

Christchurch City Council

Regulatory Compliance Unit

Compliance Strategy

Christchurch City Council Regulatory Compliance Unit – Compliance Strategy

Purpose

This Compliance Strategy sets out a high-level approach to regulatory compliance activities undertaken by the Christchurch City Council's Regulatory Compliance Unit ('the Unit').

The Enforcement Response Guidelines contained in Appendix A to this strategy seek to guide the Unit's Compliance Officers and managers in their decision-making regarding the range of compliance and enforcement tools available to Unit.

The Prosecution Policy contained in Appendix B to this strategy sets out the principles and guidelines that managers (and delegation holders) will consider when deciding whether or not to initiate criminal proceedings for offences under legislation enforced by the Unit.

Introduction

The Unit is responsible for ensuring compliance with a range of laws and regulations that are designed to achieve beneficial community and environmental outcomes.

Central to these compliance responsibilities is carrying out compliance monitoring activities, and responding to reports of potential breaches or incidents.

These compliance monitoring and investigation activities trigger a range of interventions to ensure that individuals and organisations meet their regulatory responsibilities for the public good.

The Unit approaches compliance activities strategically, targeting resources and interventions in accordance with a range of risk based factors to achieve the best possible outcomes for the community and the environment.

Strategic Compliance Framework

The framework for this compliance strategy has three key elements:

1. Monitoring compliance – developing strategic compliance monitoring programmes to assess compliance and detect potential non-compliance.
2. Encouraging compliance – engaging, educating and enabling regulated parties, and utilising appropriate enforcement options to bring about positive behaviour change when non-compliances are detected.
3. Dealing with non-compliance – utilising a range of enforcement tools to deal with non-compliance.

Guiding principles

The operating principles that guide our regulatory compliance activities are:

Transparency – We will provide clear information to the regulated community about the standards and requirements for compliance.

Consistency – Our compliance and enforcement outcomes will be consistent and predictable. This means that similar incidents of non-compliance should lead to similar enforcement outcomes.

Fair, reasonable and proportional – We will apply regulatory interventions and actions that are appropriate for the situation. Our interventions and actions will be proportionate to the risks posed to people and to the environment, and the seriousness of the non-compliance.

Evidence based – We will use an evidence based and informed approach to our decision making.

Collaborative – We will work with other Units within Council, our counterpart agencies, engage with regulated parties and the community to ensure sound environmental and community outcomes.

Lawful, ethical and accountable – We will conduct ourselves lawfully and impartially, in accordance with the relevant policies and principles that inform our regulatory compliance responsibilities. We will measure and report on our regulatory performance.

Targeted – We will target our regulatory interventions on non-compliant activities that pose the greatest risk to the community and the environment.

Responsive and effective – We will consider all alleged non-compliances to determine the necessary interventions. We will apply the right tool for the right problem at the right time.

Strategic Compliance Monitoring Approach

Implementing a strategic approach to compliance monitoring activities ensures that the Unit's resources are allocated in accordance with the risk to the environment or community posed by potential non-compliant behaviour.

In adopting this approach, the Unit uses the following high-level criteria to prioritise compliance monitoring activities:

- The likelihood and consequences of non-compliances occurring taking into account – Council priority areas, community expectations, sensitive environments, economic growth patterns and the compliance history of the industry and any risk guidelines or classifications prescribed in relevant legislation.
- Ranking sites or locations dependant on risk activity groupings.
- Determining the type / level of intervention according to risk profile.
- Determining resourcing to match the combination of interventions that apply.
- Determining monitoring frequency.
- Developing procedures and data base recording systems.

Compliance monitoring methods

Compliance monitoring methods include:

- Site visits and inspections – to assess compliance at a moment in time, against licence / consent conditions and rules.
- Desktop audits – based on data provided by the consent holder.

Enable – provide opportunities for regulated parties to be informed of regulatory requirements and best practice.

Enforce – when breaches or non-compliances are identified, a range of enforcement tools are identified to initiate behaviour change.

Dealing with Non-compliance

When breaches and non-compliant activities are identified, the Unit will respond in a way that is consistent with, and proportionate to, the overall circumstances of the breach / non-compliance.

The Unit’s enforcement responses follow a model of voluntary, assisted, directed or enforced compliance (VADE). This model is based on recognised behaviours that guide the delivery of the appropriate intervention.

The VADE model recognises that most people and businesses are willing to voluntarily comply with their regulatory obligations or can be encouraged to do so. Enforcement responses escalate depending on the seriousness of the conduct, extent of the harm and public interest factors.

The table below illustrates the VADE model.

	Description of compliance behaviour	Example	Likely scenario	Likely Compliance/ Enforcement approach
Voluntary	Persons seek to voluntarily comply and be informed about their legal obligations. The activities that they undertake are compliant and cause no related nuisance. Such people know and are aware of their obligations and make every effort to consciously comply.	Undertake consented activities in a careful and considerate manner taking into account the needs of the local community and environment. Ensures swimming pool fencing meets the requirements of the Act.	Most likely	Praise Education/Advice where required
Assisted	People are attempting to comply but are uninformed about their legal obligations or responsibilities. They will alter unintentional nonconforming behaviour when educated.	Unintentionally undertakes an activity that contravenes their consent approvals and/or underlying application Minor potential for environmental or community impact	Most likely	Education/Advice – verbal and collateral
Directed	People take advantage of the opportunity not to comply with their legal obligations or responsibilities. They know the rules but will take the opportunity to avoid compliance. Likely to challenge Officer requests.	Does not always complete required actions in manner agreed because quicker or less costly alternative. Disregards any potential impact for environmental or community impact. Risks for environmental or community impact are medium to high.	Less likely	Education – verbal and collateral Warnings Infringement notices Enforcement order Abatement notice (where ‘near miss’ for significant

	May alter behaviour when educated.			environmental breach)
Enforced	<p>People deliberately, and without any regard, undertake non-complying activity in breach of known obligations and responsibilities.</p> <p>Recidivist activities.</p> <p>Knows the rules and associated parameters/conditions and has complete disregard for operating within these.</p> <p>Very likely to challenge Officer requests.</p>	<p>Deliberately undertakes non-consented activities;</p> <p>Deliberately Disregards impact for local environment and communities</p> <p>Risks for environmental or community impact are high</p>	Least likely	<p>Infringement notice</p> <p>Abatement notice</p> <p>Enforcement order</p> <p>Prosecution (Gross breaches)</p>

The formal enforcement tools available to the Unit will differ depending on the governing legislation or regulations.

The selection and application of the enforcement responses available to Council will be guided by the Council's enforcement response guidelines and compliance model together. The Unit's Enforcement Response Guidelines are contained in Appendix A.

Reporting and Reviewing

Regulatory compliance best practice principles require robust compliance frameworks to include a reporting system. These systems enable compliance monitoring activities and interventions to be measured and the level of compliance within our regulated communities to be tracked.

The Unit reports on regulatory compliance activities via agreed levels of service identified as part of the annual and long term planning processes set out under the Local Government Act 2002.

In addition to these reporting requirements, the Unit will develop reporting functions to collect and analyse data across our regulatory compliance responsibilities in order to:

- Identify trends in non-compliance
- Use and target resources effectively
- Target high risk activities
- Assess the performance of targeted compliance programmes
- Inform the ongoing development of policies and guidelines

Review and publication of this strategy

This Strategy will be reviewed every five years in order to address any operational or implementation problems, ensure the strategy is achieving its purpose and recognise any relevant legislative amendments.

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APPENDIX A

Enforcement Response Guidelines

Enforcement Response Guidelines

Introduction

The Christchurch City Council Regulatory Compliance Unit ('the Unit') is responsible for ensuring compliance with a range of laws and regulations that are designed to achieve beneficial community and environmental outcomes. The Unit has developed a Compliance Strategy to guide its approach to regulatory compliance activities.

These Enforcement Response Guidelines are designed to be used in conjunction with the Strategy to ensure a risk based, transparent, consistent, fair, and robust decision-making process is followed in addressing compliance issues.

Application of the Guidelines

These Guidelines will be used by Compliance Officers and managers when considering the best way to address compliance issues ranging from a minor or inadvertent breach of the law through to systemic, proactively identified compliance problems.

It is anticipated that the Guidelines will be applied in various ways, for example:

- In cases where Compliance Officers need to make immediate decisions in the field (for example, on whether to issue an infringement notice at the time of detection) then the application of the Guidelines will essentially involve real time consideration and weighing up of relevant factors.
- Where a compliance issue has been identified but doesn't require an immediate response, the Guidelines will assist in determining the nature of the follow-up action required – whether to investigate with a view to prosecution, or take steps to educate and inform. More than one response may be appropriate and applied together.
- During the course of an investigation or work that is underway to address a compliance issue in some other way, the Guidelines can be applied, as more information is gathered, to check whether the originally identified course of action remains appropriate.

Note that the Council's Prosecution Policy needs to be applied separately to any decisions to prosecute.

Statutory decision-making delegations and the Guidelines

While these Guidelines support Compliance Officers and managers to provide guidance, direction, advice, and decisions regarding course of action to be followed in responding to compliance issues, they do not replace the need for statutory decisions that require formal delegations to be made by the holders of those delegations, following proper processes.

Records of decisions made according to the Guidelines

All staff will document the guidance, direction, advice and decisions made according to these Guidelines and record this on the relevant file(s).

Enforcement Response Guidelines

Guiding principles for decision-making on enforcement responses

Decisions regarding the Council's enforcement responses will take into account the attitude towards compliance and be:

- logical, timely and considered
- evidence-based
- made impartially and without fear, favour, bias, prejudice or improper motive
- sufficiently robust and well-documented to withstand judicial review
- proportionate to the risk posed by the non-complaint behaviour, and the attitude towards compliance
- consistent with the law, the public interest, and the Council's strategic objectives.

Factors for consideration

The Unit's enforcement responses follow a model of voluntary, assisted, directed or enforced compliance (VADE). This model is based on recognised behaviours that guide the delivery of the appropriate interventions.

The factors for consideration are set out below.

Application of these factors requires expertise and experience to be applied in the process of weighing up which compliance tools might be most applicable.

Extent of harm or risk of harm: This includes harm or potential harm to the community and environment. Actions that create risks but do not actually lead to harm occurring can still be serious and require a firm response.

1. There's minimal or no harm or risk of harm.
2. Harm is, or would likely be, easily remedied.
3. Harm is, or would likely be, restricted in scale or effect.
4. There's significant or widespread harm or potential for such harm.
5. Harm is actually or potentially caused to a vulnerable section of the community/environment.

Conduct: Conduct in this context means the behaviours, intent and capability of the person / organisation whose actions are being considered.

1. It is first-time or one-off behaviour that is unlikely to be repeated.
2. The conduct is accidental or resulted from momentary carelessness or the result of a limited understanding of the law (where that is not inconsistent with the expectations of someone holding a relevant consent, permit or approval).
3. Mitigating factors exist.

4. The behaviour is deliberate, reckless or involving consistent carelessness.
5. The conduct is repeated, ongoing.
6. There is a serious departure from expected lawful behaviour.
7. Aggravating factors exist.

Public interest: Public interest can be described as something being in the interest of the wider public or of public importance. It is more than simply interest from the public or expectation from the public of action. Considerations include responsibility to victims, the need to clarify the law, and whether the matter at hand reflects a widespread problem that can be usefully addressed by highlighting the need for compliance.

1. The conduct occurred some time ago and has ceased.
2. The legal principles involved are well-established and do not require clarification in court.
3. A decision not to act would undermine public confidence in the relevant law or regulatory framework.
4. The conduct involves a new or significant service to the public.
5. Action is necessary to clarify a grey area in the law.
6. Action is necessary to deter others from similar conduct.

Attitude to compliance: Typically, the nature of the responses will be informed by, and tailored to, the attitude of individuals or organisations involved towards compliance. This helps ensure that the intervention(s) chosen will have the desired effect. This does not prevent significant action being taken for other reasons, even when attitude is good.

1. Willing and able to comply.
2. Willing but not able to comply.
3. Reluctant to comply.
4. Unwilling to comply.
5. Actively and intentionally non-compliant.

Available enforcement responses

Assessment against the factors above, and attitude to compliance, will support a decision about the best course of action.

There is a range of possible enforcement responses available from: an approach based on information, education and engagement to support and encouraging compliance; to an approach (usually through investigation) that may lead to enforcement interventions such as infringement notices, or other civil or criminal action under applicable law. Multiple interventions may be appropriate and applied together.

The specific enforcement responses available are defined in or supported by the legislation and regulations that govern the Unit's regulatory compliance activities.

The table below reflects the intended method of weighing up the relevant factors and attitude to compliance to determine the appropriate response.

	Description of compliance behaviour	Example	Likely scenario	Likely Compliance/ Enforcement approach
Voluntary	Persons seek to voluntarily comply and be informed about their legal obligations. The activities that they undertake are compliant and cause no related nuisance. Such people know and are aware of their obligations and make every effort to consciously comply.	Undertake consented activities in a careful and considerate manner taking into account the needs of the local community and environment. Ensures swimming pool fencing meets the requirements of the Act.	Most likely	Praise Education/Advice where required
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Enforced	People deliberately, and without any regard, undertake non complying activity in breach of known obligations and responsibilities. Recidivist activities. Knows the rules and associated parameters/conditions and has complete disregard for operating within these. Very likely to challenge Officer requests.	Deliberately undertakes non-consented activities; Deliberately Disregards impact for local environment and communities Risks for environmental or community impact are high	Least likely	Infringement notice Abatement notice Enforcement order Prosecution (Gross breaches)

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APPENDIX B

Prosecution Policy

Prosecution Policy

Introduction

This Policy sets out principles and guidelines that the Council's Regulatory Compliance Unit ('the Unit') should consider when deciding whether or not to initiate criminal proceedings for offences under the legislation and regulations it is responsible for enforcing.

Solicitor-General's Prosecution Guidelines

The Unit's decisions on prosecution proceedings will be made in accordance with the Solicitor-General's Prosecution Guidelines. In summary, those guidelines provide that prosecutions ought to be initiated or continued only where the prosecutor is satisfied that the following test for prosecution is met:

1. The evidence which can be adduced in Court is sufficient to provide a reasonable prospect of conviction (the Evidential Test); and
2. Prosecution is required in the public interest (the Public Interest Test).

Factors that are relevant to the Evidential Test, include:

- That there is an identifiable offender
- That there is credible evidence
- That the evidence will be available and admissible
- That there is an objectively reasonable prospect of a conviction on the evidence; and
- The evidence will meet the criminal standard (i.e. beyond reasonable doubt).

Factors that are relevant to the Public Interest Test, include, but are not limited to:

- The seriousness of the offence.
- Whether the offence is likely to be continued or repeated.
- Whether or not the defendant has relevant previous convictions, has been the subject of previous enforcement action or has been given any prior warnings.
- The potential penalty for the offence bearing in mind the adverse effects of the offending and the degree of carelessness or deliberateness.
- Whether another prosecuting agency has or will bring criminal proceedings in relation to the same subject matter as the Council's potential prosecution.

Independence and impartiality of decision-making

The central element of a prosecution system under the rule of law in a democratic society is the independence of the prosecutor from persons or agencies that are not properly part of the prosecution decision-making process.

To ensure the Unit's decisions on prosecutions are independent and impartial:

- All regulatory compliance staff who are involved in the investigation, preparation, or conduct of a prosecution will act fairly, promptly, without any actual or potential conflict of interest, and in accordance with the law.
- Any decision on a prosecution will be free from undue or improper pressure from any source, political or otherwise.
- Before a decision is made on a prosecution, an officer's investigation will be reviewed by a Senior Officer or Team Leader.
- Before any prosecution is commenced, the Unit will obtain legal advice about the merits of the prosecution.