



Enforcement Strategy and Prosecution Policy

Adopted by Council on 26 April 2018

Executive Summary

This document sets out the principles and processes which Council uses to achieve regulatory compliance in a fair and consistent way that is appropriate to the circumstances. It relates particularly to Council’s responsibilities for the environment, building safety, food safety, alcohol consumption in public places and control of dogs and other animals.

In addition to being fair and consistent, Council aims to be transparent and open, to encourage disclosure of errors and mistakes, and to ensure it has the most relevant and up-to-date information. Priorities for enforcement are on those areas where Council has sole responsibility for enforcement, where there is potential for the greatest harm, and on individuals and organisations who are unwilling to comply with the regulations.

Council has a range of tools available to it by legislation, as set out in the following chart:

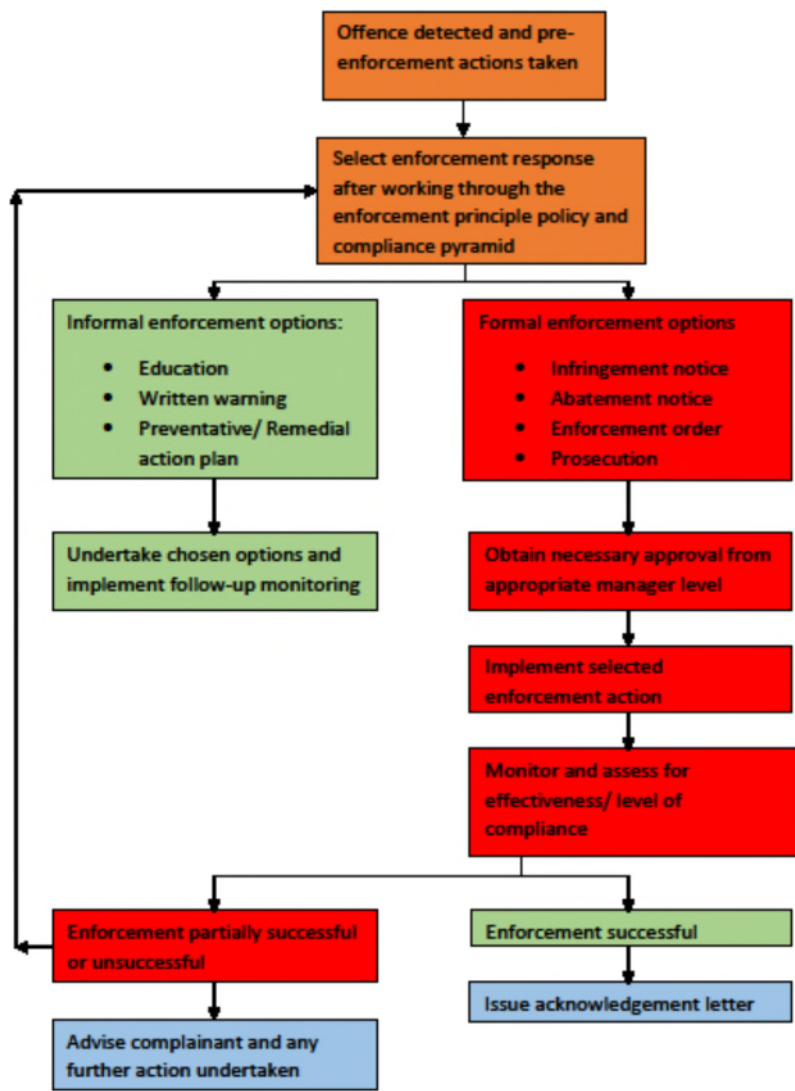
| | Oral warning | Written warning | Notice to fix | Infringement Notice | Abatement Notice | Enforcement Order | Prosecution |
|----------------------|--------------|-----------------|---------------|---------------------|------------------|-------------------|-------------|
| Building | X | X | X | X | | | X |
| Resource Consents | X | X | | X | X | X | X |
| Environmental Health | X | X | | | | | X |
| Liquor | X | X | | X | | | X |
| Parking | X | X | | X | | | X |
| Noise | X | X | | | X | | X |
| Animal Control | X | X | | X | | | X |
| District Plan | X | X | | X | X | X | X |
| Bylaws | X | X | | X | | | X |

The choice of a particular enforcement tool to achieve compliance depends on a number of factors – for example:

- the nature and scale of harm caused
- the nature of the penalty likely to be most effective in ensuring compliance or acting as a deterrent
- whether there has been previous offending
- the attitude of the person offending.

We have a carefully defined process for investigation and action which relates to the hierarchy in Council. Ultimate enforcement action, i.e. prosecution, must be approved by the Chief Executive. That approval will always have regard for the tests set out in the Solicitor-General’s Prosecution Guidelines.

The flow-chart on the following page summarises Council’s processes



Contents

| | |
|---|-----------|
| Introduction..... | 5 |
| Our approach to compliance..... | 6 |
| What we trying to achieve..... | 6 |
| How we achieve compliance..... | 6 |
| Principles we apply in our approach to compliance..... | 8 |
| Our approach to enforcement..... | 9 |
| Principles we apply in our approach to enforcement..... | 9 |
| How we make enforcement decisions..... | 11 |
| Enforcement options..... | 12 |
| Decision-making process for enforcement decisions..... | 16 |
| Evaluating enforcement outcomes..... | 18 |
| Media..... | 18 |
| Our approach to prosecution..... | 19 |
| Legal review of proposed prosecution..... | 19 |
| Roles and responsibilities during prosecution..... | 21 |

Introduction

Rangitikei District Council is required by various statutes for the administration and regulation of a wide range of functions across the district. These functions include matters such as land use and Development under the District plan, controls of sale and consumption alcohol in public, carrying out of building work, control on dogs, littering, the preparation of food for sale, parking etc.

The primary purpose of these regulatory activities is to protect the public, the environment and groups such as consumers and residents. The Council endeavours to work with various stakeholders, statutory organisations, voluntary groups, individuals and non-governmental organisations to achieve compliance with various regulatory requirements.

At the end of the day, achieving effective regulatory protections and outcomes is a responsibility that both the Council and the wider community share.

The purpose of this Enforcement Strategy is to:

- Inform the general public of the Council's approaches to the compliance, enforcement and prosecution of legislation it is responsible for enforcing;
- Outline the possible enforcement actions able to be administered by the Council;
- Guide to assist officers of the Council in the performance of their compliance, enforcement and prosecution functions;
- Ensure consistent, appropriate and coordinated decision-making of compliance, enforcement and prosecution matters.

This strategy is provided for information purposes only so as to provide a general guidance overview on how compliance, enforcement and prosecution matters are dealt with by the Council. This Strategy:

- Is not legally binding on the Council;
- Is general in nature and does not exhaustively address all the specific statutory limitations and considerations that may be relevant under the legislation administered by the Council;
- Does not confine, restrain or limit the discretion of the Council to take any action;
- Is not a substitute for legal advice or legal processes.

Our approach to compliance

What we trying to achieve

The regulatory activities the Council is responsible for provide a range of health, safety and environmental benefits for the public and residents of the Rangitikei District. The key areas where the Council has enforcement responsibilities are:

Our environment- We want everyone to be able to share in the benefits of living in a built and natural environment that contributes to the outcomes agreed in the District Plan.

Buildings- We want to have buildings that are safe and provide the amenities expected by owners and users. We are concerned about buildings that expose owners and users to risks to their health and safety.

Food- We want to support local food businesses that meet the food safety standards and ensure local people and visitors can enjoy food prepared and sold in the district. We are concerned about risks to people's health that can arise from poor food safety standards when preparing food for sale at cafes, restaurants or other outlets.

Alcohol- We want people to enjoy public events and public space without being confronted by anti-social behaviour caused by excessive consumption of alcohol or alcohol being consumed by persons who are under-age.

Dogs- we want people to have the confidence they can live and carry out their businesses in the district without being distressed or intimidated by dogs that are not being properly controlled by their owners.

How we achieve compliance

Compliance as an outcome is when a regulated activity achieves the required environmental standards, regulatory requirements and or licence or consent conditions.

An effective approach to compliance is one that improves regulatory outcomes without imposing unnecessary burdens or expense on residents, businesses and others subject to regulation.

We expect everyone to comply with the regulatory requirements the Council is responsible for and we know that most people are willing to comply with those obligations.

We know that some people will comply reluctantly only because there is a credible risk that the Council will detect their non-compliance and it will result in serious consequences.

Finally, we know that some people will not comply with the Council’s regulatory requirements because:

- They may not be aware they are not complying;
- They may not understand what is required in order to comply;
- They think the risk of being caught is low
- They accept there is a risk of being caught but they are prepared to pay the penalty;
- They have made a conscience decision not to comply, regardless of the consequences.

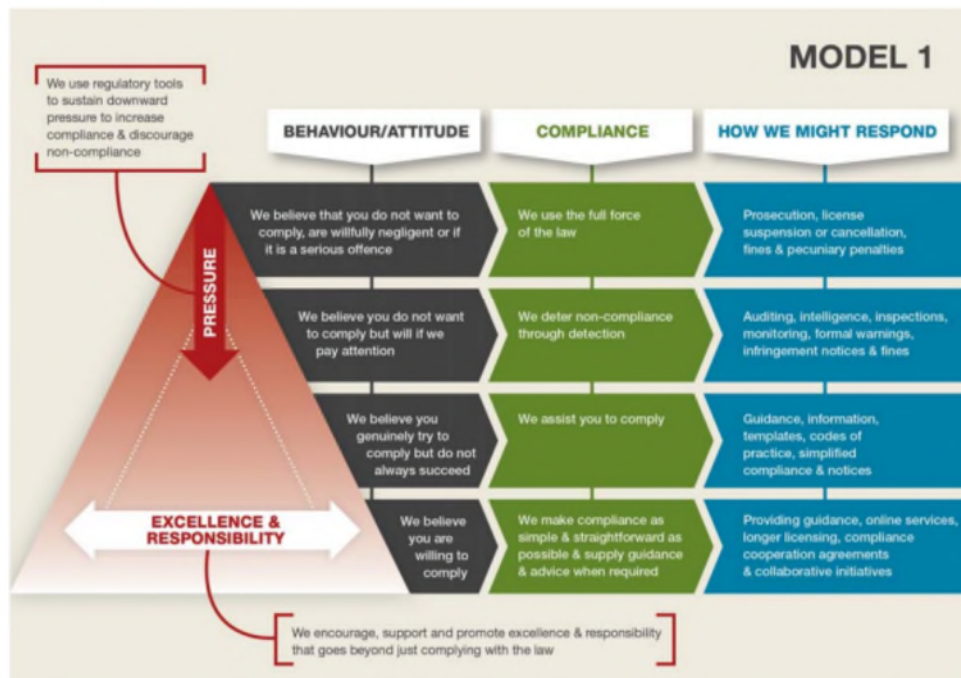
Our approach to compliance is scaled with degrees of force to:

- Make it easy as possible to comply, for those who want to comply;
- Assist those who are trying to comply but not succeeding;
- Deter those people who are thinking of not complying;
- Use the full force of the law for those who refuse to comply.

The compliance pyramid

The compliance pyramid is a widely used model for achieving compliance.

The relationship of the relevant factors which assist in determining the action taken is shown in the below model:



At the bottom of the pyramid are those who are willing to comply-at the top are those who refuse to comply. The compliance pyramid is designed to create downward pressure- that is,

to move non-compliant individuals or organisations down the pyramid to full compliance and to where lower-level and less costly interventions will be sufficient to keep them compliant.

The compliance pyramid illustrates how Council's approach to compliance will vary according to the attitude of the individual. The Council has a wide range of tools or interventions at its disposal to assist those people who are willing to comply through to those who do not want to comply. These tools are discussed in the section below, our approach to enforcement along with the factors the Council will consider when deciding on the appropriate approach to enforcement in any particular situation.

The compliance pyramid also contemplates the Council encouraging compliance through promoting examples of excellence in compliance, and not just encouraging compliance from those who are not complying.

Principles we apply in our approach to compliance

Get it right first time

We believe that it is in the interest both of regulated businesses and the wider public to get things right the first time and that therefore our compliance role should involve actively working with all those subject to regulation, especially small and medium sized businesses, to guide and assist with compliance. We will provide a contact point and telephone number for further dealings with us and we will encourage businesses and other to seek guidance or information from us.

Make compliance simple

We will make compliance as straightforward and simple as possible in the circumstances. We will provide information and advice in plain language on the legislation that we are responsible for and disseminate this as widely as possible, through information leaflets, newsletters, guidance and on the Council website www.rangitikei.govt.nz.

Assist people to comply

We will support individuals and organisations needing help to comply. We understand mistakes happen and can help rectify them when they brought to our attention openly and early. We will encourage and support disclosure of unintentional non-compliance.

Encourage complaints

Raising awareness of compliance is an important part of effective compliance policy. An easy to use complaints process raises people's awareness of compliance requirements and can be an effective source of information about non-compliance through the complaints

people make when things go wrong. An effective complaints process also increases the chances that people who are not complying with regulatory requirements will be identified.

Recognising good practice

We will recognise examples of good practice in the regulatory compliance in particularly where it contributes to better levels of compliance. Identifying and publicising examples of good practice in regulatory compliance can improve awareness of compliance requirements and improve levels of compliance in a sector by providing a model for others to follow.

Our approach to enforcement

The enforcement process covers the mechanisms and options that are designed to compel compliance. These enforcement mechanisms and options may be formal or informal and involve the Council exercising its discretion to adopt the enforcement response that is appropriate to the circumstances.

Principles we apply in our approach to enforcement

Fair and consistent

We will carry out our compliance responsibilities in a fair, equitable and consistent manner. Our responses will be unbiased, objective and made in accordance with the principles of good administrative practice and natural justice. We will treat residents, businesses, complainants, consent holders, resource users and others equally and will not favour any one group or sector over another. Decisions on enforcement action will be taken in a timely manner and without undue delay or interference.

While Investigating Officers are expected to exercise judgement in individual cases and to treat each case on its own merits, we will have arrangements in place to promote consistency. More details on the decision making process is available on page **. This means we will take similar approaches in similar circumstances, but does not mean uniformity. Each case and set of circumstances is unique and must be handled as such.

Transparent and open

We will be transparent and open about our approach to enforcement and how we make our decisions. Those affected by our decision will have opportunities to ask questions and to seek review.

Suspected individuals will be allowed the early opportunity to give an explanation of the circumstances surrounding any alleged offence including, where provided for by legislation, any statutory defences.

Encouraging disclosure of errors and mistakes

Our approach to compliance encourages people to inform us of errors and mistakes leading to unintentional non-compliance. When considering enforcement options we will be more sympathetic when genuine mistakes and errors have been voluntarily disclosed to us early. When we identify compliance issues or incidents we are more likely to offer help and assistance to individuals and organisations that have made open and early disclosures. We are more likely to consider firmer enforcement options in respect of mistakes or errors where there has been a deliberate effort to hide the error or mistake from us. However this does not mean we turn a blind eye to breaches of the law- particularly if the error or mistake is significant or harmful.

Intelligence led responses

We will ensure that information is shared within the Council to ensure Council has the most relevant and up to date information when making decisions about enforcement. This includes the information obtained from audits, inspections, reviews and applications etc. This approach also requires Council to share and receive information, where appropriate with other Government Departments and Councils in a manner that respects and protects the rights of an individual entity to ensure consistency of approach to enforcement issues.

Priorities for enforcement

We will focus on our enforcement efforts on those people and organisations we have reason to believe are unwilling to comply. We will prioritise our efforts and interventions in those areas where the Council has sole responsibility for enforcement, and in respect of those matters that could cause the greatest harm.

We will ensure that our priorities for enforcement understand and acknowledge the public's expectations for compliance and, where appropriate, respond to and reflect shifts in public's thinking and expectations of compliance.

Our goal is long-term ongoing compliance. We are likely to take firmer action against non-compliance that we consider is deliberate, deceptive or negligent. Non-compliance that causes harm to people, or adversely affects the interest of communities, is likely to attract more serious action.

Cost recovery

The Council will seek to recover a contribution towards the costs associated with enforcement from the responsible parties where possible. This enables enforcement functions to be undertaken efficiently and to minimise the cost to ratepayers.

Where monitoring costs are incurred in relation to a specific consent, these costs will be recovered from the consent holder in accordance with Rangitikei Councils Fees and Charges and the provision of any relevant laws.

How we make enforcement decisions

We consider a range of factors when deciding how to respond to compliance issues or incidents. No single factor will be determinative of an enforcement response but all the relevant factors must be weighed up in deciding what the most appropriate response to take to remedy a compliance issue or incident.

The following is not an exhaustive list of factors we consider but is a list of the most commonly considered factors. Other factors may exist in particular circumstances.

Harm

The primary factor that drives our enforcement decision-making is the harm or the potential harm to health, safety or the environment. Actions that create risks but do not actually lead to harm occurring can also be serious and require a firm response. We will carefully consider the nature of the harm caused or likely to be caused including factors such as:

- Whether the harm is temporary, can be remedied or mitigated, or is permanent
- Whether the harm is limited or widespread
- Whether the harm is trivial and does not require an enforcement response
- Whether the harm affects, or is likely to affect a particular group or section of the community or environment
- Whether that particular group or section of the community or the environment is particularly vulnerable or sensitive.

Conduct of the person responsible for compliance issue or incident

We consider the behaviour and the intent of the individual responsible for the compliance issue or incident. The factors we consider include:

- Whether this is the first time the person has been responsible for this type of compliance issue or incident.
- Whether the compliance issue or incident is likely to be a one-off incident or is a pattern of behaviour.
- Whether the Council has previously undertaken enforcement action against the person and if so, the outcome of that enforcement action and whether it was successful.
- Whether some time has passed since the issue or incident.
- Whether the compliance issue or incident was a misunderstanding, accidental, careless, or deliberate.

- Whether the person profited or benefited from the issue or incident.
- Whether the person notified the Council of the compliance issue or incident.
- Whether the person was acting alone, acting under the control or direction of another person, part of a group, or a ringleader.
- Whether the person attempted to avoid or mitigate harm and if so how soon after becoming aware of the harm the person did so and whether this was effective
- Whether the person has taken any steps to avoid such issues or incidents in the future
- Whether the person relied on advice from a third party.

Attitude of person to compliance

We consider the attitude of the person to compliance. A person's attitude is usually evident by the actions they have taken or not taken to be compliant. Even if they have a high level of willingness to comply, this does not prevent significant action being taken against them for other reasons. The factors we consider include:

- Whether the person is willing and able to comply
- Whether the person is willing but not able to comply and if so, whether the reason they are not able to comply is within their control or not
- Whether the person is reluctant or unwilling to comply
- Whether the person has made a deliberate decision not to comply

Public interest

Public interest factors are not specific to the person responsible for the compliance issue or incident but concern the public at large and may be relevant to the enforcement response. The requirements for public interest test as set out in the Solicitor-General's Prosecution Guidelines are discussed in full under the section "Our Approach to Prosecution in this policy.

Enforcement options

We have available to us a range of enforcement options under the legislation we are responsible for enforcing. There is no universal set of options. The compliance pyramid underpins our approach to enforcement decisions.

The enforcement options at the base of the pyramid for those who are willing to comply, where the harm caused is minimal and the conduct may have been accidental, may be to provide written advice or guidance, or give a formal warning. The purpose of these enforcement options could be to educate others, assist and sustain compliance, to avoid, mitigate or remedy adverse effects and to stop unlawful activity.

The enforcement options in the middle of the pyramid where the person may be unwilling to comply may involve a formal warning, a compliance notice such as an abatement notice or a notice to fix, or an infringement notice. The purpose of these enforcement actions is to avoid, mitigate or remedy adverse effects, to stop unlawful activity and to deter and educate others.

The enforcement options at the top of the pyramid for persons who have decided not to comply, where harm caused is significant, or the conduct was intentional, may be to prosecute, cancel a licence or permit, or impose a fine. The purpose of these enforcement options could be to avoid, mitigate or remedy adverse effects, to stop unlawful activity, to deter and to penalise.

We will choose the most appropriate enforcement option for the issue or incident involved- the right option at the right time. Enforcement options will not use progressively (from the base up, one action leading to another on a higher level.) Action will be taken using the appropriate enforcement option available as determined by the consideration of harm caused, the conduct of the person responsible for the incident, the attitude of the person to compliance and the public interest factors.

The range of enforcement options we have available include the following:

Provide advice or guidance

We understand the importance of people having access to good quality information and guidance on how to comply with regulatory requirements. Minor incidents are frequently dealt with by means of informal action and would involve the Council Enforcement staff drawing the matter to the attention of the person responsible for the compliance issue or incident, and giving appropriate guidance. Advice and guidance material can take many forms including verbal or written advice, or reference to other sources of compliance information such as Council's website, FAQ's, alerts leaflets' newsletters and posters. Rarely will a minor or technical infringement result in more formal action being taken, particularly if it is capable of immediate rectification.

A follow-up visit will be made, where circumstance demand, to ensure minor matters have been rectified. An officer will make a written record of the action(so that we can check for previous behavioural attitude) However if previous advice has been ignored or there is another factor that warrants a formal response, the Enforcement Officer may choose to treat the incident in a formal way.

Give formal warning

A formal warning is documented by way of letter to a person informing them that an offence has been committed, and that they are liable, but that no further action will be taken in respect of that offence. The person will also be informed that the formal warning

will be documented and recorded by the Council, and will be taken into consideration should there be further offending. The types of situations where a formal warning may be given are when:

- An administrative, minor or technical breach has occurred
- The harm, or potential harm, is minor or trivial in nature
- The person does not have a history of offending
- The matter is one which can be quickly and simply be put right
- A written warning would be appropriate in the circumstances

Publicising enforcement action

Any publicity about enforcement matters should be restricted to the simple fact that Council is undertaking enforcement action in respect of an alleged breach. Under no circumstances can any information be given that can lead to the identification of names of the defendants, or other parties to the proceedings.

Audits and inspections

We have powers to conduct announced and unannounced inspections to check on-site compliance. We can also conduct more in-depth audits to determine compliance.

Statutory powers

We have a range of statutory powers available to us under the legislation we are responsible for enforcing. Some of the key statutory powers include the following:

- **Excessive noise direction**
An enforcement officer may issue an excessive noise direction, either orally or in writing, that requires a person to immediately reduce the excessive noise to a reasonable level. This direction is additional to any power to issue an abatement notice for excessive noise. The issue of a notice binds a person to cease or reduce the noise for a period of up to 72 hours. Contravention of the direction can result in the seizure or incapacitation of the device causing the noise.
- **Compliance notice such as an abatement notice or notice to fix**
These notices under the Resource Management Act 1991 and the Building Act 2004 are formal written directives. They are drafted and served by Council staff instructing an individual or company to cease an activity, prohibit them from commencing an activity or requiring them to do something. The form, content and scope of these notices is prescribed in statute. It is an offence to fail to comply with these notices.
- **Enforcement order or injunction**
Like an abatement notice an enforcement order can direct a person to cease an activity, or to take particular action. However an application for an enforcement order must be made to the environment court. It is an offence to fail to comply with

an enforcement order. In some of our regulatory roles we have the ability to seek a court injunction to require a person to undertake something they have refused or previously failed to do.

- **Cancel, amend, suspend or refuse to renew a licence, consent or permit**

We have the ability to cancel, amend or suspend licences where we believe:

- The grounds for being licensed are no longer met;
- The licence holder is failing (or has failed) to comply with the Act
- False or misleading information has been provided.

- **Infringement Notice**

An infringement notice is a written notice alleging that a person has committed an offence which requires the payment of a fine or the election to have the matter heard in court. The actual fine for each type of offending is set within statutory schedule or bylaw. Payment of the fines does not lead to the recording of a criminal conviction. The types of situations where an infringement notice may be issued are when:

- There is evidence of a regulatory breach
- A one-off or isolated regulatory breach has occurred which is of minor impact which can be remedied easily;
- It is likely to be a sufficient deterrent.

- **Prosecute**

A prosecution is initiated by laying criminal charges in the District Court. However, this will only commence after a rigorous internal process involving:

- A thorough investigation
- A recommendation made by the Investigating officer
- Reviewed and endorsed by the Environmental & Regulatory Services Team Leader (ERSTL)
- Authority to prosecute given by the Chief Executive

The matter is then heard by a District Court Judge. All criminal evidential rules and standards must be met in a prosecution. A successful prosecution will generally result in a conviction, and a penalty may be imposed.

Negotiated settlements

A person may approach the Council with a proposal for settlement of a compliance issue or incident. The Council is open to resolving non-compliance by agreement where a remedy is possible and a negotiated settlement can be achieved that is prompt, easily implemented and in the public interest. Negotiated settlements tend to result in lower costs to the parties, faster outcomes, and greater flexibility of terms and outcome.

A negotiated settlement typically requires all or some of the following- the person to admit that they are likely to have breached the law, to cease the non-compliant conduct, pay compensation, pay our costs and may involve some publicity. A negotiated settlement will

only be agreed to if it is in public interest. For example we are unlikely to agree a negotiated settlement where the non-compliance has caused serious harm or the person is a repeat offender, lacks contrition or actively resists compliance.

Decision-making process for enforcement decisions

Investigations officer

Where information about a compliance issue or incident comes to the attention of the Council the initial investigation will be conducted by the relevant Council Investigating Officer responsible for that subject area. The powers that may be exercised by the Investigating Officers are prescribed in their position description or in formal delegations (for statutory powers) and vary according to the area for enforcement and the nature of the enforcement option.

For more serious enforcement options an Investigating Officer must obtain the approval of the relevant line manager or team leader and where appropriate may need to seek legal advice from Councils Legal Advisor. Neither the Investigating Officer, nor the relevant line manager nor the team leader has the ability to approve any enforcement option that involve prosecution or an application to court. Those matters must be approved by the Chief Executive.

A proposal for enforcement action that involves a prosecution or application to court must be referred to the Chief Executive by the ERSTL for decision and approval.

Prosecution Decision

The Chief Executive is the only member of staff that is delegated to authorise enforcement matters involving a prosecution or an application to court and must involve the following process:

- Investigation Officer
Enforcement action in accordance with position description and or formal delegation.
Recommends prosecution to Manager/Team leader
- Manager/Team Leader
Reviews the investigation and endorses or rejects the recommendation to prosecute.
Refers the proposed action to Chief Executive if prosecution recommendation is endorsed
- Chief Executive
Considers the recommendation from the investigation officer, and Manager

Approves or declines the recommendation to prosecute and may seek legal advice as part of this decision.

Advice Council should the decision to prosecute be approved.

The Chief Executives decision is final and factors taken into consideration during the decision process whether a prosecution is in the public interest are described in the last section of the document under the heading " Our approach to prosecution". The Chief Executives decision must be made independently of any undue or improper pressures such as political pressures or pressures from elected members of the Council.

Legal Review

The Chief Executive may request a legal review to ensure that the test for prosecution as set out in the Solicitor- Generals Prosecution Guidelines (2013) is satisfied.

The test for prosecution requires that there is sufficient evidence to lay charges (the evidential test) and that such charges are in the public interest (the public interest test) any legal advice obtained must explicitly consider these requirements.

Other considerations relevant to the decision whether to prosecute

Even if a matter meets the test for prosecution in terms of the Solicitor General's Prosecution Guidelines the decision by the Chief Executive whether to undertake a prosecution in a specific case will be made in accordance with this Enforcement Policy.

The Chief Executive is not required to prosecute all offences which there is sufficient evidence. The Chief executive will exercise prosecutorial discretion in each case to whether a case as to a criminal prosecution is required in the public interest.

In some cases, while a prosecution may be possible, it may be considered that a different compliance response is more appropriate in taking a decision whether to prosecute, the Chief Executive will also consider:

- This Enforcement Policy, which guides the Council's discretion as to what enforcement action it will undertake;
- The alternatives to criminal prosecution that are set out in this Enforcement Policy
- The purpose and objectives of the laws the Council is seeking to enforce by a proposed criminal prosecution
- The objectives and enforcement priorities in this Enforcement Policy;
- The expected cost of a prosecution(including Council's resources and funding)
- Whether another prosecuting agency has or may bring criminal proceedings in relation to the same subject-matter as the proposed prosecution

Communication with elected members

Once a decision has been made by the Chief Executive, the Mayor' councillors and any relevant Community Board members should be advised of the identity of the parties being prosecuted and the nature of the charges This will ensure the Mayor, councillors and Community Board Members are aware of the prosecution and so able to avoid being drawn into any media comment or improper contact with individuals that could jeopardise the right to a fair trial. It is important to note names of defendants and other parties must not be revealed to the public. (See guidance provided in the sections below under the headings "Media and Contact with defendants"

Evaluating enforcement outcomes

In order to develop an effective enforcement process, all enforcement action undertaken by Investigating Officers should be evaluated for effectiveness in achieving the desired outcome. In both successful and unsuccessful actions where further enforcement action was required, it is useful to examine what is effective or not, what could have been improved or changed to make the process more effective. This information will be reported quarterly to the senior Leadership team to implement change if necessary and then through to the Policy and Planning committee with responsibility for regulatory management issues. This information will also be used to inform any review of this Policy.

Media

Public scrutiny is beneficial to administration of justice and the community has no right to accurate information, subject to lawful restrictions and the individual's right to a fair trial. The public interest in a fair trial is fundamental and can override other important principles such as open justice and freedom of expression.

Release of information to the media.

Only the Chief Executive has the authority to release information to the media. Before providing any information to the media the CE must first discuss with the Group Manager the information that is proposed to be released. Under no circumstances are investigating Officers or other Council Officers to discuss enforcement issues with the media.

In prosecutions before the Courts the rule of sub judice applies. Sub judice means that while a matter is under judicial consideration public comment on the case is prohibited as the matter has yet to be decided by the court.

As media often report about matters prior to the Court making a decision, any press releases about enforcement matters should be restricted to the simple fact that Council is undertaking enforcement action in respect of an alleged breach. Under no circumstances can any information be given that can lead to the identification of the names of the

individuals, or other parties to the proceedings. Evidence that is brought before the courts must also not be released to the media.

Our approach to prosecution

The Council will adhere to the standards of good criminal prosecution practice expressed in the Solicitor- General's Prosecution Guidelines (2013) The Council's criminal prosecutions are conducted by external lawyers on Council's behalf, and the Solicitor-General's Prosecution Guidelines and Media Protocol for Prosecutors (Crown Law, 2013) while not binding on local authorities, represent best practice.

Review of proposed prosecution

Before the Chief Executive can approve a prosecution or application to the Court for an enforcement order or injunction the Chief Executive must consider all matters in relation to the issue, including any legal advice obtained as to whether there is sufficient evidence to lay charges (evidential test) and that such charges are in the public interest (public interest test) The requirements for these tests are set out in the Solicitor-General's Prosecution Guidelines.

Each aspect of the test for prosecution is separately considered and must be satisfied before a decision is taken to prosecute. If a matter does not pass the evidential test it will not proceed to prosecution, no matter how important it may be. The evidential test must be considered before the public interest test is considered.

The evidential test

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

- The evidence relates to an identifiable person (whether natural or legal)
- The evidence is credible
- The Council can produce the evidence before the court and is likely it will be admitted by the court
- 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 explanation and if so whether the court is likely to find the explanations credible in the light of the evidence as a whole
- There is any other evidence the Court 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 a consideration of whether the public interest requires a criminal prosecution.

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. Some of the indicative matters that may be relevant and require consideration when determining whether a prosecution will be in the public interest are described below.

The list based on the Solicitor-General's Prosecution Guidelines, is illustrative only and not a comprehensive list of matters to be considered as matters to be considered as the 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 conviction is likely to result in a significant sentence
- The offence caused significant harm or created a risk of significant harm
- The offence was committed against a person serving the public (for example a police or council officer)
- The individual was in the position of authority or trust
- The evidence shows that the individual was the ringleader or an organiser of the offence
- There is evidence that the offence was premeditated
- There is evidence that the offence was carried out by a group
- The victim of the offence was vulnerable has been put in considerable fear or suffered personal attack damage or disturbance
- The offence was committed in the presence of , or close proximity to a child
- There is an element of corruption
- The individuals previous convictions or cautions are relevant to the present offence
- There are grounds for believing that the offence is likely to be continued or repeated for example by a history of recurring conduct
- The offence although not serious in itself is widespread in the area where it was committed
- A prosecution would have a significant positive impact on maintaining community confidence
- The individual is alleged to have been committed the offence while subject to an order of the court
- A confiscation or some other order is required and a conviction is a pre-requisite

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

- The court is likely to impose a nominal penalty
- 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
- The offence was committed as a result of a genuine mistake or understanding (these factors must be balanced against the seriousness of the offence)
- 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
- 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
- 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
- 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 is serious or there is real possibility that it may be repeated
- 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)
- Where other proper alternatives to prosecution are available (including disciplinary or other proceedings)

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

Solicitor-Generals Prosecution Guidelines

The Solicitor-General's Prosecution Guidelines also provide guidance on other aspects of the conduct of the public prosecutions including matters such as:

- What charges should be filed
- Once criminal proceedings are commenced, whether they should be continued or discontinued
- The conduct of criminal prosecutions
- Standards of conduct and practice for lawyers conducting prosecutions
- Plea discussions and arrangements

Roles and responsibilities during prosecution

Once a decision to prosecute has been made by the Chief Executive, the file will be referred to external lawyers who have been engaged to undertake the prosecution. The

external prosecution lawyers will review the file and recommend charges. Once this review is complete, the prosecution lawyers will prepare the charging documents.

All staff involved in managing a prosecution will maintain a high standard of professional and ethical conduct and manage the case in a way that is consistent with the individual's right to a fair trial. In particular those involved in the prosecution should:

- Act in a manner that is fundamentally fair, performing their obligations in a detached and objective manner impartially and without delay
- Conduct themselves in accordance with their ethical obligations and rules of professional conduct
- Comply with the disclosure obligations contained in the Criminal Disclosure Act 2008 and
- Be aware of the needs of victims and ensure that in accordance with the law and the requirements of a fair trial, victims and witnesses are treated with care and respect

The Regulatory team is responsible for keeping the Chief Executive informed about the progress with the prosecution on key decisions and such as amendments to charges, plea discussions and arrangements, or a decision to discontinue proceedings.

The Regulatory team will ensure that the Council promptly provides all information and assistance required by the prosecution lawyers.

Contact with individuals

Once charges are filed no Council staff members involved with the prosecution will have any communication with the individual or individual's legal representative in relation to the prosecution, unless it has first been discussed with the prosecution lawyers acting for the Council.

Because individuals may have other dealings with Council staff during the course of the prosecution the Chief executive will ensure that relevant staff are aware of any prosecutions underway. Council staff and elected members must ensure that they do not interact with such individuals during the course of the prosecution in a manner that could jeopardise the right to a fair trial or adversely affect the prosecution.

Review of charges

The evidential test is an ongoing requirement as is public interest test. The prosecution lawyers will continue to monitor whether the evidential test is met throughout the course of prosecution. If as a result of continued investigation following the laying of charges it is considered that another charge is more suitable the Council may amend the charge, or if a charge should be withdrawn, the Council will withdraw the charge.

Decision not to prosecute

A decision not to prosecute does not preclude Council from further considering the case if new and additional evidence becomes available or if a review of the original decision is required (provided always that we are within the applicable limitation period for bringing a prosecution)

Appeals relating to a prosecution

Every decision to appeal against a sentence or appeal on a question of law must go through the same decision making process as would for a decision to prosecute.

Investigations involving other agencies

It is not uncommon for more than one prosecution agency to investigate a particular matter where prosecution by any of those agencies could result.

Wherever possible we will work collaboratively with those other agencies to ensure that investigations and criminal prosecutions are conducted effectively and efficiently. For example in some cases it may be possible for agencies to share information such as witness statements to ensure witnesses are not subjected to multiple interviews by different agencies.

Where reasonably practicable we will consult with other relevant agencies before commencing a criminal prosecution to satisfy ourselves that criminal prosecution by us is in the public interest.