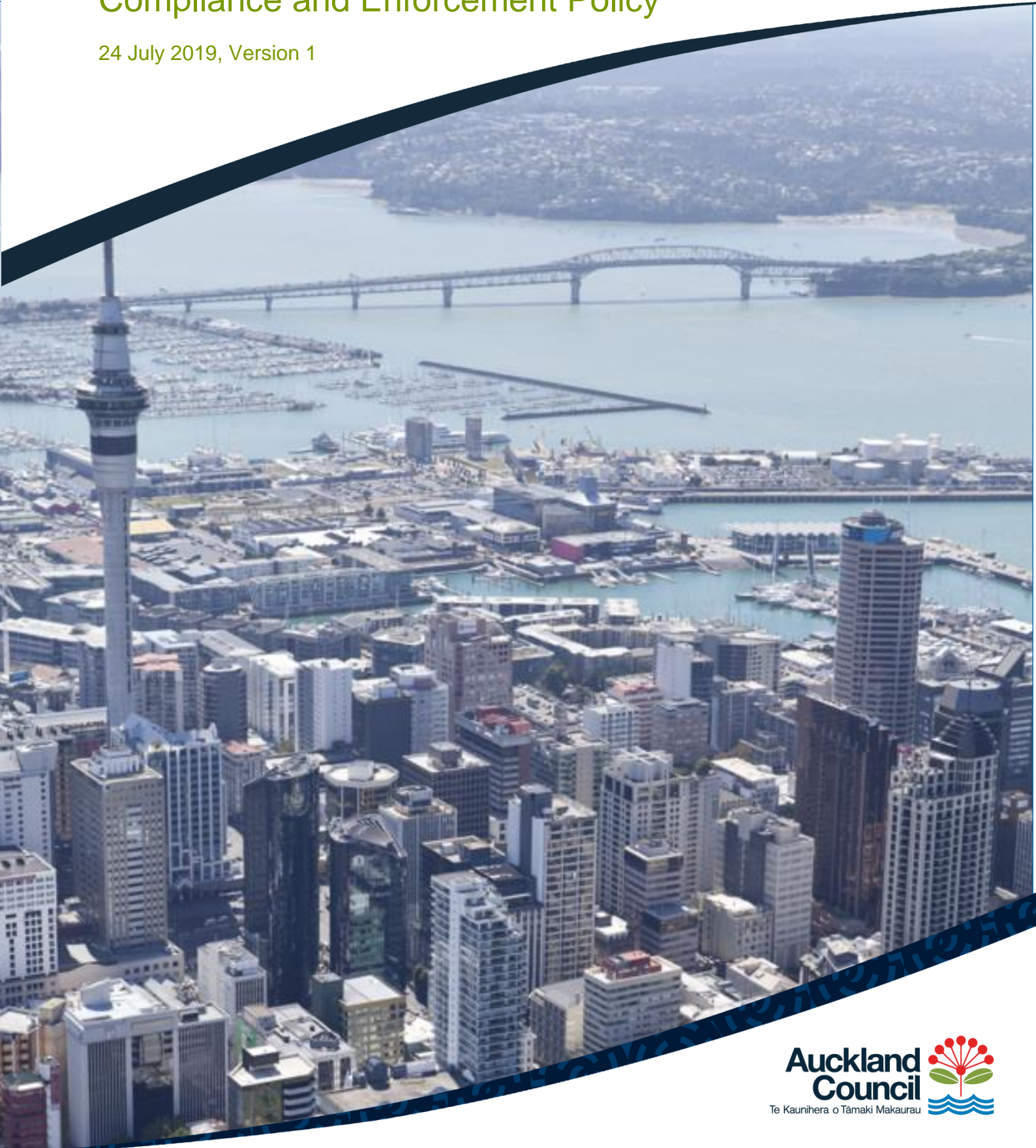


Auckland Council Regulatory Compliance Unit

Compliance and Enforcement Policy

24 July 2019, Version 1



1 Purpose

The purpose of this policy is to provide an understanding of the Auckland Council Regulatory Compliance Unit 'principles based' approach to compliance and enforcement, which underpins the unit's varied and wide-ranging statutory responsibilities.

The overall aim in applying this policy is to protect and promote the long-term sustainable management of Auckland's natural and physical resources; quality-built environments; and strong, healthy communities.

A compliance and enforcement framework is an effective means of managing activities that might otherwise impact negatively on public health, safety and well-being, or cause environmental damage. The framework is designed to ensure that specific activities are undertaken within established guidelines and standards.

Measures to guide, encourage and, if necessary, enforce compliance are part of the methods that Council employs to achieve its regulatory objectives. The compliance framework provides guidance to the public on regulatory requirements, and encourages observance of those requirements. Where rules and regulations are not voluntarily observed, a range of enforcement approaches may be used to achieve compliance.

This policy will ensure that decisions about compliance and enforcement are in accordance with the legislation and regulations and are equitable and consistent.

The policy also describes what to expect during an investigation. Enforcement is an integral part of the implementation and administration of the law. As a Unitary Authority, Council covers both Regional and Territorial authority responsibilities. It therefore has broad ranging environmental, planning, and development control responsibilities, including the statutory obligation to enforce its legal duties and responsibilities under the wide range of legislation it administers.

2 What we do

The Regulatory Compliance Unit is responsible for promoting and monitoring compliance with:

- the Resource Management Act 1991, associated regulations and the Auckland Unitary Plan
- the Building Act 2004, the Building Code, and associated regulations
- Local Government Act 2002 and associated regulations
- Local Government Act 1974
- bylaws made under the Local Government Act 2002
- other relevant legislation.

We do this by:

- responding to and investigating reports of non-compliance with these statutes and regulations
- monitoring resource consents and some permitted activities
- taking enforcement action when non-compliance is identified
- analysing patterns of non-compliance and carrying out projects to reduce non-compliance issues that are persistent, widespread or serious.

3 Principles of compliance

Underlying our approach to compliance are the following principles.

Voluntary Compliance

Council regards prevention as an important tool to ensure compliance with regulations. This includes communication, education, timely provision of information and advice, persuasion, assistance and collaboration to ensure compliance or a return from non-compliance.

Transparency of Decision Making

Transparency is important in maintaining public confidence in the Council's ability to regulate. It means helping Aucklanders to understand what is expected of them and what they should expect from the Council. It also means Council will be accountable for its decisions.

Consistency

Consistency means taking a similar approach in similar circumstances to achieve similar ends. Council aims to achieve consistency in education and advice tendered, response to non-compliance, its use of powers, and decision making on compliance matters.

However, Council also recognises that consistency does not simply mean uniformity. Staff take into account many variables. Decisions on compliance are a matter of professional judgement and discretion.

Fair, reasonable and proportionate

Council ensures that our response is proportionate to the seriousness of the non-compliance and the risk posed to people and the environment.

Targeted

We focus on the most important issues to achieve the best outcomes. We target our regulatory intervention at illegal activities that pose the greatest risk to people and the environment. We aim to apply the right tool for the right problem at the right time.

Evidence based

We use an evidence-based approach to our decision-making. Our decisions are informed by a range of sources including best scientific practice, technology, and information received from members of the public, industry, other regulators and interest groups.

Collaborative

We work with and, where necessary in accordance with applicable legislation, share information with other regulators and stakeholders, to ensure the best compliance outcomes for Auckland. We engage with the community and government to explain and promote regulatory compliance, and achieve better community and environmental outcomes.

Lawful, ethical and impartial

We conduct ourselves lawfully and impartially, and in accordance with our principles of compliance, relevant policies and guidance. We document and take responsibility for our regulatory decisions and actions.

Responsive and effective

We receive information on alleged non-compliance and determine the necessary interventions to minimise impact on the environment and the community, and maximise deterrence. We aim to respond in an effective and timely manner in accordance with legislative and organisational procedures.



Concrete in a stream

4 Encouraging compliance

Auckland Council takes a comprehensive approach to encouraging compliance through developing understanding and changes of behaviour that avoid repeat non-compliance. The different components of this approach are referred to as the 4Es: engage, educate, enable and enforce.

Engage – we consult with Aucklanders on matters that may affect them. This involves maintaining relationships and communication until final outcomes are reached.

Educate – informs Aucklanders about what is required for compliance. Education informs the Auckland community about the regulations that affect them so that they have a better understanding of what is compliant and what is not.

Enable – provides information about best practice and regulatory requirements, for example linking a business with appropriate industry advisors.

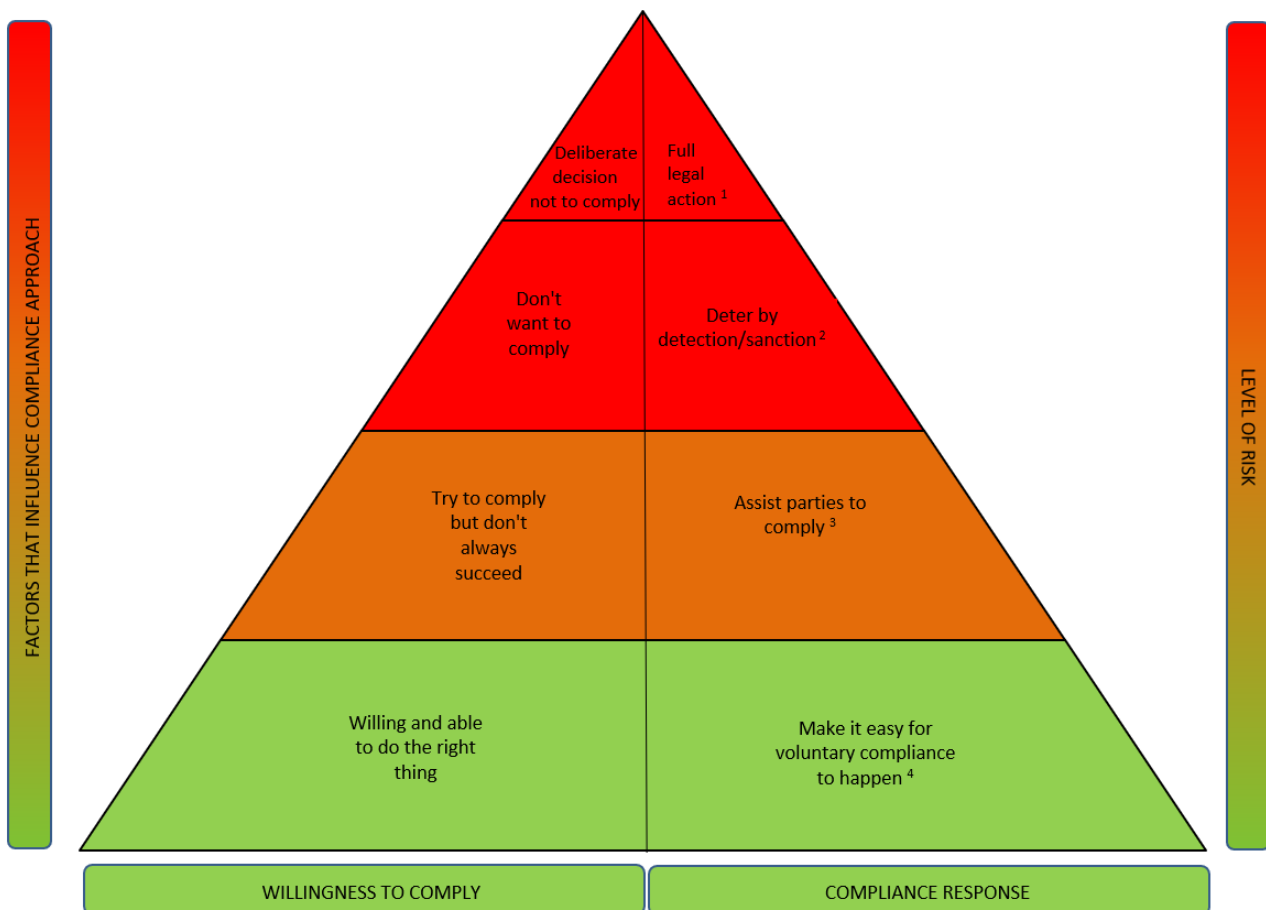
Enforce – when non-compliance is identified, an array of enforcement tools are available to bring about positive outcomes.



5 The Council's approach to non-compliance

Subject to the principle of proportionality stated above, Council uses a graduated response when responding to and managing non-compliance. The initial response may involve starting with the least serious tool, such as education or a formal warning, working through the range of options that may extend up to and include court action for those serious or persistent offenders or where there is a high risk of harm.

The following diagram illustrates our approach where the response to non-compliance is influenced by the level of risk and the individual or company's approach to compliance.



¹ For example prosecution, enforcement order, injunction.

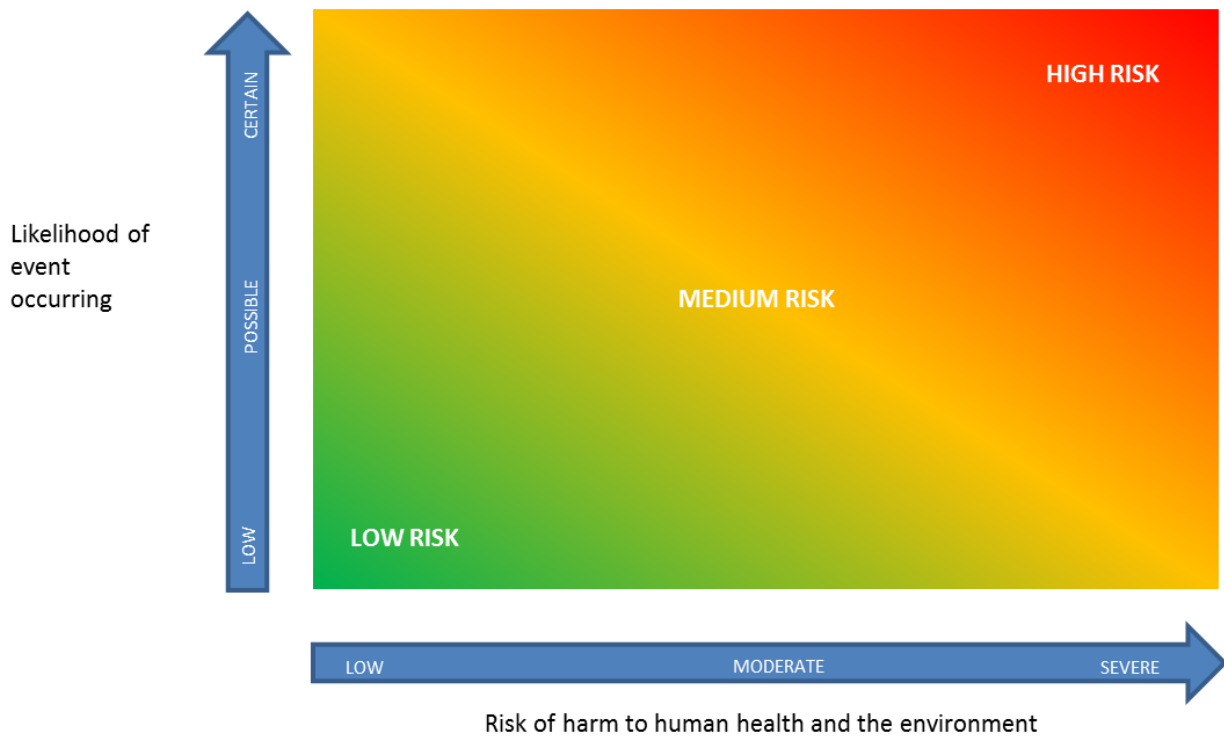
² For example legal notices, infringement fines.

³ Advice, formal letters.

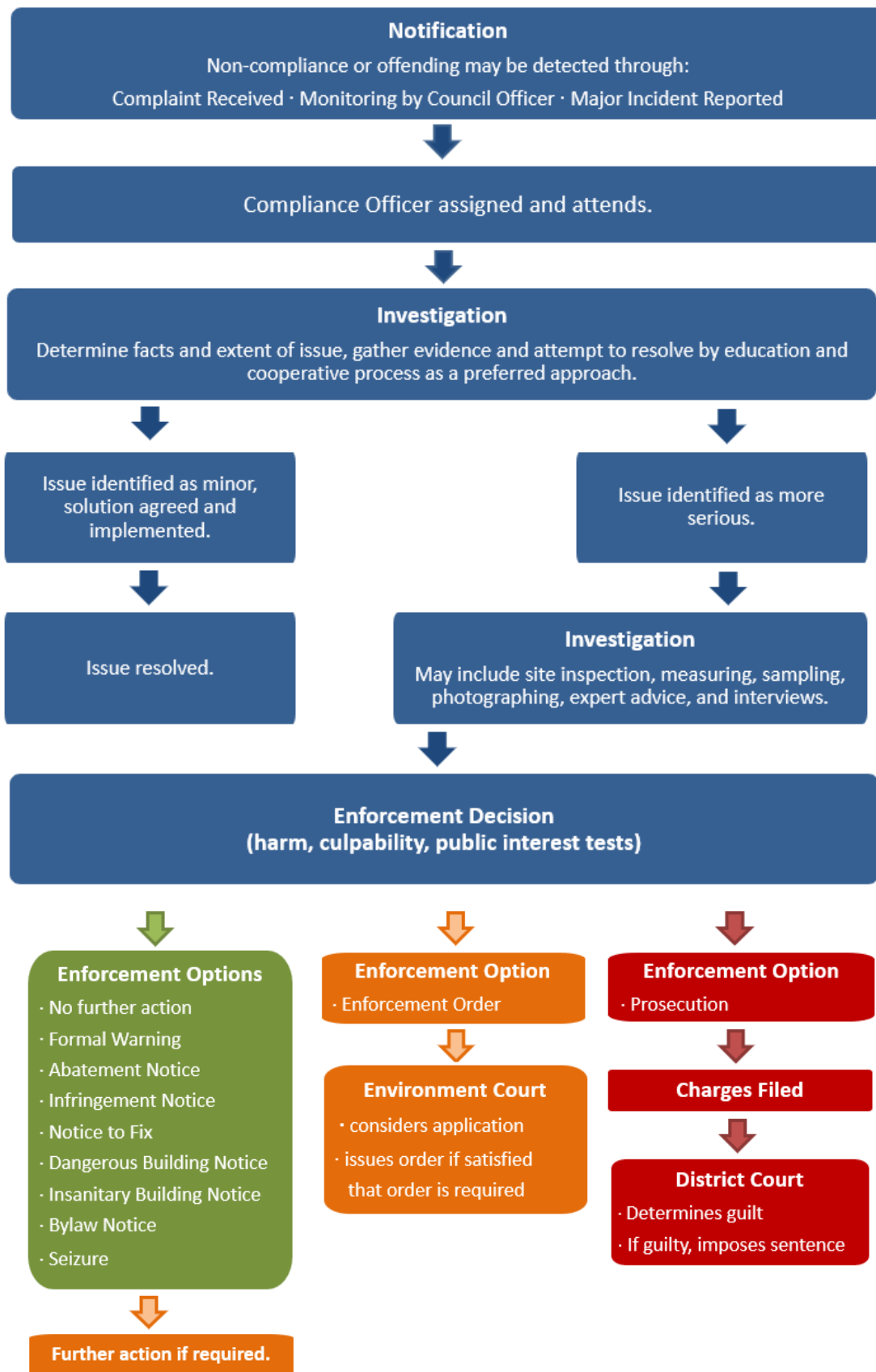
⁴ Education, brochures, workshops, field days.

6 Risk assessment

The risk associated with non-compliance is assessed using the following risk matrix. This model calculates the likelihood of non-compliance occurring and the consequent magnitude of harm to human health and the environment, including cultural, social and economic effects.



7 Responding to non-compliance



8 Gathering information (investigation)

If a breach, or suspected breach, of the Resource Management Act, Building Act or Council Bylaws is reported, information is gathered to ascertain how and why the breach occurred. The purpose of an investigation is to establish the truth of what has occurred and enable informed decisions for resolution to be made. The depth and scope of the investigation will depend on the seriousness of the incident.

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

- Visiting property, including private property, to collect information or potential evidence like samples, photographs, measurements, or ecological assessments;
- Arranging for expert inspection such as engineers, building practitioners, fire service, survey consultants to attend and assist in gathering information;
- Talking to people about what they know about the incident. People interviewed may be witnesses to an incident or potentially liable parties. These conversations are recorded in writing or by electronic means.
- For serious matters, interviews of suspects are conducted under caution to ensure they understand their rights.



Entry to private property

The Chief Executive Officer of Auckland Council has the authority to issue staff with warrants of authority. A warranted enforcement officer has the ability to enter private property for the purpose of assessing compliance in accordance with relevant sections of legislation council enforces.

There may be instances where a property has to be accessed under authority of a search warrant. The High Court has given clear direction as to when an officer can rely on their warrant of authority and when they need to have informed consent or a search warrant to enter property. Officers are aware of when this is required.

Concluding an investigation

At the end of an investigation all of the evidence gathered is assessed and analysed, and a decision is made as to further action required, if any.



9 Enforcement decision making

Enforcement decision making can be complex. The penalties available under the relevant Acts provide potentially large penalties for a breach that has been proved during the course of an investigation. Any penalty decided by a court will take into account the seriousness of the offending via a summary of the facts at sentencing.

A single section of the RMA can prohibit activities as diverse as emitting objectionable odour, discharging contaminants to a stream or burying toxic waste. These have vastly different environmental effects as well as different effects on the community.

The courts have provided helpful guidance on the factors that are appropriate to consider in RMA, Building Act and Bylaw cases to determine the seriousness of a breach.

When determining the most appropriate enforcement response to a particular situation, council applies a graduated enforcement approach. Investigators weigh all competing considerations and exercise judgement. Much will depend on the circumstances of the case and the willingness and responsiveness of the parties involved to remedy the situation.






The factors Council will consider in determining an appropriate response include:

- What are the actual adverse effects that have occurred from the breach?
- What are the likely or potential adverse effects arising from the breach?
- What is the value or sensitivity of the environment affected by the breach?
- Was the breach a result of deliberate, negligent or careless behaviour?
- What degree of care was taken by the culpable party, and how foreseeable was the incident?
- What efforts were made by the culpable party to remedy or mitigate the effects of the breach?
- How effective was that remediation or mitigation?
- Was any profit or benefit gained from the breach by the culpable party?
- Is this incident a repeat non-compliance by the culpable party or has previous enforcement action been taken against the party for the same or similar breach?
- Has the culpable party failed to act on prior instructions, advice or notice?
- Is there a degree of specific deterrence required in relation to the culpable party?
- Is there a need for a wider general deterrence required in respect of this activity or industry? Which course of action would be in the public interest?

The factors listed above are not intended to be exhaustive.

Not every factor will be relevant every time. Each case is unique and the individual circumstances need to be considered on a case-by-case basis to achieve a fair and reasonable outcome.

10 Enforcement options

Action	Description of Action	Potential Impacts on the Liable Party	When Might This Action Be Appropriate?
 <p>Formal Warning</p>	<p>A formal warning is documented by way of a letter to a culpable party informing them that an offence against the RMA has been committed and that they are liable.</p>	<p>No further action will be taken in respect of that breach.</p> <p>However, the warning forms part of a history of non-compliance and will be considered if there are future incidents of non-compliance.</p>	<p>A formal warning may be given when:</p> <ul style="list-style-type: none"> - an administrative, minor, or technical breach has occurred; and - the environmental effect or potential effect, is minor or trivial in nature; and - the subject does not have a history of non-compliance; and - the matter is one which can be quickly and simply put right; and - a written warning would be appropriate in the circumstances.
 <p>Abatement Notice</p>	<p>An abatement notice is a formal, written directive. It is drafted and served by Auckland Council 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 an abatement notice are prescribed in statute.</p>	<p>A direction given through an abatement notice is legally enforceable.</p> <p>To breach an abatement notice is to commit an offence against the RMA and make liable parties open to punitive actions.</p>	<p>An abatement notice may be appropriate any time that there is a risk of further breaches of environmental regulation or remediation or mitigation is required as a result of non-compliance.</p>
 <p>Infringement Notice</p>	<p>An infringement notice is a written notice which requires the payment of a fine. The amount of the fine is set in law. Depending on the breach, the fine will be between \$300 and \$1000.</p>	<p>No further action will be taken in respect of that breach. However, the infringement notice forms part of the history of non-compliance and will be considered if there are future incidents of non-compliance.</p>	<p>An infringement notice may be issued when:</p> <ul style="list-style-type: none"> - there is prima facie (on the face of it) evidence of a legislative breach; and - a one-off or isolated legislative breach has occurred which is of minor impact and which can be remedied easily; and - where an infringement notice is considered to be a sufficient deterrent.
 <p>Enforcement Order</p>	<p>Like an abatement notice, an enforcement order can direct a party to take particular action. However, an application for an enforcement order must be made to the Environment Court, but can also be made during the course of an RMA prosecution.</p>	<p>A direction given through an enforcement order is legally enforceable.</p> <p>To breach an enforcement order is to commit an offence against the RMA and make liable parties open to punitive actions.</p>	<p>An application for an enforcement order may be appropriate any time there is a risk of further breaches of environmental regulation, or remediation or mitigation is required as a result of non-compliance.</p>
 <p>Prosecution</p>	<p>A prosecution is a process taken through the criminal courts to establish guilt or innocence and, if appropriate, the court will impose sanctions. RMA matters are heard by a District Court Judge with an Environment Court warrant.</p> <p>All criminal evidential rules and standards must be met in an RMA prosecution.</p>	<p>A successful prosecution will generally result in a conviction, a penalty imposed, and consideration to costs of the investigation.</p> <p>A prosecution forms part of the history of non-compliance and will be considered if there are future incidents of non-compliance.</p>	<p>A prosecution may be considered appropriate when the factors listed above indicate that the matter is sufficiently serious to warrant the intervention of criminal law.</p>

Resource Management Act (RMA) - Noise	Action	Description of Action	Potential Impacts on the Liable Party	When Might This Action Be Appropriate?
	Excessive Noise Direction	An excessive noise direction is a formal written directive instructing an individual or company to cease breaching noise standards.	An excessive noise direction is legally enforceable. A breach of an excessive noise direction is an offence against the RMA.	An excessive noise direction may be appropriate any time there is a breach of noise standards in the Auckland Unitary Plan.
	Abatement Notice to Abate Excessive Noise	An abatement notice is a formal, written directive. It is drafted and served by Auckland Council 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 an abatement notice are prescribed in statute.	A direction given through an abatement notice is legally enforceable. To breach an abatement notice is to commit an offence against the RMA and make liable parties open to punitive actions.	An abatement notice may be appropriate any time that there is a risk of further breaches of environmental regulation or remediation or mitigation is required as a result of non-compliance.
Building Act	Notice to Fix	A notice to fix is a formal written directive issued under the Building Act instructing and individual or company to remove or legalise unconsented building work. The form, content, and scope of a notice to fix is prescribed in statute.	A notice to fix is legally enforceable. A breach of a notice to fix is an offence under the Building Act.	A notice to fix may be appropriate any time there is a breach of the Building Act.
	Insanitary Building Notice	An insanitary building notice is a formal written directive instructing an individual or company to remedy an insanitary building and/or restrict access to the building.	An insanitary building notice is legally enforceable. A breach of an insanitary building notice is an offence under the Building Act.	An insanitary building notice may be appropriate any time that a building has been deemed insanitary under Section 123 of the Building Act.
	Dangerous Building Notice	A dangerous building notice is a formal written directive instructing an individual or company to remedy a dangerous building and/or restrict access to the building.	A dangerous building notice is legally enforceable. A breach of a dangerous building notice is an offence under the Building Act.	A dangerous building notice may be appropriate any time that a building has been deemed dangerous under Section 121 of the Building Act.
	Prosecution	A prosecution is a process taken through the criminal courts to establish guilt or innocence and, if appropriate, the court will impose sanctions. All criminal evidential rules and standards must be met in a Building Act prosecution.	A successful prosecution will generally result in a conviction, a penalty imposed, and consideration to costs of the investigation. A prosecution forms part of the history of non-compliance and will be considered if there are future incidents of non-compliance.	A prosecution may be considered appropriate when the factors listed above indicate that the matter is sufficiently serious to warrant the intervention of criminal law.

Auckland Council Bylaws

Action	Description of Action	Potential Impacts on the Liable Party	When Might This Action Be Appropriate?
Bylaw Notice	A bylaw notice is a written directive instructing an individual or company to cease an activity, or requiring them to take specified action(s).	A bylaw notice forms part of a history of non-compliance and will be considered if there are future incidents of non-compliance.	A bylaw notice may be appropriate any time that there is a breach of a council bylaw.
Prosecution	A prosecution is a process taken through the criminal courts to establish guilt or innocence and, if appropriate, the court will impose sanctions. All criminal evidential rules and standards must be met in a prosecution.	A successful prosecution will generally result in a conviction, a penalty imposed, and consideration to costs of the investigation. A prosecution forms part of the history of non-compliance and will be considered if there are future incidents of non-compliance.	A prosecution may be considered appropriate when the factors listed above indicate that the matter is sufficiently serious to warrant the intervention of criminal law.



Methyl violet dye in the Oruarangi Awa

11 What a complainant can expect

Complaints can be made to Council via a number of methods, including phone and email. It helps to provide as many details as possible. These include the identity and address of the complainant, the address at which the alleged breach has taken place, a description of the unauthorised activity, and the harm that is considered to be caused. Complainants may also be encouraged to send in dated photographs of the alleged breach.

Council will ensure that:

- all valid complaints are properly recorded and investigated
- the personal details of the complainant are held in the strictest confidence
- in cases involving a serious and/or irreversible harm, the complaint is investigated as a matter of priority, usually within 24 hours of receipt
- the complainant is updated on any subsequent action that may result as soon as reasonably practicable
- council do not take sides in a dispute; we will however judge what action is appropriate according to the evidence, particular circumstances, impact on the built or natural environment, relevant policies, and legislation.

12 Cost recovery

Council endeavours to make all reasonable efforts to ensure that the cost of compliance is met by the person or company responsible for the non-compliance and not by the Auckland ratepayers. Such cost recovery is in line with the Council Fees and Charges regime.



Find out more: **phone 09 301 0101**
or visit **aucklandcouncil.govt.nz**