



# Compliance Monitoring & Enforcement Policy

June 2024



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# 1. Purpose

This Compliance Monitoring and Enforcement (CME) Policy provides a broad strategic overview on the way Greater Wellington Regional Council (Greater Wellington) administers its compliance, monitoring and enforcement functions under the Resource Management Act 1991 (RMA).

The Policy outlines the following:

- Principles and approach to CME
- Mana whenua and CME
- Our proactive monitoring programme including resource consent monitoring and permitted activity monitoring
- Our reactive monitoring programme including our incident response service
- Dealing with non-compliance arising from the above programmes
- Conflicts of interest and cost recovery with CME

The Policy is informed by and is consistent with the Regional Sector Strategic Compliance Framework 2019-2024 and the Best Practice Guidelines for Compliance, Monitoring and Enforcement under the Resource Management Act 1991.

Whilst the implementation of the Policy is largely undertaken by the Environmental Regulation Unit within Greater Wellington, CME activities are not limited to Environmental Regulation. Accordingly, it is important to emphasise that the Policy applies to all of Greater Wellington.



# 2. Principles and approach to CME

## 2.1 Principles

The following operating principles will be adopted and applied by Greater Wellington when developing and implementing CME programmes and responses:

### **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.

### **Consistent**

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**

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 environment and people, 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, the regulated parties, information received from other regulators, members of the community, mana whenua partners, 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, 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.

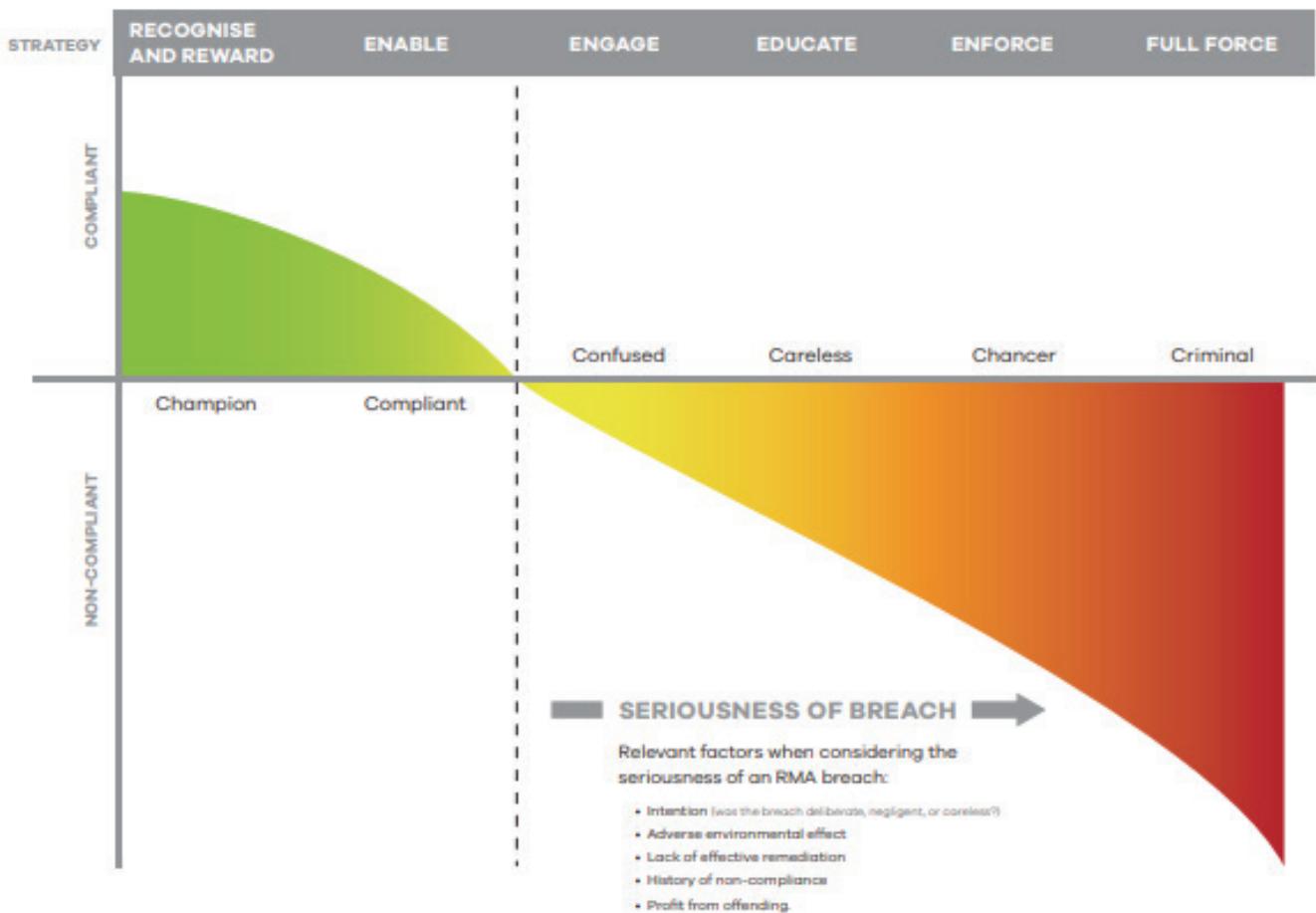
### **Responsive and effective**

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.

## 2.2 Approach

Greater Wellington will adopt the Mark II Model approach when performing its CME functions. This model builds on the earlier and well know 4 E's model (enable, engage, educate, and enforce).

### The Mark II Model – Strategic compliance with the RMA.



The aim of this model is to understand and influence behaviour across a range of both compliant and non-compliant activities. More specifically the 4 E's are broadly defined below:

### Engage

Consult with monitored parties, stakeholders and the 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

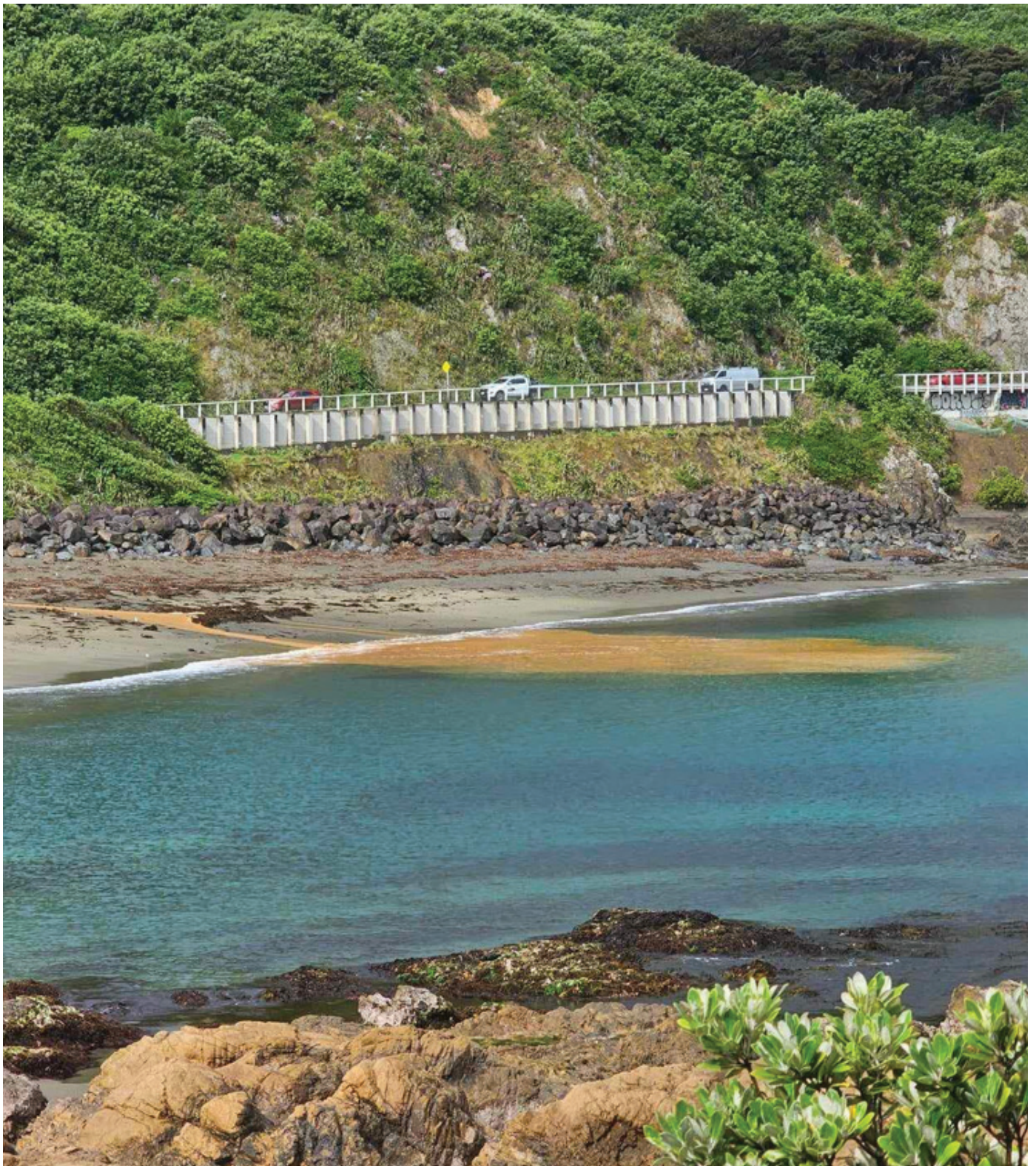
Alert monitored parties to what is required to be compliant with consent conditions and where the onus lies to be compliant. Education should also be utilised to inform the community and stakeholders about what regulations are in place around them, so that they will better understand what is compliant and what is not.

## Enable

Provide opportunities for monitored parties to be exposed to industry best practice and regulatory requirements. Link monitored parties with appropriate industry advisors and promote examples of best practice.

## 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.



### 3. Mana whenua and CME

Greater Wellington is committed to outworking Te Tiriti through mana whenua partnerships with the following:

Māori have recognised roles and responsibilities as kaitiaki (guardians) of our natural environment and resources. As part of exercising kaitiakitanga; mātauranga Māori (a body of Māori knowledge) is a vital component in understanding the natural world and human interaction with it.

There is close alignment with mana whenua aspirations and their unique kaitiakitanga role with the compliance monitoring and enforcement role entrusted to Greater Wellington. We have a common and connected role to protect the natural environment and ensure that the impacts of use of our natural resources is not done in a harmful manner.

To this end Greater Wellington is committed to ensure the following occurs:

- Integrating mana whenua aspirations and priorities into the implementation of this Policy.
- Inform the year to year direction of our risk based compliance monitoring programme.
- Explore opportunities for mana whenua to participate in decision making on enforcement options.
- Explore opportunities for partnering with mana whenua to equip and resource mana whenua to undertake compliance monitoring and enforcement in the region.
- Increase cultural competency for Greater Wellington staff on mātauranga Māori and Tiriti considerations within CME

This is not intended to be an exhaustive list of commitments but a starting point to foster an enduring and growing relationship on CME with our mana whenua partners.



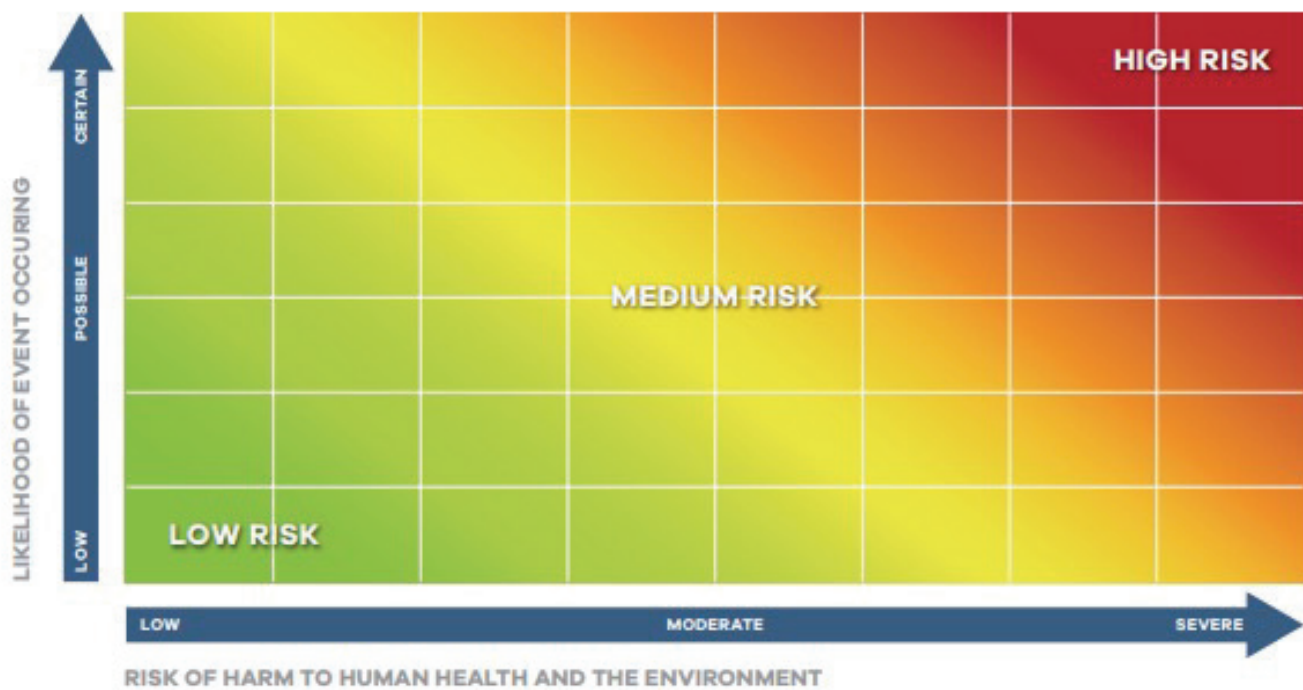


# 4. Proactive monitoring

## 4.1 Resource consent monitoring programme

**Our approach to resource consent monitoring is to direct focussed resources and monitoring effort to high risk activities, some resources into medium risk activities, and minimal or nil resources into low risk activities**

Greater Wellington issues approximately 600 resource consents per year. In total there are over 7000 active resource consents in the region. Like most other regulatory organisations, Greater Wellington does not have resources to monitor every resource consent on a frequent basis. Hence since 2015, Greater Wellington has operated a risk based compliance monitoring programme. A risk based monitoring approach is based on the following model:



Our approach is to direct more resources and monitoring effort to high-risk activities and less or nil resources into low risk activities. A review of time spent monitoring resource consents in 2022 showed that 76% of our efforts in the previous year were focussed on high-risk activities.

The process for determining our risk-based programme for resource consent monitoring uses the following three steps:



#### 4.1.1 Step 1 – Broad activity categorisation

The purpose of activity categorisation is to provide broad activity groups to assist with prioritising compliance programmes. The current activity categorisation is listed in Appendix 1 to this Policy and is subject to ongoing review.

#### 4.1.2 Step 2 – Activity prioritisation and risk profiling

The purpose of activity prioritisation and risk profiling is to provide guidance on the type and frequency of monitoring programme to be applied to each resource consent. Each activity is split into three risk profiles – high, medium, and low, based on the model presented in 4.1 of this Policy and the guiding principles below:

High	<ul style="list-style-type: none"><li>• Minimum frequency of inspection/audit is annual, possibly greater in some instances</li></ul>
Medium	<ul style="list-style-type: none"><li>• Either annual or three yearly inspection/audit</li><li>• Could be reprioritised to low risk if resources are unavailable to complete monitoring</li></ul>
Low	<ul style="list-style-type: none"><li>• Some consents will not be monitored</li><li>• If inspection/audit required, most likely set up with less than annual frequency e.g. once every three years</li></ul>

The following factors are considered when prioritising activities and their risk profiles:

Risk factor	Description
Nature and scale of actual and potential effects	The scale of the activity and its associated actual or potential effects on the environment
Environmental performance	The historical performance of the activity and the consequential risks of non-compliance
Natural Resources Plan (NRP) & Whaitua considerations	The priority or weight the NRP and Whaitua Implementation Plans gives to the activity
National regulations	How much national regulations play are part in determining the need for compliance
Local community and regional context	The impact the activity has on the local surrounding community including neighbours and any regional context (e.g. Long Term Plan / Council considerations)

We will engage and partner with mana whenua to determine appropriate priorities within the current context. As the risk profile and prioritisation can change over time, the risk based compliance programme is reviewed each year.

#### 4.1.3 Step 3 – Application of risk rating to resource consents

Activity based risk ratings are then applied to all resource consents when approved and regularly reviewed during the life cycle of the consent.

## 4.2 Permitted activity monitoring programme

**Our approach is to direct resources into permitted activity monitoring when need arises. Unless there is a compelling reason, a programme will only be initiated if our high and medium risk consenting monitoring programme is completed and/or on target**

Greater Wellington’s Natural Resources Plan (NRP) identifies a number of permitted activities where work can be undertaken without the need of a resource consent. In addition to NRP permitted activities, there are also permitted activities identified through National Environment Standards (NES) e.g. for forestry and freshwater activities.

Our priority is to monitor resource consents first, however where resources allow, permitted activity monitoring will be undertaken. A similar approach to risk based compliance monitoring of resource consent is applied when considering what permitted activities will be monitored.

# 5 Reactive monitoring

## 5.1 Environmental incident response service

**Our approach is to respond to environmental incidents based on priority and risk. The nature and scale of environmental effect is the primary consideration when managing a response**

Greater Wellington operates an environmental incident response service where the general public can call our hotline if they are concerned about any activity potentially harming the environment. There are many notifications that are made to Greater Wellington that are outside of the scope of CME responsibilities. Where possible, in these instances we will refer the notifier or incident to the relevant organisation.

Notifications of environmental incidents are triaged using a risk-based approach into either high priority / significant or standard / low priority

### High priority / significant incidents

- Unauthorised discharges of wastewater to water
- Significant unauthorised discharges of sediment to water
- Significant unauthorised streamworks
- Chemical spills where adverse effects on the environment are likely

### Standard / low priority incidents

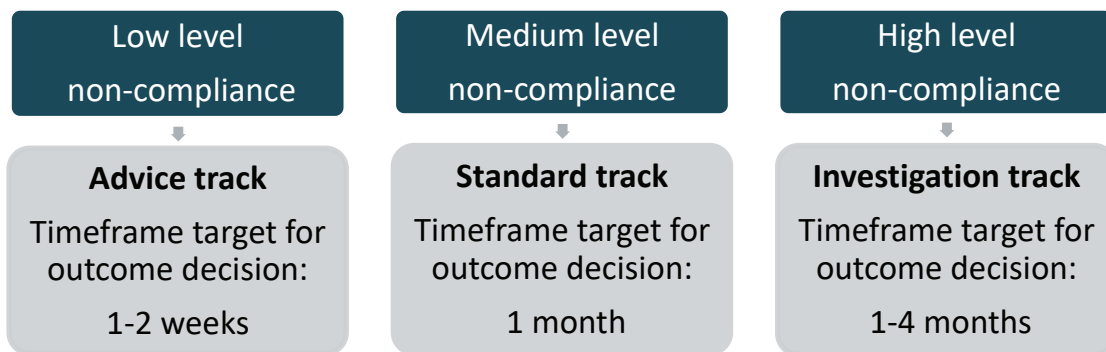
- Outdoor burning
- livestock access to waterways
- Historic works
- Aerial spraying
- Dead animals
- Water takes

While we will endeavour to get to all incidents regardless of their priority, some incidents of low risk are not attended. The general expectation is the on-call officer will attempt to contact the notifier regardless of if it was attended. All notifications are logged.

# 6 Dealing with non-compliance

**Our approach is to respond to any observed non-compliance in a manner that is proportionate to the overall circumstances of the non-complying activity**

Where non-compliance is identified through any of our proactive and reactive programmes, Greater Wellington will respond in a manner that is proportionate to the overall circumstances of the non-compliance. This is reflected in our Non-Compliance Decision Framework in Appendix 2 and summarised below:



*Note: Following review some medium level non-compliance may be channelled through the advice track.*

## 6.1 Enforcement tools

There are a wide variety of enforcement tools available for use within the Non-Compliance Decision Framework. They can be broken down into Directive Actions and Punitive Actions:

### 6.1.1 Directive actions

#### Advisory notice

An advisory notice is used in a minor to moderate situation with a cooperative, motivated party. It is designed to prevent further breaches, or to remedy or mitigate the effects of non-compliance. Normally the notice will give timelines and what action should be taken or ceased. Such a direction is not legally enforceable. It may however be taken into future decision making should the matter not be resolved within the timeframes given.

#### Abatement notice

An abatement notice is a formal, written directive. The form, content and scope of an abatement notice are prescribed in the RMA. It is written and issued by a warranted officer and will instruct an individual or company to cease an activity, prohibit them from commencing an activity or requiring them to take action. An abatement notice is legally enforceable. An abatement notice 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.

## **Enforcement order**

An enforcement order is similar in some respects to an abatement notice as it can direct an individual or company to take the same actions contained in the abatement notice. However an enforcement order is granted by the courts so the options can be far in excess of the scope of an abatement notice. An enforcement order is legally enforceable. An application can be made to recover all reasonable costs of an enforcement order from the offending party. Enforcement orders can be sought as an individual action or as part of sentencing after being found guilty of an offence.

### **6.1.2 Punitive actions**

#### **Formal warning**

A formal warning is a written warning to a person or company that has committed an offence. No further action will be taken in respect of the breach, but it will form part of the history of non-compliance.

#### **Infringement notice**

An infringement notice can be issued to an individual or company that has committed an RMA offence. The infringement fine is up to \$1000 depending on the type offence, and if not paid in certain timeframes, will be sent to the Ministry of Justice for fine collection (where further fees are likely to be added). Infringement notices can be disputed.

#### **Prosecution**

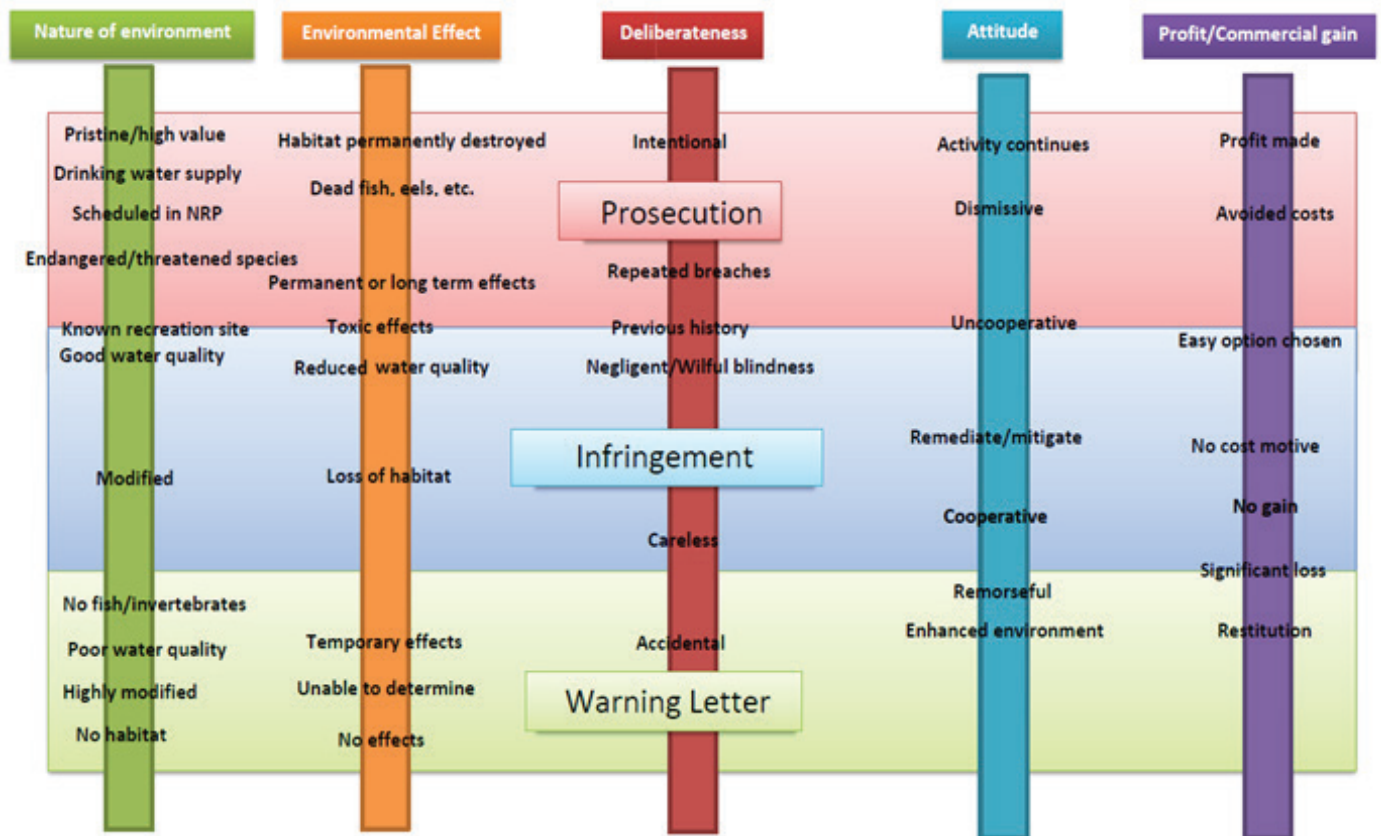
A prosecution is a process for taking a serious breach through the criminal courts. Charging documents are laid in the District Court and must be proved beyond reasonable doubt and criminal evidential standards apply. The matter is presided over by a District Court judge who specialises in Environment Court matters. The hearing is held in the District Court. People or companies who face prosecution will be served with a summons, which will provide information regarding dates and location of the court hearing.

## **6.2 Enforcement decision making**

### **6.2.1 What are factors to consider?**

Enforcement can be complex and there are many factors to consider. The RMA provides potentially large penalties for those who breach, however, it does not offer any guidance as to determining what is serious and what is less so. The Courts have provided some helpful guidelines as to what factors are appropriate to consider to determine seriousness of a breach. These guidelines are reflected in the diagram on the following page:

It is important to note that 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 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 regulatory agency. Also, on the following page are a series of helpful questions that be useful in the decision making process:



- Significance of the actual or potential effects**
- 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?
  - What is the toxicity of the discharge? (if relevant)
  - Was the receiving environment of particular significance to iwi?

- Nature of the offending**
- Was the breach a result of deliberate, negligent or careless action?
  - What degree of due care was taken, and how foreseeable was the incident?
  - Was there any profit or benefit gained by the alleged offender(s)?
  - What efforts were made to remedy or mitigate the effects the adverse effects?
  - How effective was that remediation or mitigation?
  - Is this incident a repeat non-compliance by the culpable party or has previous enforcement action been taken against the alleged offender(s) for the same or similar breach?
  - Has the alleged offender(s) failed to act on prior instructions, advice or notice?
  - Is this incident a one-off, or is it likely to reoccur?
  - Have steps been put in place to prevent future occurrence?

- Legal considerations**
- How does the unlawful activity align with the purposes and principles of the RMA?
  - Is the decision to prosecute (or not prosecute) in line with the Solicitor General's Prosecution Guidelines?

- Desired outcome**
- Is there a desired environmental outcome?
  - What enforcement action is appropriate to achieve this outcome?
  - Is there a degree of specific deterrence required for the alleged offender(s)?
  - Is there a need for a wider general deterrence for this activity or industry?
  - Is the proposed enforcement action the most cost-effective for the particular level of offending and the desired outcomes sought?

## 6.2.2 Who makes enforcement decision?

The person(s) responsible for making an enforcement decision is dependent on the track taken in the Non-Compliance Decision Framework. This is summarised below:



The formal delegation for the issuing of an **abatement notice** and **infringement notice** is with any warranted officer. The decision to issue either of these notices sits with any member of the Environmental Regulation management team. Where the non-compliance goes through the investigation track, an Enforcement Decision Group (EDG) discusses the recommendation before a final decision. The EDG is made up of the warranted officer(s) undertaking the investigation, and other staff not directly connected to the investigation, including two members of the Environmental Regulation management team.

If an EDG agrees to proceed with a **prosecution** and/or **enforcement order**, an independent legal review of the matter is obtained. A key aspect of this review is the consideration of the Solicitor General Prosecution Guidelines (2013), particularly the evidential test and the public interest test. Once a legal review is obtained the matter is referred to the Prosecution Decision Group (PDG) for a final decision. The PDG is made of warranted officer(s) undertaking the investigation, and other relevant staff not directly connected to the investigation, including senior management. Ultimately the formal delegation for each of these enforcement tools is as follows:

- Application for enforcement order under section 314 of the RMA – Manager, Environmental Regulation.
- Decision to prosecute for offences under section 338 of the RMA – General Manager, Environment and Manager, Environmental Regulation (jointly).



# 7 Miscellaneous matters

## 7.1 Conflicts of interest

Greater Wellington will carry out all of its CME functions in accordance with its Conflicts of Interest Policy which provided definitions and a process to identify and manage conflicts of interests with employees.

## 7.2 Cost recovery

Greater Wellington recovers all costs associated with its CME functions in accordance with its Resource Management Charging Policy.

## 7.3 Minor updates

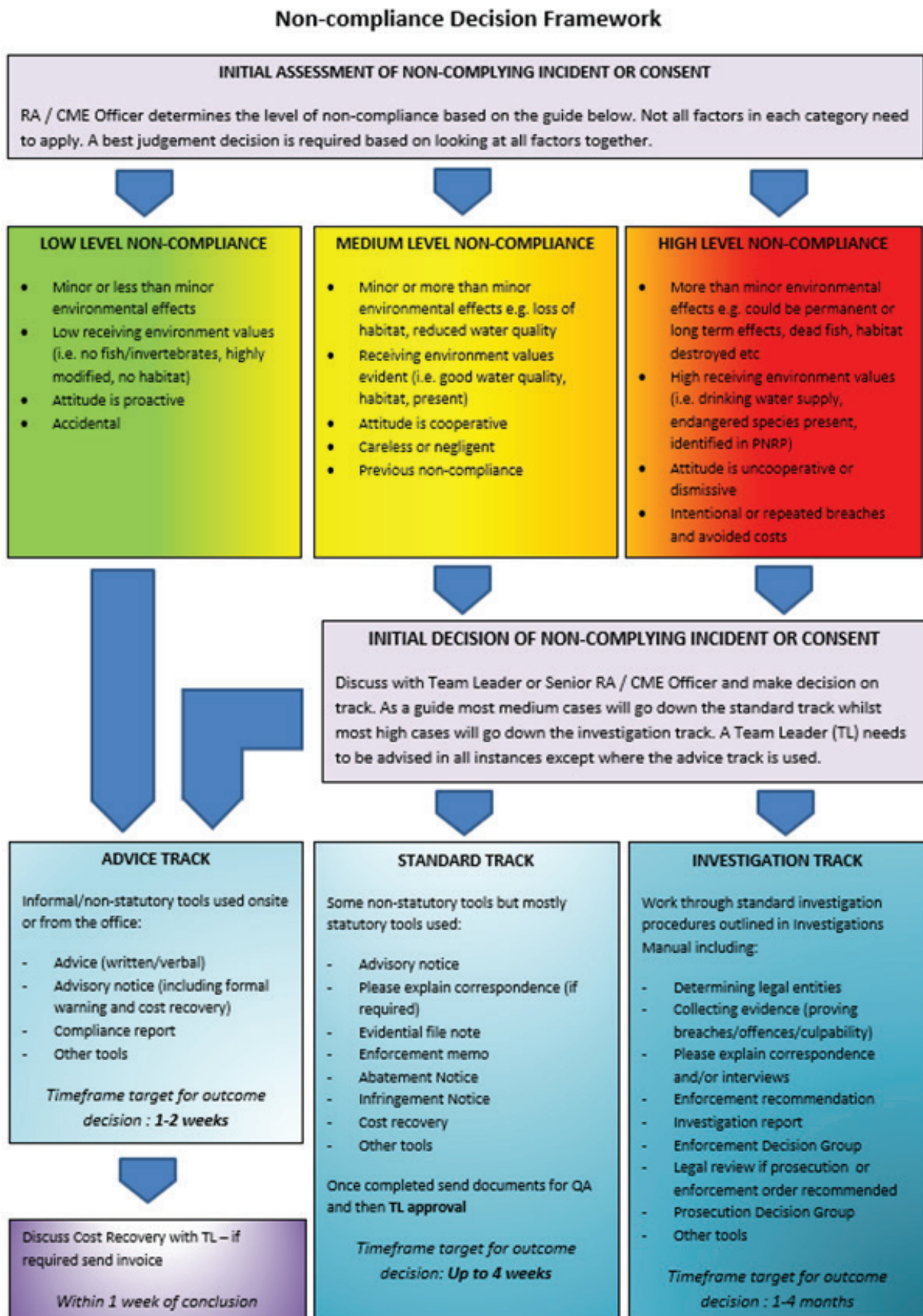
The Policy will be reviewed on an ongoing basis each year to ensure it is fit for purpose. If there are only minor updates required, these will be made accordingly and the Policy will be republished. Any substantial updates will be presented to the appropriate Council committee for subsequent approval.



# Appendix 1 - Resource consent compliance monitoring programmes

Activity	Description
Agricultural effluent	Mainly dairy farms, but does includes piggeries, chicken farms, and other rural activities e.g. intensive winter grazing and freshwater farm plans
Air discharges	Includes a wide variety of consents e.g. manufacturing plants, asphalt plants, abattoir
Coastal	Covers all coastal activities including boatsheds and reclamation of the CMA
Earthworks	Includes all consents with earthworks including quarries
Forestry	Includes all activities connected to forestry including stream works
Landfills & cleanfills	Includes open and closed landfills and cleanfills
Major projects and global consents	Includes any major projects and/or global consents that cover large areas
Onsite wastewater and wineries	Includes all consents connected to discharges from onsite wastewater systems and wineries
Other discharges	Includes all miscellaneous discharges that do not fit other compliance activities
Stormwater	Includes all consents connected operational or urban stormwater but excludes stomwater discharges arising from earthworks, landfills, cleanfills etc.
Streamworks	Covers all stream work activities excluding any major or global activities
Territorial Authority (TA) water supply	Includes all consents connected public water supplies , water races, other TA activity involving the taking of water
Territorial Authority (TA) wastewater supply	Includes all consents connected public wastewater systems
Takes telemetry	All water takes that are telemetered excluding any takes associated with TA water supplies
Takes – other and bores	All other water takes that are not telemetered including dewatering consents excluding any takes associated with TA water supplies, and all bores

# Appendix 2 - Non-Compliance Decision Framework



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