-compliant party.

Abatement notices remedy non-compliance, they do not impose fines. If an abatement notice is not complied with, an enforcement officer may serve an infringement notice, initiate a prosecution, or apply to the Environment Court for enforcement orders. Unless

⁴ For further information, Page 88: <https://www.mfe.govt.nz/sites/default/files/media/RMA/best-practice-guidelines-cme.pdf>

there is a good reason, any non-compliance with an abatement notice is expected to result in further enforcement action.⁵

If an officer believes the offender is unlikely to comply with an abatement notice, then consideration should be given to applying for enforcement orders (which are evaluated and issued by the Environment Court) as an alternative to the service of an abatement notice

Enforcement Orders

Enforcement orders are formal orders made by the Environment Court, after an application and hearing process.

Like abatement notices, enforcement orders may require the recipient to do something, or to cease or not commence something that contravenes the Resource Management Act.

Enforcement orders are only issued where the Environment Court considers that adequate grounds are made out. They can encourage compliance in situations where an offender may be reluctant to agree with the Council's view of a matter.

For serious offences, where the purpose of the enforcement action is to prevent the continuation of breaches and adverse effects on the environment, enforcement orders are preferred over an abatement notice. For lesser offences, where the enforcement officer is convinced that the recipient will not comply or appeal the abatement notice, enforcement orders may be considered as an alternative to issuing an abatement notice.

Breach of an enforcement order is also the most serious kind of offending contemplated under the Resource Management Act.

Interim Enforcement Orders⁶

Interim enforcement orders allow for urgent action, and applications are usually dealt with by the Court without a hearing and without serving notice on the other party, although a substantive hearing is scheduled for a later date.

An application for an interim enforcement order is made under [section 320](#) of the RMA and the scope of an interim enforcement order is the same as that for an enforcement order pursuant to section 314 of the RMA.

Bylaw enforcement under the Local Government Act 2002.

⁵ Best Practice Guidelines for Compliance, Monitoring and Enforcement under the Resource Management Act 1991, page 88 <https://www.mfe.govt.nz/sites/default/files/media/RMA/best-practice-guidelines-cme.pdf>

⁶ Best Practice Guidelines for Compliance, Monitoring and Enforcement under the Resource Management Act 1991, page 105, <https://www.mfe.govt.nz/sites/default/files/media/RMA/best-practice-guidelines-cme.pdf>

The compliance monitoring team periodically use bylaws to better control adverse effects from signage, advertising for commercial sex premises and noise from refuse collection. These are specified in the Public Places bylaw , The Solid Waste Management and Minimisation Bylaw 2020 and the Wellington Consolidated Bylaw Part 2 (animals).

Prosecutions may be considered for any breach of a bylaw.

Noise Control Enforcement under the Resource Management Act

Excessive noise control pursuant to [section 326](#) applies to noise under human control only. The legislation requires a subjective assessment (not sound measurements) of the noise being emitted.

These provisions typically apply to noise emanating from residential activities such as stereos, musical equipment, and people noise. The provisions can be used to provide temporary mitigation with regards to construction noise (especially outside accepted construction hours) and commercial stereo / amplified music.

Noise direction

An enforcement officer or constable who has received a complaint and upon investigation considers the noise is excessive may direct (orally or in writing) that the noise is immediately reduced to a reasonable level. A noise direction notice is in force for 72 hours. Failing to comply with the noise direction can result in seizure of the machine that is contributing to the excessive noise. In addition to noise directions, the BCC Unit may issue abatement notices and enforcement orders.

Investigations to find a long term solution require sound measurement and comparison with noise limits set in the District Plan and or an assessment whether the noise is reasonable pursuant to [Section 16](#) of the RMA.

SCHEDULE 2:

Building Compliance Team

Role:

Building Compliance and Consents (BCC) exercises enforcement powers on behalf of the Wellington City Council under the Building Act 2004 (Act).

Specific functions include:

- resolving building complaints
- enforcing compliance with the Act, including regulations
- enforcing compliance with the building code
- enforcing compliance with building consents
- enforcing compliance with Wellington City Council bylaws

Formal Directive Enforcement Measures under the Building Act 2004

Notice to Fix (TA)

A notice to fix is a notice issued under section 164 of the Building Act requiring a person to remedy a breach of the Act or associated regulations. A notice to fix can be issued for all breaches of the Act, not just for building work. For example, a notice to fix may be issued for:

- work carried out without a building consent when a building consent should have been obtained
- work not carried out in accordance with a building consent, the building code or the Act
- Failure to provide a suitable building warrant of fitness
- non-compliance with a compliance schedule

A notice to fix may be issued concurrently with an infringement offence notice (see section 'Infringement Offences').

Any notice to fix issued must include a 'reasonable timeframe' to complete the remedial action. Non-compliance with a notice to fix becomes an offence under the Act, at which point –

- An infringement fine may be issued for breach of a notice to fix
- A new notice to fix may be issued with a new compliance timeframe
- Prosecution may be considered for breach of a notice to fix
- Council may decide to take no further action. In these cases, it may be necessary to re-issue a notice to fix with a longer timeframe

Dangerous and/or Insanitary Notices

Dangerous and Insanitary building notices are issued under section 124 of the Act and aim to reduce the danger to the population posed by these buildings.

Dangerous and insanitary building notices may require building owners to vacate the building or restrict use of the property.

Officers will undertake any assessment in accordance with the Dangerous, Insanitary and Affected Buildings [Policy](#).

- BCC uses the forms linked in ProMapp under process 'Determine if building is dangerous or insanitary and resolve (TA)' to determine dangerous or insanitary buildings. WRCG Form 460 Dangerous building inspection record (Refer section 121 BA04); and/or
- WRCG Form 461 Insanitary building inspection record (Refer section 123 BA04).

Noncompliance with a dangerous and insanitary building notice is an offence under the Act.

Licensed Building Practitioner (LBP) Complaints

Part 4 of the Building Act provides a mechanism for the regulation of building practitioners. Council can make a complaint to the Building Practitioner Board, where the LBP's conduct falls within the 'grounds for discipline' listed in section 317 of the Act.

When considering whether to make an LBP complaint, the following factors should be considered:

- Whether there is sufficient evidence to prove that the LBP's conduct falls within the 'grounds for discipline' listed in section 317 of the Act.
- That the conduct complained about is not minor or trivial

Council can also make a complaint about a person who is doing or supervising restricted building work without being appropriately licensed or supervised. Where there is sufficient evidence to demonstrate that a person has been doing or supervising restricted building work a complaint should be lodged with the [Occupational Licensing Team](#). Please note that this does not apply to owner-builders who have applied for an [owner-builder exemption for restricted building work](#)

The Act also provides for councils to take immediate action (Infringement Offences) with regards to people carrying out work without the appropriate licence. Those provisions are found in section 85 of the Act –

- Section 85(1) – unlicensed person
- Section 85(2)(a) – LBP carrying out work outside of competency
- Section 85(2)(b) – LBP supervising work outside of competency

SCHEDULE 3:

Public Health Team

The Public Health Team exercises enforcement powers on behalf of Wellington City Council in respect of the Food Act 2014, Food Regulations 2015, Sale and Supply of Alcohol Act 2012, Health Act 1956, Litter Act 1979, Dog Control Act 1996.

Formal Directive Enforcement Options

Food Act 2014

Wellington City Council acts as a Registration Authority (RA) for food businesses to register with within its boundary and scope of recognition. The Registration Authority has **the ability** under certain circumstances to refuse, suspend or cancel registrations.

A Food Safety Officer working for a RA has various enforcement options available which include infringement, Improvement Notices and Directions.

Improvement notices – one or two lines of what each of these are.

Directions

Health Act 1956

An environmental health officer may direct a person to abate a **nuisance**. Nuisances are defined under **section 29** of the Act. Every person by whose act, default, or sufferance a nuisance arises or continues, whether that person is or is not the owner or occupier of the premises in respect of which the nuisance exists, commits an offence against the Health Act.

If in the opinion of the engineer or environmental health officer of the local authority, the engineer or environmental health officer, immediate abatement of the nuisance is necessary, they may enter the premises and abate the nuisance without notice to the occupier.

The Sale and Supply of Alcohol Act 2012 – can we put this in plain wording

Alcohol licence holders are subject to a number of standard and ad hoc conditions on their licence. Should a licence holder be found to be in breach of any of these licence conditions a licensing officer may apply to the Alcohol Regulatory Licensing Authority (ARLA) to:

- vary or revoke any condition of the licence, imposed by the licensing authority or a licensing committee, or impose any new condition. (or suspend the licence; or
- cancel the licence.

- An Inspector may also take a licensee or Duty Manager to ARLA - to apply to either suspend or cancel their licence or managers certificate if .
 - the manager has failed to conduct any licensed premises in a proper manner
 - the conduct of the manager is such as to show that he or she is not a suitable person to hold the certificate

Litter Act 1979

Under this Act a litter enforcement officer may issue an infringement to anyone found depositing litter in a public place. A litter enforcement officer may also issue an infringement to anyone who deposits litter from a public place onto private land without the consent of the occupier of that land. The value of the infringement is based upon the volume of litter deposited.

The litter enforcement officer can also require the person depositing the litter to remove that litter and dispose of it as directed

Dog control Act 1996

An animal control officer may issue an infringement to any dog owner found to be in breach of certain requirements of the Act. Infringement offences and fees are prescribed in schedule 1 of the Act.

Section 21 provides for the classification of a dog owner as probationary. Where any person commits 3 or more infringement offences (not relating to a single incident or occasion) within a continuous period of 24 months that person may be classified as a probationary owner

Section 25 provides for the disqualification of a person from being an owner of a dog if (a) the person commits 3 or more infringement offences within a continuous 24-month period or (b) the person is convicted of an offence (not being an infringement offence) against the Act or (c) the person is convicted of an offence against specified parts of the Animal Welfare Act 1999, the Conservation Act 1987 or the National Parks Act 1980

Section 31 provides for the classification of a dog as dangerous. Section 33 provides for the classification of a dog as menacing (either by breed or deed) both of these classifications require the owner to comply immediately with the conditions of those classifications

Bylaws

A local authority may make bylaws pursuant to section 64⁷ of the Health Act 1956.

Bylaws made under the Health Act include bylaws on public pools⁸, animals⁹ and alcohol control.¹⁰

⁸ <https://wellington.govt.nz/your-council/plans-policies-and-bylaws/bylaws/other-bylaws/public-health-bylaw>

⁹ https://wellington.govt.nz/your-council/plans-policies-and-bylaws/bylaws/wellington-consolidated-bylaw-2008/part-2_-animals

¹⁰ https://wellington.govt.nz/your-council/plans-policies-and-bylaws/bylaws/wellington-consolidated-bylaw-2008/part-4_-alcohol-control

Every person who contravenes or fails to comply with any bylaw made under the Health Act commits an offence and is liable on conviction to a fine not exceeding \$500 and, in the case of a continuing offence, to a further fine not exceeding \$50 for every day on which the offence has continued.

APPENDIX 1

Enforcement Schedule

Date:

Officer:

Name of Offender:

Summary of offence:

Adverse Effects / Impacts				
	nil			
	minor		One off	
	medium		cumulative	
	major		ongoing	
Compliance History				
	None			
	Minor, unrelated			
	Ongoing			
Public Interest				
	low		Specific deterrent	
	high		General deterrent	
Offender's Culpability				
	Not aware obligation		Accidental offending	
	Ought to be aware		Deliberate offending	
	Aware			
Offenders Attitude				
	Co operative		Completed remedial work	
	Obstructive		Attempted remedial work	
			Refuses remedial work	
Specific Enforcement Policy				
	Not targeted by specific policy			
	Targeted by specific policy			

Recommended Action

Agreed action

Update outcome

APPENDIX 2 –

Prosecution Guidelines - relevant public interest considerations

- 1 The following list is some public interest considerations for prosecution which may be relevant and require consideration by a prosecutor when determining where the public interest lies in any particular case. The following list is illustrative only.

PUBLIC INTEREST CONSIDERATIONS FOR PROSECUTION

- 1 The predominant consideration is the seriousness of the offence. Where a conviction is likely to result in a significant penalty including any confiscation order or disqualification, then there is a strong public interest for a prosecution.
- 2 Where the defendant was in a position of authority or trust and the offence is an abuse of that position.
- 3 Where the defendant was a ringleader or an organiser of the offence.
- 4 Where the offence was premeditated.
- 5 Where the offence was carried out by a group.
- 6 Where the offence was carried out pursuant to a plan in pursuit of organised crime or was an offence involving serious or significant violence.
- 7 Where the offence was motivated by hostility against a person because of their race, ethnicity, sexual orientation, disability, religion, political beliefs, age, the office they hold, or similar factors.
- 8 Where the offence is prevalent.
- 9 Where the offence has resulted in serious financial loss to an individual, corporation, trust person or society.
- 10 Where the offence was committed against a person serving the public, for example a doctor, nurse, member of the ambulance service, member of the fire service or a member of the police.
- 11 Where the victim of the offence, or their family, has been put in fear, or suffered personal attack, damage or disturbance. The more vulnerable the victim, the greater the aggravation.

- 12 Where there is marked difference between the actual or mental ages of the defendant and the victim and where the defendant took advantage of this.
- 13 Where there is any element of corruption.
- 14 Where the defendant has previous convictions, diversions or cautions which are relevant.
- 15 Where the defendant is alleged to have committed an offence whilst on bail, on probation, or subject to a suspended sentence or an order binding the defendant to keep the peace, or when released on parole from a prison or a place of detention or otherwise subject to a Court order;
- 16 Where there are grounds for believing that the offence is likely to be continued or repeated, for example, where there is a history of recurring conduct.
- 17 The following list is some public interest considerations against prosecution which may be relevant and require consideration by a prosecutor when determining where the public interest lies in any particular case. The following list is illustrative only.

PUBLIC INTEREST CONSIDERATIONS AGAINST PROSECUTION

- 18 Where the Court is likely to impose a very small or nominal penalty.
- 19 Where the loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by an error of judgement or a genuine mistake.
- 20 Where the offence is not on any test of a serious nature and is unlikely to be repeated.
- 21 Where there has been a long passage of time between an offence taking place and the likely date of trial such as to give rise to undue delay or an abuse of process unless:
 - 21.1 the offence is serious.
 - 21.2 delay has been caused in part by the defendant.
 - 21.3 the offence has only recently come to light; or
 - 21.4 the complexity of the offence has resulted in a lengthy investigation.
- 22 Where a prosecution is likely to have a detrimental effect on the physical or mental health of a victim or witness.
- 23 Where the defendant is elderly.
- 24 Where the defendant is a youth.
- 25 Where the defendant has no previous convictions.

- 26 Where the defendant was at the time of the offence or trial suffering from significant mental or physical ill-health.
- 27 Where the victim accepts that the defendant has rectified the loss or harm that was caused (although defendants must not be able to avoid prosecution simply because they pay compensation).
- 28 Where the recovery of the proceeds of crime can more effectively be pursued by civil action.
- 6.9.1 Where information may be made public that could disproportionately harm sources of information, international relations or national security.
- 6.9.2 Where any proper alternatives to prosecution are available.
- 29 These considerations are not comprehensive or exhaustive. The public interest considerations which may properly be taken into account when deciding whether the public interest requires prosecution will vary from case to case. In each case where the evidential test has been passed, the prosecutor will weigh the relevant public interest factors that are applicable. The prosecutor will then determine whether or not the public interest requires prosecution.

APPENDIX 3

Treaty of Waitangi

Section 8 of the RMA requires councils to consider the principles of the Treaty of Waitangi in exercising their functions and duties, which includes Compliance Monitoring Enforcement functions. Officers also have obligations under the Local Government Act 2002.

Being familiar with Māori language, histories, aspirations, values, and cultural customs helps us to build strong relations and maintain a high level of professionalism and cultural competency when dealing with Māori.¹¹ Council provides resources¹² on Wharu Kura to assist in training.

The Principles of the Treaty of Waitangi¹³

A number of requirements in the RMA, Local Government Act 2002, and other legislation require councils to involve iwi and other Māori groups in carrying out their functions. Although these requirements do not impose any specific obligations on councils regarding CME activities, the general requirements need to be applied through CME practice.

Resource Management Act 1991 (RMA)

The RMA contains a number of general provisions requiring “all persons exercising functions and powers” under the RMA to:

- recognise and provide for “the relationship of Māori and their culture and traditions within their ancestral lands, water, sites, wāhi tapu, and other tāonga” (section 6(e))
- have particular regard to kaitiakitanga when deliberating decisions (section 7(a))
- take into account the principles of the Treaty of Waitangi (section 8), as explained above.

When preparing plans and policy statements, councils are also required (under Schedule 1 Part 1 and Part 5 of the RMA) to:

- consult tangata whenua (through iwi authorities) and summarise responses to advice given by iwi in the reports councils prepared under [section 32](#)

¹¹<https://wccgovtnz.sharepoint.com/sites/HowWeWork/SitePages/Culture%20and%20inclusion/Mao%20resources%20hub/default.aspx>

¹²[https://wharekura.wcc.govt.nz/totara/catalog/index.php?cfp_multiselect_kthpeoplekiteho_79867\[\]=Building%20teams%2A&cfp_multiselect_kthpeoplekiteho_79867\[\]=Collaborating&cfp_multiselect_kthpeoplekiteho_79867\[\]=Connecting&cfp_multiselect_kthpeoplekiteho_79867\[\]=Developing%20self%20%26%20others&cfp_multiselect_kthpeoplekiteho_79867\[\]=Inclusiveness&cfp_multiselect_kthpeoplekiteho_79867\[\]=M%C4%81tauranga%20M%C4%81ori&orderbykey=featured&itemstyle=narrow](https://wharekura.wcc.govt.nz/totara/catalog/index.php?cfp_multiselect_kthpeoplekiteho_79867[]=Building%20teams%2A&cfp_multiselect_kthpeoplekiteho_79867[]=Collaborating&cfp_multiselect_kthpeoplekiteho_79867[]=Connecting&cfp_multiselect_kthpeoplekiteho_79867[]=Developing%20self%20%26%20others&cfp_multiselect_kthpeoplekiteho_79867[]=Inclusiveness&cfp_multiselect_kthpeoplekiteho_79867[]=M%C4%81tauranga%20M%C4%81ori&orderbykey=featured&itemstyle=narrow)

¹³ Best Practice Guidelines for Compliance, Monitoring and Enforcement under the Resource Management Act 1991, page 27 <https://www.mfe.govt.nz/sites/default/files/media/RMA/best-practice-guidelines-cme.pdf>

Principles of the Treaty of Waitangi

The Treaty of Waitangi, as New Zealand's founding document, sets out obligations for the Crown to provide for the rights and interests of Māori. The Treaty has never been codified in domestic law, and for the Treaty to have application in the present day, the Waitangi Tribunal and the Courts have considered the broad intentions and goals of the Treaty, and identified its principles on a case-by-case basis. Te Puni Kokiri has produced a document that aims to capture the principles of the Treaty as expressed by the Courts and the Waitangi Tribunal.²⁷ These principles are described below.

The principle of partnership (or the principle to act in good faith)

The principle of partnership, used to describe the relationship between the Crown and Māori, is well-established in Treaty jurisprudence. Partnership can be usefully regarded as an overarching theme, from which other key principles have been derived. It is arguably the most important principle in the context of resource management.

The concept of partnership emphasises a duty of both parties to act reasonably, honourably, and in good faith. These duties are derived from the principles of reciprocity and mutual benefit. The Tribunal has emphasised the equal status of the Treaty partners, and the need for accountability and compromise in the relationship.

The principle of active protection

The Crown's duty of active protection encompasses the Crown's obligation to take positive steps, rather than only reactionary steps, to ensure Māori interests are protected. The Courts have considered the principle primarily in association with the property interests, guaranteed to Māori in Article II of the Treaty.

The Waitangi Tribunal has elaborated the principle of protection as part of its understanding of the exchange of sovereignty for the protection of rangatiratanga, and has explicitly referred to the Crown's obligation to protect the capacity of Māori to retain tribal authority over tribal affairs, and to live according to their cultural preferences. Later Tribunal reports also place emphasis on the Crown's duty to protect Māori as a people, and as individuals, in addition to protecting their property and culture.

The principle of redress

The Court of Appeal has acknowledged that it is a principle of partnership generally, and of the Treaty relationship in particular, that past wrongs give rise to a right of redress. The primary mechanism for recognising this right is through Treaty settlements.

Consultation principle

The consultation principle has developed over time. Originally the Tribunal regarded it as a courtesy for the Crown to consult Māori, but in later years this strengthened into a view that the Crown had a duty to consult Māori on issues that affect them.

Appendix 4:

Infringement Fine Details

Issuing of fines pursuant to the various Acts:

- Building infringement Offences are outlined in Schedule 1 of the [Building \(Infringement Offences, Fees, and Forms\) Regulations 2007](#). Schedule 1 details all offences against the Act. Those commonly considered are.
 - Section 108(5) (aa) – failure to provide TA a warrant of fitness
 - Section 168(1) – failure to comply with a notice to fix
 - Section 363 – using a building with public access where no CCC or CPU has been issued
- Resource Management Act infringement offences are outlined in schedule 1 of the Resource Management Act (Infringement Offences) Regulations 1999.
- The process for infringing food businesses is outlined in [s218-221 of the Food Act 2014](#). Infringement notices are provided in Schedule 3 of the Food Regulations 2015.
- Section 14 of the Litter Act 1979 outlines the infringement notice process. Where a Litter Control Officer observes a person committing an infringement offence or has reasonable cause to believe such an offence is being or has just been committed by that person, an infringement notice in respect of that offence may be issued to that person by that Officer.
 - Warning letters shall be issued to allow the person responsible for littering an opportunity to comply prior to issuing an infringement fine Litter Act 1979
- The Sale and Supply of Alcohol Act 2012 outlines the process for issuing an infringement notice. an infringement notice may be issued if an inspector or constable observes a person committing an infringement offence or has reasonable cause to believe such an offence is being or has been committed. The fees are prescribed in the Sale and Supply of Alcohol Regulations 2015. An Inspector may also take a Licensee or Duty Manager to ARLA - (Alcohol Regulatory Licencing Authority) to apply to either suspend or cancel their licence or managers certificate.