



Mackenzie
DISTRICT COUNCIL

Mackenzie District Council

Compliance Enforcement Policy

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“Fostering Our Community”

COMPLIANCE ENFORCEMENT POLICY

Purpose	<p>This policy formalises the principles that the Mackenzie District Council adheres to for regulatory decision-making. The policy also documents Council’s regulatory compliance and enforcement processes and procedures.</p> <p>While intended primarily for enforcement staff, this policy also provides other Council employees and the public with an understanding of the purpose and principles to be applied in monitoring and enforcing rules and regulations in the Mackenzie District. It also provides insight into the range of enforcement tools available to Council and the selection processes undertaken to achieve desired outcomes.</p>
Key Points	<p>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.</p> <p>For Mackenzie District Council there are statutory obligations relating to implementation of a wide range of activities. Mackenzie District Council needs to meet its obligations under legislation, local policies and to its community while working within its corporate values, and towards the vision and mission of the wider organisation.</p>
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Review	Every two years at the anniversary date

RELATED DOCUMENTS / WEBSITES

Related Council policies and documents include:

- Delegations Manual
- Conflict of Interest Policy
- Schedule of Fees and Charges
- MDC Bylaws

Relevant legislation and other resources include (but are not limited to):

- Local Government Act 2002 and the Local Government Act Amendment Act 2014
- Compliance Monitoring Incident Response and Enforcement Guidelines (ECan)
- Regional Sector Strategic Compliance Framework 2016-2018
- Solicitor-General's Prosecution Guidelines 2013
- Biosecurity Act 1993
- Building Act 2004
- Dog Control Act 1996
- Freedom Camping Act 2011

- Food Act 2014
- Forest and Rural Fire Act 1977
- Gambling Act 2003
- Hazardous Substances & New Organisms Act 1996
- Health Act 1956
- Impounding Act 1955
- Land Transport Act 1998
- Litter Act 1979
- Local Government Act 2002
- Prostitution Law Reform Act 2003
- Reserves Act 1977
- Sale and Supply of Alcohol Act 2012
- Transport Act 1998 Resource Management Act 1991

1. Purpose

The primary purpose of this policy is to:

- Provide enforcement officers at Mackenzie District Council with an understanding of the enforcement policies and procedures to be adhered to while exercising their duties and obligations under specific Acts.
- Provide understanding on how Mackenzie District Council, through enforcement, gives effect to the purpose and principles of the relevant legislation, and bylaws.
- Provide guidance on the range of compliance promotion and enforcement tools available to enforcement staff.
- Ensure a consistent and integrated approach to compliance and enforcement in Mackenzie District Council.
- Provide Council employees and all resource users a clear understanding of Council's enforcement process and what is expected when contraventions occur.

2. Legal Status

This policy:

- Is not legally binding on Mackenzie District Council, any other organisations, such as government departments, the police, or individuals in the community.
- Is general in nature and does not exhaustively address all statutory limitations and considerations that may be relevant under legislation.
- Does not confine, restrain, or limit the discretion of Mackenzie District Council to take any action; and
- Is not a substitute for legal advice or legal processes.

It is not the intention of this policy that any act or omission of any officer of Mackenzie District Council shall be called into question or held to be invalid on the grounds of a failure to comply with this policy.

The Policy is general in nature and does not exhaustively address all the specific statutory limitations and considerations that may be relevant under the legislation administered by the Council.

3. Encouraging Compliance

Mackenzie District Council takes a comprehensive “spectrum” approach to promote understanding of the need for compliance and encourage positive behavioural change to ensure the highest levels of compliance is achieved where that is needed.

To achieve this Mackenzie District Council employs various strategies to promote compliance, such as:

- Engagement with people, stakeholders and the community on matters that may affect them. This will promote greater understanding of the challenges and constraints; engender support and identify opportunities to work with others.
- Education for those who are unaware of the rules and regulations or need reminding of their obligations. It is also important in providing the community with information about what rules and regulations are in place and what is acceptable behaviour.
- Enabling individuals, stakeholders and supporting them to develop best practice by linking with resources and advice and promoting examples of best practice.
- Enforcement when breaches of rules and regulations are identified using the range of enforcement tools council has available to it to bring about positive change

4. Why Enforce?

Enforcement is an integral part of the implementation and administration of the law. As an agency bound by legislation Council has responsibility to ensure compliance with a range of laws. As such it has a statutory obligation to enforce its legal duties and responsibilities under the wide range of Acts it administers.

The reasons Council is required to enforce the law are essentially related to matters of health, safety, and environmental protection. These are matters that Parliament has deemed to be of sufficient public interest to merit Government intervention.

The statutes under which the Council has duties and responsibilities for the enforcement of laws include the:

- Resource Management Act 1991
- Local Government Act 2002
- Local Government Act 1974
- Building Act 2004
- Fencing of Swimming Pools Act 1987
- Sale and Supply of Alcohol Act 2012
- Dog Control Act 1996
- Impounding Act 1955
- Health Act 1956
- Land Transport Act 1998
- Hazardous Substances & New Organisms Act 1996
- Gambling Act 2003
- Prostitution Law Reform Act 2003
- Litter Act 1979
- Food Act 2014

- Biosecurity Act 1993
- Maritime Transport Act 1994
- And various Regulations, Council plans and bylaws

The need to take enforcement action may arise following routine monitoring or complaint investigation. In both instances, the need to take enforcement action will arise because a breach has arisen.

Enforcement mechanisms aim to have three interrelated outcomes, these are:

- Avoidance, mitigation or remedying of adverse effects
- Compliance promotion
- Deterrents and restitution.

Typically, the process of undertaking enforcement is a staged one of promoting awareness and providing assistance, warnings, issuing of enforcement notices and in serious cases, prosecution, although this may vary from time to time. This spectrum approach encourages positive behaviour change thus ensuring highest levels of compliance.

5. Principles

The regulatory enforcement role in New Zealand has clearly established guidelines and principles. Mackenzie District Council will apply and adhere to these principles when carrying out enforcement activities.

- **Transparency**
We will provide clear information and explanation to the community, and those being regulated, about the standards and requirements for compliance. We will ensure that the community has access to information about the change to legislation as well as actions taken by us to address non-compliance.
- **Collaborative**
We will work with and, where possible, share information with other regulators and stakeholders to ensure the best compliance outcomes for our region. We will engage with the community, those we regulate and government to explain and promote compliance requirements and achieve better community outcomes.
- **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.
- **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.
- **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 seriousness of the non-compliance and the risks posed to people and the environment.
- **Targeted**
We will focus on the most important issues and problems to achieve the best outcomes. We will target our regulatory intervention at poor performers and illegal activities that pose the greatest risk. We will apply the right tool for the right problem at the right time.
- **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, the regulated parties, information received from other regulators, members of the community, industry, and interest groups.

- **Responsive and Effective**

We will consider all alleged non-compliances 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.

6. Conflicts of Interest

Mackenzie District Council will carry out all enforcement functions in accordance with the Conflict-of-Interest Policy to:

- Create a framework for decision making that avoids actual or perceived conflict of interest
- Minimise the risks where a conflict of interest exists
- Ensure staff are free from any personal, commercial, financial, political, or other pressures that might affect their actual or perceived ability to make independent decisions.

This policy provides guidance for staff as to where a conflict of interest may arise (and therefore how to avoid a conflict of interest) and a mechanism for ensuring that any actual or potential conflict of interest is disclosed and managed appropriately.

7. Three Contacts Concept

Mackenzie District Council is committed to keeping all parties as informed as possible. The compliance team has identified the three main areas of contact with the public and consent holders.

- **PRIOR:** Contacting the public and consent holders before there are issues. Such as industry and community group meetings and workshops are all designed to encourage, educate, and enable the public or consent holder to be compliant.
- **PRESENT:** At the time of an incident, compliance officers will give advice on reducing the impact at the scene.
- **POST:** If someone is being investigated, they are made fully aware of the investigation process and possible outcomes that they may face. This enforcement policy highlights the process for people.

8. Clarification and Breaches

8.1 Clarification

Clarification regarding this policy can be sought from the Mackenzie District Council General Manager Operations.

8.2 Breaches

The Mackenzie District Council General Manager Operations is responsible for monitoring compliance with this policy. Failure to comply may be considered misconduct and may result in disciplinary action.

8.3 Exceptions

The Mackenzie District Council General Manager Corporate Services (being the policy owner) will need to authorise any deviations from this policy.

9. Appendix A – Enforcement Procedures

The following Enforcement Matrix represents enforcement options available to the Council in response to designated breaches.

	Oral Warning	Written Warning	Notice to Fix	Infringement Notice	Abatement Notice	Enforcement Order	Prosecution
Building	x	x	x	x			x
Resource Consents	x	x		x	x	x	x
Environmental Health	x	x					x
Liquor	x	x		x			x
Parking	x			x			x
Noise	x	x			x		x
Animal Control	x	x		x			x
District Plan	x	x		x	x	x	x
Bylaws	x	x		x			x

The enforcement tool used to achieve compliance is dependent upon factors such as:

- The nature and scale of the harm caused by the breach
- The nature of the penalty which is likely to be most effective in ensuring compliance or acting as a deterrent
- Whether the offending relates to a Council priority for greater compliance
- Whether there is general public awareness of the regulation
- Whether there have been previous breaches.

The relationship of the relevant factors, which assist in determining the appropriate course of action, is depicted in Appendix I. It must be noted that in certain circumstances, legislation will dictate the appropriate response/penalty

9.1 Enforcement Process

The following section outlines the enforcement process that the Council undertakes from the point of discovering an offence throughout to the decision to take enforcement action. The response upon the discovery of an offence will be largely dependent on several factors, including the need to deal with any ongoing adverse effects, the risk of recurring breach, and the seriousness of the breach. It is expected that the response will take the sequential approach discussed below.

9.1.1 Response to Effects

Upon discovery, the initial response will be to assess the actual or potential effects, if any, resulting from the contravention. Significant adverse effects will require an immediate response prior to any other action. This may include:

- To prevent further serious environmental damage from starting or continuing; actions may include abatement notice, enforcement, or interim enforcement order.
- An immediate closure in the case of a serious food hygiene risk.
- Seizure of an offending animal in the case of a dog attack.

9.1.2 Gathering Information

Once the Council is made aware of an alleged breach, the next stage is to conduct investigations which would include gathering evidence, speaking to witnesses, and obtaining explanations. The purpose of this is to find out whether, how, and why the breach has occurred and to enable informed decisions to be made. The depth and scope of an investigation will be dependent on the seriousness of the incident.

In less serious matters, it may be sufficient to write to the offending party, or parties, requiring written explanations as to why the breach has occurred and as to circumstances surrounding the breach, and then to determine an appropriate response.

In more serious matters, it is expected that the investigation will be more in depth and that detailed witness statements will be obtained and that liable parties will be interviewed under formal caution. Regardless of the level of offending, a response will ordinarily be sought from an offender. The exception to this would be matters of a very minor nature with nil environmental or other detrimental effects, or where the person has responded such that the effects are remedied, and officers involved are assured that the matter will not occur again.

Upon receipt of any explanation, the next and final stage is one of deciding on an appropriate response to the breach via a sound decision-making process.

9.1.3 Evaluating the Enforcement Response Option(s)

Determining the correct enforcement response requires good judgement, and a good knowledge, and accurate interpretation, of the relevant legislation involved. It is widely accepted across agencies that the Courts have provided helpful guidelines as to what factors are appropriate to consider when determining the seriousness of a breach.

Factors to consider are:

- The actual adverse effects
- The potential adverse effects
- Whether the breach was deliberate or incidental
- Foreseeability of incident
- The degree of value/sensitivity of affected area(s)
- The attitude of the offender towards the breach
- Any effort made to avoid, remedy, and/or mitigate the adverse effects
- The effectiveness of any remediation or mitigation undertaken
- Any profit or benefit gained by alleged offender
- Any relevant special circumstances outside the control of the party involved that had facilitated the occurrence of the breach

It must be noted that not every factor will be relevant in every given situation. On occasion, one single factor may be so overwhelmingly aggravating, or mitigating, that it may influence the ultimate

decision. Each case is unique, and individual circumstances need to be considered on each occasion to achieve a fair and reasonable outcome.

9.1.4 Determining the Enforcement Response

To maximize objectivity and fairness, an oversight panel reviews recommendations made by the authorising officer toward court proceedings. The panel of three requires consensus to proceed to prosecution, and is comprised of the following Council officers:

- Chief Executive Officer
- General Manager Operations
- Regulatory Manager and/or Planning Manager

9.2 Enforcement Options

The Council regulatory officers have a broad range of enforcement options available to them to address matters of non-compliance. The tools that apply to the different regulatory functions are illustrated in the table below.

These tools can be categorized into three main types and are compatible with the Canterbury Strategic Compliance Framework:

- Informal Actions
Focused on providing education and incentive-based responses to allow the person to become better-informed and to develop their own means to improve compliance.
- Directive Actions
These are about looking forward and giving direction and righting the wrong.
- Punitive Actions
These are about looking back and holding people accountable for what they have done.

The primary purpose of the informal and directive actions is to encourage compliance via engaging, educating, and enabling stakeholders, while the punitive action focuses on using enforcement tools to deal with non-compliances.

The following matrix provides an overall view of the enforcement options available to the Council:

	Building	Planning and Resource Consents	Environmental Health	Liquor	Noise	Animal Control	Bylaws
Education and Incentive							
Education and Engagement	X	X	X	X	X	X	X
Directive Actions							
Letter of Direction	X	X	X	X	X	X	X
Excessive Noise Direction					X		
Notice to Fix	X						

Abatement Notice		X			X	X	
Enforcement Order		X					
Negotiated Settlements	X	X	X	X	X	X	X
Punitive Actions							
Formal Warning	X	X	X	X	X	X	X
Infringement Notice	X	X		X		X	X
Prosecution	X	X	X	X	X	X	X

9.3 Council Obligations to Complainant

To initiate an enforcement investigation, a request should be made via the standard Council request process, from the form on the website, via telephone, or, in person, at the Council offices.

Note that the process of requesting an investigation into potentially non-compliant activity is distinct from the Formal Complaint process which is clarified in the Complaints Resolution Policy and is specially for formally complaining about Council people or processes.

To assist any investigation, the maximum information should be provided when the initial enquiry is made. This should include the identity and address of complainant, the address at which the alleged breach has taken place, a description of the unauthorised activities and the harm that is considered to have been caused. Complainants will also be encouraged to send in dated photographs of the alleged breach to assist the investigation.

In respect of complaints received, the following standards apply:

- All valid enquiries will be properly recorded and investigated
- The personal details of the new enquirer will be held in the strictest confidence
- Other than cases where immediate or urgent action may be required, an initial investigation is to be undertaken within five working days of receipt
- In cases of involving a serious and/or irreversible harm, the complaint will be investigated as a matter of priority, usually within 24 hours of receipt. Urgent action will be instigated to stop unlawful activity of a severe nature
- The enquirer will be updated on any subsequent action that may result as soon as reasonably practicable.
- Staff will not take sides in a dispute; staff will however judge what action is appropriate according to the evidence, particular circumstances, impact on the environment and the community, relevant policies, and legalisation

9.4 Council Obligations to Individuals in Breach

Under normal circumstances, prior to taking formal enforcement action, the officer concerned will fully and openly discuss the circumstances of the breach with those involved. Those in breach will be

contacted as soon as possible following the site visit, and advice will be provided on what action is required to avoid, remedy and/or mitigate the environmental harm identified.

When breaches are found to have occurred, the Council officers will:

- Communicate clearly to the responsible party or their agent, identifying the problem and that they may need to undertake action to achieve compliance.
- Where officers consider there is a minimal effect, or effects are satisfactorily addressed by mitigation measures, a reasonable period of time will be allowed for the submission of a retrospective application to regularise an activity (where this is an available course of action under the relevant piece of legislation).
- Initiate formal enforcement powers after being satisfied that there is a clear breach of the relevant piece of legislation.
- In the case of formal action being authorised, the rights of appeal will be explained to those in breach.

9.5 Prosecution Guidelines

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

The Solicitor-General's Prosecution Guidelines is a comprehensive 31-page document providing a detailed guide to evidential and public interest considerations, and the list below is illustrative only and not a comprehensive list of the matters to be considered. Matters will vary in each case according to the particular facts.

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

- A conviction is likely to result in a significant sentence
- The offence caused significant harm or created a risk of significant harm
- The offence was committed against a person serving the public e.g., a Police or Council officer
- The individual was in a position of authority or trust
- The evidence shows that the individual was a ringleader or an organiser of the offence
- There is evidence that the offence was premeditated
- There is evidence that the offence was carried out by a group
- The victim of the offence was vulnerable, has been put in considerable fear, or suffered personal attack, damage, or disturbance
- The offence was committed in the presence of, or near, a child
- There is an element of corruption
- The individual's previous convictions or cautions are relevant to the present offence
- There are grounds for believing that the offence is likely to be continued or repeated for example by a history of recurring conduct
- The offence, although not serious, is widespread in the area where it was committed
- A prosecution would have a significant positive impact on maintaining community confidence
- The individual is alleged to have committed the offence while subject to an order of the court
- A confiscation or some other order is required, and a conviction is a prerequisite

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

- The court is likely to impose a nominal penalty

- The individual has already been made the subject of a sentence and any further conviction would be unlikely to result in the imposition of an additional sentence or order
- The offence was committed because of a genuine mistake or misunderstanding (these factors must be balanced against the seriousness of the offence)
- The loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by a misjudgement
- There has been a long delay between the offence taking place and the date of the trial, unless: the offence is serious, the delay has been caused in part by the individual, the offence has only recently come to light, or the complexity of the offence has meant that there has been a long investigation
- A prosecution is likely to have a bad effect on the physical or mental health of a victim or witness, always bearing in mind the seriousness of the offence
- The individual is elderly or very young or is, or was at the time of the offence, suffering from significant mental or physical ill health, unless the offence was serious or there is real possibility that it may be repeated
- The individual has put right the loss or harm that was caused (but individuals must not avoid prosecution or diversion solely because they pay compensation)
- Where other proper alternatives to prosecution are available (including disciplinary or other proceedings).

9.5.1 The Evidential Test

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

- The evidence relates to an identifiable person (whether natural or legal).
- The evidence is credible.
- The Council can produce the evidence before the court, and it is likely it will be admitted by the court.
- The evidence can reasonably be expected to satisfy an impartial jury (or judge), beyond a reasonable doubt, that the individual has committed a criminal offence; the individual has given any explanations and, if so, whether the court is likely to find the explanations credible in the light of the evidence.
- There is any other evidence the Council should seek out which may support or detract from the case. Once it has been established that there is sufficient evidence to provide a reasonable prospect of conviction, the test for prosecution requires a consideration of whether the public interest requires a criminal prosecution.

9.5.1 The Public Interest Test

The second part of the test for prosecution is the public interest test, which is important for ensuring that the discretion to prosecute is exercised in accordance with the rule of law and any relevant statutory requirements.

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

In practice in New Zealand the independence of the prosecutor refers to freedom from undue or improper pressure from any source, political or otherwise.