

Resource Management Act 1991

Compliance Monitoring and Incident Response Guidelines



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1. Purpose

Tasman District Council has a core responsibility through the Resource Management Act (the Act) to ensure the sustainable management of our natural and physical resources.

As a key part of this, Council monitors activities occurring in the district that are regulated by the Tasman Resource Management Plan (TRMP), resource consents, and national regulations, to ensure activities are being undertaken in a manner that is compliant. The council also provides a 24 hour, seven days a week environmental complaint and incident response service as part of this function.

To achieve this, a dedicated compliance and investigation team sits within the Environmental Assurance group, directly tasked with monitoring, investigation, and enforcement.

In order to deliver an effective and efficient service, a compliance monitoring and incident response strategy interwoven with an enforcement strategy supports this team achieve goals and objectives.

This document, titled Compliance Monitoring and Incident Response Guidelines is designed to provide context around the principles and practices underpinning our monitoring and incident response. It should be read in conjunction with our Enforcement Guidelines.

In developing these guidelines and the associated Enforcement guidelines, acknowledgement is given to the Ministry for the Environment, Best Practice Guidelines for Compliance Monitoring and Enforcement¹ and the Compliance and Enforcement Special Interest Group, Regional Strategic Compliance Framework 2019-2024².

2. Key Drivers Behind our Compliance Monitoring and Incident Response Strategy.

2.1. Relevant Legislation

Under the RMA a number of obligations rest on Council to monitor and record activities affecting our districts natural resources. Some of the key legislative obligations are:

- Section 35(2)(d) that sets out that every local authority shall monitor the exercise of the resource consents that have effect in its region or district and take appropriate action (having regard to the methods available to it under this Act) where this is shown to be necessary.
- Section 35(3) that states Council must “keep reasonably available at [their] principal office” information relevant to the administration of policy statements and plans, the monitoring of resource consents, and current issues relating to the environment of the area to enable the public to be informed of their duties and the council’s functions, powers, and duties, and to participate effectively in the Act.
- Section 35(5)(i) also requires Council to keep a summary of all written complaints received by it during the preceding five years concerning alleged breaches of the Act or a plan, and information on how it dealt with each such complaint.

¹ Ministry for the Environment 2018, Best Practice Guidelines for Compliance Monitoring and Enforcement under the Resource Management Act 1991.

² Compliance and Enforcement Special Interest Group, Regional Strategic Compliance Framework 2019-2024

- Section 84 requires council to observe its policy statements and plans and to “enforce the observance of the policy statement or plan”. This creates a general duty on the council to implement plans and policy statements, which therefore requires councils to carry out CME to monitor compliance and respond to non-compliance.
- Section 44A (8) requires councils to enforce the observance of national environmental standards, as far as its powers allow it to do so.

2.2. Issues of Significance to Manawhenua Iwi

Council has an obligation when exercising its powers under the RMA in relation to managing the use, development, and protection of natural and physical resources, to take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

Identifying resource management issues for Iwi, harnessing their knowledge, and incorporating these into monitoring and enforcement strategies is fundamental to meeting our commitment with manawhenua and in supporting Mātauranga Māori.

2.3. Issues of significance to communities

Our community can provide valuable feedback and assist in understanding where issues are or may be emerging. This can allow us to develop or adjust our monitoring and incident response strategies to achieve objectives.

2.4. Issues emerging from environmental monitoring.

State of the environment monitoring, scientific studies and collated data analysis can expose issues, trends, and emerging problems that support targeted compliance monitoring investigations or reassessment of monitoring programmes and staff resourcing.

2.5. Input into Consenting Decisions and Resource Management Policy

Compliance monitoring of activities as well as responding to public complaints can identify trends and issues and allow feedback on consenting or plan effectiveness as well as inform future plan development.

3. Aligning with our Values

In order to be effective and consistent, our compliance monitoring strategy should align and strive to give effect to the Council's wider core values. We will achieve this through the following principles.

Our monitoring and incident response strategies, support where possible the visions, aspirations and values of our iwi partners and communities by.

- Respecting Mātauranga Māori and the exercise of kaitiakitanga where possible
- Recognise and support the priorities and concerns of Tasman's communities.
- Work with our staff across council in delivering wider environmental outcomes

We design and maintain robust and relevant data information systems to allow us to:

- Identify and respond to issues having an adverse impact on human and ecosystem health.
- Implement meaningful evidence-based strategies around monitoring and incident response.
- Deliver on objectives of our local plans and policies as well as national regulations.

Support our goal to be good custodians of the natural, built, and human environments by,

- Monitoring those users of our natural resources to ensure they are meeting expectations.
- Responding appropriately to issues and community concerns.
- Looking for opportunities to promote compliance and good practice to avoid impacts on our environment.
- Report to the community on our monitoring and incident response activities.

We endeavour to deliver strategic and efficient monitoring and incident response by:

- Prioritising our monitoring towards the highest risk activities and sensitive environments.
- Constantly looking for opportunities to deliver our service in the most cost-effective and efficient way.
- Develop methods to communicate more effectively with the public and resource users around our procedures and practices.
- Assisting our community to understand their obligations and enable them to undertake their activities with the best information available

4. Principles Underpinning our Monitoring and Incident Response

When meeting our compliance monitoring and incident response obligations, we will adhere to the following set of core principles³.

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.

Based in evidence

We will use an evidence-based and informed approach to our decision-making. Our decisions will be informed by a range of sources, including sound science and information received from other regulators, members of the community, industry, and interest groups

Fairness and proportionality

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.

Legal, accountable and ethical.

We will conduct ourselves lawfully, impartially and in accordance with these principles, as well as 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

Communicative

We will communicate with all relevant parties to ensure that there is full understanding of Councils responsibilities and its potential responses; and to assist all parties to understand their responsibilities and what constitutes a non-compliance or a breach

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.

Outcomes focussed.

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

Collaborative approach

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 consider the public interest and engage with the community, those we regulate, and central government, to explain and promote environmental requirements and achieve better community and environmental outcomes

Responsive and effective

We will consider all alleged non-compliance to determine the necessary interventions (using a risk-based approach) and actions 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.

³ These principles are based on those contained in the Ministry for the Environment's Best Practice Guidelines for Compliance, Monitoring and Enforcement under the Resource Management Act 1991.

4.1. Using the Regulatory Spectrum

We will also take a graduated approach to compliance which recognises the regulatory spectrum available to resolve non-compliance. This will ensure that responsible and compliant resource users are acknowledged while those who are not are given the opportunity to voluntarily gain compliance. Those who do not are then held accountable for their actions. The model⁴ in the following figure 1 best illustrates the fundamentals of this approach.

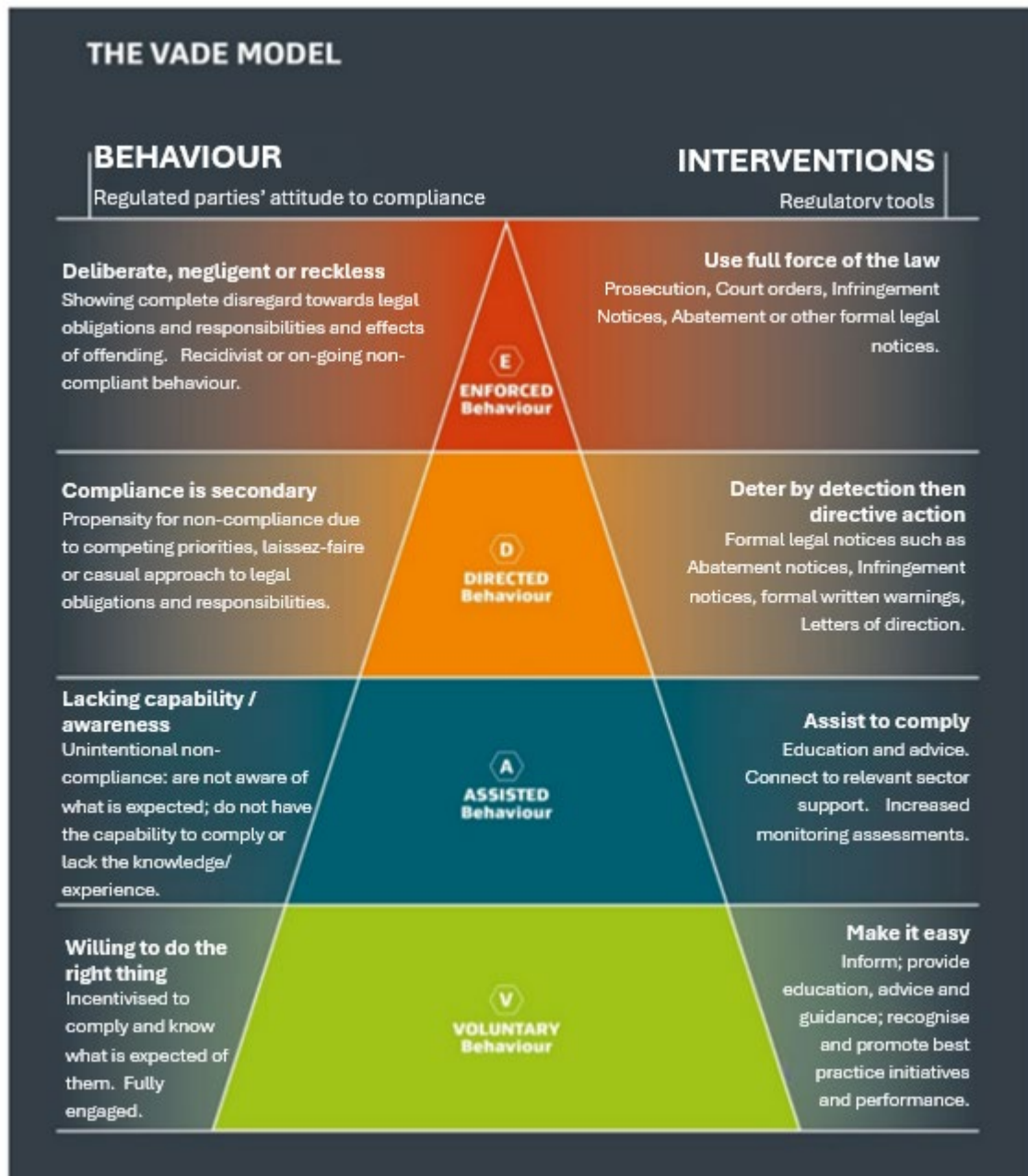


Figure 1. The VADE Model.

⁴ VADE model diagram taken and adapted from the New Directions for Resource Management in New Zealand - Report of the Resource Management Review Panel – June 2020

4.2. Encouraging Compliance

When Council does detect non-compliance with a consent condition, plan rule or regulation we will take a comprehensive approach to gaining compliance to develop understanding and changes of behaviour that avoid repeat non-compliance. The different components of this approach are referred to as the 4Es: engage, educate, enable and enforcement. These are not exclusive of each other, and components of the model may be carried out by different parts of council to support achieving an outcome.

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.

5. Risk Based Monitoring

The RMA is one of our principal laws governing use and management of our natural resources. As well as managing activities affecting air, soil, freshwater and the coastal marine area, (regional activities) the Act also regulates land use activities (district activities) that affect communities within the natural and built environments.

The Act essentially restricts any person from undertaking a regional activity unless it is specifically allowed in a regional plan or a resource consent. This differs from a land use activity where there is a presumption that it is permitted unless it is restricted by a rule in a district plan. If any activity can't meet the rules, then a resource consent is required. In Tasman District both the district and regional rules are contained in one plan, the TRMP.

Tasman District has many thousands of regional and district resource consents active at any one time. There are also a range of activities that, while permitted, require some level of targeted monitoring. These types of activities are often also subject to National Environment Standards (NES) restrictions.

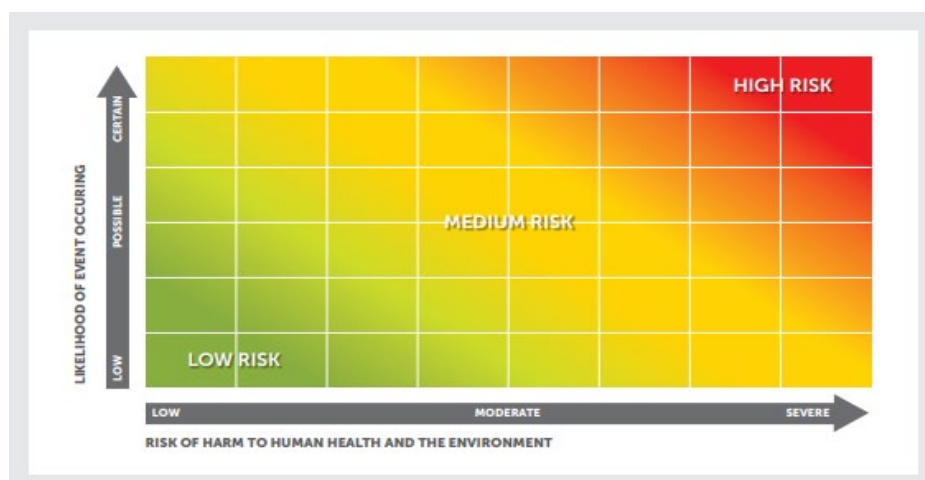
Recognising that we have limited resources, prioritising what we monitor is critical to ensuring that risks to human health and the environment are minimised as much as possible, and that we remain adaptive to changes.

The key objectives of this risk-based approach are:

- Ensuring we deliver our resource management responsibilities as effectively and efficiently as possible.
- Applying an appropriate level of oversight on higher risk activities to our environment.

- Allow forward planning to ensure capacity, and resources are available to address changes and trends.
- Respond to issues with targeted strategies to assist people understand and achieve better compliance where issues are evident.
- Identify environmental, economic, social, or cultural impacts from activities, to help inform the effectiveness of policy settings, plan rules as well as provide information to support science strategies and consenting.
- Enable reporting to the community and central government around levels of compliance, and regulatory actions.

Figure 2. below illustrates the conceptual environmental risk-based model underpinning our monitoring strategy⁵.



5.1. Ngā Iwi in Compliance Monitoring

Councils approach to compliance monitoring and enforcement recognises the unique relationship that Māori have with the environment and the specific functions that iwi have under the RMA in relation to their culture and traditions within their ancestral lands, water, sites, wāhi tapu, and other taonga as well as taking into account the principles of the Treaty of Waitangi⁶ and the principles of Te Mana o te Wai⁷.

The Council is committed to enabling tangata whenua to more fully carry out their kaitiaki responsibilities, as well as opportunity to incorporate mātauranga Māori within the area of compliance and monitoring. To this end, it is incumbent on us to understand the objectives and aspirations of local iwi when designing and delivering our compliance monitoring programmes.

⁵ Adapted from the Compliance and Enforcement Special Interest Group. Regional Sector Strategic Compliance Framework 2019–2024

⁶ Section 8, Resource Management Act 1991

⁷ [Essential Freshwater: Te Mana o te Wai factsheet | Ministry for the Environment](#)

In addition to this, where serious issues of non-compliance occur within a particular rohe, the Council will endeavour to inform Iwi of the non-compliance and without compromising the integrity of any investigation, endeavour to keep Iwi informed of progress where possible.

Where appropriate, Council will also seek to obtain Cultural Impact Statements from Iwi when offending results in court action and incorporate these into proceedings.

6. Monitoring and Incident Response in Practice

Effective compliance monitoring and incident response is made up of many components. These include desktop assessments such as receiving and reviewing data, reports, and plans, as well as scheduled site visits to monitor performance against conditions, or to assess the lawfulness of an activity following a public complaint.

Monitoring of resource consented activities, depending on the conditions of consent, may require multiple visits across the life of the consent, while for others it may only be one inspection.

Activities found in non-compliance, whether from routine monitoring or complaint response, will generally receive additional visits until Council is satisfied that compliance is regained. This is particularly relevant if more formal enforcement mechanisms are applied.

6.1. Site Visits – Entering Private Property

Officers are required to enter on to private property as part of the need to physically view and assess an activity for compliance with a rule, a regulation or resource consent conditions.

Under section 332 of the RMA, enforcement officers have the power to enter and inspect private property except a dwelling house, at any reasonable time, for this purpose.

All of Tasman District Councils compliance officers are duly appointed enforcement officers under the RMA for that explicit purpose. These officers are issued and will carry this warrant of authority and produce it at time of inspection.

Where practical, officers intending to conduct any site visit will endeavour to contact the landowner, occupier, or person undertaking the activity to notify of the intention to inspect and provide opportunity to meet. There will, however, be occasions where it is not practicable or sensible to make contact, particularly when investigating a reported offence. In these cases, the officer is entitled to enter without permission or invitation of the lawful landowner or occupier, for the purpose of assessing the extent of compliance.

If an officer exercises their power to enter private property and undertake an inspection, the property owner or occupier must allow them to do their inspection tasks. It is an offence to obstruct an enforcement officer.

There may also be instances where a property must be accessed under authority of a search warrant from the court. This method of entry to private property is usually reserved for occasions when the use of the power of authority to inspect or informed consent are no longer appropriate. The Courts have set out clear direction as to when an officer can rely on their warrant of authority or when a search warrant to enter property is required. All occasions when officers have the need to enter private property, the reasons are always carefully assessed on a case-by-case basis.

If the Council considers entering a property under a search warrant is required, the case and draft application will be reviewed by legal counsel prior to lodging the application for a warrant before an appointed issuing officer under the Search and Surveillance Act 2012.

6.2. When no one is home

If the owner or occupier of a place subject to inspection is not present at the time of the inspection, the officer will leave in a prominent position, a written notice showing the date and time of the inspection and the name of the officer carrying out the inspection and contact details.

6.3. Taking samples, measurements and photographs

While on site the enforcement officer may also take

- samples of water, air, soil, or organic matter.
- samples of any substance where they have reasonable cause to believe that substance is a contaminant of any of these
- any relevant measurements or photographs, and to record their observations. This may include making audio or visual recordings of their inspection and/or field interviews.

6.4. Using assistance

Enforcement officers have the power to bring assistance with them if needed, such as a scientist, surveyor or additional people for health and safety reasons.

If the Council is entering private property under a search warrant issued by an 'issuing officer' under the Search and Surveillance Act, then section 335 of the RMA requires a police constable to be present when the search warrant is executed. RMA search warrants cannot be executed by an enforcement officer alone.

On occasions it may be necessary for enforcement officers to employ a drone to assist with an inspection on private property. For instance, if monitoring rural activities such as commercial forestry. All drone operators are fully trained and cognisant of the relevant legislation pertaining to their use including sensitivities around protecting privacy rights, particularly if considering their use near dwellings.

6.5. Health and safety while undertaking inspections

Under the Health and Safety at Work Act 2015 (HSWA) the Council is a PCBU (person conducting a business or undertaking). An enforcement officer carrying out their normal duties is defined as a worker by the HSWA. A PCBU's worker's workplace includes any place where a worker goes, or is likely to be, while at work.

Council staff have a responsibility to-

- take reasonable care for their own health and safety while on a site.
- take reasonable care that their acts or omissions do not adversely affect the health and safety of other persons.
- comply, as far as they are reasonably able, with any reasonable instruction that is given.

Councils' enforcement officers receive comprehensive health and safety training and will manage themselves provided they are properly informed about hazards.

A property owner cannot prevent an enforcement officer from conducting a lawful inspection of their property under section 332 of the RMA on health and safety grounds.

There may be occasions where enforcement officers rely on the use of body cameras when executing their duties. These serve as a useful tool in accurately recording officer interactions in the case of any public complaints and can assist in de-escalating some situations. When activated their use is brought to the attention of the member of the public.

6.6. Desktop monitoring - Reviewing Information

Increasing numbers of resource consents and many NES regulations require reports and certain information to be provided as part of demonstrating compliance with conditions. Depending on the scale of the activity or the complexity of the conditions, the amount of information can vary widely and can often be extensive. Environmental management plans, specialised reports, sampling and servicing as well as quarterly and annual performance reports are all routinely required through modern consents.

All these reports once received must be assessed to determine compliance with the relevant conditions and this information uploaded into the system to ensure monitoring records are up to date and accurate.

7. Working with the Regulated Community and Sector Groups

Council is committed to working with individuals, sector groups and collectives to promote good practice and maintain positive compliance outcomes with the regulated community. The Council may achieve this through direct engagement, facilitating or participating in workshops, field days and information sharing exercises to provide advice or education around compliance monitoring and enforcement.

The Council will also maintain relevant information relating to compliance monitoring and enforcement on its website as well as good practice guides and supporting documents to assist and inform the regulated community and public.

Engaging in these activities does not diminish the role of Council as regulator but recognises the importance of education and assistance as part of the spectrum of effective compliance.



8. Responding to Community Concerns

The public are entitled to raise concerns about an environmental matter affecting them and the Council has a duty to investigate those concerns. This is important as the Council does not have the resources to be everywhere at all times and this information is often key in alerting us to issues occurring in the district.

8.1. Complaint receipt

The Council is available to receive complaints 24 hours a day, seven days a week and endeavours to respond as soon as possible.

Complaints may be lodged through:

- Phone calls using the main Council phone number at any time including weekends and after hours.
- Emails to Council through its contact address.
- Use of Councils apps.
- Referrals by other agencies
- Written letters or petitions

Council generally discourages anonymous complaints about environmental issues as it may limit the effectiveness of an investigation. However, the Council recognises that individuals may feel need to withhold their identity due to safety concerns or risk to their employment. Council has procedures in place that provide a safe environment for people to report issues.

All complaints received are immediately uploaded into our system along with any supporting photographs and referred for follow up.

8.2. Prioritising complaint response

Council receives a lot of calls around environmental incidents and not all may be urgent. Council must triage incidents to ensure proper and timely response to the matters that carry greater risk of environmental harm or impact on our communities.

The following matrix is used by Council in setting an appropriate priority response time to environmental incidents and complaints.

Priority	Response time	Description
1	Immediate	Significant adverse environmental effect occurring on the environment, extensive contamination, or impacts on businesses, human population. May comprise a full Council/multi agency response.
2	Within 24 Hours	Moderate to significant adverse environmental effect, damage to property or impact on business, human population or amenity value. Calls should be responded to as soon as possible after notification.
3	Within 14 days	Minor impacts on environment, property, or business or amenity value requiring a physical response but extended out as no real risk of significant adverse environmental effects.
4	Next time in area	Nil or less than minor adverse effects on environment, property, business or amenity value requiring a physical response but with no urgency.
5	Record Only	Does not require a physical response as caller providing information for our benefit or to note for records only.

Unfortunately, the need to prioritise may mean a delay in attending to some matters with less urgency.

Regardless of the level of response assigned, the Council will always ensure that:

- all valid complaints are properly recorded and actioned.
- the personal details of the complainant are held in the strictest confidence.
- the complainant is updated on any subsequent action that may result as soon as reasonably practicable.
- Council will not take sides in a dispute, instead judge what action is appropriate according to the evidence, particular circumstances and its guiding policies and procedures.

9. Investigations and dealing with non-compliance

Councils' Enforcement Guidelines publication describes in detail the procedures surrounding investigation and enforcement decision making when non-compliance is detected. That guideline should be read in conjunction with this document.

Where non-compliance is identified in any proactive monitoring or incident response, Council will investigate and respond in a manner that is proportionate to the overall circumstances of the non-compliance and in accordance with its enforcement procedures.

If the matter is outside the jurisdiction of the enforcement officer i.e. not an RMA matter, the officer will be expected to refer the matter to the appropriate department or other agency through formal processes.

Generally, an investigation will be expected to achieve the following:

- Determine whether there has been a breach of a resource consent, rule in a plan, national environment standard or regulation.
- Determine the nature and scale of the effect on the environment from that breach.
- Collect evidence that if required, can be used in criminal proceedings.
- Identify an appropriate action and timeline to address any environmental impact.
- Establish an appropriate response to level of offending.
- Give the public confidence in the integrity of the compliance monitoring and regulatory system.



The level of investigations by Council will be determined by the seriousness of the offence and impact on the environment. Serious non-compliance is expected to be approached as a full investigation and evidence gathering with a view to supporting a potential for the matter be heard in the Court.

10. Communication

Council is committed to communicating transparently with all relevant parties to inform them of the situation, what action is required or what can be expected in compliance monitoring and complaint response.

Following any monitoring we will advise of the outcome of that inspection and what level of compliance was achieved. If conditions are not being met, we will advise them accordingly along with any action that may be required and timelines to achieving this. We will also fairly inform them of any consideration of likely enforcement action.

Where serious offending is identified that prompts a more comprehensive level of investigation, we will, where possible, provide interim notification to the offending party on that investigation.

If the non-compliance is associated with an organisation, we will often communicate in writing with the most senior management positions within that organisation.

11. Cost Recovery

The RMA under section 36(1) (c) enables local authorities to set charges for the administration and monitoring of compliance with resource consents and permitted activities in accordance with the Act.

This section also provides the ability for the local authority to set charges to recover actual and reasonable costs incurred investigating and resolving breaches of the Act, a national environment standard, regulation, rule in a plan or resource consent.

Tasman District Council as the local authority has a policy of recovering actual and reasonable administration and monitoring costs associated with a person's activities. This cost may include:

- Time spent by council officers identifying and confirming that the activity is taking place or has taken place.
- Time spent by council officers identifying and confirming the person or organisation responsible for causing or allowing the activity to take place or to have taken place
- Time spent by council officers alerting and informing the person or organisation responsible of their responsibilities in relation to the activity, including any suggestions or advice relating to how any adverse effects might be managed.
- Costs of disbursements (such as laboratory analysis costs, expert or professional services, clean-up costs and materials).
- Time spent confirming compliance with an enforcement order, interim enforcement order or abatement notice.

These charges are detailed in the Councils Schedule of Charges which is set and published each year⁸.

12. Review

Rapid changes occur in environmental legislation and the practice of compliance monitoring and enforcement. There is a need to ensure a regular review occurs to take into account changes and ensure consistency.

This guideline is reviewed every two years for that purpose but may be reviewed earlier if deemed necessary.

⁸ [Fees and charges | Tasman District Council](#)

