



REGULATORY COMMITTEE AGENDA

THURSDAY 2 August 2018

11:00 am ORC Council Chamber
Level 2, Philip Laing House,
144 Rattray Street, Dunedin

Membership

Cr Bryan Scott
Cr Sam Neill
Cr Graeme Bell
Cr Doug Brown
Cr Michael Deaker
Cr Carmen Hope
Cr Trevor Kempton
Cr Michael Laws
Cr Ella Lawton
Cr Andrew Noone
Cr Gretchen Robertson
Cr Stephen Woodhead

(Chairperson)
(Deputy Chairperson)

Disclaimer

Please note that there is an embargo on agenda items until 8:30 am on Monday 30 July 2018. Reports and recommendations contained in this agenda are not to be considered as Council policy until adopted.

For our future

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1. APOLOGIES

2. LEAVE OF ABSENCE

3. ATTENDANCE

4. CONFIRMATION OF AGENDA

5. CONFLICT OF INTEREST

Members are reminded of the need to stand aside from decision-making when a conflict arises between their role as an elected representative and any private or other external interest they might have.

6. PUBLIC FORUM

7. PRESENTATIONS

8. CONFIRMATION OF MINUTES

8.1. Minutes

Recommendation

That the minutes of the meeting held on 21 September 2017 be received and confirmed as a true and accurate record.

Attachments

1. Regulatory Committee Minutes - 13 June 2018 **[8.1.1]**

9. ACTIONS

Status report on the resolutions of the Regulatory Committee.

Report No.	Meeting	Resolution	Status
11.3 Managing the use of coal for domestic heating in Otago and New Zealand (Technical Committee)	31/1/2018	<i>That the matter of the ability to enforce the current Regional Air Plan AirZone 1 provisions be considered by the Regulatory Committee</i>	In process
Director's Report Wallaby Control		<i>Arrange a meeting with governance and staff of Environment Canterbury re wallaby control issues</i>	In process, the matter is with the Chairs of ORC and ECan.

Attachments

Nil

10. MATTERS FOR COUNCIL DECISION

Nil

10. MATTERS FOR NOTING

10.1. Director's Report on Progress

Prepared for: Regulatory Committee
Report No. EMO1820
Activity: Governance Report
Prepared by: Scott MacLean, Director Environmental Monitoring, and Operations
Date: 6 July 2018

1. Précis

This report describes the Regulatory activity and processes for the reporting period 19 May to 6 July 2018.

2. Compliance

2.1. Compliance grading and changes for the proposed MfE Best Practice guidelines for Compliance Monitoring and Enforcement

Council operates a nationally developed compliance grading system for consent monitoring that relates to both performance monitoring and consent auditing programmes. The grading system is based on timeliness of performance monitoring information to Council, that is due by a specified date as a condition of consent or based on environmental harm, in accordance with the consent auditing criteria. Table 1 is a breakdown and explanation of the current compliance grading system.

Table 1: Compliance Grading Schedule

Grade 1 – Compliant
Grade 2 – Non-Compliant – minor (no adverse effects)
Grade 3 – Non-Compliant – significant (no adverse effects)
Grade 4 – Non-Compliant – minor actual or potential effects
Grade 5 – Non-Compliant – significant actual or potential effects
Grade 0 – No Compliance Grade

Grade 1 means the consent holder is complying with all aspects of the consent condition.

Grades 2 & 3 relate to the degree of lateness of paperwork required as conditions of consent. Examples may be submitting management plans, keeping of logs and/or complaint registers, before and after photographic records etc. These are usually required to be submitted to Council by a specified date. An example of non-compliance may be that a consent holder was required to send a return in by 1 July but was not submitted until 2 weeks after the due date. This is deemed a technical, but minor, breach of consent and would be given the corresponding non-compliant grading of Grade 2 – minor (no adverse effects). In comparison if the performance monitoring data was submitted two months past the due date, it would be given a non-compliant grading of Grade 3 – significant (no adverse effects).

Grades 4 & 5 relate to physical non-compliance such as exceeding consent limits and/or causing or potentially causing a physical effect on the environment. An example is where the consent holder has a condition that E-coli in a water sample (or series of samples) shall not exceed 100 cfu/100mls but the performance monitoring data return shows levels of 110 cfu/100mls. This would be graded non-complaint Grade 4 (minor actual or potential effects). If the performance monitoring data return showed levels of 10,000 cfu/100mls (for example) it is likely this would be graded non-compliant Grade 5 (significant actual or potential effects).

Grade 0 may be used where further information is required before being able to assess compliance.

Overall Compliance is the highest grade(poorest) awarded for that consent for the period monitored.

There are proposed changes to how Council's grade compliance based on the Ministry for the Environment's Best Practice Guidelines for Compliance Monitoring and Enforcement which will come into effect on 17 July 2018. These guidelines have been developed in consultation with the Compliance and Enforcement Special Interest Group (CESig). This is a group of regional and unitary compliance and enforcement managers whose primary function is to develop a nationally consistent framework for compliance monitoring and enforcement.

CESig and Mfe have recommended the following compliance grading system based on risk. Table 2 details the risk framework.

Table 2: Proposed compliance grading rating.

Compliance Grading	
	FULL COMPLIANCE with all relevant consent conditions, plan rules, regulations and national environmental standards
	LOW RISK NON-COMPLIANCE. Compliance with most of the relevant consent conditions, plan rules regulations and national environmental standards. Non-compliance carries a low risk of adverse environmental effects or is technical in nature (e.g. failure to submit a monitoring report)
	MODERATE NON-COMPLIANCE. Non-compliance with some of the relevant consent conditions, plan rules regulations and national environmental standards where there are some environmental consequences and/or there is a moderate risk of adverse environmental effects
	SIGNIFICANT NON-COMPLIANCE. Non-compliance with many of the relevant consent conditions, plan rules regulations and national environmental standards, where there are significant environmental consequences and/or a high risk of adverse environmental effects.

2.2. Dairy Inspections

Dairy inspections are conducted to assess compliance with the water plan rules. The focus is on the storage and disposal of contaminants such as dairy effluent and silage effluent. Infrastructure information is also gathered in order to ascertain potential environmental risk due to poor/lack of adequate infrastructure to be able to achieve compliance with Regional Plan rules at all times. Infrastructure risk and catchment water quality information is used to determine the overall risk ranking for a property.

This season 168 effluent inspections were carried out on properties where risk rankings have been determined to be medium or high. Some properties received more than one inspection for the season. 154 (91.5%) properties were compliant at the time of inspection. 14 properties were non-compliant, with 5 being significantly non-compliant. In most cases, non-compliance was found with rules relating to the ponding of effluent. An annual Dairy compliance report will come to the next Regulatory Committee summarising the inspection season identifying common issues and trends which will help focus educational activity and also feed into plan effectiveness processes.

2.3. Forestry Inspections

Since 1 May 2018, when the new NES for Planation Forestry (NES PF) came into effect, council has received 90 notifications of works from foresters (companies and private woodlots). These have predominantly been for harvesting and earthworks with some for quarrying and afforestation. The amount of notifications has proved challenging, this is due to no template or set format stated in the NES PF. The only requirement is for start and end date and place of work to be undertaken. A template is being developed by ORC staff and is expected to be on the web site in the coming months. This will enable foresters to submit standardised and consistent information with their notifications.

There are a number of the notices that have been received by ORC that are not within the 20 to 60-day mandatory timeframes stated in the regulations and are therefore are non-compliant. This in some cases, is due to misinterpretation of the timeframe in the regulations as foresters come to terms with the requirements of the NES-PF. Staff continue to work with forestry companies to ensure timeframes and other written requirements are met.

There are currently two consents applications with council for "short term notice" as a way for these companies to maintain compliance with regards to mandatory notification timeframes.

Harvest management plans have been requested from all applicable notices received for work starting after 1 May 2018, these were not requested for works that started prior to May 2018. There is no standard format for providing this information and many variations have been received. Of the management plans reviewed, most are not compliant with the supply of information and level of detail. The Schedule in the NES PF is very specific about what must to be supplied, including certain information to be detailed on maps. Staff are working closely with the industry representatives in developing clear guidelines for all foresters on management plan expectations.

Slash in waterways has proved to be a major point of discussion between ORC and industry. In a lot of harvest areas this is unavoidable and has in the past been removed by the land-preparation operator after harvest is completed. The NES PF with its setbacks for machinery has allowances for slash removal at the time of harvest. The NES PF refers to the removal of slash in areas with 5% AEP (Annual Expected Probability) of slash mobilisation. Harvesters normally do not have the appropriate equipment to carry out this type of activity in a manner that would be deemed best practice. In the Land-preparation section of the NES PF there is no provision for clearing of slash from waterways. This is another of the challenges staff are working with foresters on during the implementation of the NES PF.

Preliminary work has been undertaken on how an inspection risk matrix may look to determine compliance inspection priorities. Table 3 is the proposed risk matrix.

Table 3: Forestry Risk Matrix

	Extreme	High	Medium	Low
	4	3	2	1
Time of year				
Errosion clasification (MPI clasification)				
Waterways/lakes/wetlands/coastal area				
At risk catchment				
Native Fish Present				
Topography				
Harvest Method				
History of site/contractor				
Contents of Management Plans				
Compliance with Notice				

While council has a reasonable list of contractors that carry out forestry activities, there are some smaller contracting businesses that carry this work out as an additional activity to their core business. There is a challenge with reaching out to these operators to ensure they are aware of the NES PF and their obligations in operating in accordance with it. These are predominantly land preparation contractors and earth works operators. There has been one such company found to be harvesting without giving notice since 1 May 2018. This operator was unaware of the NES PF. This company is now submitting notices and management plans for the work they are undertaking.

2.4. Wetlands

The purpose of the Wetlands compliance project is to assess compliance with the Permitted Activity rules in the Regional Plan: Water for Otago. Staff assess whether there has been any encroachment into the wetland boundary (fencing, stock, pasture etc), any new or recently constructed drainage systems in the wetland and any damage to Flora and Fauna. While on site staff note vegetation types and distribution for future referencing and whether the existing boundary (as defined in the water plan) of the wetland is accurate on the ground.

71 inspections of the Reginal Significant wetlands have been assessed this year for compliance with the rules. Only 3 of them were desktop assessed from recent aerial photography the rest have either been assessed from flyovers or site inspections and in some cases, both.

Three investigations are underway relating to the recent programme of inspections.

3. Contaminated Sites

3.1. CSRF Dunedin City Gasworks Remediation Planning Project

Staff are continuing to work with the Dunedin City Council to develop a site remediation plan for a site containing an underground tar well at the former city gasworks. The City Council are currently reviewing the available options to determine the most appropriate course of action. Once the preferred remediation option has been identified, an additional application to the Ministry for the Environment's Contaminated Sites Remediation Fund

will be completed to seek additional funding for the development of a remediation action plan and complete the necessary site works.

3.2. Clean-fill Criteria

Work has been completed to provide guidance on acceptable clean-fill criteria for compliance monitoring and contaminated land assessment. A summary of this guidance has been published on the ORC hazardous substances webpage.

3.3. Public Enquires – Contaminated Land

For the 2017/18 financial year, staff reviewed and provided guidance and technical advice on 79 site investigation reports and responded to 486 public enquires about contaminated land. This is an increase on previous years enquiries.

4. Recommendations

a) *That this report is received and noted.*

Endorsed by: Scott MacLean
Director Environmental Monitoring & Operations

10.2. Enforcement Activities from 19 May 2018 to 6 July 2018

Prepared for: Regulatory Committee
Report No. EMO1821
Activity: Environmental - Investigations and Enforcement Action
Prepared by: Peter Kelliher, Legal Counsel
Date: 6 July 2018

1. Précis

This report details Resource Management Act 1991, Biosecurity Act 1993 and Building Act 2004 enforcement activities undertaken by the Otago Regional Council during the period 19 May 2018 to 30 June 2018.

2. Resource Management Act 1991

a) Complaint Response

Table 1. Infringement Notices

Details	Period – 19 May 2018 to 30 June 2018	Total – from 1 July 2017
Disturbing the bed of a river - pugging	0	1
Disturbing the bed of a river – mechanical excavation	0	6
Discharge of contaminants to land in a manner where it may enter water - sediment	0	2
Discharge of contaminants to land in a manner where it may enter water - oil	0	1
Discharge of contaminants to air in breach of a regional rule – outdoor burning	0	1
Discharge of contaminants to land in a manner where it may enter water - wastewater	0	1
Discharge of contaminants to air in breach of a regional rule – odour	2	2
TOTAL	2	14

Table 2. Authorised Legal Proceedings

Details	Period – 19 May 2018 to 30 June 2018	Total – from 1 July 2017
Disturbing the bed of a river – mechanical excavation	0	1
Discharge of contaminants to land in a manner where it may enter water - sediment	1	3
Discharge of contaminants to land in a manner where it may enter water - wastewater	0	2
TOTAL	1	6

Table 3. Abatement Notices

Details	Period – 19 May 2018 to 30 June 2018	Total – from 1 July 2017
To cease discharging contaminants in breach of a regional rule - sediment	1	3
To cease discharging contaminants in breach of a regional rule - sawdust	0	1
To cease discharging contaminants in breach of a regional rule - wastewater	0	1
To cease discharging contaminants in breach of a resource consent - odour	1	1
To remove a structure which is likely to dam / divert water	1	1
TOTAL	3	7

b) Inspections

Table 4. Infringement Notices

Details	Period – 19 May 2018 to 30 June 2018	Total – from 1 July 2017
Discharge of contaminants to land in breach of a regional rule - effluent	5	7
Discharge of contaminants to land in breach of a regional rule - silage	2	3
TOTAL	7	10

Table 5. Abatement Notices

Details	Period – 19 May 2018 to 30 June 2018	Total – from 1 July 2017
To cease taking water in breach of water meter regulations	0	5
TOTAL	0	5

3. Total Infringements Notices and Authorised legal Proceedings – Years - 2016/17 and 2017/18

Table 6 – Total Infringement Notices (Inspections and Compliant Response)

Details	Period – 2016/17	Period - 2017/18
DAIRY EFFLUENT		
Discharge of contaminants to land in breach of a regional rule – effluent	22	7
OTHER		
Disturbing the bed of a river - pugging	0	1
Discharge of contaminants to land in breach of a regional rule - silage	1	3
Disturbing the bed of a river – mechanical excavation	3	6
Discharge of contaminants to land in a manner where it may enter water - sediment	3	2
Discharge of contaminants to land in a manner where it may enter water - oil	0	1
Discharge of contaminants to air in breach of a regional rule – outdoor burning	0	1
Discharge of contaminants to land in a manner where it may enter water - wastewater	7	1
Discharge of contaminants to air in breach of a regional rule – odour	2	2
Depositing sediment on the bed of a river	1	0
Discharge of contaminants to land in a manner where it may enter water - petrol	0	0
Disturbing the bed of a wetland	1	0
TOTAL	40	24

Table 7 – Total Authorised Legal Proceedings (Inspections and Compliant Response)

Details	Period – 2016/17	Period - 2017/18
DAIRY EFFLUENT		
Discharge of contaminants to land in breach of a regional rule - effluent	8	0
OTHER		
Disturbing the bed of a river – mechanical excavation	1	1
Discharge of contaminants to land in a manner where it may enter water - sediment	1	3
Discharge of contaminants to land in a manner where it may enter water - wastewater	2	2
Discharge of contaminants to land where it may enter water – sediment; and Damming of water in breach of a regional rule	1	0
Discharge of contaminants to air – burning prohibited materials	1	0
TOTAL	14	6

4. Recommendation

a) *That this report be received and noted.*

Endorsed by: Scott MacLean
Director Environmental Monitoring & Operations

Attachments

Nil

10.3. Consents and Building Control

Prepared for: Regulatory Committee
Report No. EMO1822
Activity: Resource Consent, Deemed Permits and Building Act Activity
Prepared by: Ian McCabe, Acting Director Policy Planning and Resource Management
Date: 27 July 2018

1. Précis

This report covers consents and building control and deemed permit replacement progress for the period 19 May 2018 to 6 July 2018.

2. Consent Processing

2.1. Public Notification

There have been no publicly notified consents during this period.

2.2. Limited Notification

There is one application that is being processed as limited notified at this time.

2.3. Objections

No objections have been received in this period.

2.4. Appeals

RM17.229 – Peter Ronald Graham – an application to occupy the coastal marine area with a pontoon for operating a ‘Hole in one’ golf challenge. Resource consent was granted on ? and subsequently appealed to the Environment Court on ?.

The appellant is an unincorporated society comprised of submitters on the application. They are appealing the decision to grant the consent for a wide variety of reasons.

2.5. Consent Statistics

Table 1. Consents Statistics Summary

Reporting Period	Lodged			Rejected	Decision Given		
	Consents	Variations			Consents	Variations	
		Regular	Water reporting date			Regular	Water reporting date
19/5 to 6/7 2018	50	4	0	2	46	6	0
17/18 Totals	415	28	3	8	335	28	4

All decisions on consents were given within RMA mandated timeframes.

3. Deemed Permit Replacement.

There are currently 367 deemed permits left. The number is coming down slowly as permits are replaced or surrendered. A small number have been cancelled.

4. Consent Administration

Table 2. Consent Administration Statistics

Reporting Period	Transfers Received	Transfers Issued	s417 Certs Received	s417 Certs Issued
19/5 – 6/7 2018	29	28	0	0
17/18 Totals	143	139	7	5

5. Building Consent Authority (BCA) Administration

Table 3: Building Act Statistics

Reporting Period	Building Permits		Certificate of Acceptance		Code Compliance Certificate	
	Received	Issued	Received	Issued	Received	Issued
19/5 – 6/7 2018	0	0	0	0	0	0
17/18 totals	3	1	0	2	1	0

6. Public Enquiries

301 enquiries were received during the five-week reporting period.

Details are set out in Appendix 1 to this report.

Table 4. Public Enquiries Statistics

Period	Number of Enquiries
17/18	2415
19/5 – 6/7 2018	301
18/19 YTD	35

7. Recommendation

- a) *That this report is noted.*

Endorsed by: Ian McCabe
Acting Director Policy Planning and Resource Management

Appendix 1 – Public Enquiries

Resource Consent Public Enquiry Report

For period from 06 April 2018 to 18 May 2018

Total Number of Enquiries **305**

Enquiry Type	No.	% of Total
Current Consents	119	39 %
Mining Privileges	9	3 %
Other	18	5.9 %
Permitted Activities	70	23 %
Pre-application	36	11.8 %
Property Enquiries	44	14.4 %
Transfers	9	3 %

Enquiry Location	No.	% of Total
Central Otago District	94	30.8 %
Clutha District	23	7.5 %
Dunedin City	46	15.1 %
Outside Otago	3	1 %
Queenstown Lakes District	70	23 %
Throughout Otago	14	4.6 %
Unspecified	41	13.4 %
Waitaki District	14	4.6 %

Enquiry Method	No.	% of Total
Counter	9	3 %
Email	190	62.3 %
Internet	4	1.3 %
Letter	1	0.3 %
Telephone	101	33.1 %

11. NOTICES OF MOTION

12. RESOLUTION TO EXCLUDE THE PUBLIC

12.1. Public Excluded Recommendation

That the public be excluded from the following parts of the proceedings of this meeting, namely:

Item Enforcement – Current Matters

13. PUBLIC EXCLUDED POSTAMBLE

The general subject 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\(1\)](#) 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(1) for the passing of this resolution
Enforcement – Current Matters	LGOMIA Section 6 (a) to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial;	Section 48(1)(a); Section 48(1)(d)

This resolution is made in reliance on [section 48\(1\)\(a\)](#) of the Local Government Official Information and Meetings Act 1987 and the particular interest or interests protected by [section 6](#) or [section 7](#) of that Act or [section 6](#) or [section 7](#) or [section 9](#) of the Official Information Act 1982, as the case may require, which would be prejudiced by the holding of the whole or the relevant part of the proceedings of the meeting in public are as follows:

Enforcement – Current Matters.

Section 6 (a)

to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial;

14. CLOSURE