



# **Westland District Council RMA Compliance & Enforcement Policy**

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Endorsed by Council: 21<sup>st</sup> December 2023.

## 1. Introduction:

The Resource Management Act 1991 (RMA) requires territorial authorities to prepare, implement and administer District Plans to assist in the carrying out of their functions to achieve the purpose of the RMA. In addition, territorial authorities have obligations to give effect to National Policy Statements (NPS) and National Environmental Standards (NES). This document sets out Westland District Council's (Council) approach to compliance and enforcement under the RMA.

Council has obligations under the RMA to enforce its District Plan(s) and other relevant planning instruments. The manner with which Council approaches compliance and enforcement will differ depending on the level of environmental effects, the attitude of the person undertaking the activity and community expectations.

The RMA Compliance and Enforcement Policy gives direction to staff exercising these roles, and outlines mechanisms that Council will adopt to ensure that its enforcement powers are exercised appropriately and consistently.

The purpose of this policy is to:

- Ensure Council meets its obligations under the RMA in relation to compliance and enforcement.
- Provide consistency in Council's approach to compliance and enforcement decisions.
- Provide assistance as to the selection of the appropriate compliance and enforcement tools.
- Ensure the appropriate procedures are followed by staff when they are undertaking enforcement work to ensure that the enforcement action has been carried out correctly.
- Inform the public of Council's approach to compliance and enforcement.

## 2. Statutory Obligations of Westland District Council under the Resource Management Act and Local Government Act:

Council has statutory obligations to promote, monitor and enforce provisions of legislation regarding resource management, namely the:

- Local Government Act 2002 (LGA)
- Resource Management Act 1991 (RMA)
- Bylaws, Council plans and regulations

In addition, Council works with various stakeholders to achieve high levels of compliance within the various regulatory requirements.

Under the RMA Council's specific functions are:

- The establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the District.
- The establishment, implementation, and review of objectives, policies, and methods to ensure that there is sufficient development capacity with respect to housing and business land to meet the expected demands of the District.
- Control of actual or potential effects of the use, development, or protection of land, including for the purpose of—

- the avoidance or mitigation of natural hazards; and
- the prevention or mitigation of any adverse effects of the development, subdivision, or use of contaminated land
- the maintenance of indigenous biological diversity
- Controlling the emission of noise and the mitigation of the effects of noise
- Control of any actual or potential effects of activities in relation to the surface of water in rivers and lakes
- Issuing Resource Consents for land use under s9(3) and the subdivision of land under s11 of the RMA
- Monitoring of consent conditions
- Under the LGA the role of Council is to:
- Give effect, in relation to its District or region, to the purpose of local government as stated in section 10; and
- Perform the duties, and exercise the rights, conferred on it by or under the LGA and any other enactment.

At present Westland District Council operates under the current Operative plan, the proposed Te Tai o Poutini Plan which is not yet fully operative, and Westland District Council Bylaws.

### 3. Goals and Desired Outcomes of the RMA Compliance and Enforcement Program:

Council's RMA Compliance and Enforcement Program aims to achieve the following outcomes:

- To avoid, remedy or mitigate any adverse effects on the environment.
- To increase the level of voluntary compliance with the RMA, resource consent conditions, Westland District Council Plans, bylaws, and policies.
- To deter individuals or companies from undertaking activities that may result in major adverse effects on the environment.
- To ensure the Westland community is aware of its obligations under the RMA through an educational approach.
- To undertake compliance and enforcement action in a fair, reasonable and cost-effective manner.

### 4. Compliance and Enforcement Tools under the RMA:

The enforcement options available to Council under the RMA are:

Punitive	Directive
<ul style="list-style-type: none"> <li>● Formal written warning</li> <li>● Infringement Notice</li> <li>● Prosecution</li> </ul>	<ul style="list-style-type: none"> <li>● Letter of Direction</li> <li>● Abatement Notice</li> <li>● Enforcement Order</li> </ul>

In addition, Council will also take an educational approach, to educate person(s) undertaking an activity deemed to not be in accordance with the RMA.

## **5. Council Principles for Compliance and Enforcement:**

Council's compliance and enforcement program follows principles set out below. While a target of total compliance is desirable, it is recognised that this is sometimes unattainable. Council has considerable discretion over how it enforces the RMA. Moreover Council, through its elected representatives, is accountable to the community for the manner in which it exercises this discretion.

Several principles guide the exercise of this discretion. The four main principles to be used in guiding enforcement action are proportionality, certainty, impartiality/fairness and clear and effective reasoning. These principles will be discussed individually below.

### **5.1 Proportionality:**

Council needs to determine the most effective and cost-efficient method of enforcement for each regulatory activity in relation to the RMA. Therefore, the type of enforcement action taken will depend on the severity of the incident and the effects of that incident on the environment. The enforcement action taken should be in proportion to the environmental effects.

Council will consider various factors when deciding upon a course of action, including (but not limited to):

- The seriousness of the offence, including the anticipated penalty
- Nature and scale of harm caused by the offence.
- Whether there has been previous infringing/offending
- Whether the offence is continuing or repeated
- Whether the offence is prevalent within the community
- The cost of various enforcement options
- Mitigating factors
- Whether offending was premeditated
- Steps taken by offender to remediate or mitigate harm.

The environmental effect of breaches of the RMA, and /or operative Plans can vary markedly from minor breaches with minimal environmental effects, to those that have very serious effects. The seriousness of the breach should be reflected in the seriousness of the measures adopted by the Council in response.

### **5.2 Certainty:**

Council will endeavour to provide certainty and clarity about what is, and what is not, acceptable compliance with the RMA and, in instances of non-compliance, the likely course of action that will be taken.

Although ignorance of the law is no excuse for breaching its provisions, the RMA can be difficult for the layperson to determine. While recognising that Council is the final arbiter of the requirements of the RMA before prosecution, we will also provide clear answers and direction on the requirements of the RMA, particularly those provisions that Council will enforce.

The Crown Law office has issued the Solicitor General's Prosecution Guidelines (SGPG) to assist regulatory agency prosecutors in exercising their discretion to prosecute criminal cases. This document guides Council as to when decisions about enforcement action and potential prosecution is required.

Meeting the tests established by the SGPG will assist Council in establishing with certainty whether a breach of the RMA has occurred or not.

The SGPG sets out a two-part test for prosecutions namely:

- The Evidential Test – whether the evidence that can be given in Court is sufficient to provide a reasonable prospect of conviction.
- The Public Interest Test – whether prosecution is required in the public interest.

Each aspect of the test must be separately considered and satisfied before a decision to prosecute can be taken. The evidential test must be met before the public interest test is considered.

Prosecution will be a last resort as Council endeavours to achieve voluntary compliance through education and other various enforcement tools.

### **5.3 Impartiality / Fairness:**

All persons will be impartially and fairly treated using a consistent process of enforcement regardless of the type and extent of resource use. This promotes respect for the law being enforced and will increase levels of voluntary compliance.

This can be achieved through:

- Consistency in enforcement
- Ongoing education, and engagement with the public
- Transparency in relation to the enforcement policies and priorities
- Good use of judgement and discretion in determining the method of enforcement, and
- Training to ensure that staff conduct themselves in a courteous, and professional manner consistent with the legislation that they are enforcing.

### **5.4 Clear and Effective Resolution:**

Council will endeavour to undertake its duties in a clear and effective manner that gives effect to the purpose and principles of the RMA while minimising costs to the ratepayer.

Council intends to fulfil its enforcement duties in a clear and timely manner. To ensure this principle is not compromised through a lack of funds, Council will seek recovery of costs associated with enforcement.

Where monitoring costs are incurred in relation to a specific consent, these costs will be recovered from the consent holder in accordance with the Westland District Council's Fees and Charges Schedule and the provisions of the RMA.

WDC recovers costs from consent holders for the monitoring of consents so as to not burden the rate payer with these costs.

The following is a list of services where cost recovery will be sought as per the general charging policy:

- Administration
- System input
- Associated documentation
- Staff travel time to and from monitoring sites
- Mileage (Kms)
- Evidence gathering
- Information collation
- Investigation
- Supplementary research
- Enforcement consideration collation
- Documented analysis of incident
- Freight / courier costs
- Legal costs

Cost recovery may also be sought for any other matters not specifically listed above.

Costs incurred are to be recovered under Sections 36(1)(c) and 36(5) of the Resource Management Act 1991, as set out in Council's Fees and Charges Schedule reviewed annually. Costs are recoverable for monitoring compliance with a resource consent and in circumstances where there is a breach of the consent.

Council also has a further policy of recovering incident costs from a person or company responsible for an environmental incident so as to not burden the rate payer with these costs.

The following is an overview breakdown of costs that can be incurred:

- Administration
- System input
- Associated documentation
- Incident travel to and from – staff time
- Mileage (Kms)
- Evidence gathering
- Information collation

The costs incurred for the inspection are to be recovered under Section 150 of the Local Government Act 2002, as set out in the council's Fees and Charges Schedule.

## **6. Council's approach to enforcement:**

In general, the Westland District Council advocates a policy of education and co-operation towards compliance where an offence causes only minor environmental effects. However, Council recognises that there are times when the use of punitive measures is necessary.

Examples of common breaches of the RMA experienced in the Westland District are as follows:

- District Plan(s) rule breaches:
  - Unauthorised dwelling in the Rural Zone
  - Unauthorised signage
  - Unauthorised commercial activity in the Rural Zone
- Resource consent conditions non-compliance:
  - Environmental Management Plan (EMP) related conditions (dust and sediment leaving site, failing to submit an EMP)
  - Undertaking the activity not in accordance with an application.
  - Accessway upgrades not to Council standard.
- Breaches of the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulation 2011.

### **6.1 Resource Management Act (RMA) 1991 (Excluding Noise):**

#### **Education:**

Education involves explaining the nature of the breach that has occurred under the relevant legislation. A record of the education provided will be kept and considered if any further offending occurs.

This tool will be appropriate if a minor offence has occurred, or if there are mitigating circumstances. It can take the form of a Letter of Advice, or a letter of direction informing the person to take a specific action or stop a specific action so as to become compliant with the RMA.

#### **Letter of Direction:**

This mechanism is a formal enforcement tool to identify to the person that a breach of the RMA has occurred and they are required to take steps to rectify and mitigate the situation. Non-compliance with the letter of direction will be considered if escalating to further enforcement action.

A Letter of Direction may be appropriate any time there is a breach of resource consent conditions, the Westland District Council's operative and proposed plans and / or the RMA.

#### **Formal Warning:**

Formal warnings can be verbal or written warnings that identify to the person that a breach of the relevant legislation has occurred and that they are liable.

No further action will be taken in respect of that breach. However, the warning forms part of a history of non-compliance and will be considered if there are future incidents of non-compliance.

Formal warning may be appropriate any time there is a breach of resource consent conditions, the Westland District Council's operative and proposed plans and / or the RMA.

**Abatement Notice:**

An abatement notice is a formal, written direction that there has been a contravention of the RMA. The notice instructs an individual or company to comply with the RMA and will outline the steps required to gain compliance.

A direction given through an abatement notice is legally enforceable. To breach an abatement notice is to commit an offence against the RMA and it can lead to further enforcement action. These notices can be appealed by the recipient.

An abatement notice may be appropriate when Council has previously educated and requested the person to act and/or cease an action within a certain time frame and this has not been complied with.

**Infringement:**

An infringement is a monetary fine imposed on individual(s) and / or companies. An infringement is issued when an offence under the relevant legislation has occurred. An infringement notice will be filed, and it will be taken into consideration if further noncompliance is identified and may lead to prosecution.

An infringement may be appropriate any time there is a breach of the RMA and education, or a formal warning, is not considered sufficient to address the seriousness of the offense, or there is an ongoing offense that has not ceased after previous enforcement action.

**Enforcement Order:**

An enforcement order can direct a party to take particular action. 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.

A direction given through an enforcement order is legally enforceable. To breach an enforcement order is to commit an offence against the RMA and it can lead to further enforcement action.

**Prosecution:**

Prosecution is a serious response to non-compliance and should be used in a deliberate and considered manner to deter and denounce offending and hold the person accountable for harm, to the victim, environment, and community, caused by the offending.

Public confidence in Council's administration of its enforcement duties relies on decisions to prosecute being made in a transparent, consistent, and fair manner.

The SGPS sets out a test for prosecutions. Prosecutions ought to be initiated or continued only if the prosecution test is met. There are two tests relied upon when deciding to pursue a prosecution:

- The Evidential Test – *whether the evidence that can be given in Court is sufficient to provide a reasonable prospect of conviction.*
- The Public Interest Test – *whether prosecution is required in the public interest.*
- Each test must be separately considered and satisfied before a decision to prosecute can be taken.
- The evidential test must be met before the public interest test is considered.



A successful prosecution will generally result in a conviction, a penalty imposed, and consideration as to costs of the investigation as well as the legal costs of the matter. A prosecution forms part of the history of noncompliance and will be considered if there are future incidents of noncompliance.

A prosecution may be considered appropriate when the matter is sufficiently serious to warrant the intervention of criminal law, as well as the evidential and public interest tests being met.

### **Alternative Justice / Diversion:**

Alternative Justice or Diversion is a scheme that allows first-time offenders to take responsibility for their offending outside the court system and is at the discretion of Council.

Diversion is usually offered in these cases:

- It's the person's first offence, or there are special circumstances, and the person has admitted committing the offence and accepts responsibility for it, and
- The person agrees to the conditions of diversion that Council has offered, and
- The offence is a less serious one.

### **Declaration:**

Declarations are not an enforcement tool in the same sense as an abatement notice or prosecution, as they neither require an outcome nor penalise any actions taken by a person. Declarations may, however, clarify whether any particular action or incident breaches or complies with, a plan rule, resource consent condition, or regulation.

In the enforcement context, an application for a declaration may be helpful when:

- There is a need to seek clarification, or an interpretation, of a legal matter without going so far as to prosecute or apply for an enforcement through the courts.
- Wherever there is doubt about the compliance status of an activity

In some cases, the declaration may be enough in itself to encourage an errant party to comply or may otherwise remove the need for further enforcement action.

Declarations can be sought on a wide range of matters, including in regard to Regulations under the RMA, including NES's. However, they cannot be used as a 'back door' way of challenging the non-notification of a resource consent application.

## **6.2 Resource Management Act 1991 (Noise):**

In general, the enforcement tools of education, and/or formal warnings can also be used for a noise breach. Prosecutions may be initiated for continued breaches / non-compliance. Other enforcement actions regarding noise are:

### **Excessive Noise Direction (END):**

An END is a formal written directive instructing a person to cease the excessive and/or unreasonable noise. A breach of an END is an offence against the RMA and may result in the offending equipment being

seized. An END may be appropriate any time there is determined to be excessive and/or unreasonable noise.

#### **Abatement Notice to Abate Excessive Noise:**

An abatement notice is a formal, written direction that there has been a contravention of the RMA. The notice instructs an individual or company to comply with the RMA and will outline the steps required to gain compliance. To breach an abatement notice is to commit an offence against the RMA and it can lead to further enforcement action.

### **6.3 Factors to Consider when undertaking Enforcement Action:**

When deciding to take enforcement action in relation to a breach of the RMA, District Plan(s) rules, or resource consent conditions, there are several criteria that need to be considered.

Criteria to be considered:

- The actual adverse effects (effects that have occurred).
- Any likely adverse effects (potential effects).
- Whether it was a deliberate or an accidental action.
- The degree of due care taken / foreseeability of incident.
- The value or sensitivity of the area affected.
- The attitude of the offender toward the offence.
- Whether it was a repeat non-compliance or if previous enforcement action was needed for a similar situation.
- Any effort made to remedy or mitigate the adverse effects.
- The effectiveness of any remediation or mitigation undertaken.
- Any profit or benefit gained by alleged offender.
- The degree of deterrence required in relation to the party involved.
- Any degree of general deterrence required.
- Any failure to act on prior instructions, advice or notice
- Any relevant special circumstances – e.g. extreme weather event or other event outside the control of the party involved.

### **6.4 Process for the investigation of a potential breach:**

Under s35 of the RMA every Local Authority has a duty to gather information, monitor the environment and keep records. To ensure full compliance with s35 of the RMA, Council shall gather such information, and undertake or commission such research, as is necessary to carry out effectively its functions under the RMA or regulations under the RMA and ensure that proper recordkeeping is done.

#### **Initial Process:**

When a complaint is received an Incident Referral Form is to be completed and registered to the compliance database. All information regarding the complaint must be recorded.

The complaint will then be allocated to a compliance officer for further action. The compliance officer will investigate the complaint which can vary from an on-site visit through to desktop follow-up/enquiries. Complaints are prioritised, allocated and investigated according to severity.

To ensure that clear records of the inspections and investigation are recorded and that statutory investigation timelines are met, the compliance officer must ensure contemporaneous note keeping occurs and that an inspection completion file note is completed after an inspection. All records are to be saved into the compliance database together with any other evidence gathered during the first site visit as per s332 of the RMA. Any further site visits must be carried out under a signed informed consent or under a warrant.

If, on the professional opinion of the Compliance Officer, after discussion with the Planning Manager, a satisfactory outcome was obtained through the inspection and discussion with the alleged offender and no further action is required, the Compliance Officer will draft 'An Outcome of investigation letter' informing the party involved that no further action will be taken.

**Additional process where further investigation is required:**

Should, on the professional opinion of the Compliance Officer, after discussion with the Planning Manager, a need be identified for further investigation, the Compliance Officer will draft an Investigation Process Advisory Letter, informing the person being investigated of the ongoing investigation and may also request further specific information from the person. The person will have 10 working days to respond.

After a 10-working day period has concluded, the Compliance Officer can consider the possible need for further information or a formal interview. If an interview is required, an invitation for interview with a list of questions *may* be forwarded to the alleged offender.

Once all the required information has been compiled and saved to the database, the Compliance Officer will complete an 'Compliance Investigation Report' with a conclusion as to the suggested enforcement action to be taken.

This will be forwarded to the Planning Manager for approval. The Planning Manager may delegate this responsibility as required, or where there may be a perceived conflict of interest.

Once approval is obtained, the Compliance Officer will proceed with finalising the formal enforcement outcome.