



ENFORCEMENT POLICY

Te Kaupapa Here Ūruhitanga

Effective from 1 June 2021

Purpose

The purpose of this policy is to:

- Set out clearly the principles and decision guidelines for the lawful discharge of functions and duties
- monitor compliance and encourage compliance (i.e. achieving the highest levels of compliance)
- deal with non-compliance (i.e. use of enforcement tools to bring about behaviour change)
- Ensure that enforcement is assessed, authorised and reviewed consistently for all staff and elected members.

Application

This policy applies to all staff, contractors and elected members of the Invercargill City Council.

Contents - *Ngā Ihirangi*

	Page
1 Introduction	1
2 Compliance / Monitoring / Enforcement Role	1
3 Principles For Decision-Making	3
4 Policy Purpose And Strategic Intent	4
5 Enforcement Options	6
6 Enforcement Decision-Making	8
7 Monitoring And Evaluation	10

1. Introduction - *He Kupu Whakataki*

The Invercargill City Council Enforcement Policy sets out Councils approach to compliance, monitoring and enforcement and provides clarity to all relevant stakeholders for all Regulatory related areas

This Policy does not relate to Councils regulatory activities in-relation to Dog Control and Noise Control as each of these will have their own Policy.

2. Compliance / Monitoring / Enforcement Role – *Ngā Mahi Whakaaetanga / Arotake / Tūranga Whakamana*

Local Government is responsible for ensuring compliance with a variety of laws and regulations that are aimed at achieving positive community and environmental outcomes. The Resource Management Act 1991(RMA) is a significant component of the overall suite, the purpose of which is to promote the sustainable management of natural and physical resources.¹ The RMA sets out specific duties for councils which apply to CME activities. These include a responsibility to implement the RMA, duty to collect information on implementing the RMA and a duty to observe and enforce their policy statements, plans and national environmental standards.

The Building Act 2004 (BA) is another important part of Councils Regulatory functions. The purpose of the BA² is to ensure that people who use buildings can do so safely and without endangering their health, and to ensure that buildings are designed and built to ensure safety, sustainability and to promote accountability to the building code. There are several duties for a Council to carry out, including monitoring Dangerous, Insanitary and Earthquake Prone buildings, as well as monitoring for unconsented work or work that is not built within the Building Consent. Finally, Council must also monitor Swimming Pools and Spa Pools.

Council also has CME roles under the Local Government Acts (1974 and 2002), to enforce Bylaws, rules around roads, storm water, drains and animals. The Health Act 1956 and Regulations are in place to ensure that public health is maintained, whilst the Sale and Supply of Alcohol Act 2012 ensure licenced premises comply with the Act. There are also licenses and general compliance such as litter under the Litter Act 1979 and the Amusement Device Regulations 1978 to ensure that carnival rides are safe.

Council also has to ensure the provisions of the Hazardous Substances and New Organisms Act 1996 (HSNO) are enforced in or on any premises situated in the City district other than those premises assigned to other regulations by Section 97 of HSNO other than to protect public health. Council has the discretion to enforce HSNO in or on any premises when the Council is there for the purpose of enforcing the RMA.

¹ RMA s5

² BA s3 -4

HSNO also provides for the enforcement function in or on any premises to be transferred to a territorial authority, in which case the duty to enforce is mandatory.

Applying a strategic approach to ensuring others are compliant enables councils to focus their compliance related programmes and interventions on the most 'important problems' – based on a range of risk based factors. Compliance monitoring and enforcement refers to the full range of activities related to managing compliance within a regulated community, which can be thought of as a spectrum of approaches as set out in the VADE model (see section 4).

Definitions for the three key aspects of the term are below.

Compliance: adherence to the Acts, Regulations, and rules, including the rules established under regional and district plans and meeting resource consent conditions, and national environmental standards.

Monitoring: the activities carried out by councils to assess compliance with the Acts and regulations. This can be proactive (e.g., resource consent or permitted activity monitoring) or reactive (e.g., investigation of suspected offences).

Enforcement: the actions taken by councils to respond to non-compliance with the Acts and Regulations. Actions can be punitive (for the purpose of deterring or punishing the offender) and/or directive (e.g., directing remediation of the damage or ensuring compliance with the Acts and Regulations).

Source: MfE Best Practice Guidelines for Compliance Monitoring and Enforcement under the Resource Management Act 1991

Territorial local authorities such as Invercargill City have responsibilities set out in section 31 of the RMA. There are three main sources of work for the CME role under the RMA

- Monitoring the conditions of resource consents and related requirements (designations and heritage orders)
- Responding to complaints related to potential unlawful activities
- Proactively monitoring compliance with permitted activity rules in the District Plan

In respect of the above dimensions, councils promote compliance, monitor activities, and undertake enforcement as required.

Council will endeavour to have the costs incurred in undertaking compliance monitoring and enforcement met by the regulated community rather than ratepayers at large. Where possible costs will be charged directly to the property owner and/or consent holder/s. Details on specific fees can be found in Council's Schedule of Fees and Charges (part of the Annual Plan).

3. Principles for Decision-Making – *Ngā Mātāpono Mō Te Whakatau Tikanga*

Principled decision making is the cornerstone of a good enforcement policy. The principles below act to underpin those process and outcomes. They also reflect what is in the MfE Best Practice Guidance on Compliance, Monitoring and Enforcement.

Responsive and effective

We will consider all alleged non-compliance to determine the necessary interventions and action to minimise impacts on the environment and the community and maximise deterrence. We will respond in an effective and timely manner in accordance with legislative and organisational obligations.

Collaborative

We will work with and, where possible, share information with other regulators and stakeholders to ensure the best compliance outcomes for our regions. We will engage with the community and consider public interest, those we regulate, and government to explain and promote environmental requirements, and achieve better community and environmental outcomes.

Fair, reasonable, and proportional approach

We will apply regulatory interventions and actions appropriate for the situation. We will use our discretion justifiably and ensure our decisions are appropriate to the circumstances and that our interventions and actions will be proportionate to the risks posed to people and the environment, and the seriousness of the non-compliance.

Transparency

We will provide clear information and explanation to the regulated community about the standards and requirements for compliance. We will ensure that the community has access to information about industry environmental performance as well as actions taken by us to address environmental issues and non-compliance.

Consistency of process

Our actions will be consistent with the legislation and within our powers. Compliance and enforcement outcomes will be consistent and predictable for similar circumstances. We will ensure that our staff have the necessary skills and are appropriately trained; and that there are effective systems and policies in place to support them.

Evidence based, informed

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

Lawful, ethical, and accountable

We will conduct ourselves lawfully and impartially and in accordance with these principles and relevant policies and guidance. We will document and take responsibility for our regulatory decisions and actions. We will measure and report on our regulatory performance.

Targeted

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

4. Policy Purpose and Strategic Intent – *Te Pūtake Kaupapa Here Me Te Mahere Rautaki*

The purpose of this policy is to ensure that council's approach to compliance, monitoring and enforcement (CME) is designed to:

- Maintain a level playing field within the regulated community
- Support an approach recognising that compliance is a technical role that will be undertaken void of politicised decision making
- Recognise that a compliance culture within council is established and maintained

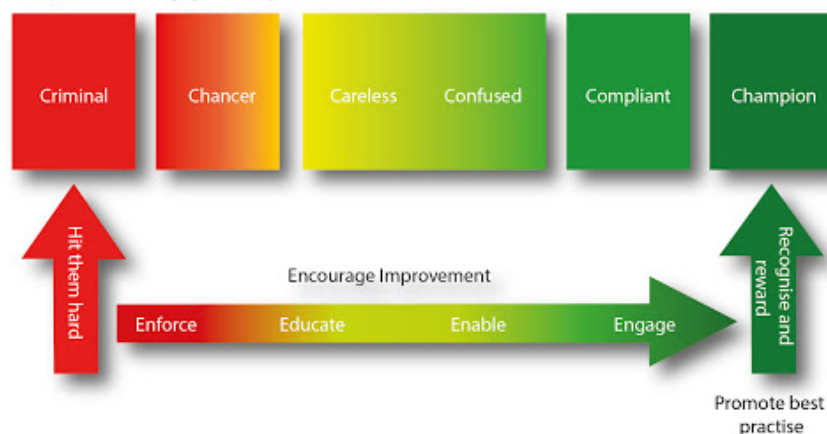
Invercargill City Council had informally used the VADE model. This Policy now formally adopts the 'VADE' model of addressing non-compliance. The VADE model is set out below and details the attitudes of the regulated community and the CME responses most likely to be employed. The spectrum set out below present's similar information in a different way, acknowledging the presence of different mind sets that Council will support and recognise or manage and deter.

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	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	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 non-conforming behaviour when educated.	Unintentionally undertakes an activity that contravenes their consent approvals and/or underlying application Minor potential for	Most likely	Education / advice both 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. May alter behaviour when educated.	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	Less likely	Education – verbal and collateral Warnings Infringement notices Enforcement order Abatement notice (where ‘near miss’ for significant environmental breach)
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	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)

Compliance and Engagement Spectrum (Source SEPA)



5. Enforcement Options – *Ngā Ara Whakatikatika*

Sets out the range of tools available to Council in respect of RMA enforcement and when appropriate to be used.

Tool	Description	Purpose	Appropriate for....
Excessive noise direction	Formal direction requiring a party to stop contravening noise standards	Issues directions that are legally enforceable. Failure to comply with an abatement notice constitutes an offence under the RMA.	<ul style="list-style-type: none"> - Used specifically for a breach of noise standards
Formal warning	A formal warning is a letter issued that documents a culpable party having received advisement that they have committed an offence.	Non-statutory but provides a record of non-compliance that may be relevant in future instances.	<ul style="list-style-type: none"> - minor breaches (including technical) - minor environmental effects - first time offender - the matter is easily addressed/resolved
Abatement Notice	A formal written direction asking that someone undertake an activity or cease an activity or prohibit them from commencing one. There is a form for an abatement notice that is set in statute.	Issues directions that are legally enforceable. Failure to comply with an abatement notice constitutes an offence under the RMA.	<ul style="list-style-type: none"> - further offences may occur - action is required to remedy or mitigate the effects of non-compliance - can also be issued for excessive noise
Infringement Notice	Written notice requiring that a fine be paid to council of between \$300 and \$1000 depending on the nature of the offence (and this is prescribed in law).	No further action will be taken in respect of that stated breach, but fine provides a record of non-compliance that may be relevant in future instances.	<ul style="list-style-type: none"> - clear evidence of a breach of the law - an isolated instance of non-compliance that is minor and able to be easily addressed - where a fine will influence behaviour to return to compliance
Enforcement order	A formal written direction asking that someone undertake an activity or cease an activity or prohibit them from commencing one. Distinct from an abatement notice because an application must be made to the Environment Court for an enforcement order (may also be issued during a prosecution process).	Issues directions that are legally enforceable. Failure to comply with an abatement notice constitutes an offence under the RMA.	<ul style="list-style-type: none"> - further offences may occur - action is required to remedy or mitigate the effects of non-compliance
Prosecution	A process through the criminal courts (meeting all evidential standards for criminal cases). RMA prosecutions are heard by a District Court Judge holding an RMA warrant.	Prosecutions may result in conviction, a range of possible penalties and a potential award of costs. A prior prosecution provides a record of non-compliance that may be relevant in future instances.	<ul style="list-style-type: none"> - serious enough issues to warrant criminal procedures - evidential and public interest tests satisfied

Options for Non-RMA Matters - General

Tool	Description	Purpose	Appropriate for....
Formal warning	A formal warning is a letter issued that documents a culpable party having received advisement that they have committed an offence.	Non-statutory but provides a record of non-compliance that may be relevant in future instances.	<ul style="list-style-type: none"> - minor breaches (including technical) - first time offender - the matter is easily addressed/resolved
Abatement Notice (Health Act) Notice to Fix Building Act	A formal written direction asking that someone undertake an activity or cease an activity or prohibit them from commencing one. There is a form for an abatement notice that is set in statute.	Issues directions that are legally enforceable. If an abatement notice is not complied with, that constitutes an offence under the Health Act	<ul style="list-style-type: none"> - further offences may occur - action is required to remedy or mitigate the effects of non-compliance - can also be issued for excessive noise
Infringement Notice	Written notice requiring that a fine be paid to council the amount depending on the nature of the offence (and this is prescribed in law).	No further action will be taken in respect of that stated breach, but fine provides a record of non-compliance that may be relevant in future instances.	<ul style="list-style-type: none"> - clear evidence of a breach of the law - an isolated instance of non-compliance that is minor and able to be easily addressed - where a fine will influence behaviour to return to compliance
Prosecution	A process through the criminal courts (meeting all evidential standards for criminal cases).	Prosecutions may result in convictions, a range of possible penalties and a potential award of costs. A prior prosecution provides a record of non-compliance that may be relevant in future instances.	<ul style="list-style-type: none"> - serious enough issues to warrant criminal procedures - evidential and public interest tests satisfied

Specific CME Tools Under Other Acts

Tool	Description	Purpose	Appropriate for....
Closing Order-Health Act	Formal direction requiring a party to take steps to clean property/close the Building for cleaning	Issues directions that are legally enforceable. It is an offence not to comply with and can be escalated.	- Used for dirty/contaminated properties.
Dangerous / Insanitary Notice Building Act	A formal Notice advising that the Property is either Dangerous or Insanitary and needs to be repaired or demolished.	Gives notice to owners to take steps to repair or demolish dangerous or Insanitary buildings. An offence to fail to comply and can see Council apply to the Court for permission to complete the work.	- Any building that is Dangerous and or Insanitary and the owner has failed to take steps during the earlier stages of the CME.
Compliance Order (Food Act)	A formal written direction requiring a Food provider to take steps to stop serving Food and to take steps to clean/destroy and retrain.	Issues directions that are legally enforceable. If an abatement notice is not complied with, that constitutes an offence under the Food Act	- Serious noncompliance with Food Control Plans or programmes and risks to public safety.

6. Enforcement Decision-Making – *Ngā Ara Whakataua*

This policy covers three key phases. The immediate response, the investigative tasks and the decision-making processes that follows. These phases are set out below.

1. **Immediate and urgent response stage**

At the time an offence is detected, immediate responses may be required to protect life and property or to curtail or otherwise remedy or mitigate effects. This may include issuing relevant notices or engaging contractors to do emergency works. The nature of all actions and decisions should be carefully documented.

2. **The investigation stage**

Concurrent with or following any urgent response is an investigation to establish all the facts that will inform a decision on which action to take (or which actions should follow those already done).

3. **Decision-making stage**

On completion of the initial investigation, decisions must be made on what action to take. These decisions may be iterative or may be multi-staged depending on the nature of the response.

Delegations and authority to approve actions

The Council maintains a delegation register that contains a principle that 'Council will normally delegate to the lowest competent level'. Experience and understanding of environmental enforcement are the relevant competencies and the Council will need to decide as to where that competency is expected to lie in each instance. To support this process, relevant staff should all receive training and be assessed as competent before undertaking decision making in the compliance area.

Tool	Process	Decision-maker
Excessive noise direction	Investigating officer determines that an excessive noise direction is the most appropriate response and issues in-field advising Team Leader or Compliance officer on return.	Team Leader - Compliance
Formal warning	Investigating officer determines what has occurred needs to be recorded but does not warrant a more formal compliance response, discusses with the Team Leader.	Team Leaders - Compliance, Planning
Abatement Notice	Investigating officer determines that an abatement notice is the most appropriate response and discusses with Team Leader. Review may also occur at regular CME meeting if required.	Team Leaders - Compliance, Environmental Health and Planning
Infringement Notice	Investigating officer determines that an infringement fine is the most appropriate response and discusses with Team Leader. Review may also occur at regular CME meeting if required.	Team Leaders - Compliance, Environmental Health, Building Regulation Services and Planning
Enforcement order	Enforcement Decision Group meets comprising Officer, Team Leader Compliance, Legal (input from relevant expert as required)	Manager - Building and Planning Services
Prosecution	Enforcement Decision Group meets comprising Officer, Team Leaders, Legal (input from relevant expert as required)	Group Manager - Environmental Services (subject to independent legal review if necessary)
Notice to Fix	Investigating officer determines that a Notice to Fix is the most appropriate response and issues in consultation with team leader	Building Control Officer
Closing Order-Health Act	Investigating officer determines that a closing order is the most appropriate response and discusses with team leader. Review may also occur at regular CME meeting if required.	Team Leader - Environmental Health
Dangerous/Insanitary Notice Building Act	Investigating officer determines that a dangerous / insanitary notice is the most appropriate response and discusses with team leader. Review may also occur at regular CME meeting if required.	Manager - Building and Planning Services
Compliance Order (Food Act)	Investigating officer determines that a Compliance Order is the most appropriate response and discusses with Team Leader.	Team Leader - Environmental Health

Tool	Process	Decision-maker
Abatement Notice	Investigating officer determines that an abatement notice is the most appropriate response and discusses with Team Leader. Review may also occur at regular CME meeting if required.	Team Leaders - Compliance, Environmental Health and Planning
Infringement Notice	Investigating officer determines that an infringement fine is the most appropriate response and discusses with Team Leader. Review may also occur at regular CME meeting if required.	Team Leaders - Compliance, Environmental Health, Building Regulation Services and Planning
Enforcement order	Enforcement Decision Group meets comprising Officer, Team Leader Compliance, Legal (input from relevant expert as required)	Manager - Building and Planning Services
Prosecution	Enforcement Decision Group meets comprising Officer, Team Leaders, Legal (input from relevant expert as required)	Group Manager – Environmental Services (subject to independent legal review if necessary)
Notice to Fix	Investigating officer determines that a Notice to Fix is the most appropriate response and issues in consultation with team leader	Building Control Officer
Closing Order-Health Act	Investigating officer determines that a closing order is the most appropriate response and discusses with team leader. Review may also occur at regular CME meeting if required.	Team Leader - Environmental Health
Dangerous/ Insanitary Notice Building Act	Investigating officer determines that a dangerous / insanitary notice is the most appropriate response and discusses with team leader. Review may also occur at regular CME meeting if required.	Manager - Building and Planning Services
Compliance Order (Food Act)	Investigating officer determines that a Compliance Order is the most appropriate response and discusses with Team Leader.	Team Leader - Environmental Health

It is possible that what is presently set out in the delegation register may change, and this table will be reviewed accordingly at that time.

7. Monitoring and Evaluation – *Te Aroturuki Me Te Arotake*

Council will monitor the effectiveness and implementation of this policy by:

- Continuing with annual reporting of RMA CME functions through the National Monitoring System to the Ministry for the Environment.
- Incorporating best practice approaches with regards to the principles and approach to CME.
- Sharing advice, guidance, resources and training on compliance, monitoring and enforcement.
- Identifying and addressing emerging issues, risks, limitations and/or barriers.
- Report to Council Committee on a regular basis.

Reference Number:	A3392357
Effective Date:	1 June 2021
Review Period:	This Policy will be reviewed every five (5) years, unless earlier review is required due to legislative changes, or is warranted by another reason requested by Council.
Supersedes:	NIL
New Review Date:	1 June 2026
Legal compliance:	LGA 2002, RMA 1991, BA 2004, HA 1956, SASA 2012, LA 1979, HSNO 1996
Policy Owner:	Group Manager – Customer and Environment