



Notice is given of a Planning and Regulations Committee Meeting to be held on:

Date: Tuesday, 2 March 2021

Time: Following the Engineering and Services Committee

**Location: Council Chambers
Fairlie**

AGENDA

Planning and Regulations Committee Meeting

2 March 2021

Note: This meeting may be digitally recorded by the minute-taker.

Planning and Regulations Committee Membership:

Anne Munro (Chair)
Stuart Barwood
James Leslie
Graham Smith
Emily Bradbury
Murray Cox
Matt Murphy

The purpose of local government:

(1) The purpose of local government is—

- (a) to enable democratic local decision-making and action by, and on behalf of, communities; and
- (b) to meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses.

(2) In this Act, good-quality, in relation to local infrastructure, local public services, and performance of regulatory functions, means infrastructure, services, and performance that are—

- (a) efficient; and
- (b) effective; and
- (c) appropriate to present and anticipated future circumstances.

(Local Government Act 2002)

Order Of Business

| | | |
|----------|---|-----------|
| 1 | Opening..... | 5 |
| 2 | Apologies..... | 5 |
| 3 | Declarations Of Interest | 5 |
| 4 | Visitors | 5 |
| 5 | Reports..... | 6 |
| 5.1 | Minutes of Planning and Regulations Committee Meeting - 15 December 2020..... | 6 |
| 5.2 | Resource Consenting Update | 11 |
| 5.3 | Update on Policies and Bylaw Review..... | 13 |
| 5.4 | Update on Spatial Plan and District Plan Review Projects | 17 |
| 5.5 | Update on Plan Change 18 | 22 |
| 5.6 | Mackenzie District Council Submission on the Water Services Bill | 26 |
| 5.7 | Report on Council Building Control Authority | 28 |
| 5.8 | Compliance Enforcement Policy | 35 |
| 6 | Public Excluded | 51 |
| 6.1 | Update on Monitoring and Compliance Activities..... | 51 |
| 6.2 | Minutes of Public Excluded Planning and Regulations Committee Meeting - 15 December 2020 | 51 |
| 6.3 | Procurement of Services for Spatial Plan and District Plan Review Projects | 51 |

- 1 OPENING**
- 2 APOLOGIES**
- 3 DECLARATIONS OF INTEREST**
- 4 VISITORS**

5 REPORTS

5.1 MINUTES OF PLANNING AND REGULATIONS COMMITTEE MEETING - 15 DECEMBER 2020

Author: **Arlene Goss, Governance Advisor**

Authoriser:

Attachments: 1. **Minutes of Planning and Regulations Committee 15 December 2021** [↓](#)



RECOMMENDATION

That the Minutes of the Planning and Regulations Committee Meeting held on Tuesday 15 December 2020 be received and confirmed as an accurate record of the meeting.



Unconfirmed MINUTES

Planning and Regulations Committee Meeting

15 December 2020

**MINUTES OF MACKENZIE DISTRICT COUNCIL
PLANNING AND REGULATIONS COMMITTEE MEETING
HELD AT THE COUNCIL CHAMBERS, FAIRLIE
ON TUESDAY, 15 DECEMBER 2020**

PRESENT: Cr Anne Munro (Chairperson), Cr Stuart Barwood, Deputy Mayor James Leslie, Mayor Graham Smith, Cr Emily Bradbury, Cr Murray Cox, Cr Matt Murphy

IN ATTENDANCE: Suzette van Aswegen (Chief Executive), Paul Numan (GM Corporate Services), Tim Harty (GM Operations), Aaron Hakkaart (Planning and Regulations Manager), Mark Offen (Compliance Officer), Katrina Te Rito (Freedom Camping Ambassador), Chris Clarke (Communications Advisor), Sam Molyneux (Executive Assistant), Arlene Goss (Governance Advisor).

1 OPENING

The chairperson opened the meeting.

2 APOLOGIES

There were no apologies.

3 DECLARATIONS OF INTEREST

There were no declarations of interest.

4 VISITORS

There were no visitors.

5 REPORTS

5.1 MINUTES OF PLANNING AND REGULATIONS COMMITTEE MEETING - 11 AUGUST 2020

COMMITTEE RESOLUTION PRC/2020/95

Moved: Deputy Mayor James Leslie

Seconded: Cr Matt Murphy

That the Minutes of the Planning and Regulations Committee Meeting held on Tuesday 11 August 2020 be received and confirmed as an accurate record of the meeting.

CARRIED

5.2 PLANNING UPDATE

Mr Hakkaart updated the committee on planning activity and noted that the Plan Change 18 hearing had been moved to next March.

5.3 FREEDOM CAMPING UPDATE

Compliance officer Mark Offen and Katrina Te Rito (camping ambassador) were invited to speak. The committee was updated on new apps for the use of camping ambassadors. These would be used to capture data around the campers who visit the district.

This year has been significantly quieter than last year, but this gives the camping ambassadors more time to talk to people. A lot of freedom campers are NZMA members, or visitors from the north island.

Cr Leslie asked if it was possible to find out how many camper vehicles were rented or privately owned. This information was not collected specifically.

Camping ambassadors noted that the message about self-containment was getting through.

5.4 VERBAL UPDATES REQUESTED BY CHAIRPERSON

The following verbal updates have been requested by the chairperson:

1. **Regulations Update** – This was discussed at the council meeting earlier in the day.
2. **Aoraki Mackenzie International Dark Sky Reserve Update** - Two action points came out of the Dark Sky Reserve meeting pertaining to Mackenzie District Council. They were:
 - a) Expansion of the Reserve - To re-engage with Mackenzie District Council and International Dark Sky Assn. to pursue an expansion of the AMIDSR to the full Mackenzie District boundary.
 - b) Review of the Mackenzie District Plan – To re-engage with Mackenzie District Council staff and council to contribute to a lighting regulations review. Also, to work with the Compliance Officer regarding the implementation of rules.

The chairperson asked for these to be made action points. Mr Hakkaart would ask staff to get in touch with Mr Butler.

6 PUBLIC EXCLUDED

RESOLUTION TO EXCLUDE THE PUBLIC

COMMITTEE RESOLUTION PRC/2020/96

Moved: Deputy Mayor James Leslie

Seconded: Cr Stuart Barwood

That the public be excluded from the following parts of the proceedings of this meeting.

The general subject matter of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under

Planning and Regulations Committee Meeting Minutes

15 December 2020

section 48 of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

| General subject of each matter to be considered | Reason for passing this resolution in relation to each matter | Ground(s) under section 48 for the passing of this resolution |
|---|---|--|
| 1.1 - Late Item - Discussion Regarding Hocken Farm Master Plan | s7(2)(h) - the withholding of the information is necessary to enable Council to carry out, without prejudice or disadvantage, commercial activities | s48(1)(a)(i) - the public conduct of the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist under section 6 or section 7 |

CARRIED**COMMITTEE RESOLUTION PRC/2020/97**

Moved: Deputy Mayor James Leslie

Seconded: Cr Stuart Barwood

That the committee moves out of closed meeting into open meeting.

CARRIED

The Meeting closed at 5.26pm.

The minutes of this meeting were confirmed at the Planning and Regulations Committee Meeting held on .

.....
CHAIRPERSON

5.2 RESOURCE CONSENTING UPDATE

Author: Aaron Hakkaart, Planning Team Leader
Authoriser: Tim Harty, General Manager Operations
Attachments: Nil

STAFF RECOMMENDATIONS

That the information be noted.

BACKGROUND

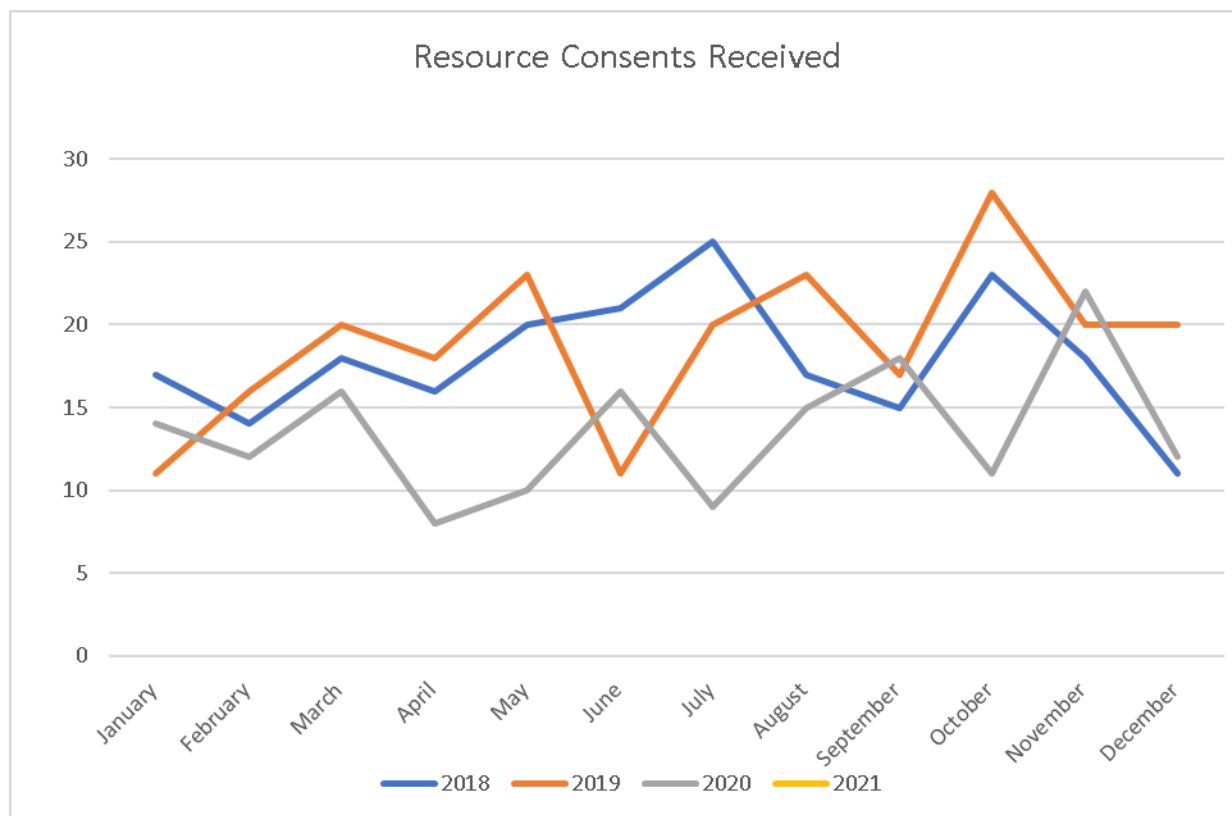
The purpose of the report is to update the Planning and Regulatory Committee on Resource Consenting activities related to the Planning Team.

RESOURCE CONSENTSDecember 2020

- 12 Resource Consents were received.
- 14 Resource Consents were granted.
- 100% of Resource Consents were granted within statutory timeframes.
- The average processing time was 13 days.

January 2021

- 8 Resource Consents were received.
- 8 Resource Consents were granted.
- 100% of Resource Consents were granted within statutory timeframes.
- The average processing time was 14 days.



RESOURCE CONSENT COMPARISON 2018, 2019 AND 2020

Resource Consent numbers were down on previous years in 2020:

- 161 Resource Consents were received during 2020.
- 229 Resource Consents were received during 2019.
- 213 Resource Consents were received during 2018.

The number of consents granted were down on previous years:

- 149 Resource Consents were granted during 2020.
- 160 Resource Consents were granted during 2019.
- 194 Resource Consents were granted during 2018.

The percentage of consents granted within statutory timeframes has improved year on year:

- 97.96% (147/149) of Resource Consents were completed within statutory timeframes in 2020.
- 96.25% (154/160) of Resource Consents were completed within statutory timeframes in 2019.
- 85% (165/194) of Resource Consents were completed within statutory timeframes in 2018.

CONCLUSION

This report has been prepared to update the Planning and Regulatory Committee on current activities related to the Planning Team

5.3 UPDATE ON POLICIES AND BYLAW REVIEW

Author: Aaron Hakkaart, Planning Team Leader
Authoriser: Tim Harty, General Manager Operations
Attachments: Nil

STAFF RECOMMENDATIONS

That the information be noted.

BACKGROUND

The purpose of the report is to update the Planning and Regulatory Committee on the review of Council's Policies and Bylaws.

Pursuant to Section 158 of the Local Government Act 2002 (the LGA) a Territorial Authority (TA) must review a bylaw no later than five years after the date on which the bylaw was made. If a bylaw is not reviewed as required by Section 158, the bylaw is officially revoked on the date that is two years after the last date on which the bylaw should have been reviewed (Section 160A of the LGA).

Council also has several new Bylaws that are recommended to be introduced, being:

- The Mackenzie District Council Keeping of Animals, Poultry and Bees Bylaw 2021; and
- The Mackenzie District Council Parking Bylaw 2021.

All policies and bylaws will be consulted upon in accordance with statutory requirements. Additional pre-engagement will also occur on many of the policies and bylaws to ensure they meet the needs of the community.

PROJECT SUMMARY

A summary of Mackenzie District Councils current Policies and Bylaws is provided below:

| Bylaw/Policy | Adopted | Status | Comment |
|------------------------------|-----------------|--|---|
| The Cemetery Fees Bylaw 2010 | 05 March 2010 | Lapsed | Not recommended to be reinstated. A new Cemeteries Bylaw to manage, regulate and protect Council Cemeteries however could be established. |
| The Solid Waste Bylaw 2013 | 15 October 2013 | The Bylaw will be officially revoked on 30 | Amendments to the Bylaw are required. The |

| | | | |
|---|------------------|---|--|
| | | June 2021, under the LGA, or 15 October 2023 under the Waste Minimisation Act 2008. | Special Consultative Procedure set out in the LGA will need to be followed. |
| The Dog Control Policy and Dog Control Bylaw 2014 | 09 December 2014 | The Bylaw/Policy will be officially revoked on 09 December 2021. | Amendments to the Bylaw/Policy are required. The Special Consultative Procedure set out in the LGA will need to be followed. Ready for community engagement. |
| The Mobile Shop and Traders Bylaw 2014 | 09 December 2014 | The Bylaw will be officially revoked on 09 December 2021. | Amendments to the Bylaw are required. The Special Consultative Procedure set out in the LGA will need to be followed. Currently out for community engagement. |
| The Downlands Water Supply Bylaw 2014 | 09 December 2014 | The Bylaw will be officially revoked on 09 December 2021. | The Bylaw is not recommended to be reinstated. The Council have already adopted the Downlands Water Supply Policy 2016 which replaces the Bylaw. Updates to website are required. |
| The Wastewater Network Bylaw 2014 | 09 December 2014 | The Bylaw will be officially revoked on 09 December 2021. | Level of changes required needs to be established. |
| The Water Supply Bylaw 2014 | 09 December 2014 | The Bylaw will be officially revoked on 09 December 2021. | Level of changes required needs to be established. |
| The Class 4 Venue Policy 2016 | 08 August 2016 | Lapsed. Required to be reviewed every three years. | Amendments to Policy may be required (a resolution from Council on how they intend to proceed/community consultation is required). The Special Consultative Procedure set out in the LGA will need to be followed. |
| The TAB Venue Policy 2016 | 08 August 2016 | Lapsed. Required to be reviewed every three years. | Amendments to Policy may be required (a resolution from Council |

| | | | |
|---|--|---|--|
| | | | on how they intend to proceed/community consultation is required). The Special Consultative Procedure set out in the LGA will need to be followed. |
| The Dangerous and Insanitary Buildings Policies | Drafted 2005. There is however no record of these policies being officially adopted. | Lapsed. Required to be reviewed every five years. | A Policy under Section 131 of the Building Act 2004 must be adopted in accordance with the special consultative procedure set out in the LGA. |
| The Earthquake Prone Buildings Policy 2005 | 2005. | Lapsed. | The requirement to have a policy under the Building Act 2004 is no longer required. The policy is therefore not recommended to be reinstated. |
| The Market Place Liquor Ban Bylaw 2014 | 09 December 2014 | The Bylaw will be officially revoked on 09 December 2021. | Amendments to the Bylaw/Policy are required. The Special Consultative Procedure set out in the LGA will need to be followed. Ready for community engagement. |
| Responsible Camping Policy and Responsible Camping Bylaw 2016 | 04 October 2016 (Policy) 27 August 2016 (Bylaw) | The Bylaw is required to be reviewed every five years pursuant to Section 11 of the Freedom Camping Act being the 21 August 2021. The Bylaw however is not officially revoked until 21 August 2023. | Amendments to the Bylaw/Policy are required. The Special Consultative Procedure set out in the LGA will need to be followed. Recommend this be delayed until next year due to the need to progress on other policies and bylaws. |
| Speed Limits Bylaw 2013 | 1 July 2013 | Section 6 of the Speed Limits Validation and Other Matters Act 2015 allows for s 160A of the LGA to be superseded. The Speed Limit Bylaw therefore remains in force. | It is not considered necessary to review the Speed Limit Bylaw 2013 at this time. |

| | | | |
|---|-----------------|---|---|
| | | | |
| Policy on Flying Unnamed Aircraft 2015 | 8 December 2015 | Valid. No Statutory requirement for review. | It is not considered necessary to review the Policy on Flying Unnamed Aircraft 2015 at this time. |
| Heritage Protection Fund Policy 2006 | 1 July 2006 | Valid. No Statutory requirement for review. | The Heritage Protection Fund Policy is recommended to be reviewed in conjunction with the District Plan review. |
| Keeping of Animals, Poultry and Bees Bylaw 2021 | Proposed bylaw | LGA process | Ready for early engagement. |
| Council Parking Bylaw 2021 | Proposed bylaw | LGA process | Ready for early engagement. |

There is an immediate need for Mackenzie District Council to complete a wide-ranging review of current Policies and Bylaws to ensure they meet legislative requirements. Staff are in the process of actioning this now with progress under way.

Progress to date includes:

- A review of current policies and bylaws to identify any issues.
- Engagement on the Mobile Traders Bylaw.
- Drafting of revised Policies and Bylaws.
- Formation of a standardised template for future use.
- Commencement of Statements of Proposal.

There will be a need to engage further resources to complete this project within the statutory timeframes available. Staff are currently investigating the next steps and what resources are required to ensure the success of this project. This will include a project plan to ensure completion of the project in the shortest possible timeframe.

CONCLUSION

This report has been prepared to update the Planning and Regulatory Committee on the current policies and Bylaw review being undertaken by staff

5.4 UPDATE ON SPATIAL PLAN AND DISTRICT PLAN REVIEW PROJECTS

Author: Aaron Hakkaart, Planning Team Leader

Authoriser: Tim Harty, General Manager Operations

Attachments:

1. Project Timeframes [↓](#) 
2. Ministry of Education Response to Twizel Spatial Plan Query [↓](#) 

STAFF RECOMMENDATIONS

That the information be noted.

BACKGROUND

The purpose of the report is to update the Planning and Regulatory Committee on the Spatial Planning and District Plan Review projects.

SPATIAL PLANNING PROJECT

Good progress is being made on finalising drafts of the preferred options for Council review and engagement with the community. At the time of writing Rationale was finalising the multi-criteria analysis for each town and was expecting to deliver this within one week to Council staff. Boffa Miskell were working on drafting the preferred option for each town and it is anticipated that these would be largely completed by the end of February.

Council staff are currently finalising an engagement approach surrounding the release of the preferred option. The need to adapt to the community's needs has meant a revised approach has been considered, and changes to the initial project plan will be required.

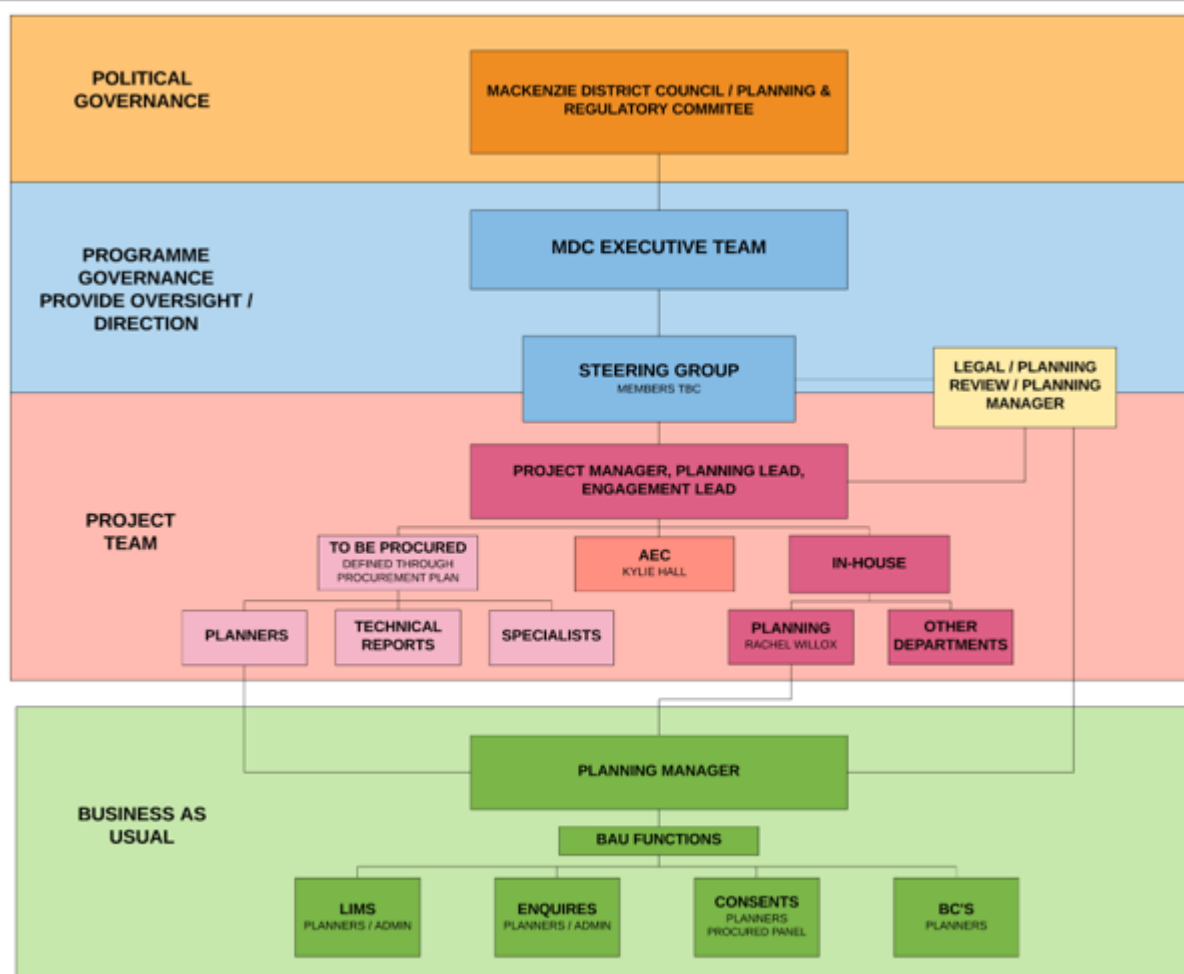
Additional engagement has occurred with the Ministry of Education surrounding the proposed school re-build in Twizel and whether there was scope to consider alternative sites. The Ministry has responded (attached) and confirmed that the re-build would be progressing on the current site, as per the plans previously communicated to Council staff. This will be feed back to the community as part of the next round of engagement.

A project plan is attached that demonstrates the next steps for the Spatial Planning project, and how the District Plan Review will be commencing alongside the existing workstream.

DISTRICT PLAN REVIEW

The Spatial Planning project will inform the District Plan Review. The District Plan is essentially the rulebook for land use and development within the Mackenzie District and is intended to help manage development of the Mackenzie District by regulating the environmental effects created by land use activities.

Council staff are currently in the final stages of completing a Project Plan that drives the drafting of the District Plan. This includes a proposed structure for the governance of the District Plan Review:

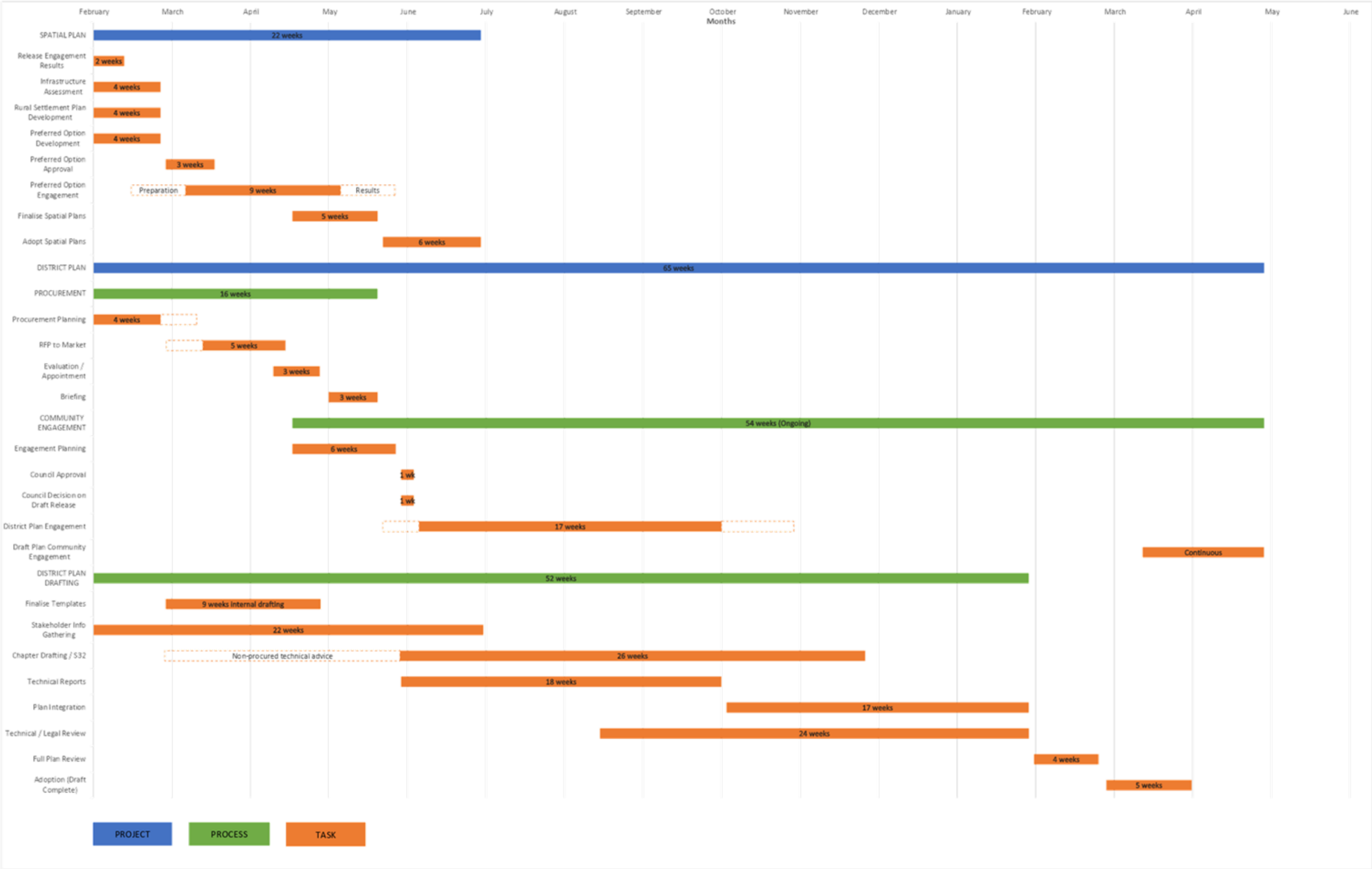


Work is still required to add detail to the structure, particularly around the procured services and who will sit in the Steering Group. This detail will be added as Council moves through the procurement process and the final structure of the project team becomes apparent.

An indicative timeframe for the delivery of a Draft District Plan is attached. This work program is subject to being able to fill the necessary roles and procure the necessary services to deliver the draft. Following the completion of a draft, the Plan will need to be notified under the RMA. This represent another significant workstream, and process, which will not be fully understood until the time of notification arrives, and the number of submissions received is known.

CONCLUSION

This report has been prepared to update the Planning and Regulatory Committee on current the Spatial Planning and District Plan Review projects.





16 February 2021

MacKenzie District Council
PO Box 52
Main Street
FAIRLIE 7949

Attn: Aaron Hakkaart

Dear Aaron

MACKENZIE DISTRICT COUNCIL SPATIAL PLANS

Thank you for your letter of 10 February 2021 in relation to the Spatial Planning Project at Twizel.

It is the Ministry of Education's view that the Twizel Area School current site is the most appropriate site for the rebuild of the school.

Due to the pressing need to redevelop the school, the Ministry will carry on with the current plans on the current site. I have communicated with the Commissioner at the school and she agrees that the current site is the most appropriate.

Please get back to me if you have any queries or you need any further information.

Your sincerely

Gill Maher
Infrastructure Manager

03 378 7794
gill.maher@education.govt.nz

Phone: Fax

education.govt.nz

5.5 UPDATE ON PLAN CHANGE 18

Author: Aaron Hakkaart, Planning Team Leader

Authoriser: Tim Harty, General Manager Operations

Attachments: 1. Letter from Minister Parker [↓](#) 

STAFF RECOMMENDATIONS

That the information be noted.

BACKGROUND

The purpose of the report is to update the Planning and Regulatory Committee on Plan Change 18 to the Operative Mackenzie District Plan 2004.

Plan Change 18 was notified in December 2017 as part of Stage One to the District Plan Review. Proposed Plan Change 18 inserts Section 19 – Indigenous Biodiversity into the District Plan, which focuses on managing Indigenous Biodiversity. Revised rules controlling indigenous vegetation clearance are included in the new Section 19, and the existing indigenous vegetation clearance rules in Section 7 – Rural are deleted. Plan Change 18 has immediate legal effect within the Mackenzie Basin Subzone. 21 submissions were received on Plan Change 18 with 13 further submissions also received.

PLAN CHANGE 18

The Hearing for Plan Change 18 will be heard by independent Commissioners between the 8th – 11th of March 2021.

Submitter's expert evidence was submitted on 12 February 2021 and has been circulated.

Joint witness statements (if appropriate) were to be provided on 26 February 2021, legal submissions are due 3 March 2021, with any rebuttal evidence to be provided on 5 March 2021.

The circulation and collation of the information received has meant dedicated staff time has been required to manage this aspect of the process. This has been resourced internally and has not impacted on the day-to-day functions of the Planning Team.

To allow for completion of the Plan Change 18 process Council applied to the Minister of the Environment for a time extension of 6 months to allow for a decision to be issued by the Commissioners. This extension was in addition to a previous extension that was granted for a one-year period.

Council was notified by the Hon David Parker, Minister for the Environment on 10 February 2021 that the 6-month extension had been granted and that a decision on Plan Change 18 must be made on or before 30 June 2021. The appointed Commissioners have indicated that they see no-reason as to why this deadline will not be achieved.

Following the issue of a decision there will be the opportunity for submitters to appeal the decision to the Environment Court. Staff note that there are differing views held by submitters and the decision will be thoroughly scrutinised.

CONCLUSION

This report has been prepared to update the Planning and Regulatory Committee on Plan Change 18 to the Operative Mackenzie District Plan 2004.

Hon David Parker BCom, LLB

Attorney-General
Minister for the Environment
Minister for Oceans and Fisheries
Minister of Revenue
Associate Minister of Finance



10 FEB 2021

2021-B-07496

Mackenzie District Council
c/o Alanya Limmer
Bridgeside Chambers
PO Box 3180
CHRISTCHURCH 8140

Dear Alanya Limmer

Application from Mackenzie District Council for a six-month extension of time to give decisions on Proposed Plan Change 18 to the Mackenzie District Plan

On 11 December 2020, Mackenzie District Council lodged an application for a six-month extension of time (until 30 June 2021) to issue a decision on Proposed Plan Change 18 of the Mackenzie District Plan.

This is in addition to the extension of time I granted on 16 March 2020 to extend the timeframes to give a decision on this plan change from 20 December 2019 to 20 December 2020.

I agree to this extension under clause 10A(4)(a) of Schedule 1 of the Resource Management Act 1991 (RMA). Decisions on the Proposed Plan Change 18 to the Mackenzie District Plan must be made on or before 30 June 2021. The reasons for my decision are the following:

- Granting this extension would provide a clear statutory basis for MDC to make a decision on PC 18 after 20 December 2020 and by 30 June 2021.
- MDC has advised that although their work was impacted by COVID-19, they have completed the additional policy and evidence required for PC 18 hearings to proceed. They have secured commissioners they consider appropriate for their hearings panel to ensure that a high quality decision can be made.
- The total number of extensions that may be granted under clause 10A of Schedule 1 is not specified and MDC have met the statutory requirements for making an application.

In accordance with clause 10A(6) of Schedule 1 of the RMA, you are now required to give public notice of this extension.

Private Bag 18041, Parliament Buildings, Wellington 6160, New Zealand
+64 4 817 8710 | d.parker@ministers.govt.nz | beehive.govt.nz

I wish you well with the remainder of your plan making process.

Yours sincerely

A handwritten signature in black ink, appearing to read 'David Parker', with a stylized flourish at the end.

Hon David Parker
Minister for the Environment

5.6 MACKENZIE DISTRICT COUNCIL SUBMISSION ON THE WATER SERVICES BILL

Author: Aaron Hakkaart, Planning Team Leader

Authoriser: Tim Harty, General Manager Operations

Attachments: Nil

Council Role:

- ☒ **Advocacy** When Council or Committee advocates on its own behalf or on behalf of its community to another level of government/body/agency.
- ☐ **Executive** The substantial direction setting and oversight role of the Council or Committee e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.
- ☐ **Legislative** Includes adopting District Plans and plan changes, bylaws and policies.
- ☐ **Review** When Council or Committee reviews decisions made by officers.
- ☐ **Quasi-judicial** When Council determines an application/matter that directly affects a person's rights and interests. The judicial character arises from the obligation to abide by the principles of natural justice, e.g. resource consent or planning applications or objections, consents or other permits/licences (e.g. under Health Act, Dog Control Act) and other decisions that may be appealable to the Court including the Environment Court.
- ☐ **Not applicable** (Not applicable to Community Boards).

PURPOSE OF REPORT

To consider the draft submission on the Water Services Bill prepared on behalf of Council and suggest any changes prior to resolving that the submission be lodged with the Select Committee. The submission is not attached and will be circulated before the meeting.

STAFF RECOMMENDATIONS

1. That the report be received.
2. That a submission on the Water Services Bill be lodged with the Health Committee by Mackenzie District Council.

BACKGROUND

The Chairperson of the Health Committee has called for public submissions on the Water Services Bill.

The Water Services Bill will comprehensively reform the drinking water regulatory system, with targeted reforms to improve the regulation and performance of wastewater and stormwater networks.

Council staff, elected members and representatives of community water supplies attended a workshop on 16 February 2021, facilitated by GHD Consultants to discuss the implications of the 3 Waters Reform and the Water Services Bill on the Mackenzie District Council and wider community.

The attached submission has been developed following this workshop and additional communication between those who attended the meeting. A draft submission was circulated on 22 February 2021 and has been amended based on the response received (attached as a late item).

POLICY STATUS

Not applicable.

SIGNIFICANCE OF DECISION

This does not trigger Council's Significance and Engagement Policy.

OPTIONS

Option 1: The Planning and Regulatory Committee resolve to submit the submission on the Water Services Bill as written.

Option 2: The Planning and Regulatory Committee resolve to submit the submission on the Water Services Bill subject to changes.

Option 3: The Planning and Regulatory Committee resolve to not submit on the Water Services Bill.

CONSIDERATIONS

Legal

There are no legal considerations associated with this decision.

Financial

There are no immediate financial implications associated with this decision. The outcome of the Water Services Bill is likely to have implications on Mackenzie District Council and therefore it is recommended that a submission is made as part of the current process.


Other

The 3 Waters Reform, and Water Services Bill represents a significant change in how water services are managed within New Zealand. The full impacts of these reforms are yet to be understood, however, the opportunity to provide a submission on the Water Services Bill allows Mackenzie District Council to outline any concerns, and to be part of the process.

CONCLUSION

Council needs to decide whether the submission drafted for lodgement accurately reflects the position of Mackenzie District Council, and if so, resolve to lodge this submission with the Health Committee.

5.7 REPORT ON COUNCIL BUILDING CONTROL AUTHORITY

Author: Tim Harty, General Manager Operations
Authoriser: Suzette van Aswegen, Chief Executive Officer
Attachments: 1. BCA Management Report Jan 21 [↓](#) 

STAFF RECOMMENDATIONS

That the information be noted.

BACKGROUND

Attached to this report is the Building Control Management report for January 2021 for information.

This is the first time this report has been generated and presented to Council. The report is based on reporting compliance against Councils Quality Policy and Manual with regards to its activities as a Building Control Authority (BCA).

Staff will present the attached reports to the Committee on a regular basis.

CONCLUSION

Council BCA activities need to comply with its approved Quality Manual. Monthly reports are generated to ensure and report on compliance.

BCA Management Report

Date: Prepared on 17.02.2021 for period: 01.01.2021 to 31.01.2021

Agenda item: Review of the BCAs overall management and operation performance, reporting against the expected standards and high-level performance indicators from its quality policy where appropriate.

- 1. Building control quality systems** – *are there any being developed (policies, procedures, systems), and has implementation of these been effective and or are they being maintained effectively?*

BCA Managers response:

- The quality manual is currently being reviewed and amended by Focus Consultancy, Tina Donald and Sam Peterson to clearly document how the BCA delivers each building control function and Regulation. This is to ensure we meet the Building Accreditation Regulations and the MBIE guidance scheme checklists.

Action:

- Continue to review and amend to ensure we meet the Building Accreditation Regulations and the MBIE guidance scheme checklists.
-

- 2. Continuous improvements** – *are they being managed appropriately and or are there any issues or opportunities that require escalating or advised to management?*

BCA Managers response:

- The continuous improvement register, and form have been reviewed and amended to better align with what is required to meet the regulations.
- Continuous improvements are now being managed appropriately and within recorded timeframes.

Action:

- Continue to monitor continue improvement register.
-

- 3. Audits** – *are they demonstrating the quality assurance system is effective?*

BCA Managers response:

- Technical audits are scheduled to be undertaken by Focus Consultancy Limited before the next accreditation assessment in July 2021.
- Procedural, process and system audits are scheduled to be undertaken by Tina Donald and Sam Peterson before the next accreditation assessment in July 2021.

Action:

- Ensure all audits are undertaken as scheduled.
-

- 4. Building consent application volumes and Statutory time frames** – *are these being meet? if not, record reasons why any went over.*

- **Record the actual number of building consent applications received and lodged for the month: 01.01.2021 to 31.01.2021.**
 - 13 received and lodged.
- **Building consents processed: 01.01.2021 to 31.01.2021.**
 - 21 building consent processed / granted.
 - 19 consent process where information was requested.
 - 13 consent processed where information was requested more than once.

BCA Management Report

- **Statutory Clock Performance - Record the % of building consents granted within 20 working days: 01.01.2021 to 31.01.2021.**
 - 100 % processed and granted within the 20-day statutory timeframe.
- **Record reason(s) why timeframe went over 20 working days - record reasons for any failure to meet statutory timeframes and record what the BCA is doing to address the failure(s) to ensure that it will not continue.**
 - No statutory timeframes were exceeded.

Action:

- Continue to monitor timeframes on a regular basis to ensure statutory timeframes are being met.
-

5. Code Compliance Certificates

- **Record the actual number of code compliance certificate applications received and lodged for the month: 01.01.2021 to 31.01.2021.**
 - 9 received and lodged.
- **Code compliance certificate applications processed: 01.01.2021 to 31.01.2021.**
 - 9 processed.
- **Statutory Clock Performance - Record the % of code compliance certificates issued within 20 working days: 01.01.2021 to 31.01.2021.**
 - 100 % processed and issued within the 20-day statutory timeframe.
- **Record reason(s) why timeframe went over 20 working days - record reasons for any failure to meet statutory timeframes and record what the BCA is doing to address the failure(s) to ensure that it will not continue.**
 - No statutory timeframes were exceeded.

Action:

- Continue to monitor timeframes on a regular basis to ensure statutory timeframes are being met.
-

5. Inspection volumes and waiting times

- **Record the number of actual inspection numbers received for the month for each complexity for the month: 01.01.2021 to 31.01.2021.:**

Actual:

| R1 | R2 | R3 | C1 | C2 | C3 |
|----|----|----|----|----|----|
| 85 | 58 | 23 | 46 | - | 4 |

- Total inspections for the month were 219. There were 3 inspections that had no category recorded against them.
- Of the 219 inspections undertaken there were 38 inspections that failed.
- All inspections were reported by Solutions as being delivered within a 1 – 2-day delivery timeframe.

BCA Management Report

Action:

- Continue to monitor timeframes on a regular basis to ensure timeframes are being met.
-

6. Consents lapsing

- *Record the number of consents that were due to lapse?*
- *Record the actual number of consents that were lapsed?*
- *Was the computer system appropriately updated to reflect the lapsed status?*

Action:

- As this is the first time the report has been provided in this format, the figures had not been obtained to report against. Going forward for the February 2021 report, consent lapsing will be reported on.
-

7. 2-year decision volumes and refusal to issue – the BCA have to make a decision at 24 months (2 years) after the date on which the building consent for the building work was granted to issue the CCC and must give the applicant written notice of the refusal and the reasons for refusal.

- *Record the actual number of consents due for a decision:*
- *Record the actual number of Code Compliance Certificates refused:*
- *Record if all required written notice of refusal and the reasons of refusal were sent, and if not, record why not?*
- *Record the reason(s) why the CCCs were refused - record an overview of reasons why the CCCs were refused, for example:*
 - *the BCA was not satisfied on reasonable ground that the building work complied with the building consent,*
 - *no energy work certificates,*
 - *fees not paid,*
 - *warning or bans relating to any building method or product that may have been used*
 - *specified systems in the building not capable of performing to the performance standards set out in the building consent*
 - *no applications had been made two years after the date on which the building consent was granted*

Action:

- As this is the first time the report has been provided in this format, the figures had not been obtained to report against. Going forward for the February 2021 report, 2 year decision volumes and refusal to issue will be reported on.
-

8. Resources – are they sufficient (staff and contractors) to meet the statutory requirements e.g., processing, inspection, code compliance, audits, supervision, 24-month process, competency assessments?

- All processing is being outsourced to a competent reputable company being Focus Consultancy Limited. All consents are being processed in a timely manner with no consents going over the 20-day statutory timeframe. MDC have sufficient resource for delivery of the building control function.
- All inspections are being outsourced to a competent reputable company being Solutions Team. All inspections were reported by Solutions as being delivered within a 1 – 2-day delivery timeframe.

BCA Management Report

- Inspections in relation to complaints are being undertaken by Paul Buckley.
- One resignation was received by the Building Control Officer – Daniela B.
- Compliance Schedules are being completed by Paul Buckley and George Cuthbert. There are currently 7 being worked on.
- COA's are being completed by a contractor George Cuthbert. There are currently 12 being worked on.
- Notice to fix – there is several entries recorded on the notice to fix register that are old and need addressing. These will be reviewed and actioned over the coming months by both the BCA in conjunction with George Cuthbert, Paul Buckley and Focus Consultancy Limited.

Action:

- Continue to send all Building Consent applications to Focus Consultancy Limited.
 - Inspections to continue to be delivered by Solutions Team.
 - Continue to monitor and address the delivery of Compliance Schedules, COA's and NTF's.
-

9. Technical resources – information, facilities and equipment; are these all appropriate?**BCA Managers response:**

- All inspection equipment is provided and maintained by the external contractor Solutions Team.
- The BCA has recently relocated back into the Twizel office and have been provided with sufficient facilities and equipment.

Action:

- Continue to monitor technical resources to ensure they are appropriate.
-

10. Training – are the identified training needs being met and if not what is being done to ensure they will be?**BCA Managers response:**

- Training is to be provided for Purchase Orders on 17.02.2021.
- Magiq training is scheduled for BCA staff on 01.02.2021 and 02.02.2021 at the Twizel office.
- No training needs have been identified for BCA employees.

Action:

- Continue to monitor training needs and where any are identified record within the relevant training plans.
-

11. Complaints – are there any to report and are they being managed appropriately?**BCA Managers response:**

- No written complaints were received or recorded for January 2021.

Action:

- Continue to monitor complaints register to ensure any written complaints received are being addressed in a timely manner and in accordance with the written procedure to meet the Building accreditation requirements.
-

BCA Management Report

12. Contractors – *communicate how contractor's performance is going, any issues to report?*

BCA Managers response:

- All processing is being outsourced to a competent reputable company being Focus Consultancy Limited. All consents are being processed in a timely manner with no consents going over the 20-day statutory timeframe. MDC have sufficient resource for delivery of the building control function.
- All inspections are being outsourced to a competent reputable company being Solutions Team. All inspections were reported by Solutions as being delivered within a 1 – 2-day delivery timeframe.

Action:

- Continue to monitor complaints register to ensure any written complaints received have been addressed in a timely manner and in accordance with the written procedure to meet the Building accreditation requirements.
-

13. Team meetings – *any issues or opportunities to bring forward or relay back to the team?*

BCA Managers response:

- Any issues or opportunities that may be identified during the monthly team meetings are being addressed by the BCA Manager and if required will be escalated to upper management. There are not issues or opportunities to relay to management currently.
- Where any issues or opportunities are identified by upper management, these are either feed down to the BCA Manager and staff or to the BCA Manager directly who will relay these messages during either a monthly meeting or via email to staff.

Action:

- Continue to relay / escalate issues or opportunities to upper manager and or staff where identified and required.
-

14. 6A Notifications – *have there been any notifications made.*

BCA Managers response:

- A 6A notification needs to be sent to MBIE and IANZ in relation to the resignation of a Building Control Officer -Daniela B. The notification will be prepared and sent on 01.02.2021.

Action:

- Ensure 6A notification is sent to MBIE and IANZ in relation to the resignation of a Building Control Officer -Daniela B.
-

15. Accreditation

BCA Managers response:

- IANZ have been sent all GNC clearance material. The BCA are currently awaiting clearance of all GNCs by IANZ.
- **Update:** On 08.02.2020 an email was received from IANZ advising the following:

BCA Management Report

Clearance Material



Carolyn Osborne <COsborne@ianz.govt.nz>
To: Tina Donald

 You forwarded this message on 8/02/2021 5:17 PM.

CAUTION: This email originated from outside Mackenzie District Cour

Dear Tina

All GNC's are cleared.

You will receive formal notice of continued accreditation shortly

Regards

Carolyn Osborne

Lead Assessor

Building Programme

Mob 027 290 0127

DDI +64 9 580 6707

cosborne@ianz.govt.nz

www.ianz.govt.nz



The NZ mark of competence
Tohu Matatau Aotearoa

Action:

- Once the certificate is received, put it on the Twizel Office wall and advise management and the CEO.

5.8 COMPLIANCE ENFORCEMENT POLICY

Author: Tim Mulcock, Transition Manager

Authoriser: Suzette van Aswegen, Chief Executive Officer

Attachments: 1. Compliance Enforcement Policy DRAFT 20210222 [↓](#) 

Council Role:

- ☐ **Advocacy** When Council or Committee advocates on its own behalf or on behalf of its community to another level of government/body/agency.
- ☐ **Executive** The substantial direction setting and oversight role of the Council or Committee e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.
- ☒ **Legislative** Includes adopting District Plans and plan changes, bylaws and policies.
- ☐ **Review** When Council or Committee reviews decisions made by officers.
- ☐ **Quasi-judicial** When Council determines an application/matter that directly affects a person's rights and interests. The judicial character arises from the obligation to abide by the principles of natural justice, e.g. resource consent or planning applications or objections, consents or other permits/licences (e.g. under Health Act, Dog Control Act) and other decisions that may be appealable to the Court including the Environment Court.
- ☐ **Not applicable** (Not applicable to Community Boards).

PURPOSE OF REPORT

The Mackenzie District Council Organisation Review in 2018 identified a gap in our regulatory policy; that we did not have a Regulatory Compliance Enforcement Policy. This policy has been drafted to address this.

This is a core policy as it provides guidance both internally and for the public about how Council intends to deliver the statutory requirements to make sure national legislature and district bylaws are complied with.

This policy is presented to Council for adoption.

STAFF RECOMMENDATIONS

1. That the report be received.
2. That the new Compliance Enforcement Policy be adopted by Council.

BACKGROUND

Over the last few years there has been regional agreement to align to a common compliance framework (see the Regional Sector Strategic Compliance Framework 2016-2018 document). The framework was developed by CESIG (Compliance and Enforcement Special Interest Group). CESIG comprises regulatory managers from the 16 regional and unitary councils making up the Regional Sector of local government within New Zealand.

A key element of the Strategic Compliance Framework establishes the principle to encourage compliance as a primary principle, rather than an immediate focus on punishment for non-compliance. This is articulated as the 4E's Model (Engage, Educate, Enable, Enforce). This policy adopts this model.

POLICY STATUS

The policy is in draft, submitted to Council for approval.

SIGNIFICANCE OF DECISION

In accordance with the Council's Significance and Engagement Policy, adoption of this policy has been assessed as having low significance and will not require community consultation.

OPTIONS

N/A

CONSIDERATIONS

Legal

Financial

About the Policy

The Policy articulates the guidance for Council employees and the community how we will manage remediation of non-compliance across the wide range of Acts and Bylaws that we have statutory responsibility to administer.

Encouraging Compliance

Section 3. of the draft policy explains our commitment to the 4E's Model:

- 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

Policy Principles

The policy (Section 5. Principles) adopts eight guiding principles:

- Transparency
- Collaborative
- Consistency of Process
- Lawful, Ethical and Accountable
- Fair, Reasonable and Proportional Approach
- Targeted
- Evidence-based, Informed
- Responsive and Effective

These principles guide our enforcement officers' approach and help the public understand our high-level commitment.

Three Contacts Concept

The Policy commits Council to keeping people informed through the compliance management process. The Three Contacts Concept aims to guide Council employees to communicate before there are issues; if there is an incident then communicating during the incident; and then, if there is an investigation, then communicating the post-incident process.

- 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 to the environment 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.

Appendix A – Enforcement Procedures

This section guides Council employees to align with a standard set of procedures that will ensure people get treated consistently.

CONCLUSION

It is recommended that the Council adopts this policy.



Mackenzie District Council

Compliance Enforcement Policy

| | |
|-----------------------------|--|
| STATUS: | DRAFT |
| VERSION: | 20210222 |
| POLICY OWNER: | GM Operations |
| POLICY APPROVER / S: | Chief Executive Officer, Mackenzie District Council |
| DATE: | 2021-02-22 |

“Fostering Our Community”

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> |
| Date of Issue | DRAFT |
| File Retention | Mackenzie District Council Laserfiche – Policies section |
| 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

Mackenzie District Council Compliance Enforcement Policy DRAFT 2021-02-22

2 | Page

- 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.

Mackenzie District Council Compliance Enforcement Policy DRAFT 2021-02-22

3 | Page

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.

6 PUBLIC EXCLUDED**RESOLUTION TO EXCLUDE THE PUBLIC****RECOMMENDATION**

That the public be excluded from the following parts of the proceedings of this meeting.

The general subject matter of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under section 48 of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

| General subject of each matter to be considered | Reason for passing this resolution in relation to each matter | Ground(s) under section 48 for the passing of this resolution |
|---|--|--|
| 6.1 - Update on Monitoring and Compliance Activities | s6(a) - the making available of the information would be likely to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial s7(2)(a) - the withholding of the information is necessary to protect the privacy of natural persons, including that of deceased natural persons | s48(1)(a)(i) - the public conduct of the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist under section 6 or section 7 |
| 6.2 - Minutes of Public Excluded Planning and Regulations Committee Meeting - 15 December 2020 | s7(2)(b)(ii) - the withholding of the information is necessary to protect information where the making available of the information would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information | s48(1)(a)(i) - the public conduct of the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist under section 6 or section 7 |
| 6.3 - Procurement of Services for Spatial Plan and District Plan Review Projects | s7(2)(b)(ii) - the withholding of the information is necessary to protect information where the making available of the information would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information | s48(1)(a)(i) - the public conduct of the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist under section 6 or section 7 |