

REPORT

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Prepared For: Compliance Committee
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**Subject: Enforcement of Consents Auditing and Performance Monitoring
Non-compliance**

1. Précis

There has been a history of non-compliance with consent conditions by a wide range of consent holders. The paper provides a process for enforcing non-compliance of consents auditing and performance (self) monitoring. The process is based on principles of being fair, firm, pragmatic and achieving environmental good outcomes.

2. Background

Once consents are granted most consents will require either performance monitoring or auditing or both. Performance monitoring checks compliance with consent holders' forwarding data, information or management plans as required in the consents. Auditing is performed on selected consents whereby compliance with all consent conditions is checked annually. The audit monitoring involves a site inspection, sampling where necessary, assessment of consent holder technical reports, and a discussion of the consent requirements with the consent holder.

Compliance is graded using the following system:

Grade I Compliant
Grade II Non-compliant- minor (no actual or potential adverse effects)
Grade III Non-compliant- significant (no actual or potential adverse effects)
Grade IV Non-compliant- minor (actual or potential adverse effects)
Grade V Non-compliant- significant (actual or potential adverse effects more than minor)

Table 1 illustrates audit monitoring history in the past three years of monitoring. The table also shows that there has been a large number of minor non-compliance (Grade I & II) and a relatively small number of significant non-compliance (Grade V).

Table 1. Audit monitoring history

Year	Grade I		Grade II		Grade III		Grade IV		Grade V	
2006/07	957	72%	32	2%	20	1%	181	14%	150	11%
2007/08	747	74%	51	5%	13	1%	126	12%	82	8%
2008/09	668	71%	45	5%	22	2%	140	15%	65	7%

In the past, warning or follow-up letters have been sent by staff with some consents resulting in direct discussions between compliance staff and the consent holders.

Despite this effort the trend of non-compliance in both minor and major categories continues. At the last Compliance Committee meeting the Committee was concerned with the trend of ongoing non-compliance and requested staff to consider a tougher approach to ongoing non-compliance. This report provides a process to take a tough stance on performance and audit non-compliances in future.

3. Processes to improve non-compliance of performance and audit monitoring

Principles used

The principles used to set the required process will be based on fairness, firmness, pragmatism, environmental effects, scale of offence, recidivism, user-pays cooperation and commitment by the consent holder to comply. Given the history of ongoing non-compliance it is inevitable that the proposed process will use enforcement options (infringement notices, abatement notices, enforcement orders or prosecutions) to improve compliance. However, there will be opportunities given to consent holders to comply with conditions before using any of the enforcement options. Since non-compliance of performance monitoring is related to lack of timely input of data or information to ORC, which is a minor scale offence, an enforcement option such as prosecution is not an immediate option. Under the circumstances repeat infringement notices (at least three) may achieve the desired outcomes.

On the other hand, Grade V non-compliance should be viewed seriously and hence prosecution may be an option preceded by warning or infringement notice. Some non-compliances may be as a result of poor consent conditions or standards imposed and these could be dealt with by inviting consent variations from consent holders. Some consents (e.g. discharge consents) may require a high capital input (several millions) to improve or achieve compliance. If the consent holder is willing to upgrade but is requiring a reasonable timeframe to achieve compliance this should be allowed through negotiation by the Chief Executive or Director Resource Management. An example of this was the Fonterra Stirling cheese factory discharge where a memorandum of understanding was entered to upgrade the treatment system. Such a process could take several years for installation and commissioning of new systems. In some cases the consent renewal may be a pathway to improve or achieve compliance should the consent expiry be closer to the time of decision making. Under the circumstances prosecutions or any other legal actions are counterproductive.

Installation of water meters is treated as a separate process because it does require a slightly different approach to audit or performance failures. Failure to install water meters as per the consent will receive a two-month warning letter, a cost recoverable inspection, an infringement notice (\$500) and another warning letter to install within one month. Further failures will be reported to the Enforcement Decision Group (EDG) (whose members are Chief Executive, Director Resource Management and Manager Compliance).

Process efficiency

Figures 1-3 provide procedures to improve performance monitoring, audit and water meter non-compliance. These procedures should be reviewed regularly to ensure process efficiency, fairness and consistency.

Figure 1. Enforcement procedure for performance monitoring non-compliance.

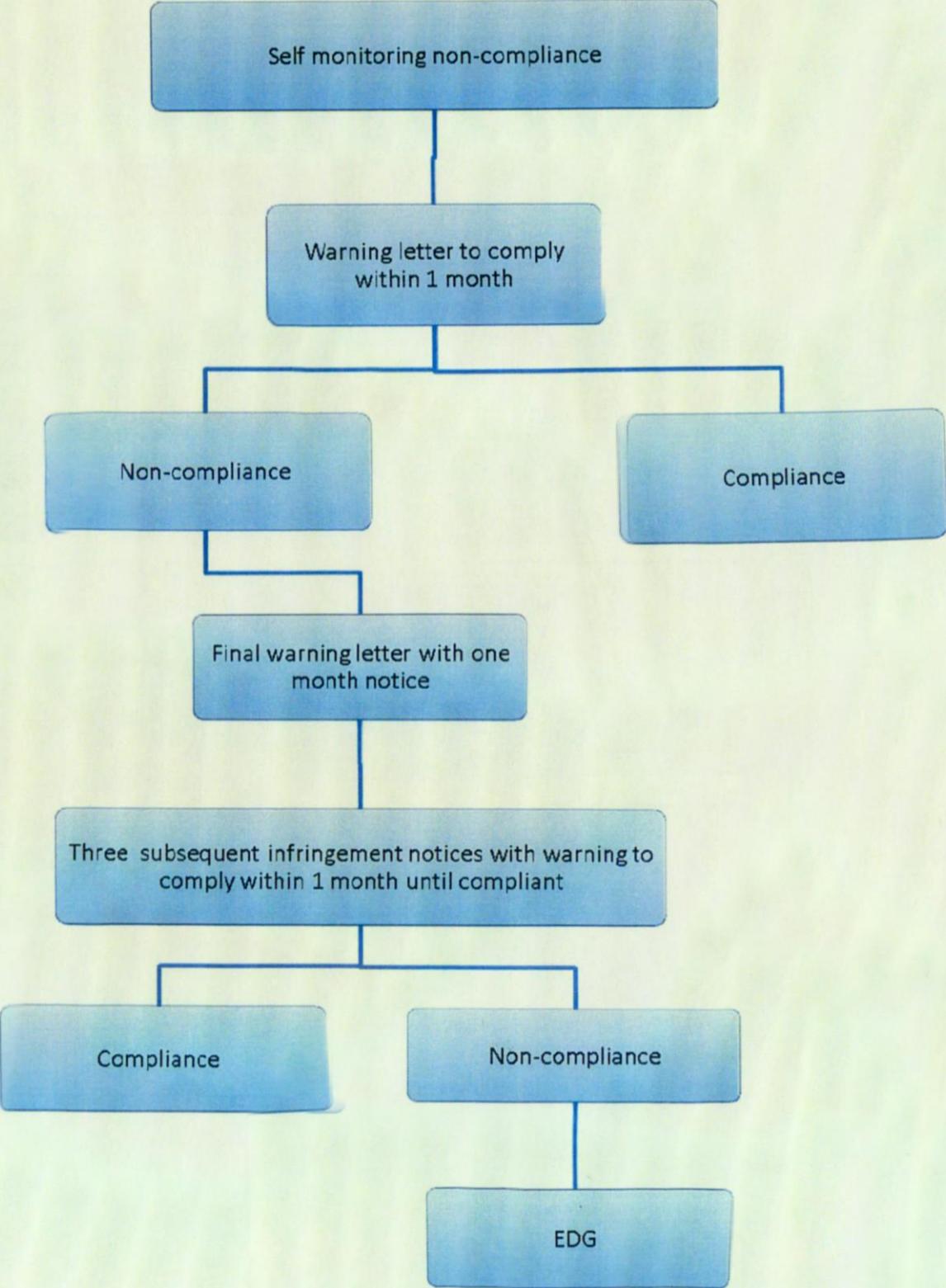


Figure 2. Enforcement procedure for audit non-compliance.

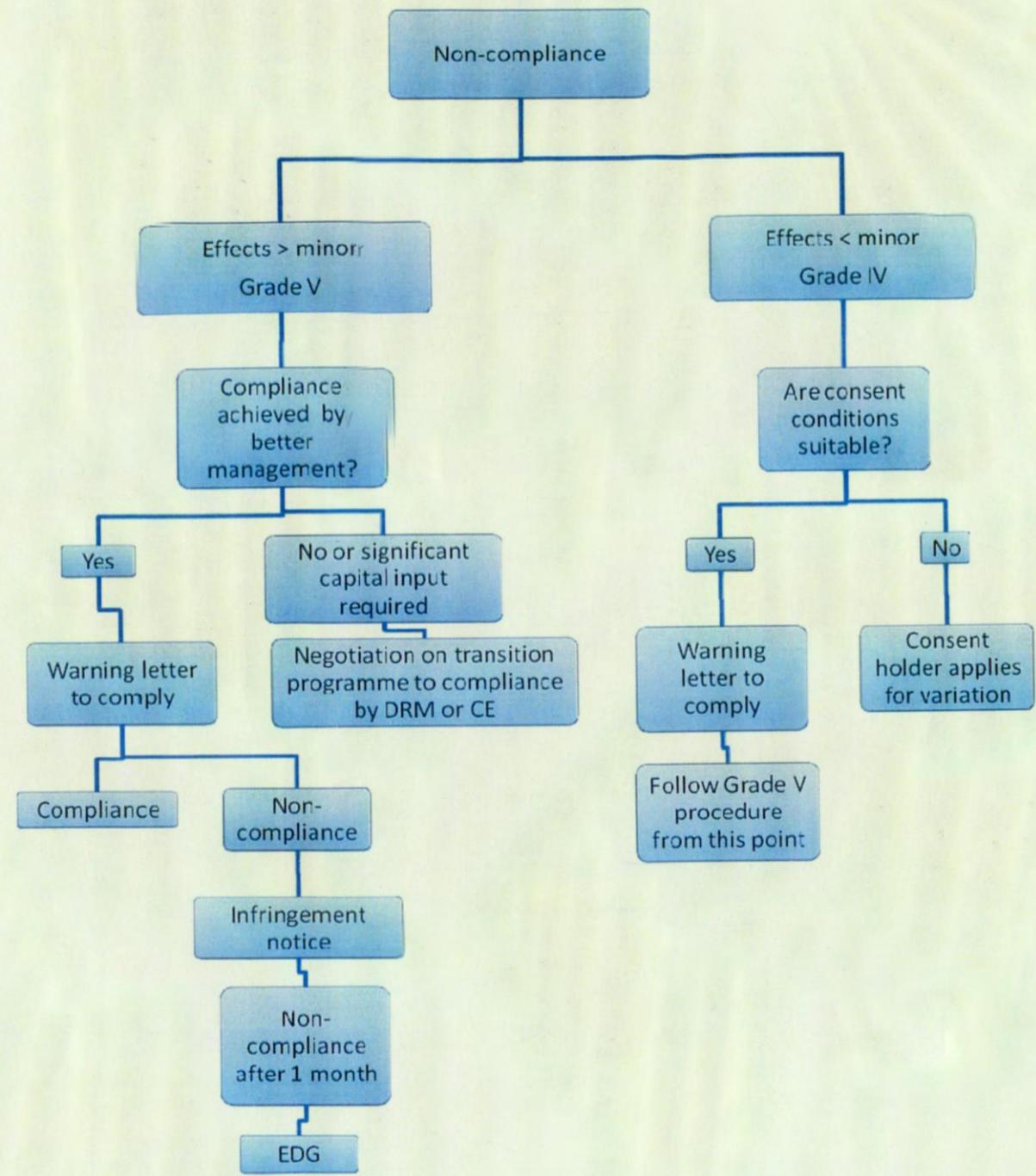
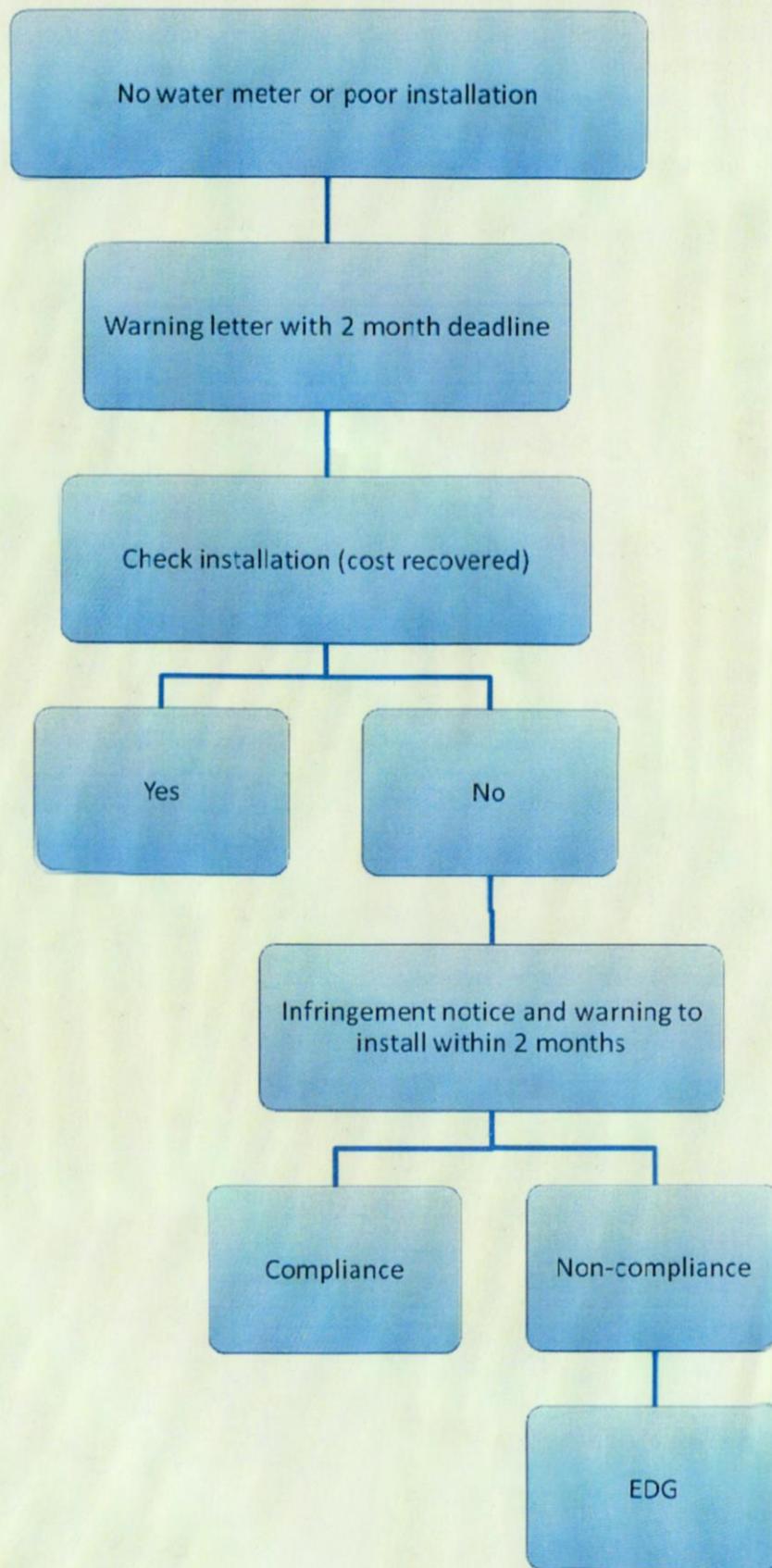


Figure 3. Enforcement procedure for water meter installation non-compliance.



Currently infringement notices are approved by the EDG. In the case of water meter and performance monitoring non-compliances, which will not result in complex litigation or decision making, infringement notices could be served directly by the enforcement officers without the approval from the EDG. Any infringement notice served under audit compliance procedure (Figure 2) will require the EDG approval. This is because a judgment is required as to whether compliance could be achieved by better management which may not be straightforward.

4. Recommendations

1. That this report be received.
2. That the Council use the enforcement procedures reported in this paper to improve or achieve consent compliance.

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