

Tasman District Council Enforcement Policy

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1. 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, public health and safety, and environmental outcomes.

Tasman District Council is a unitary Council and has a key role in promoting the social, economic, environmental and cultural well-being of the Tasman communities, now and in the future whilst meeting the legislative obligations set out in various Acts, Regulations and Bylaws. These legislative instruments set in place standards, rules, systems and processes that must be complied with in the interests of protecting public health, safety and convenience, and the environment.

Complying with these regulations and requirements is everyone's responsibility.

Tasman District Council's approach to compliance is to work with individuals, industry, and the community to achieve voluntary compliance wherever possible and to take enforcement action when voluntary compliance is not achieved. There are many dedicated staff who have enforcement responsibilities which deliver on these obligations, while working within the organisational values towards achieving the vision for the Tasman community.

2. Purpose

The primary purpose of this policy document is to:

- outline the approach to investigation and enforcement in the Tasman District
- inform the general community as to the approach Council takes to resolve non-compliance.
- provide guidelines to for Tasman District Council staff when delivering enforcement functions.
- ensure a consistent and integrated approach to enforcement in the Tasman region.
- provide public understanding on how enforcement gives effect to the purpose and principles of the relevant legislation, bylaws and the objectives of the Tasman Resource Management Plan (TRMP).

3 Conflict of Interest

Tasman District Council staff will carry out all enforcement functions in full accordance with the Tasman District Council Conflict of interest (COI) policy. This policy provides guidance for staff as to where a Conflict of Interest may arise and a mechanism for ensuring that any actual or potential Conflict of Interest is disclosed and managed appropriately.

4. Principles of Compliance

Tasman District Council will undertake its enforcement responsibilities in a manner that is consistent with the following principles;

Transparent

We will provide clear information and explanation to the 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.

Evidence based information

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.

Fair, reasonable and proportional approach

We will apply regulatory interventions and actions appropriate for the situation. This could range from educating users, promoting, and encouraging compliance, using enforcement tools to obtain necessary action, or providing deterrence through appropriate penalties. 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.

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.

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.

Risk based and prioritised

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 to the environment and the communities impacted by poor performance.

Collaborative

We will work with all parties where possible, including sharing 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.

Responsive and affective

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.

5. Encouraging Compliance

Tasman District Council works across the full regulatory spectrum to develop understanding and promote positive change of behaviour. The components of this approach are referred to as the 4Es.

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.



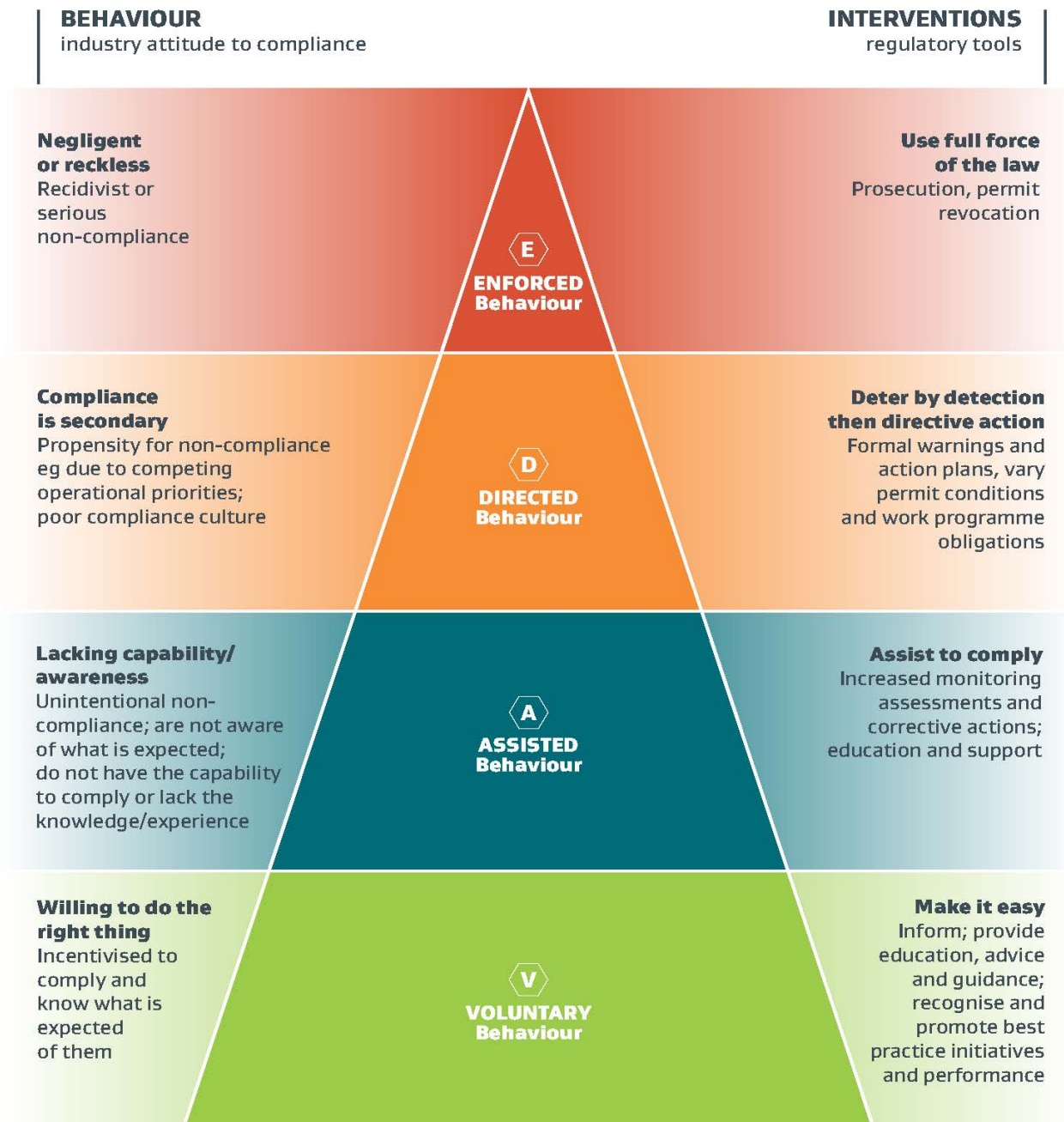
6. Approach to Non-Compliance

The requirement to monitor and ensure compliance with the law is a mandatory obligation of most of the Acts Council administers. These Acts provide the specific legislative framework for Council to enforce the rules and regulations.

While these Acts provide the enforcement tools, how Council chooses to enforce remains at its discretion. Our approach is to work towards gaining voluntary compliance using education and advice through to stronger responses such as court action for persistent offending or serious risk of harm.

The following diagram¹ illustrates our approach to intervention influenced by the individual or company's approach to non-compliance and willingness to do right.

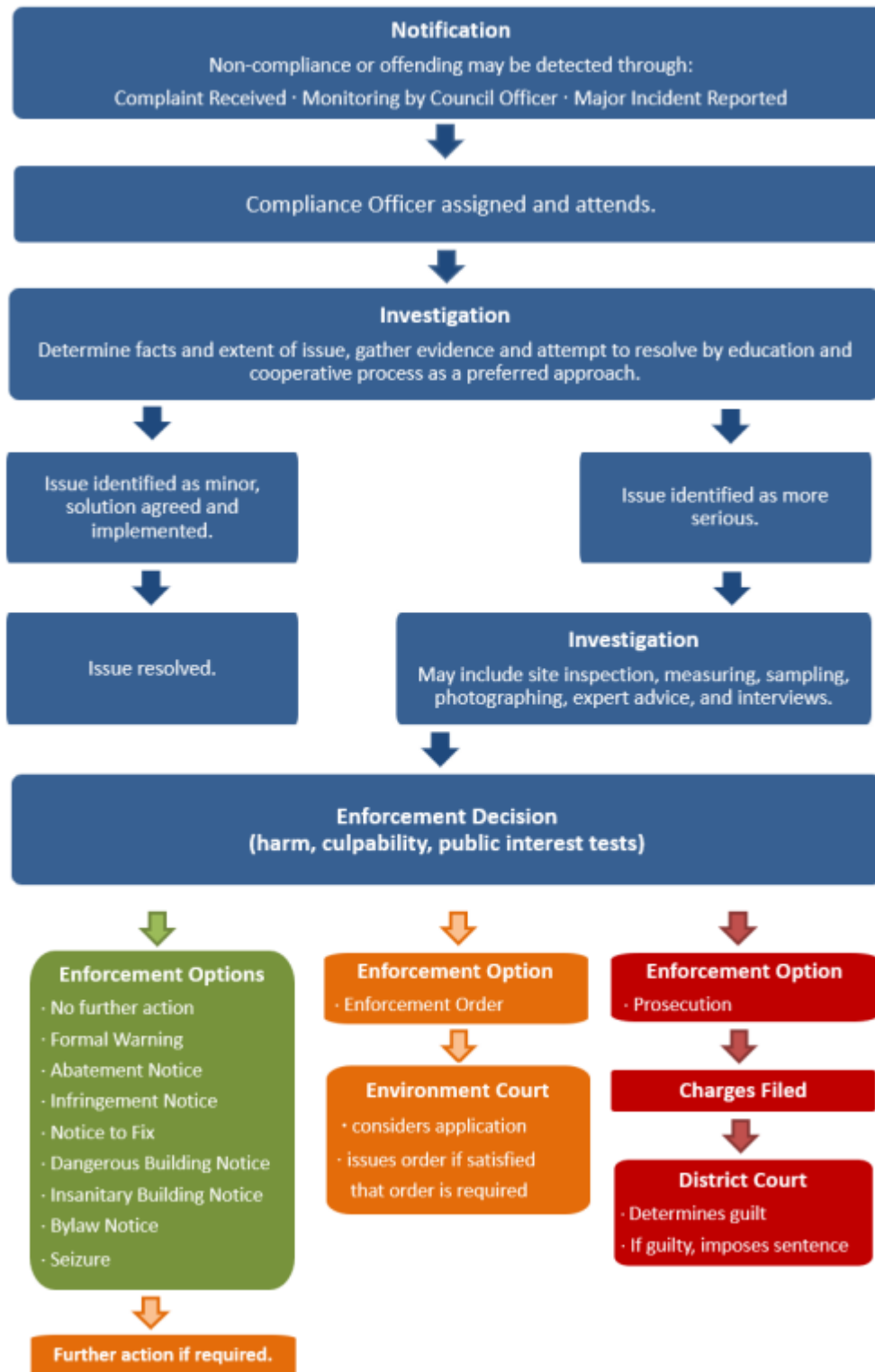
THE VADE MODEL



¹ VADE model diagram taken from the New Directions for Resource Management in New Zealand - Report of the Resource Management Review Panel – June 2020

7. Responding to Non Compliance

The following diagram outlines the typical pathway expected to be undertaken from discovery of a breach through to the decision to take enforcement action.



8. The Investigation Process

If a breach or suspected breach of the Resource Management Act, Building Act or Council Bylaws is reported our response will normally be a staged one of firstly ascertaining and dealing with any ongoing adverse effects if that is relevant, followed by an investigation to establish the truth of what has occurred and enable informed decisions for an appropriate response if offending found. The following is step through of that expected process.

8.1 Response to Incident

Upon discovery, the initial response will be to assess the nature of the breach and the actual or potential effects, if any, resulting from the contravention. Significant adverse effects will require an immediate response prior to any other action and may include a full pollution prevention response, an immediate closure of the premises involved, or the seizure or destruction of an offending animal in the case of a dog attack.

8.2 Gathering information (Investigation)

If a breach or a potential breach occurs, then information and evidence is gathered to establish the truth of what 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.

An investigation may entail:

- Visiting private property to gather information and evidence such as, samples, photographs and ecological or geological surveys.
- Arranging for expert inspection such as engineers, building practitioners, survey consultants to attend and assist in gathering information.
- Speaking to witnesses and liable parties, and
- recording, either in written form or electronically, detailed witness statements, and the interview of liable parties under a formal caution.

In less serious matters, it may be sufficient to write to the liable party or parties requiring written explanation as to why the breach occurred and the circumstances behind it, and then determine and appropriate response.

In more serious matters, it is expected that the investigation will entail an inspection of the site, evidence gathered, obtaining witness statements, and interviewing liable parties under formal caution.

8.3 Entry to private property

A Council warranted enforcement officer has the ability to enter private property for the purpose of assessing compliance in accordance with the relevant sections of legislation council enforces².

When entering private property Council officers must ensure that they respect the rights of liable parties and lawful occupiers and that their entry onto private property is lawful

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

² Under Section 38 of the RMA Tasman District Council may issue warrants to their officers which gives them legal authority to assess compliance with environmental regulations. The Chief Executive Officer of Tasman District Council has the authority to issue staff with warrants of authority.

8.4 Concluding an investigation.

Undertaking an investigation ensures that we have the right information to be able to make an informed decision about how the Council should best respond to non-compliance. At the end of an investigation all of the evidence gathered is assessed and analysed, and a decision is made as to further action required, if any.



9. Enforcement Decision Making

Enforcement can be complex. Some Acts provide potentially large penalties for those who breach, however, do not offer any guidance as to determining what is serious and what is less so. The Courts have provided helpful guidelines³ as to what factors are appropriate to consider determining seriousness of a breach. Factors to be considered by Tasman District Council when contemplating enforcement action:

- 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 due care was taken, and how foreseeable was the incident?
- What efforts were made to remedy or mitigate the adverse effects?
- How effective was that remediation or mitigation?
- Was any profit or benefit gained from the breach by the offender(s)?
- Was there a failure to act on prior instructions, advice or notice?
- Is there a degree of specific deterrence required in relation to the alleged offender?
- Is there a need for a wider general deterrence required in respect of this activity or industry?
- Was the receiving environment of particular significance to iwi?
- How does the unlawful activity align with the purposes and principles of the legislation? Is the decision to prosecute (or not prosecute) in line with the Solicitor General's guidelines? (Extract from Guidelines attached as appendix A).

³ *Machinery Movers Limited –v Auckland [1994] 1 NZLR 492 & Selwyn Mews Ltd –v- Auckland City Council HC Auckland CRI -2003-404-159*

The factors listed above are not intended to be exhaustive.

Not every factor will be relevant on every occasion and one single factor may be sufficiently aggravating, or mitigating, such that it may influence the ultimate decision. Each case is unique, and the individual circumstances need to be considered on each occasion to achieve a fair and reasonable outcome. Notwithstanding this, Tasman District Council may proceed directly to enforcement action, including prosecution where the circumstances support this. The discretion to take enforcement action, or not, sits solely with regulatory agency⁴.

9.1 Who Can Make a Decision?

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 information. The Tasman District Council Appointment Register identifies warranted powers available to Council enforcement officers and the Delegation Register will cover specific delegated enforcement powers.

For low level breaches, warranted officers can issue formal warnings, infringement notices and abatement notices. The officer will consult with team leaders and/or managers in making that decision. If a matter is complex, has a high public profile, requires specific guidance or simply there is no precedent, then the warranted officer will seek support from peers, team leaders, or managers, and, if necessary, legal advisors.

If the matter is being considered for prosecution or other remedies involving Court action, then it must ultimately be authorised by the Group Manager, Environmental Assurance. In such circumstances, the case will be subjected to independent legal review.



⁴ New Zealand Law Commission <http://www.nzlii.org/nz/other/nzlc/report/R66/R66-5.html>

9.2 Legal review

An independent legal review considers the matter in its entirety. Among other things the review applies at least two tests, being the evidential test and the public interest test.

The Evidential Test

The first part of the test is the evidential test and

requires a legal assessment of whether:

- The evidence relates to an identifiable person or organisation
- 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 light of the evidence as a whole
- There is any other evidence the council should seek out which may support or detract from the case

The public interest test

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.

The public interest test is important for ensuring that only the most serious cases are considered for further action and that the discretion to prosecute is exercised to ensure that limited resources are not consumed on offences which, although the evidence is sufficient to provide a reasonable prospect of conviction, the offence is not serious and prosecution is not required in the public interest.

- This considers many factors such as:
- the seriousness of the offence,
- the impact on the environment,
- premeditation of the offending party
- Financial gain from offending on potential
- enforcement matters





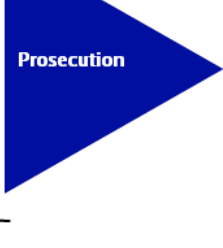
The legal review may be undertaken by Tasman District Council in-house legal counsel, a Crown Solicitor, or an independent law firm.

10. Enforcement Options

Enforcement can be categorised into three main types. Informal actions are focussed on providing education and incentive-based responses to allow the person to become better informed and develop their own means to improved compliance. Directive actions are about looking forward and giving direction and righting the wrong. Punitive actions are about looking back and holding people accountable for what they have done.

Selecting the appropriate enforcement response will depend on such factors as the seriousness of the offence, the significance of adverse effect on people and/or the environment and the level of ownership shown by the offender.

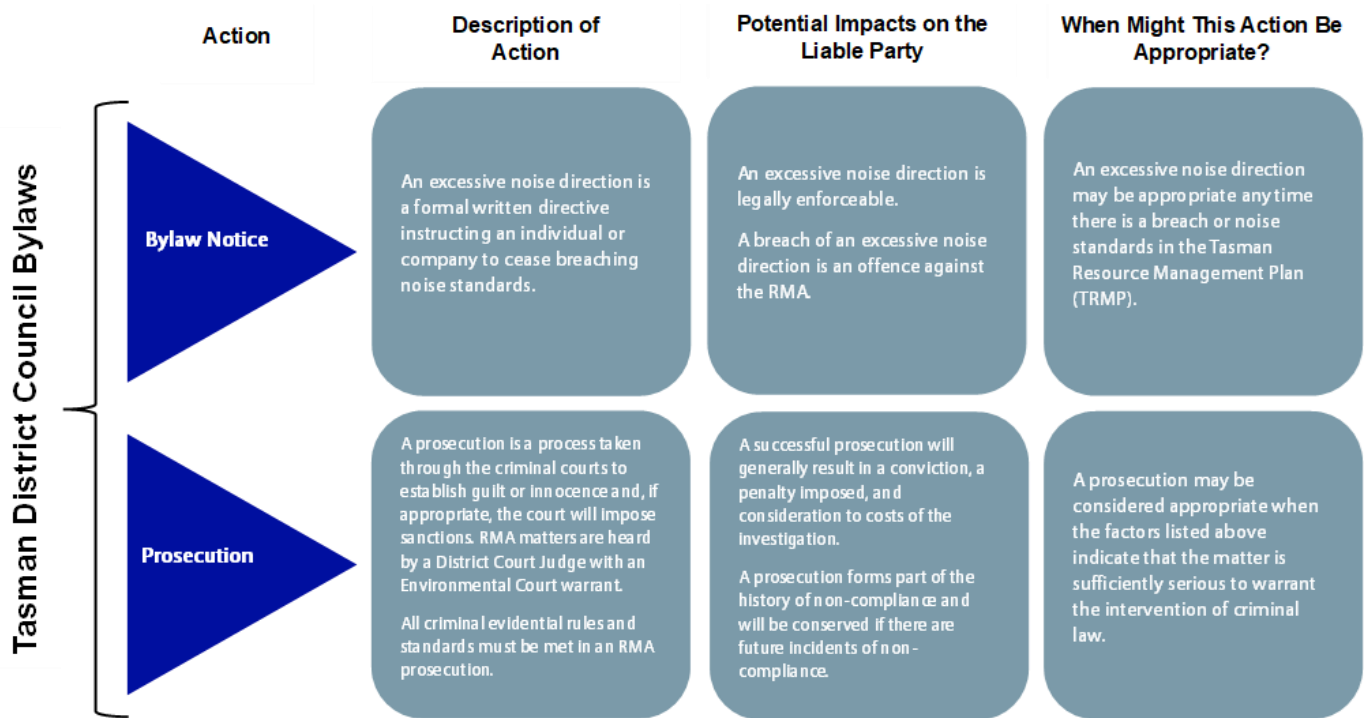
The following range of enforcement options are available to staff in response to detected offending:

Action	Description of Action	Potential Impacts on the Liable Party	When Might This Action Be Appropriate?
 <p>Formal Warning</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 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>A formal warning may be given when:</p> <ul style="list-style-type: none"> - an administrative, minor, or technical breach has occurred; and - the environmental effect or potential effect is minor or trivial in nature; and - the subject does not have a history of non-compliance; and - the matter is one which can be quickly and simply put right; and - a written warning would be appropriate in the circumstances.
 <p>Abatement Notice</p>	<p>An abatement notice is a formal, written directive. It is drafted and served by Tasman District 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>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.</p> <p>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>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>Enforcement Order</p>	<p>Like an abatement notice, and enforcement order can direct a party to take particular action. However, an application for an enforcement order must be made to the Environment Court but can also be made during the course of an RMA prosecution.</p>	<p>A direction given through an enforcement order is legally enforceable.</p> <p>To breach an enforcement order is to commit an offence against the RMA and make liable parties open to punitive actions.</p>	<p>An application for an enforcement order may be appropriate any time there is a risk of further breaches of environmental regulation, or remediation or mitigation is required as a result of non-compliance.</p>
 <p>Prosecution</p>	<p>A prosecution is a process taken through the criminal courts to establish guilt or innocence and, if appropriate, the court will impose sanctions. RMA matters are heard by a District Court Judge with an Environmental Court warrant.</p> <p>All criminal evidential rules and standards must be met in an RMA prosecution.</p>	<p>A successful prosecution will generally result in a conviction, a penalty imposed, and consideration to costs of the investigation.</p> <p>A prosecution forms part of the history of non-compliance and will be considered if there are future incidents of non-compliance.</p>	<p>A prosecution may be considered appropriate when the factors listed above indicate that the matter is sufficiently serious to warrant the intervention of criminal law.</p>

Resource Management Act (RMA) - Noise

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

Building Act



11. Evaluating Effectiveness

In order to maintain an effective enforcement process in Council, all enforcement action undertaken by officers should be evaluated for effectiveness in achieving the desired outcome.

In both successful and unsuccessful actions where further enforcement action was then required, it is useful to examine what was effective or not, what could have been improved or changed to make the process more effective and robust. This information should be fed back to the relevant decision makers to implement change if necessary.

12. What a complainant can expect

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

Council will ensure that:

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

13. Cost Recovery

Council endeavours to make all reasonable efforts to ensure that the cost of compliance is met by the person or company responsible for the non-compliance and not by the Tasman ratepayers. Such cost recovery is in line with the Council Fees and Charges regime. These fees and charges are available for view on the Council's website. [Fees and charges | Tasman District Council](#)



Appendix A

Solicitor-General's Prosecution Guidelines (2013)

The Council will adhere to the standards of good criminal prosecution practice expressed in the *Solicitor-General's Prosecution Guidelines* (2013). The Council's criminal prosecutions are conducted by external lawyers, on the Council's behalf, and the *Solicitor-General's Prosecution Guidelines* and the *Media Protocol for Prosecutors* (Crown Law, 2013) while not binding on local authorities, represent best practice. Also, the Solicitor-General's Guidance (CLO311/379) is helpful in guidance to local government as to who offers the best legal service in prosecution matters.

The list, based on the *Solicitor-General's Prosecution Guidelines*, is illustrative only and not a comprehensive list of the matters to be considered as the 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 for example, a police officer 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 in close proximity to, 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 in itself, 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 pre-requisite.