



Regional Sector Strategic Compliance Framework 2016-2018



Compliance and Enforcement Special Interest Group

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Introduction

Local Government in New Zealand is responsible for ensuring compliance with a variety of laws and regulations that are aimed at achieving positive community and environmental outcomes. A key role in ensuring compliance is carrying out compliance monitoring, and responding to notifications of potential breaches or incidents. This role triggers a range of associated interventions to ensure that individuals and organisations adhere to these rules and regulations for the ‘public good’.

Applying a strategic approach to ensuring others are compliant enables councils to focus their compliance related programmes and interventions on ‘important problems’ – based on a range of risk-based factors.

Councils making up the Regional Sector¹ (the Sector) are generally experienced in developing regulatory based approaches to achieving compliance. These approaches have tended to adopt some elements of a risk based strategy with varying success. However, it has been identified that the way councils collectively approach compliance lacks consistency. There has been no overarching, robust framework that can be shared and applied across the Sector. The absence of such a framework not only reduces opportunities for Councils to effectively focus resources on important compliance priorities, but also allows for inconsistent approaches between councils to be highlighted and criticised, limiting the collective effectiveness of Local Government. The purpose of this document is to address the absence of an overarching framework.

The framework described in this document has been developed by the Regional Sector Compliance and Enforcement Special Interest Group (CESIG)².

CESIG acknowledges each council has the autonomy to develop its own approach to achieving or ensuring compliance. It is appropriate that individual councils tailor their strategies to meet their own needs and resources. They will also need to review and adapt their programmes in response to changes such as new national regulations or regional policy direction. However, we strongly advocate that individual compliance strategies should be within, and linked to, this framework.

¹ Regional Sector includes Regional Councils and Unitary Authorities in New Zealand

² CESIG plays an important role in overseeing consistency across the Regional Sector and auditing practices and procedures. Roll out of the national framework is likely to take 1-3 years (depending on the resources available to each council). CESIG will maintain an overview of implementation and record any issues arising so these can be addressed when the framework is next reviewed.

A full review is not scheduled until 2018; however, CESIG will maintain a watching brief and provide oversight and guidance on implementation via the biannual CESIG meetings.

Purpose and overview

This document sets out a Strategic Compliance Framework (SCF) to assist Regional and Unitary Authorities³ to develop a consistent approach to:

- monitor compliance (i.e. what is the state of compliance)
- 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)
- review each of these components (i.e. to gauge the effectiveness of the SCF).

Objective of Strategic Compliance Framework

“To assist councils in using a consistent approach to developing strategic compliance programmes and a range of interventions to fix important problems.”

CESIG March 2014

The aim of this approach is to achieve positive environmental outcomes primarily in relation to the Resource Management Act 1991 (RMA). Unitary and Territorial Authorities may consider using this framework in a broader context than the RMA.

Sustainable Management

“Sustainable management means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while –

(a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and

(b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and

(c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.”

RMA section 5

The RMA imposes a duty on Regional and Unitary Authorities (the Sector) to regulate resource use. The Sector manages resource use in their region, primarily through regional plans, resource consents and a range of other regulatory instruments. A key step is monitoring and assessing compliance with standards set.

It is important to remember that the RMA imposes restrictions on use of natural and physical resources:

- Section 9: Restrictions on use of land
- Section 12: Restrictions on use of the coastal marine area
- Section 13: Restrictions on certain uses of beds of lakes and rivers
- Section 14: Restrictions relating to water
- Section 15: Discharges of contaminants into the environment.

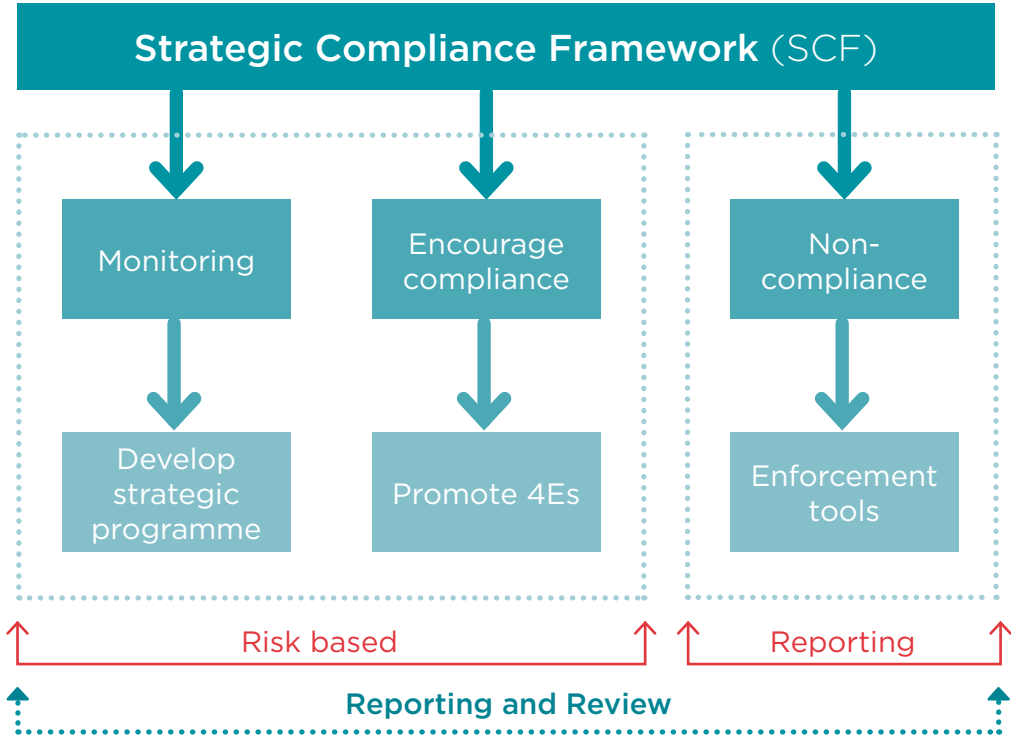
³ Unitary Authority – carries out Regional and Territorial authority functions

CESIG promotes a Strategic Compliance Framework - the SCF - as a means to manage the Sector's responsibility in respect of the use of our natural and physical resources. Figure 1 shows the different elements of the SCF and how they relate. There are three major components to the SCF:

1. **Monitoring** - this includes developing strategic programmes
2. **Encouraging Compliance** - using the proactive 4Es model (refer page 12)
3. **Non-compliance** - using enforcement tools to deal with non-compliance.

Monitoring and encouraging compliance employs a risk-based approach in its execution (it's about prioritising resources based on risk) and dealing with non-compliance using a 'toolbox' of enforcement tools. A key component of any SCF is the requirement to report and review.

Figure 1: Elements of a Strategic Compliance Framework





Why do we need a strategic approach to compliance?

All regions face significant challenges from increases in, and intensification of, industry, farming, horticulture, infrastructure and population; all of which puts pressure on our natural and physical resources but also on council's ability to fulfil their role in respect of sustainable management. Specific examples of challenges facing councils include: implementation of new nutrient rules; land use change and development; national policy on freshwater and water management; contaminated land activities and emerging contaminants.

As well as the growing diversity of activities in each region there is a related increased council workload from the growing number of consented activities. There are also growing cultural and community expectations in respect of sustainable management generally, and that local government operates in a fiscally prudent manner.

These challenges mean:

- We should increasingly focus on 'what's important' in our compliance related activities.
- We must align with Council priorities and be cognisant of community needs, environmental issues and economic growth.
- We want to effectively manage Council resources across a growing body of consented and permitted activities.
- We should look for every opportunity to work with others to increase our effectiveness.
- We should utilise the full range of interventions available to ensure the highest possible levels of compliance and corresponding positive environmental outcomes.

"The regulator's resources are inevitably scarce, so effectively implementing a regulatory regime will require the regulator to prioritise its effort. How the regulator prioritises its effort will also be crucial to the success of the regime in meeting its intended outcomes."

New Zealand Productivity Commission
– Regulatory institutions and practices
– June 2014 page 55.

These challenges crystallise the obvious need to take both a strategic and a risk-based approach to focus each Council's resources to achieve the best possible outcomes for their communities. The Regional Sector Strategic Compliance Framework provides a methodology to enable us to do this.



Principles to guide compliance operations

The implementation of a Strategic Compliance Framework should adopt the following operating principles. These principles should guide how we develop strategic compliance programmes:

Transparent

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.

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.

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.

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.

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.

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.

Developing a strategic compliance monitoring programme

As part of the monitoring component of the SCF, a Strategic Compliance Monitoring Programme ensures that the appropriate resources are allocated to activities by determining the monitoring frequency and intervention method, dependant on the risk to the environment from that activity.

This programme may include:

- Using criteria to assess the likelihood and consequences of non-compliance occurring. These could include:
 - Council priority areas
 - Community and tāngata whenua expectations;
 - Sensitive or endangered environments
 - Economic growth patterns
 - Compliance history of industry type.
- Ranking sites dependant on risk or activity groupings (e.g. dairy, water takes, etc.).
- Determining type/level of intervention according to risk profile.
- Determining resourcing to match combination of interventions that apply.
- Determining monitoring frequencies.
- Developing procedures, charging regime, database recording system.

‘For a compliance agency, a systematic, risk-based programme of activities for assessing compliance is a means of:

- *Monitoring compliance in a cost-effective manner*
- *Targeting its resources at the highest-priority risks*
- *Responding proactively to changing and emerging risks*
- *Promoting sound practices and positive attitudes towards compliance among the regulated sector*
- *Strengthening its relationships with the regulated sector’*

CCCP – Achieving Compliance;
A Guide for Compliance Agencies in New Zealand June 2011; page 158

Compliance monitoring methods

Compliance monitoring can be carried out in various ways including:

- **Site visits** - to assess compliance, at a moment in time, against consent conditions and rules.
- **Desk top audit** - based on data provided by the consent holder.
- **Community reports or notifications** – feeds into the risk assessment and frequency of interventions.
- **Pro-active campaigns** – targets particular activity types, e.g. water takes during low flow conditions.

Prioritise resources using a risk based methodology

The most common and effective way to set up a compliance monitoring programme is to use a risk assessment method to determine priority areas. The Government expects that 'Departments...will maintain a transparent, risk-based compliance and enforcement strategy'⁴.

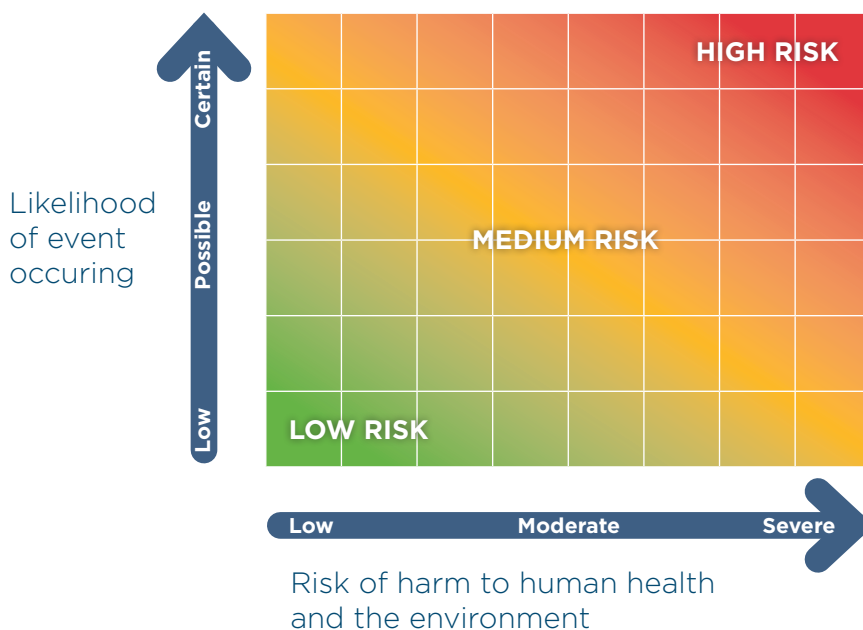
In the context of compliance monitoring, risk is traditionally calculated using the likelihood of a non-compliance occurring and the consequent magnitude of harm to human health and the environment (including cultural, social and economic effects). The ranking/level of risk calculated informs development of an appropriate compliance monitoring response that considers the appropriate frequency, type and scale of monitoring.

Applying a risk based approach enables monitoring efforts to be focussed on the biggest risks to the environment and target areas where businesses and people are less likely to comply. This model can be adapted for specific use as shown in Appendix 1. It is important to remember that a risk matrix should be used for focusing monitoring efforts and **is not** an enforcement decision making tool.

Within a basic risk assessment framework, individual councils can 'weight' certain aspects to suit priorities for their Council, for example, RMA Plan priorities, science programmes, Long Term Plan priorities.

As a 'reality' check, CESIG recommend the monitoring frequencies are benchmarked against other regional and unitary authorities once every three years to ensure general consistency of a risk-based approach to our compliance monitoring programmes.

Figure 2: Generic Environmental Risk Matrix



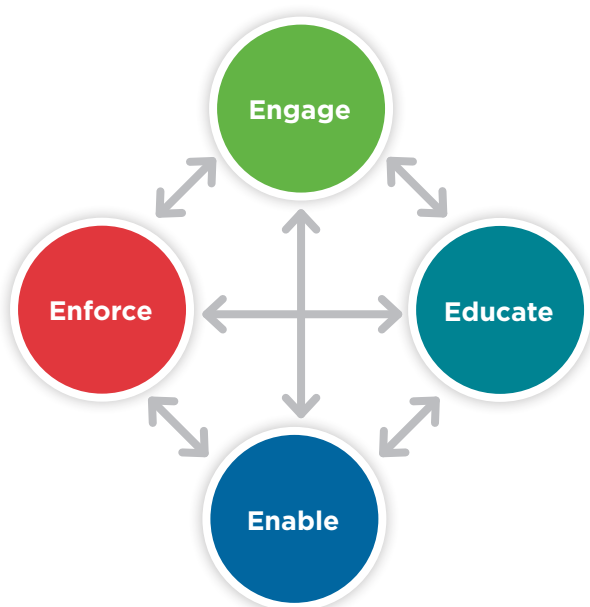
⁴ New Zealand Productivity Commission. Regulatory institutions and practices 2014

Encouraging compliance

It is important that the Sector takes a comprehensive 'spectrum' approach to encourage the highest levels of compliance through developing understanding and sustained behaviour change.

The 4Es Model⁵ is a helpful way of displaying the four components that a comprehensive strategy *should* have. The 4Es: Engage, Educate, Enable and Enforce are not exclusive of each other. It is recognised that different components of the model may be carried out by different parts of an organisation. Regardless of who has responsibility for implementing each component of the model **it is vital** that they are coordinated and a high level of communication is maintained to ensure that full effect is being achieved.

Figure 3: The 4Es



The resource and emphasis put into any one “E” will be determined by an individual council or part of the council responsible for ensuring compliance with a particular activity. It may be that councils put more emphasis on different components over time and that the use of the 4Es is dynamic and changes, but in a coordinated and planned fashion. Each of the components is explained in more detail:

Engage – consult with regulated parties, stakeholders and community on matters that may affect them. This will require maintaining relationships and communication until final outcomes have been reached. This will facilitate greater understanding of challenges and constraints, engender support and identify opportunities to work with others.

Educate – alert regulated parties to what is required to be compliant and where the onus lies to be compliant. (i.e. with them!) Education should also be utilised to inform community and stakeholders about what regulations are in place around them, so that they will better understand what is compliant and what is not.

Enable – provide opportunities for regulated parties to be exposed to industry best practice and regulatory requirements. Link regulated parties with appropriate industry advisors. Promote examples of best practise.

Enforce – when breaches of regulation, or non-compliance, are identified then an array of enforcement tools are available to bring about positive behaviour change. Enforcement outcomes should be proportional to individual circumstances of the breach and culpability of the party.

⁵ Adapted from Zaman 2015

Dealing with non-compliance

When non-compliant activities are identified there needs to be an explicit response that is proportionate to the overall circumstances of the offending. The response should be clear, and be able to be understood by the regulated party as well as the community. Councils must strive to ensure that responses are not inconsistently

A proportionate, risk-based compliance strategy

“A successful and cost effective compliance strategy will draw on a range of options for responding to non-compliance. Responses can range from encouraging and assisting an individual or business to comply where the risk presented is minor, to revoking an operating licence and bringing criminal or civil court action in cases of serious risk and deliberate non-compliance.”

CCCP – Achieving Compliance; A Guide for Compliance Agencies in New Zealand June 2011; page 172

applied.

In the Regional Sector context, and with our obligations to sustainable management, it is important to consider the use of formal enforcement action to remediate adverse environmental effects, or limit environmental harm. It may be also appropriate to hold parties accountable for wrong doing.

Taking any kind of enforcement action can have a profound impact on the subject of the action and cannot be taken lightly. Decisions on enforcement action must be based on reliable and correctly obtained information⁶ so that an informed decision can be made. This information will not only determine whether a breach has occurred but also how serious the breach is.

⁶ It is expected that the Regional Sector will gather information in keeping with best practise detailed in Basic Investigative Skills for Local Government ISBN 978-0-9876661-9-2

Enforcement Options

The RMA and case law provide the formal enforcement tools that are available to the Sector. It may be that individual agencies also develop informal tools which can be effective when used appropriately. It will be important to ensure these informal tools are consistent with the principles and purpose of the Strategic Compliance Framework.

Enforcement tools can be categorised into two main functions. **Directive** actions are about looking forward and righting the wrong. **Punitive** actions are about looking back and holding people accountable for what they have done. These actions are described in more detail at Appendix 2.

“... where a regulated entity deliberately or persistently fails to comply, it is vital that the agency take swift and firm enforcement action. Failing to do this will:

- *Unfairly advantage those who are non-compliant, as against those who comply voluntarily*
- *Undermine incentives for voluntary compliance*
- *Damage the agency’s credibility with the regulatory sector and the wider public, who will perceive that the agency allows deliberate offenders to ‘get away with it’*
- *Undermine the agency’s own internal morale”*

CCCP – Achieving Compliance; A Guide for Compliance Agencies in New Zealand June 2011; page 181

Decision making – factors to consider

The courts have provided helpful guidelines⁷ as to what factors are appropriate to consider in RMA cases to determine the seriousness of a breach. These factors should be adopted by the Regional Sector to guide their enforcement decision making:

- 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 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?

If prosecution is being considered then two additional factors should be considered:

- What degree of deterrence is required in relation to the culpable party?
- What degree of general deterrence is required for the wider industry or community?

Not every factor will be relevant every time. On occasion one single factor may be so overwhelmingly aggravating, or mitigating, that it may influence the ultimate decision. It is inappropriate to take a matrix or numerical approach to weighing and balancing these factors. Each case is unique and the individual circumstances need to be considered on each occasion to achieve a fair and reasonable outcome. The discretion to take enforcement action, or not, sits solely with the prosecuting agency⁸.

An example of a Prosecution Policy is included in Appendix 3. This Policy sets out principles and guidelines to follow when deciding whether or not to initiate criminal proceedings for offences under the RMA.

⁷ *Machinery Movers Limited –v Auckland* [1994] 1 NZLR 492 & *Selwyn Mews Ltd –v- Auckland City Council* HC Auckland CRI -2003-404-159

⁸ New Zealand Law Commission
http://www.nzlii.org/nz/other/nzlc/report/R66/R66-5_.html

Reporting and reviewing

Each component of the SCF (monitoring, encouraging compliance and dealing with non-compliance) needs to be reported on and reviewed on a regular basis

Reporting

Measuring

“Best practice: A robust compliance framework should include a reporting system that allows the organisation’s compliance state to be measured against explicit objectives, and trends to be tracked.”

Rebecca Kitteridge, March 2013; Review of Compliance at the Government Communications Security Bureau

There should be a robust form of data collection on compliance monitoring and action for reporting purposes. It is important to be able to report to Council, communities and those who are regulated on the level of compliance within our regions and what interventions have been used in the moderate and significant cases. An example of this may be regular reporting to Council on response to complaints from the public and what enforcement action has been taken over a certain period. Reporting should be made publically available, easily accessible in a variety of formats and be open to public scrutiny.

It is equally important that such reporting confirms that the Council’s Compliance Framework provides for transparency, clearly outlines a consistent, integrated and co-ordinated compliance monitoring programme and enables all resource users to have a clear understanding of what to expect in the event of contraventions of the RMA and applied enforcement action.

Monitoring and reporting needs to be made accessible to the community, and community needs and expectations considered. A growing area of research and community expectation is the use of *Matauranga Māori* and cultural health indicators or indices in monitoring and reporting.

Systems should be developed to capture sufficient data to enable comprehensive analysis on a number of levels and inform and feed into the other functions of council, for example consenting, policy and science.

Analysis of this data and reporting on will assist in:

- Identifying trends in non-compliance
- Using available resources more effectively
- Targeting high risk activities
- Establishing the frequency of compliance visits based on performance
- Assessing performance/success of the compliance programme
- Reviewing and refining the compliance programme
- Informing policies, plan development and programmes
- Responding to media enquiries
- Preparing an annual compliance report
- Completing central government environment reports.

Reviewing

The purpose of review is to ensure the effectiveness of a SCF, in terms of its individual components and the overall framework. Reviews may be completed internally or externally. A review may be carried out of each component separately or of the entire framework. It is important to establish, and keep to, clear timeframes for these reviews to ensure their effectiveness is maintained and learnings feedback into the SCF.

Improving

“Best practice: An organisation should have a compliance culture of continuous systems improvement. The compliance systems within the organisation need to be reviewed periodically in the light of compliance performance information to drive on-going change and improvement. There should be a compliance team work programme that sets out improvement projects as well as day-to-day business.”

Rebecca Kitteridge, March 2013; Review of Compliance at the Government Communications Security Bureau

Appendix 1:

Application of a risk based approach – an example

A risk matrix is a front-end tool that can be used to assess the risk of an activity. This assessment impact on the frequency as detailed in the tables below. The factors likely to be relevant to compliance monitoring are:

Factors to assess consequence/harm

- The environmental media involved (air, land, water, coastal marine area).
- The impact on the environment from the operation when it operates within the conditions of the consent.
- The impact on the environment when the operation does not operate within the conditions.
- The sensitivity of the local environment, such as the proximity to residential premises or waterways, or areas of cultural significance.

Factors to assess likelihood of non-compliance

- The scale and complexity of the activity.
- The historical compliance history of similar activities
- The compliance history of the business or person being regulated.

Other factors could include:

- Regional Plan Priorities
- Science monitoring programme priorities
- National regulations
- Council and community priorities
- Stakeholder priorities to determine

The risk matrix shown in Table 1 (page 18) is a generic example; it can be used to semi-qualitatively assess the level of risk associated with different consented activities. The numbers assigned are guideline and can be varied to accommodate individual council's requirements.

Table 1: Risk Assessment Matrix

		Consequence of Environmental/Human Effect caused by non-compliance				
		Insignificant (1)	Minor (2)	Moderate (3)	Major (4)	Severe (5)
Likelihood of non-compliance (%)	40+ (5)	Minor	Moderate	Moderate	High	High
	30-40 (4)	Minor	Minor	Moderate	Moderate	High
	20-30 (3)	Low	Minor	Minor	Moderate	Moderate
	10-20 (2)	Low	Minor	Minor	Minor	Moderate
	0-10 (1)	Low	Low	Low	Minor	Minor

Activities that are likely to be compliant, and where the impact of non-compliance is expected to be insignificant or minor, have a low level of risk (green shading). Conversely, activities have a high level of risk (red shading) where non-compliance is more likely, and the impacts of non-compliance may be severe.

The resultant risk score is then used to set the compliance monitoring frequency using Table 2.




Table 2: Monitoring Frequency ranges

Risk Score	Monitoring Frequency Ranges
13+	Less than 1 yearly
9-12	1 to 3 years
4-8	3 to 5 years
1-3	Greater than 5 yearly

The compliance monitoring frequencies can also be influenced by national requirements (for example the water regulations) and the nature of the consent conditions; some resource consents will specify a monitoring frequency. In addition some resource consents require the submission and review of various monitoring reports on an annual (or more frequent) basis.




Appendix 2: Enforcement Tools

Directive actions

ACTION	DESCRIPTION OF ACTION	POTENTIAL IMPACTS ON THE LIABLE PARTY	WHEN MIGHT THIS ACTION BE APPROPRIATE?
 <p>Letter of direction</p>	<p>To prevent further breaches, or to remedy or mitigate the effects of non-compliance, council can give a written direction for a party to take or cease a particular action.</p>	<p>Such a direction is not legally enforceable.</p>	<p>Letters of direction should be reserved for dealing with co-operative parties, who are motivated to follow the direction, and where the breach is of a minor nature, consistent with a breach that would perhaps also receive a formal warning.</p>
 <p>Abatement notice</p>	<p>An abatement notice is a formal, written directive. It is drafted and served by 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 is required as a result of non-compliance.</p>
 <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 a 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 is required as a result of non-compliance.</p>

It is important to note that for every directive action, where a breach has been established that Council may also elect to take punitive action.

Punitive actions

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>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>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.</p> <p>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 a 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 the criminal law.</p>

Appendix 3:

Example of a Prosecution Policy

REGIONAL COUNCIL PROSECUTION POLICY

Introduction

This Policy sets out principles and guidelines that a council should consider when deciding whether or not to initiate criminal proceedings for offences under the Resource Management Act 1991 (“the RMA”).

Pursuant to section 30 of the RMA the Regional Council has functions for the purpose of giving effect to the RMA. Those functions include, but are not limited to: the control of the use of land for the purpose of soil conservation and the maintenance and enhancement of the quality of water in water bodies and coastal water; the control of resources relating to coastal marine areas in the region; control of the taking, use, damming, and diversion of water; control of the quantity, level, and flow of water in any water body; and control of discharges of contaminants into or onto land, air, or water.

In accordance with these statutory functions, the Regional Council undertakes criminal prosecutions for offences under the RMA.

Solicitor-General’s Prosecution Guidelines

The Regional Council’s decisions whether or not to prosecute will be made in accordance with the Solicitor-General’s Prosecution Guidelines. In summary, those guidelines provide that prosecutions ought to be initiated or continued only where the prosecutor is satisfied that the following test for prosecution is met:

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

Factors that are relevant to the Evidential Test, include:

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

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

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

Particular public interest considerations arising under the RMA

In addition to the foregoing list of general public interest factors, the following considerations are also relevant to the Regional Council's decision to prosecute:

- The purpose of the RMA, namely to promote the sustainable management of natural and physical resources: section 5 of the RMA.
- Whether the case engages any of the matters set out in section 6 of the RMA, namely:
 - The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development.
 - The protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development.
 - The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.
 - The maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers.
 - The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.
 - Protecting historic heritage from inappropriate subdivision, use, & development.
 - The protection of protected customary rights.
- Whether the case engages any of the matters set out in section 7 of the RMA, namely:
 - Kaitiakitanga.
 - The ethic of stewardship.
 - The efficient use and development of natural and physical resources.
 - The efficiency of the end use of energy.
 - The maintenance and enhancement of amenity values.

- Intrinsic values of ecosystems.
- Maintenance and enhancement of the quality of the environment.
- Any finite characteristics of natural and physical resources.
- The protection of the habitat of trout and salmon.
- The effects of climate change.
- The benefits to be derived from the use and development of renewable energy.

Independence and impartiality of decision-making

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

To ensure Regional Council decisions on prosecutions are independent and impartial:

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

