

Regulatory Committee 9 July 2020

Meeting is held in the Council Chamber, Level 2, Philip Laing House
144 Rattray Street, Dunedin



| | |
|---------------------------------|------------------|
| Cr Gretchen Robertson, Co-Chair | Cr Carmen Hope |
| Cr Kate Wilson, Co-Chair | Cr Gary Kelliher |
| Cr Hilary Calvert | Cr Michael Laws |
| Cr Michael Deaker | Cr Kevin Malcolm |
| Cr Alexa Forbes | Cr Andrew Noone |
| Hon Marian Hobbs | Cr Bryan Scott |

Senior Officer: Sarah Gardner, Chief Executive

Meeting Support: Liz Spector, Committee Secretary

09 July 2020 01:00 PM

| Agenda Topic | Page |
|--|-------------|
| 1. APOLOGIES Cr Marian Hobbs has submitted her apologies for the meeting. | |
| 2. ATTENDANCE Staff present will be identified as they present reports. | |
| 3. CONFIRMATION OF AGENDA Note: Any additions must be approved by resolution with an explanation as to why they cannot be delayed until a future meeting. | |
| 4. 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. | |
| 5. PUBLIC FORUM Members of the public may request to speak to the Council. No requests were received prior to publication of the agenda. | |
| 6. CONFIRMATION OF MINUTES | 3 |
| 6.1 Minutes of the 11 March 2020 Regulatory Committee Meeting The Committee will consider minutes of the 11 March 2020 Regulatory Committee meeting as a true and accurate record, with or without changes. | 3 |
| 7. ACTIONS (STATUS OF COMMITTEE RESOLUTIONS) The Committee will be updated on its outstanding Actions. | 8 |
| 8. MATTERS FOR NOTING | 9 |

| | | |
|-------|---|-----|
| 8.1 | QUARTERLY REGULATORY ACTIVITY REPORT | 9 |
| | To update the Committee on activities of the Regulatory Group for the period 1 January to 31 May 2020 | |
| 8.1.1 | Attachment 1: Regulatory Data July 2019 to December 2019 | 16 |
| 8.1.2 | Attachment 3: CME Metrics 2018-2019 | 25 |
| 8.2 | REPORT ON DAIRY INSPECTIONS 2019/20 | 101 |
| | To update the Committee on the dairy inspection compliance programme for the 2019/20 year. | |
| 8.2.1 | Attachment 1: Dairy Inspection Template | 105 |
| 9. | RESOLUTION TO EXCLUDE THE PUBLIC | 107 |
| | That the Committee consider the following item in public-excluded: | |
| 1.1 | Clutha District Council WWTP Investigation Update, LGOIMA 48(1)(a), 6(a) | |
| 10. | CLOSURE | |



Minutes of a meeting of the
Regulatory Committee held in the Council Chamber on
Wednesday 11 March 2020 at 9:30 am

Membership

| | |
|-----------------------|-------------------------|
| Cr Kate Wilson | <i>(Co-Chairperson)</i> |
| Cr Gretchen Robertson | <i>(Co-Chairperson)</i> |
| Cr Hilary Calvert | |
| Cr Michael Deaker | |
| Cr Alexa Forbes | |
| Hon Marian Hobbs | |
| Cr Carmen Hope | |
| Cr Gary Kelliher | |
| Cr Michael Laws | |
| Cr Kevin Malcolm | |
| Cr Andrew Noone | |
| Cr Bryan Scott | |

Welcome

Regulatory Committee Co-Chairperson Kate Wilson welcomed Councillors, members of the public and staff to the meeting at 09:33 am.

For our future

70 Stafford St, Private Bag 1954, Dunedin 9054 | **ph** (03) 474 0827 or 0800 474 082 | www.orc.govt.nz

1. APOLOGIES

There were no apologies.

2. ATTENDANCE

| | |
|------------------|---|
| Sarah Gardner | <i>(Chief Executive)</i> |
| Nick Donnelly | <i>(General Manager Corporate Services and CFO)</i> |
| Gavin Palmer | <i>(General Manager Operations)</i> |
| Richard Saunders | <i>(General Manager Regulatory)</i> |
| Gwyneth Elsum | <i>(General Manager Policy, Strategy and Science)</i> |
| Sally Giddens | <i>(General Manager People, Culture and Communications)</i> |
| Liz Spector | <i>(Committee Secretary)</i> |

Other staff in attendance included: Joanna Gilroy (Manager Consents), Simon Wilson (Manager Consent Systems and Administration), Rachel Brennan (Team Lead Compliance Coastal Otago), Eleanor Ross (Manager Communications Channels), Ryan Tippet (Media Communications Lead).

3. CONFIRMATION OF AGENDA

Cr Wilson asked to move item 8.3 to the first item considered by the Committee as Mayor Bryan Cadogan and Chief Executive Steve Hill from Clutha District Council were present to speak to that item.

4. CONFLICT OF INTEREST

No conflicts of interest were advised.

5. PUBLIC FORUM

No public forum was held.

6. CONFIRMATION OF MINUTES

Resolution

That the minutes of the meeting held on 11 December 2019 be received and confirmed as a true and accurate record, with or without changes.

Moved: Cr Wilson

Seconded: Cr Noone

CARRIED

7. ACTIONS

The Councillors were informed of outstanding actions from Regulatory Committee resolutions.

8. MATTERS FOR NOTING

8.1. Territorial Local Authority Wastewater Treatment Plant Compliance Report

Cr Wilson noted that Chair Hobbs had approved the requests of Mayor Bryan Cadogan and Mr Steve Hill, CE of Clutha District Council to speak to the Wastewater Treatment plant compliance issues identified in the staff report. Mr Hill addressed issues that had occurred, and the ways

CDC was working to correct them. Mayor Cadogan and Mr Hill answered questions from the Councillors.

Richard Saunders (GM Regulatory) and Rachel Brennan (Team Leader Compliance Coastal Otago) were present to speak to the staff report. Mr Saunders noted the cooperation of the local authorities to facilitate the report's completion. He indicated most of the non-compliances were process-related, i.e., late or no reports, etc., however, the non-compliances for Clutha were more significant. Mr Saunders said after each plant inspection, a report with required improvement actions is sent from the ORC to the concerned TLA. He noted there is a risk when an audit report is sent with remedial actions, that if no follow up is done by the ORC, the remediation may not be undertaken by the TLA. He said his goal is improved consistency on such follow ups.

Cr Robertson thanked Mr Saunders for the comprehensive report and said she would like to see similar reports on dairy inspections, discharges to air, and landfills. She said ORC should work with Public Health to ensure communities are informed of risks related to non-compliances. Cr Wilson agreed that such reports would be valuable on future committee reports. There was no further discussion and Cr Wilson asked for a motion.

Resolution

That the Council:

- 1) **Receives** this report.
- 2) **Notes** that the investigation into significant non-compliances identified in Table 2 is continuing.
- 3) **Notes** that the compliance team will complete an annual report for the Regulatory Committee on the compliance status of wastewater treatment plants in the Otago region.
- 4) **Works** with TAs and public health to make sure communities, both urban and rural, are informed of health risks associated with wastewater discharges.
- 5) **Include** follow up reports on this compliance report on future Regulatory Committee Quarterly Activity Reports.

Moved: Cr Noone
 Seconded: Cr Calvert
 CARRIED

Cr Calvert left the meeting at 10:39 am.

Cr Calvert returned to the meeting at 10:41 am.

Cr Forbes left the meeting at 10:43 am.

Cr Forbes returned to the meeting at 10:47 am.

8.2. Regulatory Group - Quarterly Activity Report

Richard Saunders (GM Regulatory), Simon Wilson (Manager Consent Systems and Administration), Joanna Gilroy (Manager Consents) and Steve Rushbrook (Harbourmaster) were present to answer questions about the Quarterly Activity Report. The report was provided to update the Councillors on Regulatory activities including consents, compliance, consents systems and administration, and the harbourmaster teams. Cr Robertson asked that future reports differentiate between notified and non-notified consent activities. Cr Wilson requested

reporting on scheduled work in the compliance space be provided in quarterly reports to include air discharge and landfill compliance. Cr Kelliher and Cr Scott also requested updates on biodiversity be included on future quarterly reports.

Cr Deaker noted he has received frequent comments from people living in the South Dunedin community that they are concerned about air quality due to domestic chimney outputs. He asked Mr Saunders what the standard procedure is when complaints of this type are received by ORC staff. Mr Saunders said when complaints are received about a specific property, a letter is sent to the property owner to remedy the situation. He said if frequent complaints on a particular address are received, a staff visit to the property would be in order to allow discussion with the property owner. Mr Saunders said the regulatory response other than that is limited.

After further discussion, Cr Wilson asked for a motion.

Resolution

That the Council:

- 1) **Receives** this report.
- 2) **Notes** the quarterly update report from the Regulatory Group for the period 1 July 2019 to 31 December 2019.

Moved: Cr Kevin Malcolm

Seconded: Cr Wilson

CARRIED

Cr Calvert left the meeting at 10:54 am.

Cr Calvert returned to the meeting at 10:56 am.

Cr Hobbs left the meeting at 10:58 am.

Cr Kelliher left the meeting at 11:00 am.

Cr Hobbs returned to the meeting at 11:02 am.

Cr Kelliher returned to the meeting at 11:03 am.

Cr Hope left the meeting at 11:04 am.

Cr Hope returned to the meeting at 11:06 am.

8.3. Strategic Compliance Framework

Richard Saunders (GM Regulatory) was present to answer questions about the report which was provided to inform the Council about the compliance framework. He said the framework was developed by the Regional Sector Compliance and Enforcement Special Interest Group to promote best practice and consistency across the sector. Mr Saunders said staff will develop a compliance monitoring plan consistent with this Strategic Compliance Framework and present the draft to the Regulatory Committee in September. After a general discussion, Cr Wilson asked for a motion.

Resolution

That the Council:

- 1) **Receives** this report.

- 2) **Notes** that an *ORC Compliance Monitoring Plan consistent with the principles of the Strategic Compliance Framework 2019 – 2024 will be presented to the Regulatory Committee at the September 2020 meeting*

Moved: Cr Noone

Seconded: Cr Hope

CARRIED

8. CLOSURE

There was no further business and Cr Wilson declared the meeting closed at 11:12 a.m.

Chairperson

Date

7.1. Actions**Status report on the resolutions of the Regulatory Committee**

| REPORT TITLE | MEETING DATE | ACTION | STATUS | UPDATES |
|------------------------------------|-------------------|--|--|--|
| Wallaby Control | 28 November 2018 | Cr Scott requested that the action item for a Memorandum of Understanding (MOU) with Environment Canterbury for wallaby control be reinstated to the action list and provide an update on the success of the wallaby control programme. | IN PROGRESS – Dr Palmer updated Committee on progress on 31/7/19 | Reporting will take place through the quarterly activity reporting. UPDATE (Gavin Palmer): Update provided at Councillor workshop on 10 June 2020. Further update to be provided in biosecurity implementation update to September Regulatory Committee meeting. |
| Delegation of Harbourmaster Duties | 25 September 2019 | Conduct a review and amendment of the ORC Navigational Safety Bylaw 2019, noting date of relinquishment of transfer agmt will be the same as the effective date of the amended bylaw. | IN PROGRESS - Regulatory | Council approval on 26 February 2020 - to consult on changes to the bylaw. UPDATE (Richard Saunders): A hearing has been held following the submission period. A recommending report will be presented to the Council at the end of July. |
| ORC Compliance Monitoring | 11 March 2020 | Present a compliance monitoring plan consistent with the principles of the Strategic Compliance Framework 2019 – 2024 to the Regulatory Committee at the September 2020 meeting. | IN PROGRESS – Regulatory | |

8.1. Regulatory Group - Quarterly Activity Report

| | |
|----------------------|--|
| Prepared for: | Regulatory Committee |
| Report No. | GOV1928 |
| Activity: | Regulatory: Consents and Compliance |
| Author: | Richard Saunders, General Manager Regulatory |
| Endorsed by: | Richard Saunders, General Manager Regulatory |
| Date: | 30 June 2020 |

PURPOSE

- [1] To update the Committee on activities of the Regulatory Group during the 2019/20 year to 31 May 2020.

EXECUTIVE SUMMARY

- [2] This report summarises the activity of the Regulatory Group which includes Consents, Compliance, Consents Systems and Administration and Harbourmaster teams.

RECOMMENDATION

That the Council:

- 1) **Receives** this report.
- 2) **Notes** the update report from the Regulatory Group for the period 1 January to 31 May 2020

DISCUSSION

- [3] The following report provides a summary of the activity of each team within the Regulatory Group.
- [4] Attachment 1 contains statistics on Regulatory Group activity for the period 1 July 2019 to 31 May 2020.

HARBOURMASTER

- [5] This reporting period covers the Covid 19 pandemic, the Harbourmaster (HM) team were able to operate effectively and remotely throughout this period. We were also able to keep up to speed with national events and issues through regular online meetings with Maritime New Zealand (MNZ). With a very high compliance from recreational boaties throughout Otago during this period we had minimal reason for response on the water.
- [6] Navigational risk assessments for the harbour have been reviewed and updated during February as part of the annual Safety Management System review for the Port and Harbour Marine Safety Code.

- [7] The HM team completed the Regional Responder Courses for Oil Spill, this is the first step on the ladder to gaining full Regional On-Scene Commander qualification and therefore enhancing the ORC capability to respond to Oil Spill events. Two further courses have been rescheduled for later in 2020.
- [8] In order to prepare for the reversal of the maritime delegation to CODC, staff have taken the opportunity to identify, assess and where required upgrade the 130 mooring/marks on Lake Dunstan. Essentially these are being updated and renewed to ensure the assets are fit for purpose when the maritime delegation returns to ORC.
- [9] Water safety signage continues to be updated and made fit for purpose throughout Otago. Recently staff have attended to some of the more remote locations, like Poolburn and Mahineranghi. We have some further locations to improve during next year.
- [10] Consultation has been completed for the merger of the ORC and CODC navigational bylaws and the reversal of maritime delegation for Lake Dunstan. A hearing was held on the 1st of July and the final recommendation will be presented to council for approval at the end of July.

CONSENTS

Consent Processing

- [11] Three applications were publicly notified in the reporting period.
 - a. An application from Port Otago Limited for a series of coastal permits relating to beach rehabilitation at Te Rauone Beach, Harrington Point was notified in May. This was notified at the applicant's request. Submissions closed on this application on the 15th of June. The Applicant and Council are currently working through these submissions, with over 300 received.
 - b. Consents associated with Oceana Gold's Deepdell North Pit Stage Three work at Macraes Flat were notified. A hearing for this application will be held in August and it will be a joint process with Waitaki District Council.
 - c. Consents sought by NZTA for the construction of a new bridge over the Clutha/Mata-Au River at Beaumont were also notified. This application was also notified at the applicant's request. A hearing was not required for this application and the consents have been approved.
- [12] Limited notification is where notice of an application is served on all persons identified as being adversely affected. Only these people can make a submission on the application. Twenty-four applications were limited notified during this period. Some of these applications may need to go to a hearing, but if matters raised in submissions can be resolved or there are no submissions then these can be signed off under existing staff delegations. The type of applications limited notified included water permits to take surface water, land use consents and discharge to land permits.
- [13] In the reporting period decisions were made on 104 consents. All decisions in this reporting period were made within Resource Management Act timeframes. Timeframe extensions were used in this period in most cases to enable the applicant to review the

proposed conditions or to allow for a site visit to be undertaken once people were able to move freely under COVID-19 restrictions.

- [14] COVID-19 did not negatively impact the overall performance of the Consents Team, with all team members able to work from home and timeframes being adhered to. Some site visits were delayed until the appropriate national alert level was in place and meetings were conducted via electronic means.
- [15] At the end of the reporting period there were 254 applications in the system, down from a peak of 259 in March. With this number of consents in the system staff workloads remain high, but statutory timeframes are being met. Workload will increase for the team over the next reporting period as applications relating to deemed permits will continue to be lodged. Additionally, consents being required under Plan Change 8 to the Water Plan and the upcoming changes to national legislation relating to the Action Plan for Healthy Waterways are expected to significantly impact the workload of the Consents Team.
- [16] The number of applications lodged during this reporting period was 162. The highest number of applications lodged in the reporting period was 44 in the month of March. During April the number of incoming applications did drop to just 23, but they returned to normal levels in May (35 lodged). This is likely to reflect the changes in national alert levels in place for COVID-19.
- [17] A summary of consents statistics for the period are included in Figures 1 to 6 of Attachment 1.

Deemed Permit Replacements

- [18] There are currently 253 deemed permits that do not have an application in with Council for a new water permit. This figure includes deemed permits that are not likely to be replaced such as those associated with the operation of a power company (about 90 permits), or that holders no longer want to use. If the deemed permit is not replaced, it will only remain current until 1 October 2021. Council is currently processing 42 applications relating to the replacement of 78 deemed permits.
- [19] Applications have been lodged during the reporting period for water permits under Plan Change 7 specifically seeking a consent term of 6 years. Whilst Plan Change 7 applies to these applications, when assessing these we still need to consider the rules and policies in the operative plan. Once a decision has been made on Plan Change 7 in the Environment Court, this requirement to consider both plans drops away. The balance to be struck is to ensure that we give effect to the notified and operative plans, are making robust decisions and are providing for the intent of PC7 which is for an efficient and cost-effective consent process. Water permit applications already in the system at the date of notification of PC7 are also covered by the notified and operative plans.

Public Enquiries

- [20] Responding to public enquiries is a significant part of the workload of the Consents Team. 1,385 enquiries were received during this reporting period.

- [21] In order to provide an improved level of service and deliver process efficiencies a new position has been created and is currently being recruited for. The 'Consents Officer – Public Enquiries' role will be responsible for managing all of the customer enquiries currently handled by a range of consent processing staff. This will provide improved consistency of service for customers and increased efficiencies for other processing staff. One outcome of this new role is expected to be an increase to chargeable time achieved by consent processing staff.

Building Consent Authority (BCA) Administration

- [22] In the 19/20 year to date very little activity has occurred in the building consent area.
- [23] The Building Consent Authority was audited by IANZ in early April. As a result of this audit 17 General Non-Compliances were identified, but no Significant Non-Compliances were found. The number of issues identified in this audit is down from 20 General Non-Compliances and 5 Significant Non-Compliances in the previous audit. The positive results of this audit show the work that has been put into the BCA. These general non-compliances are in the process of being cleared.
- [24] Work continues to transfer the BCA function to Environment Canterbury. This transfer has been agreed to by Council and will go out for consultation under the Local Government Act during the next reporting period.

Flood Protection Management Bylaw 2012

- [25] The Consents Team is responsible for co-ordinating the approval of applications under the Flood Protection Management Bylaw 2012. The technical work on these applications is undertaken by the Engineering and Hazards Teams. During the reporting period 10 decisions on Bylaws were issued. For context, this is the same number as the previous reporting period.

COMPLIANCE

Performance Monitoring

- [26] In the 11 months to 31 May 2020 the Consent Systems and Administration and Compliance teams have graded 4,649 Performance Monitoring returns. The focus has been on targeting key catchments such as the Manuherikia and Taieri to support Deemed Permit processing and Science activities.
- [27] Covid 19 caused some delay in the submission of Performance Monitoring returns as isolation disrupted activities such as sampling and meter verifications. Data processing continued as normal during lockdown.
- [28] A summary of performance monitoring data is set out in Figures 7 and 8.
- [29] A major focus of the Consent Systems and Administration Team is the replacement of Hilltop, the Council's current timeseries database. This project is a joint effort with the Environmental Monitoring and Science teams. The new system, Aquarius, will hold all

the Council's time series and sampling data. The structure of Aquarius will significantly improve the ability of the Council to share data with the public, as well as simplifying the process for data analysis. Councillors will receive a demonstration of Aquarius once the project is far enough advanced.

RMA Consent Audits

- [30] In this reporting period 268 RMA consent audits have been completed.
- [31] The large number of audits completed in April were associated with OceanaGold Mining operations which has 128 consents. Overall compliance can be considered high with most consent conditions being considered either fully compliant or low risk non-compliance. A small number of moderate non-compliances are currently being followed up by staff.
- [32] A summary of consent audit data is set out in Figures 9 and 10.

Investigations and Enforcement

- [33] 1,327 service requests were received on the pollution response line for the year to 31 May. The most common reason for requests was water pollution (346), outdoor burning (242), odour (224) and air discharge/spray drift/dust (117). Further details on service requests can be found in Figures 14 and 15.
- [34] A dedicated resource for pollution response in both Dunedin and Central Otago is providing an improved level of service however staff are still unable to attend all incidents reported through the pollution hotline. Where the volume of calls is too high for the dedicated pollution response staff, incident staff are undertaking investigations and compliance staff may be called on to attend incidents. Further thought will need to be given in the future to the level of service offered for pollution response and any potential impact this has on other functions.
- [35] In the year to 31 May ORC has issued 23 infringement notices and 17 abatement notices. The most common reason for infringement notices was water pollution, odour and outdoor burning. Abatement notices were issued for water pollution (6) and odour (3). Further details on enforcement action can be found in Figures 16 and 17.

Clutha Wastewater Treatment Plant Enforcement

- [36] Following an investigation by Council staff a number of charges have been laid. The first court appearance for this case is scheduled to be on the 30th of July 2020 at the Dunedin District Court. In addition to the enforcement action compliance staff have been working with Clutha District Council to address the immediate impacts of the non-compliances identified.

- [37] As the case is currently before the court no further details will be made public at this time. Further public updates can occur at the appropriate time. An update for Councillors is included in the non-public section of the agenda.

Air Plan Enforcement

- [38] Council receives a number of complaints each year about smoke and odour from domestic home heating appliances. The Council approach to date has been an educational one where we issue advisory and warning letters and provide guidance on effective use of wood burners.
- [39] In the 2019/20 financial year to 31 May 2020, Council has received 90 complaints about domestic heating appliance discharges.
- [40] For the majority of complaints, an advisory letter is sent to the homeowner who has the smoky / odorous appliance. The letter advises that a complaint was received and includes information on how to reduce their impact on the environment. Ongoing complaints can result in a site inspection to verify the smoke/odour nuisance.
- [41] Enforcing the Regional Plan Air for Otago can be challenging. It is permitted to have a home heating appliance subject to rules. Rules include the emissions rate from the burner, which varies between air zones, and the date it was installed. There is also a catch-all rule which states there is to be no offensive and objectionable smoke and odour beyond a property boundary.
- [42] To prove that a homeowner is using a non-compliant wood burner can be difficult. Council staff are not able to enter a private dwelling (unless invited) to observe the wood burner therefore age, model type and fuel being burnt can be difficult to prove. Territorial Local Authorities, under the Building Act consent the installation of wood burners, however these records can be incomplete, especially for older burners.
- [43] The rule enforcing no offensive and objectionable smoke and odour beyond the property boundary is also problematic. Where multiple fires are present and operating, proving who is causing the nuisance effect is challenging. It is more likely that in these situations a broader education approach will need to be taken.
- [44] Council can take enforcement action where it is established non-compliant burners are being used. While an education first approach will be taken, where there is proven and ongoing non-compliance, staff will consider formal enforcement action. This action will consider the human health element of home heating and provide an appropriate period of time for compliance to be achieved.
- [45] An opportunity also exists for ORC to work with TLA's to share information, and better inform homeowners of their responsibilities when installing a fire appliance. Staff have recently commenced discussions with Dunedin City Council's Building Services team on this matter.

COMPLIANCE MONITORING AND ENFORCEMENT METRICS

- [46] The Compliance and Enforcement Special Interest Group (CESIG) is a regional sector group with a focus on promoting best practice in compliance monitoring and enforcement (CME).
- [47] The CESIG has produced a metrics report for the 2018/19 year. This is a follow up to the first report on the 2017/18 metrics. The report is included as Attachment 3.
- [48] While the report acknowledges limitations due to the different ways in which Council's collect data, it does provide a good insight into CME activity across the sector.
- [49] Having a fit for purpose system to manage workflow and collect data is a critical action for ORC. The report shows that ORC is unable to report on a number of metrics due to the shortcomings of the existing IT system. A review of this system is being undertaken in the 2020/21 year.

OPTIONS

- [50] As this is a report for noting there are no options.

CONSIDERATIONS

Policy Considerations

- [51] There are no policy considerations.

Financial Considerations

- [52] There are no financial considerations.

Significance and Engagement

- [53] As this is a report for noting consideration of the Significance and Engagement Policy is not required.

Legislative Considerations

- [54] A number of legislative requirements govern the activities of the Regulatory Group.

Risk Considerations

- [55] There are no risk considerations.

NEXT STEPS

- [56] Regulatory activity will continue and will be reported to the Committee on a quarterly basis.

ATTACHMENTS

1. Regulatory Data Appendix July to May 2020 [8.1.1 - 9 pages]

APPENDIX 1: REGULATORY REPORTING FOR THE PERIOD 1 JULY 2019 TO 31 MAY 2020

Consents

Figure 1: Resource Consent Applications Received

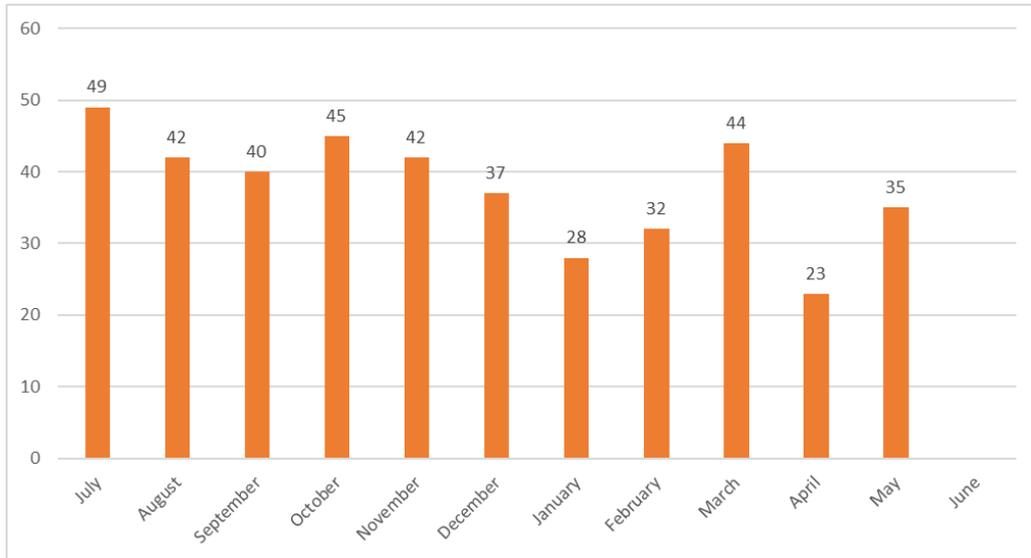


Figure 2: Notified Applications

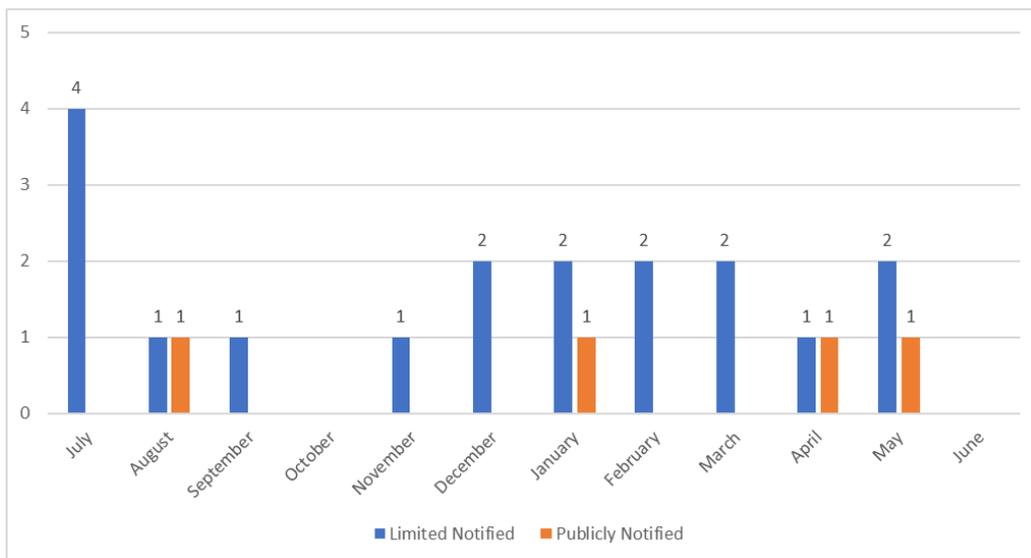


Figure 3: Resource Consents Issued

| Activity | July | August | September | October | November | December | January | February | March | April | May | Total |
|------------------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|------------|
| Air | | 1 | | | 3 | 1 | | 1 | 3 | 2 | | 11 |
| Bore | 9 | 10 | 7 | 9 | 10 | 7 | 1 | 7 | 10 | 3 | 5 | 78 |
| CMA Use | 1 | | | 6 | 2 | | | 2 | | 2 | | 13 |
| Compliance Certificate | | 1 | | | 1 | 1 | | | | 1 | | 4 |
| Dam | | 1 | 1 | | | 3 | | 1 | 1 | 1 | | 8 |
| Discharge | | 1 | | | | 1 | | | | | | 2 |
| Divert | | 2 | | | 2 | 2 | | | 1 | 1 | | 8 |
| General | 3 | 6 | 2 | 4 | 6 | 10 | 2 | 10 | 3 | 2 | | 48 |
| Gravel | | | | | 1 | | 1 | | 1 | 1 | | 4 |
| Groundwater Take | 5 | 3 | 7 | 1 | 1 | 7 | 1 | 5 | 2 | 1 | 2 | 35 |
| Land Use | 4 | 1 | 1 | 3 | 3 | 3 | 3 | 1 | 5 | 3 | 6 | 33 |
| Surface Water Take | 2 | 1 | 1 | 8 | 4 | 4 | 1 | 1 | 3 | 2 | | 27 |
| Water | 1 | 2 | 1 | 4 | 1 | 1 | 1 | 1 | 3 | 1 | | 16 |
| Total | 25 | 29 | 20 | 35 | 34 | 40 | 10 | 29 | 32 | 20 | 13 | 287 |

Figure 4: Other Applications Received

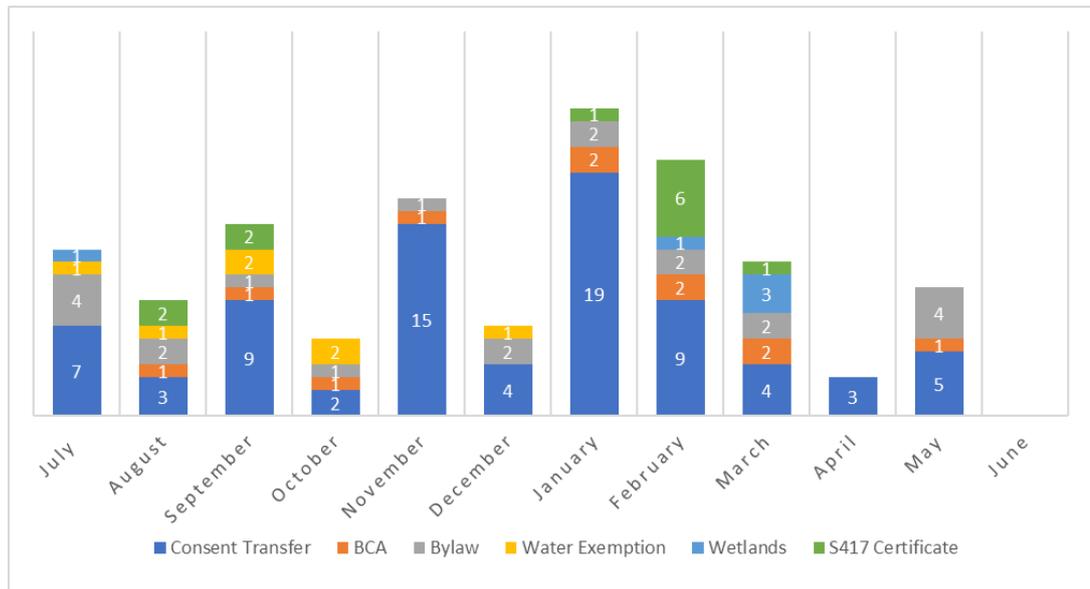


Figure 5: Other Applications Processed

| Activity | July | August | September | October | November | December | January | February | March | April | May | Total |
|------------------|----------|----------|-----------|----------|-----------|----------|-----------|-----------|----------|----------|----------|------------|
| Transfers | 5 | 5 | 6 | 4 | 16 | 3 | 19 | 12 | 4 | 2 | 6 | 82 |
| BCA | | | 1 | | | | | | | | | 1 |
| Bylaw | 1 | | | | | | 1 | 4 | 2 | 3 | | 11 |
| S417 Certificate | | | | | | | 2 | | 1 | | | 3 |
| Water Exemption | | | 1 | | | | 4 | 2 | | | | 7 |
| Total | 6 | 5 | 8 | 4 | 16 | 3 | 26 | 18 | 7 | 5 | 6 | 104 |

Figure 6: Consent Public Enquiries

Total 1385

| Type of Enquiry | No. | % of Total |
|--------------------|-----|------------|
| Current Consents | 494 | 36 |
| Other | 148 | 11 |
| Permitted Activity | 312 | 22 |
| Pre-application | 221 | 15 |
| Property Enquiries | 162 | 12 |
| Mining Privileges | 17 | 1.5 |
| Transfers | 22 | 2 |
| TLA Enquiries | 9 | .5 |

| Method of Enquiry | No. | % of Total |
|-------------------|-----|------------|
| Counter | 58 | 4.18 |
| E-mail | 899 | 64.9 |
| Internet | 15 | 1.08 |
| Letter | 2 | 0.14 |
| Telephone | 410 | 29.6 |
| Fax | 1 | .10 |

| Enquiry Location | No. | % of Total |
|---------------------|-----|------------|
| Central Otago DC | 434 | 31.33 |
| Clutha DC | 97 | 7 |
| Dunedin CC | 250 | 18.05 |
| Queenstown Lakes DC | 271 | 19.56 |
| Throughout Otago | 64 | 4.65 |
| Unspecified | 146 | 10.54 |
| Waitaki DC | 121 | 8.73 |
| Outside Otago | 2 | 0.14 |

Compliance

Figure 7: Performance Monitoring Returns

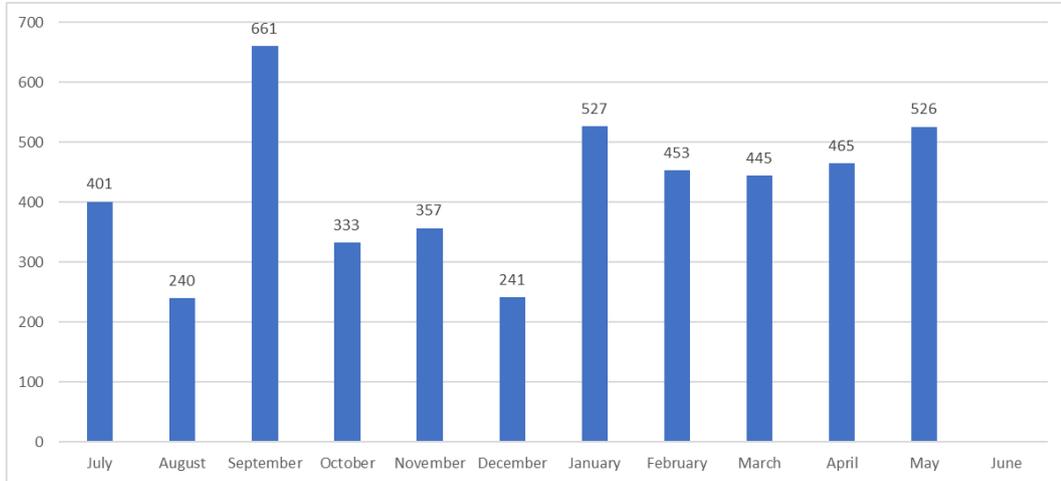


Figure 8: Performance Monitoring Grades Year to Date

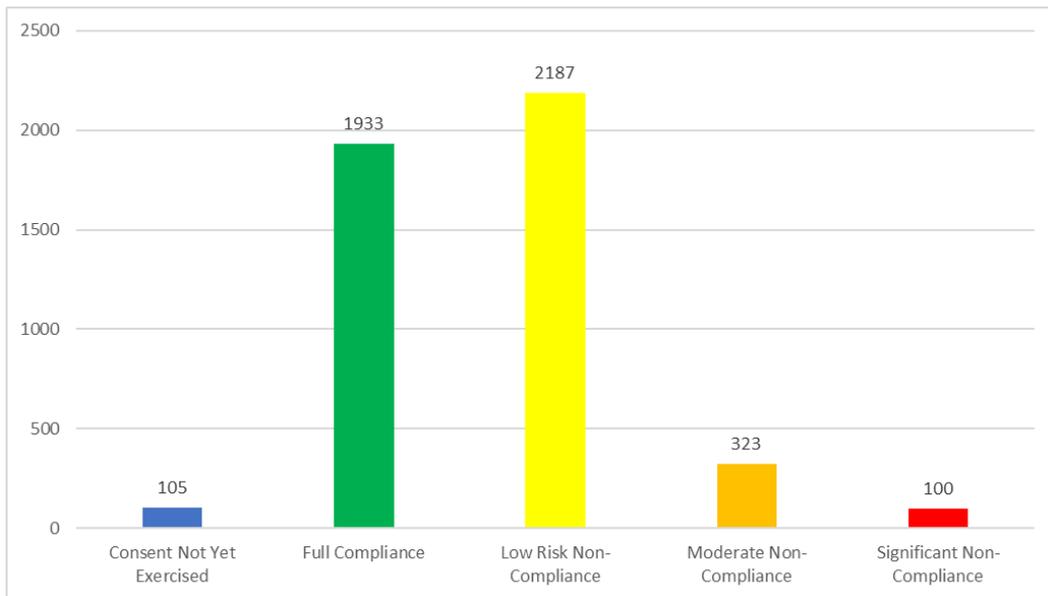


Figure 9: RMA Consent Audits Completed

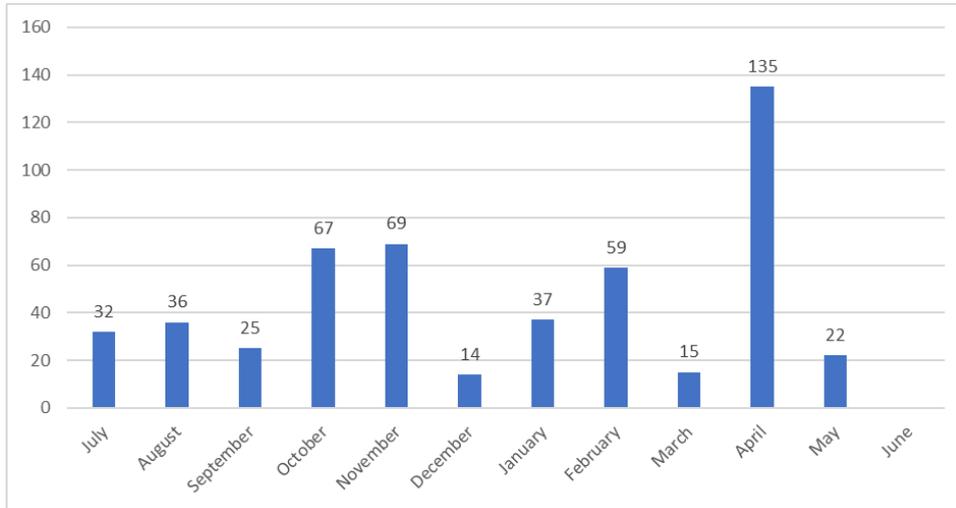


Figure 10: Audit Grades Year to Date

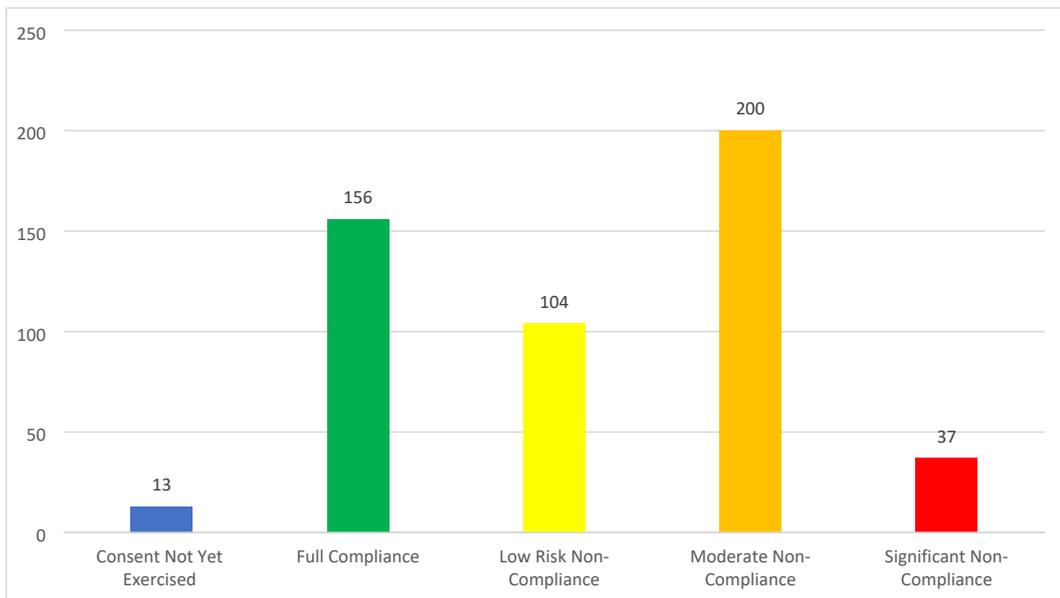


Figure 11: Dairy Inspections

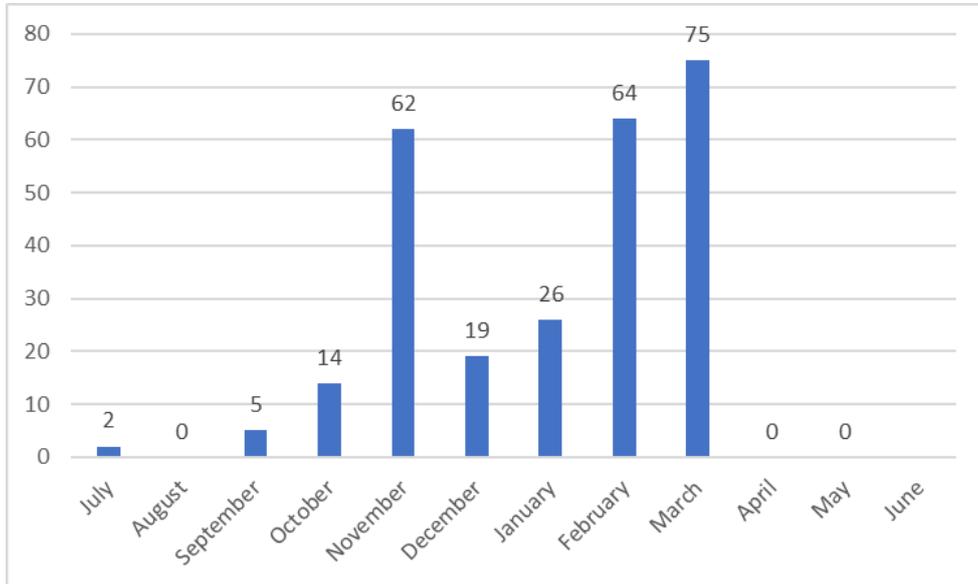


Figure 12: Dairy Inspection Grades

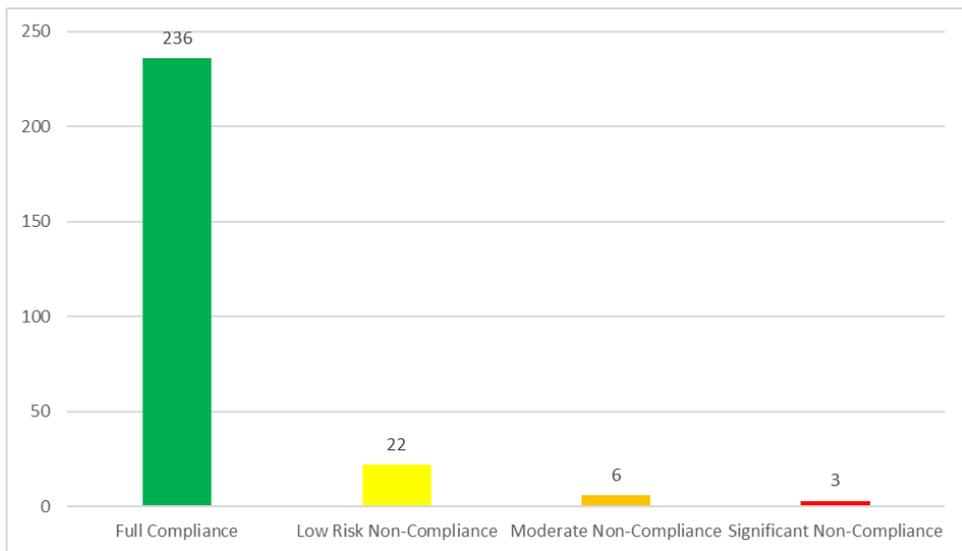


Figure 13: Types of Significant Non-Compliance

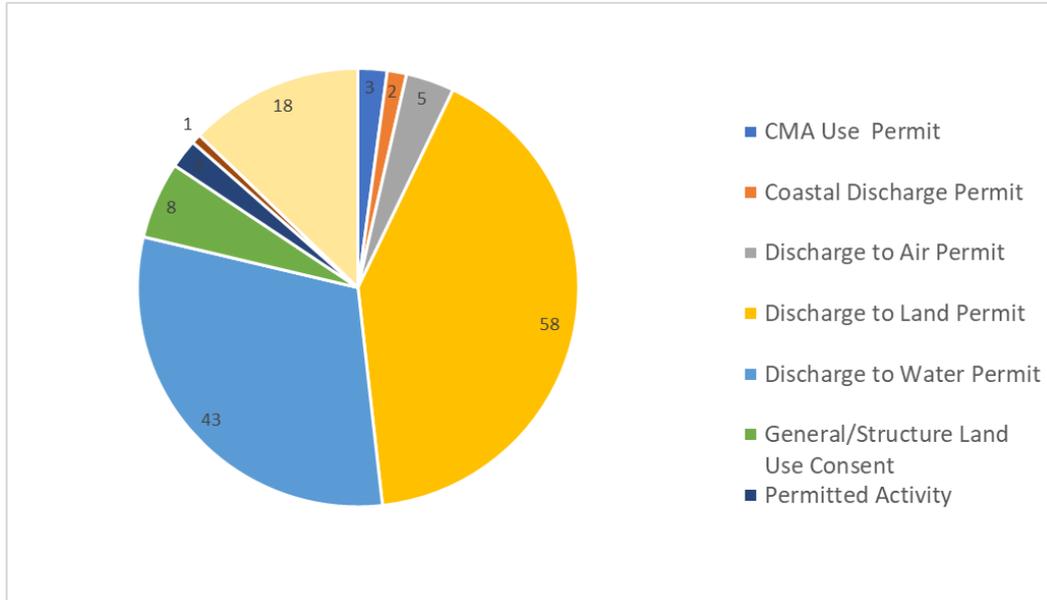


Figure 14: Service Requests

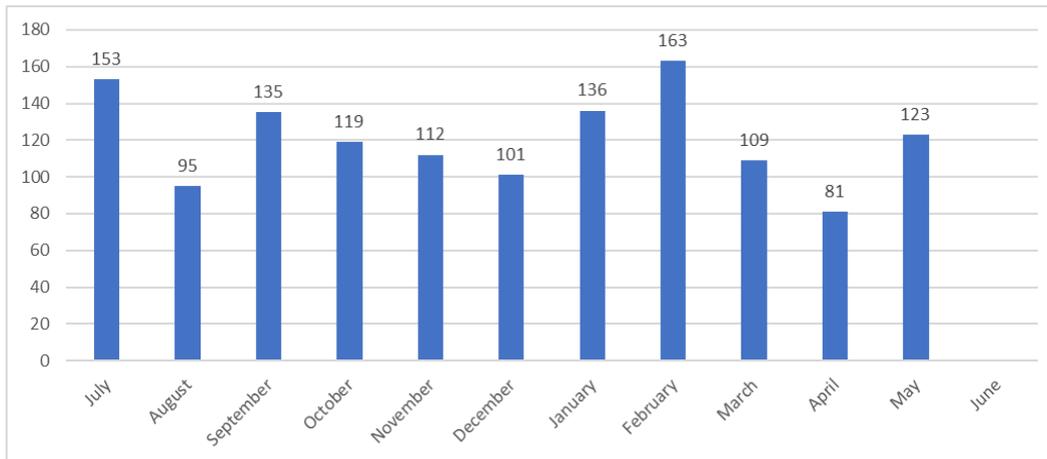


Figure 15: Service Requests by Type

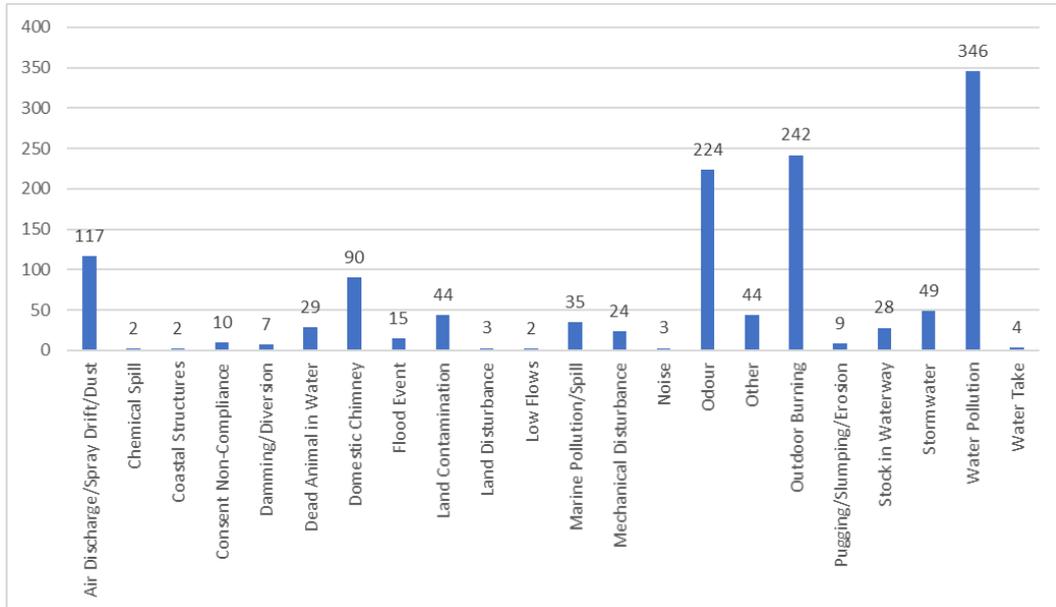


Figure 16: Enforcement Action

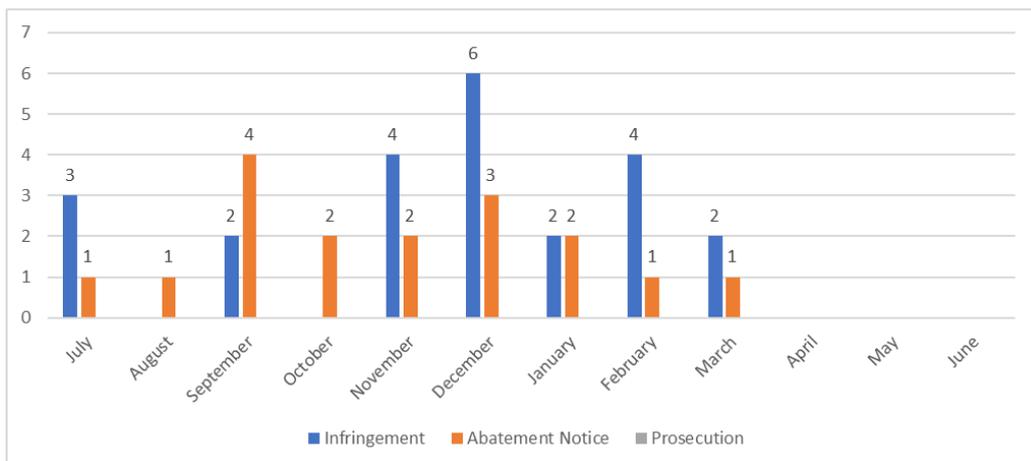
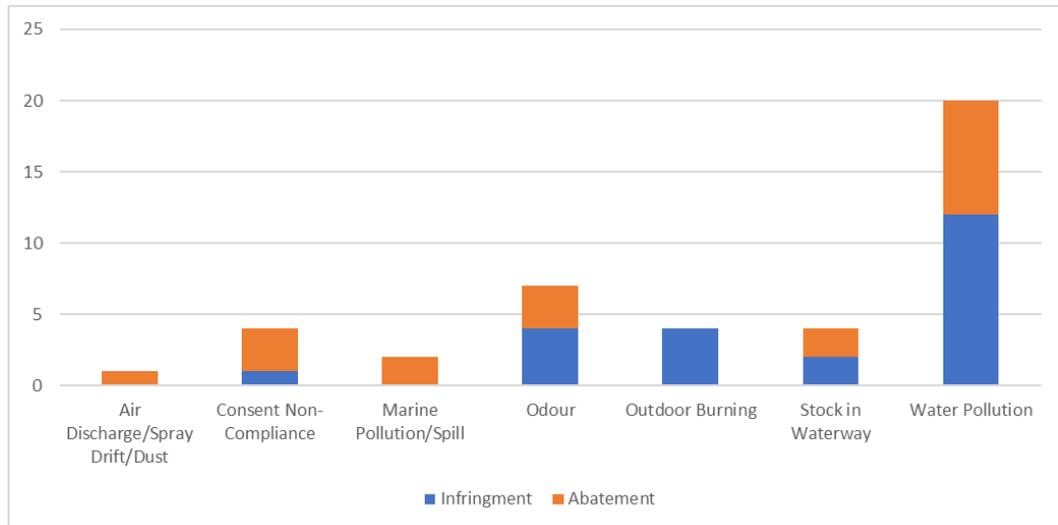


Figure 17: Enforcement Causes



INDEPENDENT ANALYSIS OF THE 2018/2019 COMPLIANCE MONITORING AND ENFORCEMENT METRICS FOR THE REGIONAL SECTOR

3 FEBRUARY 2020



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.....

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CONTRACT REPORT NO:

2019/152

.....

PREPARED FOR:

The Compliance and Enforcement Special Interest Group (CESIG)
CESIG comprises regulatory managers from the 16 regional and unitary councils making up the regional sector of Local Government within New Zealand. The focus of this special interest group is the development and maintenance of best practice, as it relates to compliance monitoring and enforcement (CME), particular to the Resource Management Act. They form part of a network of special interest groups (SIGs) reporting to the collective executive from the regional sector. This report has been commissioned by CESIG for the purpose of analysing practice across the sector, looking for opportunities to share strengths and to continuously improve.

.....

ACKNOWLEDGEMENTS:

Thanks is due to the councils that make up the regional sector for their strategic leadership in developing this reporting framework and for the provision of the data.



THE CATALYST GROUP
planning and environment

FOREWORD

I'm pleased to present the Independent Analysis of the 2018/19 Compliance, Monitoring and Enforcement Metrics for the Regional Sector, which was written by Dr Marie Doole and commissioned by the Regional Sector. This report is the second of its kind, building on the previous year's efforts to provide a comprehensive review of the sector and its compliance, monitoring and enforcement functions under the Resource Management Act (RMA).

As a sector, we recognise that compliance, monitoring and enforcement (CME), sits alongside planning, consenting and non-regulatory steps as an essential tool for protecting the environment and implementing policy. This importance is reflected with the focus from Central Government on CME performance over the past two years. The report helps to quantify the efforts of Regional Councils across the country, and identifies opportunities for improvement, which will help to guide the work of our Compliance and Enforcement Special Interest Group (CESIG).

The data presented in this report shows that the sector collectively is very productive, with some large numbers representing the volume of work being achieved. For example, across the country, Regional Councils administer over 200,000 resource consents, and undertook over 7000 formal enforcement actions. Similarly, Regional Councils, on the whole, should take pride in the level of service being provided directly to the community, with over 98 percent of the 34,000 calls received from the public about pollution being responded to.

The report also helps to articulate a number of challenges, which will guide the efforts of the Regional Sector in this space. For example, the results would suggest that non-compliance for activities controlled by regional plan rules seems disproportionately high when compared with consented activities, prompting further analysis to understand the causes behind that.

Similarly, the report also acknowledges the limitations of comparing statistics across a regional sector comprised of 16 different agencies, who tailor their approaches within the bounds of a devolved framework, in order to meet the unique challenges of their respective regions. The challenge this presents for the sector in the future is to build consistency in the right areas, while continuing to provide for that variation; similarly, future iterations of this report will need to continue honing how it can measure and articulate the success of these regimes at a national level, and refine the linkages between regulatory and scientific data.

I'm pleased to see this reporting continue with this latest version, and look forward to seeing future iterations both demonstrate the efforts of the Regional Sector in tackling the challenges it currently faces, and provide a platform to identify emerging trends in this space at a national level.



Doug Leeder
Chair, Regional Sector
Local Government New Zealand

EXECUTIVE SUMMARY

This report is the second in a series of reports based on questions designed by the regional sector to improve and complement the present national monitoring system's compliance, monitoring and enforcement related questions and analysis. This report series represents a sector-led effort, under the leadership of CESIG, to improve the availability of data on CME functions. All 16 of New Zealand's regional councils and unitary authorities (collectively referred to as the 'regional sector') participated in this second edition. The collective reports provide a useful sector level overview of RMA CME implementation by regional and unitary councils.

The second year of the CME reporting project demonstrates that the regional sector continues to give compliance prominence within their agencies and are working on continuously improving how the function is carried out by the 480 FTE that make up the sector. The sector administers more than 220,000 resource consents, up more than 10,000 from last year. Councils monitored approximately 89.5% overall of all consents under the RMA that were determined to require monitoring and responded to an overall average of 98.7% of complaints received. A range of non-compliance was encountered, and the regions differ significantly in the levels of different types of compliance and in the extent to which formal tools were employed to address that non-compliance. For the 2018/2019 year key trends remain consistent with the inaugural report.

Councils have well codified responses to managing consent monitoring and incident response, but very little for permitted activities (where resourcing demands are dominated by dairy and forestry). Strikingly, data from this year reflects that the overwhelming majority of confirmed breaches from complaint response are of activities that are not consented. This trend could well be reflective of some activities that are permitted being high risk activities, but at the least reflects that council complaint lines are one useful source of information about potential non-compliance.

Council resourcing remains variable and there is little change to this (except for Auckland). The resourcing for some councils appears concerning low and most are relatively static. It is difficult to ascertain what impact the resourcing shortfalls would be having on activity levels, although a quick analysis of FTEs/1000 compared with the number of formal actions on the same basis indicates there is some relationship between resourcing and the number of formal actions taken. If councils are to be credible regulators, it is vital that resourcing is adequate.

Councils continue to develop their internal policy frameworks, and most have the basic ingredients of them. Some still do not have an enforcement policy however and it is strongly recommended that this gap be addressed. This recommendation was made in 2017/2018 report and has yet to be implemented by all councils. All councils have a multi-party decision making process for prosecutions and delegation to approve a prosecution appears to stop with the CEO, with no instances of formal approval being required from elected representatives. Transparency and fair process are of utmost importance where the legal consequences are at their highest, and apolitical enforcement decision making is a fundamental requirement.

Where formal enforcement tools were employed, non-compliance with section 15 (discharges of contaminants) was again the dominant category of offence as last year. Overall the sector issued 7105 formal notices, more than half of which were section 15 based. Abatement notices following by infringement fines are the most commonly used instruments. Enforcement orders remain a relatively rare tool to use, with usage halving this year from 21 to 11. It would be useful to understand why the use of enforcement orders is so limited.

In the reporting year, the sector overall concluded 61 prosecutions and has 99 in progress. That activity is clustered

within just a few councils, with most councils only infrequently taking prosecutions, if ever. The sector collectively secured 106 convictions against 29 individuals and 102 convictions against 47 corporates, netting approximately \$1.8 million in fines. A prison sentence was also handed down. It is likely too soon in the reporting framework to know what level of enforcement constitutes 'the norm'. Councils are also increasingly communicating the results of their prosecutions to the general public in an effort to promote the importance of compliance.

The advent of the Ministry for the Environment Best Practice Guidelines is providing useful overarching guidance, and standardisation is emerging as an operational priority where it is helpful to do it. The data reflect three clear groups within the regional sector: Auckland Council, the smaller unitaries and the regional councils. These three subgroups are quite distinct across much of the data and do suggest that broad-brush sector approaches are likely to be only partially effective.

It is possible to further augment the richness of the data through tactical additional questions. For example, it would be useful to develop a more contiguous data set which links workload (incoming complaints, consents requiring monitoring and permitted activity monitoring) with compliance outcomes (i.e., instruments used to effect behaviour change, state of the environment reporting). It would be useful to be able to demonstrate how instances of significant non-compliance were followed up and how they were resolved. Further, it would be useful to better understand the reasons for the disparity in use of formal instruments particularly prosecution, to better understand the variables that are affecting the extent to which they are used on a council by council basis.

The continuation of the reporting process will only increase in value over time, particularly as councils progressively align their data management approaches and recording conventions. There were much fewer instances of 'unknown' data this year, and with all councils participating this makes for an increasingly robust suite of information. The ultimate test of a compliance programme is the quality of the environmental outcomes. This year the survey did not discuss the link between CME and SOE reporting, but it remains ever important to integrate the two. CME is clearly a key lever in implementing and achieving the purpose of the RMA.

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PART 1 OVERVIEW

This report is the second in a series of reports based on questions designed by the regional sector to improve and complement the present national monitoring system's compliance, monitoring and enforcement related questions and analysis. This report series represents a sector-led effort, under the leadership of CESIG, to improve the availability of data on CME functions. All 16 of New Zealand's regional councils and unitary authorities (collectively referred to as the 'regional sector') participated in this second edition.

How to read this report

Each council was sent a survey comprising 46 questions (Appendix 1). This report sets out data provided for each section of the survey, as follows:

- A boxed section containing the exact questions relevant to that section
- An overview of the purpose of the questions
- The tables and graphs of the information
- A description of findings
- A short analysis of the findings, at both a regional and national scale

Responses to open-ended questions have been aggregated and analysed and the theme of the response presented in this report. Where responses reflected a sector-level trend that could not easily be articulated in text, verbatim answers are provided. In most cases unitary authorities and regional councils were tabulated separately, because with most matters they are not entirely comparable. The data specific to each regional council has been collated into single page summaries that are included in Part 3. The purpose of the one page summaries is to assist councils in communicating the survey findings.

Data limitations

The sector under the leadership of CESIG have expended significant time and resource in developing and refining the questions for this second round of reporting. It is hoped that this, in combination with rising sector capability and buy-in to the metrics project itself, will enrich the data available and improve comparability across agencies. There are several aspects of the metrics and the data that was submitted that should be kept in mind when reading this report:

- Not all requested information can be provided by all councils which results in gaps in the dataset. It should be noted however, that for the 2018/2019 reporting year there are fewer instances of an 'unknown' response, suggesting the sector have made inroads to enhancing the data they both collect and collate. Time was provided to councils to gather the data together and a draft was circulated to further check any errors that may have materialised at any stage of the process.
- The project does not include any data auditing and it is therefore unknown how accurate the information provided by councils is.

INTRODUCTION

CME under the Resource Management Act in New Zealand

Regional councils, unitary authorities and territorial local authorities have the primary role for compliance, monitoring and enforcement of the Resource Management Act 1991 (RMA). The Ministry for the Environment (MfE, the Ministry) has a system stewardship role which has been exercised to a limited extent throughout the history of the regime. Recently, a limited suite of powers was proposed to be granted to the Environmental Protection Authority (EPA).

Councils can choose how to exercise their CME role within the relatively broad framework of the RMA. There are few specific parameters set down in the Act other than procedural/tool-based sections. Because of this relatively high level of discretion and limited national direction, the role has evolved differently over different jurisdictions and culminated in high levels of variation nationwide. The regions are also quite different, with three obvious groupings being evident in the data: Auckland Council, the small unitary councils and regional councils.

In 2018, the Ministry released the Best Practice Guidelines on Compliance Monitoring and Enforcement, which continues to gain buy-in and appears to be effective in helping drive some measure of standardisation (e.g., compliance gradings). The guidelines were developed between the Ministry and an advisory panel comprised of CESIG members, a Crown Solicitor, and representatives from territorial authorities. Notwithstanding the differences between the three groupings highlighted above, where standardisation is possible and helpful it should be pursued.

Key definitions

Compliance: adherence to the RMA, including the rules established under regional and district plans and meeting resource consent conditions, regulations and national environmental standards.

Monitoring: the activities carried out by councils to assess compliance with the RMA. This can be proactive (e.g., resource consent or permitted activity monitoring) or reactive (e.g., investigation of suspected offences).

Enforcement: the actions taken by councils to respond to non-compliance with the RMA. Actions can be punitive (seek to deter or punish the offender) and/or directive (e.g. direct remediation of the damage or ensure compliance with the RMA).

What does success look like?

It is important that regulators – in this case unitary and regional councils – are credible. But what does it mean to be credible? Insights into the kinds of expectations that might be had of the credible regulator under the RMA can be found in the following documents:

- Solicitor General Prosecution Guidelines
- Best Practice Guidelines
- Basic Investigative Skills Manual
- Regional Sector Strategic Compliance Framework

Expectations relate to the kinds of resourcing that is available for compliance (including capacity and capability), the policy context for CME and the procedures and reporting in place to record and demonstrate effectiveness.

A brief review of the 2017/2018 report

The inaugural report in this series identified the significant volume of CME related activity under the RMA that the regional sector was responsible for and provided some key insights into that activity. Throughout the responses it was evident that standardisation could be more keenly focused upon and that this would have public interest benefits including greater transparency and comparability across the sector. Notwithstanding the variation, it was evident that the regional sector had made significant progress in professionalising the CME function at both an individual council level and a sector level.

Other observations included that the resources of several councils appeared very low, and likely too low to be able to effectively execute their role in CME. The variability in resourcing was significant, with some councils carrying a relative order of magnitude more staff than other agencies. The reasons for this resource disparity did not appear to be explained by relative wealth, land area or population. Staffing levels remain relatively static across the sector, with mostly minor increases or deductions in FTEs, other than Auckland Council which experienced a significant increase.

It is possible that requests for further resourcing are still underway given the delay in public release of the 2017/2018 report and that greater staff numbers may be reflected in the next reporting year. Local government funding processes make it difficult to respond quickly to resource needs (i.e., waiting on annual and long-term plan processes) so some time-lag is to be expected once a resource deficit is identified.

The information management capability of councils was the subject of criticism in the last iteration with many councils not being able to furnish relatively basic information. Further, unitary authorities were criticised for not demarcating their regional from their district functions to enable true comparisons with their regional cousins. The final key finding was that many councils had an incomplete internal policy framework, leaving them vulnerable to reputational issues and an inability to demonstrate fair and transparent decision making. Overall these aspects have improved, but there is still ample scope to enhance practice and policy.

How does this reporting process differ from the last?

The value of continuous reporting increases exponentially over time. As a result, there were minimal changes to core questions between the surveys. The questions have been condensed and rearranged, so the subsequent data collection broadly matches the structure of the first report. The data is also presented from the previous year's analysis. Stability in question wording and data analysis is vital to fair and authentic reporting over time. Questions were only changed, removed or added to increase clarity and data richness.

The analysis differs slightly from 2017/2018 in that Auckland data are often extracted from the fully aggregated dataset to ensure that changes in Auckland's data do not unreasonably influence sector totals and demonstrate trends where they do not exist at a sector level. It is possibly not going to be easy to develop a suite of metrics that can produce robust comparability between the three groupings (Auckland, the smaller unitary councils and the regional councils) in the short term.

PART 2 ANALYSIS

Regional context

All the councils, and the regional jurisdictions over which they preside are unique in certain ways. The purpose of this section is to set out the regional context for CME across those geographic areas.

Table 1: *Regional context data*

| Regional council | Population (million) Census 2018 | % change 2013-2018 | Geographic area (square km) | Regional GDP (\$million) to March 2018 |
|-------------------------------------|----------------------------------|--------------------|-----------------------------|--|
| Northland Regional Council | 181,047 | 16.2 | 13,778 | 7415 |
| Waikato Regional Council | 466,110 | 12.8 | 24,147 | 23,914 |
| Bay of Plenty Regional Council | 313,380 | 14.6 | 12,303 | 15,833 |
| Hawkes Bay Regional Council | 170,448 | 9.2 | 14,138 | 8070 |
| Taranaki Regional Council | 118,215 | 7.4 | 7256 | 8136 |
| Horizons Regional Council | 241,182 | 7.0 | 22,220 | 10,709 |
| Greater Wellington Regional Council | 514,752 | 7.6 | 8142 | 37,107 |
| Environment Canterbury | 614,628 | 10.8 | 44,633 | 35,392 |
| Otago Regional Council | 239,313 | 7.3 | 31,280 | 12,658 |
| West Coast Regional Council | 35,202 | -3.0 | 23,277 | 1600 |
| Southland Regional Council | 101,571 | 3.8 | 32,184 | 5826 |
| Unitary authorities | | | | |
| Auckland Council | 1,590,261 | 10.6 | 5945 | 107,754 |
| Gisborne District Council | 47,565 | 8.3 | 8386 | 2011 |
| Tasman District Council | 55,206 | 7.7 | 9764 | 5239 |
| Nelson City Council | 53,082 | 9.6 | 447 | |
| Marlborough District Council | 50,562 | 9.2 | 10,773 | 3020 |

These data demonstrate that the population, growth rates, areas and Gross Domestic Product (GDP) differ significantly across regions. These are just some of the possible variables, for example, dominant land use and other factors also vary between regions. The purpose of this section is to illustrate how different regions are placed in relation to others, and the figures are drawn upon later where relevant. Of particular note is the variance in population growth rates from a negative rate on the West Coast through to over 16% increase in Northland between the 2013 and 2018 Census.

Working with iwi

Q3: In no more than 300 words describe your regional key commitments to work with iwi/Māori on CME. For example, joint management agreements or other co-management agreements.

Note: The report author may contact you for further information or clarification of your response.

This question has been analysed on a qualitative basis as the narrative responses generally preclude categorical examination. The full verbatim responses are included in Appendix 2. The survey results show that councils are increasingly engaging with iwi over CME matters. The breadth and depth of responses are greater than in the previous year and demonstrate the positive trend and indicate that this dimension of the relationship between agencies and iwi is likely to continue to grow and diversify.

Most councils have existing engagement opportunities with iwi and hapū and nine councils identify that this engagement may include CME matters. The second most common means of engaging with Māori over CME is considering the cultural impact of offences. Local iwi and hapū presenting victim impact statements appears to be a common strategy to help demonstrate the effects of noncompliance. Eight councils attest to utilising these techniques in prosecutions. Five councils are working towards developing new modes of engagement.

Key findings

Most councils have engagement with iwi and hapū that may include CME matters. While the responses to this question may be brief, the burgeoning co-governance space suggests that questions in this regard are likely to increase in number and scope over time.

CME Operations (managing the workload)

Responding to Complaints (Questions 4-9)

Q4. Does your council register/count:

- An individual “incident” per notification?
- One incident per event, regardless of the number of separate complainants?

Q5. How many notifications (complaints) were received from members of the public (or other sources, but excluding information from council monitoring activity) relating to environmental incidents or potential breaches of environmental regulation?

This might include information from, for example, emergency services attending an incident or perhaps a council staff member observing something while on other duties but excludes information from council monitoring activity. Please note answer unknown if your council does not record the information requested.

Q6. How many of these notifications were responded to by council?

This response may be in any form – e.g., phone call, site visit, desktop audit

Q7. How many of these notifications were physically attended by council staff?

If one incident had multiple visits, only count this as one.

Q8. How many of these notifications were confirmed as breaches of the RMA or subsidiary instruments?

Q9. How many of the breaches were for:

- Breach of a resource consent?
- Breach of permitted activity rules?

Q4: Registering notifications

Councils generally register complaints in one of two ways – as individual incidents in and of themselves, or one incident with multiple complainants. Logically, the latter number is usually smaller. Any comparative analysis between councils must take into consideration the differences that these recording conventions can make. In response to this question, councils appear to be exactly split. Half of councils record on a complaint basis and half generate an event to which multiple complaints are attributed. The unitaries are also split (Table 1).

The purpose of collecting this information is to gauge an approximation of workload. However, recording the number of complaints about a particular issue can usefully reflect the degree of public interest and the volume of communications workload that results. It would be optimal if the sector would work towards a standardised approach, perhaps in which both sets of data are collected, to enable it to be used for different purposes as needs arise.

Table 2: Recording conventions for incoming complaints across the regional sector

| An individual “incident” per notification | One incident per event, regardless of the number of separate complainants |
|---|---|
| Waikato | Northland |
| Bay of Plenty | Taranaki |
| West Coast | Horizons |
| Southland | Greater Wellington |
| Auckland | Environment Canterbury |
| Nelson | Gisborne |
| Tasman | Marlborough |
| Otago | Hawkes Bay |

Q5–9 Recording and responding to complaints

Questions 5–9 follow incident reports from notification through to whether or not the complaint is validated for compliance purposes (i.e. has identified a breach of the RMA). Not all complaints relate to a matter that is within the jurisdiction of councils, nor do they necessarily relate to any unlawful activity. Councils need robust internal processes to manage the appropriate directing of complaints (including well-trained front-line phone staff) to reduce this burden. Different complaints warrant different forms and urgency of responses. Attending to a complaint physically is the most resource-intensive response possible, but is important to 'ground truth' notifications and to enable officers to assess an issue first-hand. However, a physical response may not always be possible or necessary, and a range of alternative responses can be employed instead.

Measuring the number of complaints that link to genuine determinations of wrongdoing helps reflect the level of legitimacy of complaints as a whole and to some extent reflects the enforcement workload. For the 2018/2019 reporting year, an additional question (question 9) was added which requested that councils articulate what proportion of validated complaints related to breaches of permitted activity standards and what proportion related to breaches of an existing resource consent.

Analysis

Councils across New Zealand receive a highly variable number of complaints, as was recorded in the 2017/2018 reporting year also. However, the variation between councils would seem generally in-line with their population base. Regional council response levels continue to be very high, with all councils except for Environment Southland improving the proportion of complaints they respond to, and most responding to 100% (Table 3). Unitary councils all responded to 100% of complaints, consistent with last year’s reporting. The proportion of complaints physically attended was relatively static for regional councils, and as only one unitary authority provided the data this year (despite four providing it last year) there is no trend to discuss.

| | Individual complaints | | Individual incidents | | Responded to | | Physically attended | | Confirmed as a breach | | Resource consent | Non-consented activity |
|-------------------------------------|-----------------------|---------|----------------------|---------|---------------|-------------------|---------------------|-------------------|-----------------------|-------------------|--|------------------------|
| Regional Councils | | | | | | | | | | | | |
| | 2017/18 | 2018/19 | 2017/18 | 2018/19 | 2017/18 | 2018/19 Number(%) | 2017/18 | 2018/19 Number(%) | 2017/18 | 2018/19 Number(%) | Percentage of # breaches 2018/2019 Number(%) | |
| Northland Regional Council | | | 1052 | 1026 | 100% | 1026 (100) | 67% | 698 (68) | Unknown | 495 (48.2) | 24 (4.8) | 451 (91.1) |
| Waikato Regional Council | 1543 | 1838 | | | 100% | 1838 (100) | 20.3% | 522 (28.4) | 24% | 125 (6.8) | Unknown | Unknown |
| Bay of Plenty Regional Council | 2834 | 3519 | | | 100% | 3519 (100) | Unknown | 1677 (47.7) | Unknown | 868 (24.7) | Unknown | Unknown |
| Hawkes Bay Regional Council | | | 1095 | 1116 | 100% | 1116 (100) | Unknown | Unknown | Unknown | Unknown | Unknown | Unknown |
| Taranaki Regional Council | | | 414 | 452 | 100% | 452 (100) | 100% | 452 (100) | 37% | 169 (37.4) | 31 (18.3) | 138 (81.7) |
| Horizons Regional Council | | | 792 | 1298 | 100% | 1298 (100) | 23% | 402 (31) | Unknown | Unknown | Unknown | Unknown |
| Greater Wellington Regional Council | | 1244 | 1308 | 1192 | 83% | 1244 (100) | 42% | 482 (38.7) | 17% | 182 (14.6) | Unknown | Unknown |
| Environment Canterbury | | 4225 | 4735 | 3599 | 80% | 3198 (88.9) | 38% | 1197 (37.4) | 23% | 1030 (28.61) | Unknown | Unknown |
| Otago Regional Council | | | 1913 | 2056 | Unknown | 2056 (100) | Unknown | Unknown | Unknown | Unknown | Unknown | Unknown |
| West Coast Regional Council | 102 | 233 | | | 100% | 233 (100) | Unknown | 121 (51.9) | 50% | 96 (41.2) | 70 (72.9) | 26 (27.1) |
| Southland Regional Council | 742 | 813 | | | 90% | 700 (86.1) | 51% | 305 (37.5) | 17.20% | 144 (17.7) | 34 (23.6) | 110 (76.4) |
| REGIONAL SUBTOTAL/AVERAGE (2018/19) | 5221 | 11,872 | 11309 | 10739 | 95.30% | 97.7% | 48.70% | 48.9% | 24% | 27.4% | 29.9% | 69.1% |
| Unitary authorities | | | | | | | | | | | | |
| Auckland Council | 9022 | 11,743 | | | 100% | 11743 (100) | 42.50% | Unknown | Unknown | 3347 (28.5) | Unknown | Unknown |
| Gisborne District Council | | | 147 | 539 | 100% | 539 (100) | 100% | Unknown | Unknown | Unknown | Unknown | Unknown |
| Nelson City Council | 472 | 537 | | | 100% | 537 (100) | 70% | Unknown | 70% | Unknown | Unknown | Unknown |
| Marlborough District Council | | | 557 | 633 | 100% | 633 (100) | 48% | 320 (50.5) | 33.90% | 145 (22.9) | 4 (2.7) | 141 (97.3) |
| Tasman District Council | 2562 | 2631 | | | 100% | 2631 (100) | Unknown | Unknown | Unknown | Unknown | Unknown | Unknown |
| UNITARY SUBTOTAL/AVERAGE (2018/19) | 12,056 | 14,911 | 704 | 1172 | 100% | 100 | 65% | 50.5% | 51.90% | 25.7% | 2.7% | 97.3% |
| TOTAL/OVERALL AVERAGE | | | | | 97.65% | 98.7% | 56.85% | 49.7% | 37.95% | 26.6% | | |

Table 3: Managing and responding to complaints and identifying breaches



The validation of complaints levels was static across the regional councils and halved in the unitary authorities compared to the 2017/2018 reporting year. The highest validation rate was Northland at 48% but the average across the sector was approximately a quarter. The lowest validation rate was Waikato Regional Council at just 7%.¹ It remains important that councils probe further into the reasons for these figures. Possible contributing factors include:

- Low public knowledge of what the role of council is and therefore a high volume of irrelevant concerns being received
- Poor internal management of complaints meaning they are not appropriately filtered before reaching the RMA compliance team
- Vexatious complainants
- Systems that fail to capture the validation of complaints

In time, this question train could be lengthened to capture the link between complaints and enforcement action as at present there is a disjunct between the two. Ideally, questions (and data management) would preserve a chain of custody from notification of a concern through to any action taken as a consequence. Of particular interest is that where complaints are validated the issue tends to relate to a non-consented activity (i.e., a permitted activity or one which is unlawful) rather than a condition of resource consent. This is highly relevant strategically and warrants further discussion.²

For instance, if council is responding to a significant proportion of complaints about a permitted activity breach for a particular activity type, the approach to managing that activity may need to be reviewed (i.e., that activity may need to be more strictly regulated). Further, the council may not be able to recover the costs from incident response as easily as for consent monitoring, thus the ratepayers may bear a more significant proportion of the costs of regulation than is reasonable (e.g., recidivist offenders and industries that have significant compliance issues).

Key findings

- Councils record incoming complaints in different ways which limits national comparison. Councils should consider options for more standardised recording.

¹ In supplying the data required for the CME metrics survey Waikato Regional Council identified that the number, and more specifically the percentage, of calls that came from members of the public that were confirmed as breaches of environmental regulation seemed very low. This caused WRC to check their database and identified that there are a number of incidents where breaches of environmental regulation were confirmed but not 'captured' as such, as they did not result in formal enforcement action but were resolved by other mechanisms, such as education. WRC have changed their system and back captured, correctly, the data from 1 July 2019, however, understand that the data presented for 2018/19 is inaccurate in this respect. WRC see this, overall, as a positive as it has enabled them to identify a reporting fault and rectify it.

² It should be noted that resource consents on a site do not usually cover all activities on a site. So a resource consent and a breach of a permitted rule or an unlawful activity can obviously occur in the same location. There may be subtle variation in how councils account for this which should be kept in mind, there is likely some grey area in between. In future surveys it is suggested that 'non-consented' is used in place of permitted as has been used here.

- Most councils respond to all or a significant majority of their complaints, while – despite patchy data – an average of approximately half are physically attended (ranging from Taranaki at 100% through to less than 30% in the Waikato).
- Approximately one quarter of complaints are validated at a sector level with wide variation between councils.
- Except for one council (West Coast) all councils reported that the overwhelming majority of complaints arose in relation to non-consented activities rather than consent condition breaches.

Monitoring Resource Consents

Q10. How many individual, active resource consents exist in your region?

Exclude Land Use Consents where the activity is completed e.g., Land use subdivisions where the subdivision is complete, and certificates issued or land use – building where the building has been constructed.

Q11. How many consents required monitoring during this period, in accordance with your monitoring prioritisation model/strategy?

Q12. How many of these consents were monitored (including desktop audit) in the period?

Councils receive different numbers of consent applications and manage different numbers of them on an ongoing basis. Understanding the number of consents and the degree of consent monitoring gives insight into the relative workload of each council. Question 10 asked for the number of ‘active’ resource consents. Implicit within the question was that ‘inactive’ consents did not form part of the workload, and the question explicitly asked respondents to exclude ‘*Land use consents where the activity is completed. E.g., Land use-Subdivisions where the subdivision is complete and certificates issued or Land Use-Building where the building has been constructed*’. Question 11 determined the proportion of those total active consents that were considered by the council to ‘require’ monitoring, noting that this determination varies across sector. Finally, Question 12 asked for the actual proportion that was subject to monitoring (including by desktop audit) to provide an insight in the extent to which council’s efforts were keeping pace with its intentions.

Analysis

Councils administered a total of **222,783** active resource consents for the reporting year, up 20,000 on the previous year. Of those, 60,254 (27%) were deemed to require monitoring and 89.5% of those were monitored. At a sector level, this was an improvement on last years’ monitored proportion of 74% (Table 4). All councils other than Gisborne³ were able to provide data on the number of consents monitored. This high reporting rate was perhaps enabled by the cost recovery capacity of the consent monitoring function demanding more accurate recording than for the other activities in the CME space. Nelson, Waikato, Taranaki and West Coast Councils all monitored 100% of the consents

³ Gisborne District Council is currently going through a change in how they manage information relating to compliance and enforcement. The CME function now has dedicated admin support which is helping to provide better processes to allow better capture of data. This will enable Council to respond and answer fully to this survey in coming years.

in their respective jurisdictions that required monitoring. The lowest proportion of consents monitored was Otago (52%). The average proportion monitored by regional councils and unitary authorities were similar .

In 2017/2018 it was noted that;

'A failure to monitor a consented activity at an appropriate frequency removes the ability for the regulator (absent a complaint) to detect non-compliance and therefore address environmental harm. Councils routinely set goals for proportions of consents to monitor and appear to meet these goals most of the time. Current best practice suggests that consents should be monitored in a way that reflects the level of risk the subject activity (risk-based approach) may pose to the environment and/or the wider community and given the relatively robust basis for cost recovery of consent monitoring, there is no good reason why councils should fall significantly short of fulfilling this expectation. For some, resourcing may simply be inadequate for the task, which places undue stress on staff and management and should be addressed at a council level.'

These comments stand and are reinforced by the figures in the 2018/2019 year.



Key findings

- Overall consent numbers increased and approximately one quarter were considered to require monitoring, and 89.5% of those were monitored.
- Councils may not be carrying enough resource to fulfil minimum monitoring requirements, and this is concerning as cost recovery in this instance is clearly provided for. It is likely that the resource shortfall is explained by other factors including political priority and difficulty with recruitment and retention of staff.

Table 4: Monitoring workload from consents

| Regional councils | Total consents | | Required monitoring | | Number monitored | |
|-------------------------------------|----------------|----------------|---------------------|---------------|------------------|----------------------|
| | 2017/18 | 2018/19 | 2017/18 | 2018/19 | 2017/18 | 2018/19 Number(%) |
| Northland Regional Council | 3812 | 9738 | 3724 | 3847 | 94% | 3561 (92.6) |
| Waikato Regional Council** | 4500 | 4787 | 1500^ | 525 | 77% | 1157 (100+) |
| Bay of Plenty Regional Council | 5500 | 9057* | 1900 | 2380 | 68.60% | 1656 (69.6) |
| Hawkes Bay Regional Council | 3144 | 5928 | 3144 | 3446 | 93% | 3198 (92.8) |
| Taranaki Regional Council | 4837 | 4784 | 2930 | 2743 | 100% | 2743 (100) |
| Horizons Regional Council | 4700 | 5204 | 1700 | 1648 | 82% | 1318 (80) |
| Greater Wellington Regional Council | 6375 | 6604 | 1544 | 1782 | 94.40% | 1692 (94.9) |
| Environment Canterbury | 20,417 | 18,500 | Unknown | 4625 | 28% | 3315 (71.7) |
| Otago Regional Council | 5984 | 5588 | 3827 | 1161 | 66% | 607 (52.3) |
| West Coast Regional Council | Unknown | 3474 | Unknown | 868 | Unknown | 891 (100+) |
| Southland Regional Council | 5376 | 5590 | 3188 | 4586 | 100% | 3594 (78.4) |
| SUBTOTAL | 60,145 | 79,254 | 21,957 | 27611 | 80% | 23,732 (86) |
| Unitary authorities | | | | | | |
| Auckland Council | 103,690 | 108,326 | 17,759 | 11,778 | 70% | 7057 (59.9) |
| Gisborne District Council | 1250 | Unknown | 699 | Unknown | 34% | Unknown |
| Nelson City Council | 1200 (est) | 784 | 550 | 619 | 100% | 619 (100%) |
| Marlborough District Council | 20,802 | 21,377 | 2686 | 3261 | 83% | 2895 (88.7%) |
| Tasman District Council | 15,764 | 13,042 | 4250 | 2478 | 46% | 1870 (75.5%) |
| SUBTOTAL | 142,706 | 143,529 | 25,944 | 18,136 | 67% | 81.02% |
| TOTAL | 202,851 | 222,783 | 47,901 | 60,254 | 73.50% | 89.5% |

* Significant increase in total consents granted by Bay of Plenty Regional Council is linked to a change in reporting and data collection to be in line with recent legal decisions about how different activities within a single broad application are counted. For instance, earthworks will include land use, water take and discharge consents, which would previously have been collated into a single consent and counted as one. Bay of Plenty Regional Council currently has 9057 individual consents, which sit under 5560 application/parent consents

^Waikato Regional Council records consents and determines monitoring priority on a 'per site' basis

** The monitoring prioritisation model at Waikato Regional Council was amended after the 2017/18 year resulting in resources being focused more on high priority consented sites resulting in a reduction in the total number of sites monitored. More consents were monitored than 'required' under the new prioritisation model.

Compliance gradings

Q13. In the 2018/19 year, did you use the four compliance grades as recommended by Ministry for the Environment?

- Yes
- No

Q15. When will your council be adopting the four compliance grades recommended by Ministry for the Environment?

The MfE Best Practice Guidelines were released in 2018, and contained a recommended suite of compliance categories, in the hope that the regional sector would take them up and make data on compliance levels nationally comparable. It is foreseen that councils may retain subcategories for regional purposes, but it is desirable that the broad categories are standard.

Responses demonstrated that a total of eight councils (five regional, three unitary) have already assimilated the framework into their recording system. A further three councils specifically identify that the gradings will be adopted in the 2019/2020 year. Greater Wellington Regional Council is the only council to not indicate a short-term intention to adopt the gradings, answering 'unknown'. The remainder all councils indicated they would be adopted but were less specific as to when (i.e., Taranaki Regional Council indicated they would be adopted 'as soon as possible').

Based on these responses, 11 councils will be using a consistent recording system for compliance gradings by the next reporting year. The fairly rapid uptake of this framework is illustrative of the value of nationally consistent guidance and standardisation where it is appropriate.

Key findings

- Half of all councils have implemented the suggested categorisation of compliance levels.
- A further three will adopt the framework in the upcoming reporting year.
- All councils indicated that the framework would be adopted, with the exception of Greater Wellington Regional Council.



Compliance assessment

Q14. What grades do you apply to non-compliance? (e.g., technical non-compliance, significant non-compliance)

- Fully Compliant
- Technical/Low Non-Compliance
- Moderate Non-Compliance
- Significant Non-Compliance
- Other (please specify)

Q16. What were the levels of compliance with consents according to the grades you use?

Note 1: Numbers provided under each grade is per monitoring event not per consent. E.g., a consent may be monitored four times in the year: on one occasion it may be Technically Non-Compliance and on three occasions it may be Fully Compliant, this would add three to the total of Fully Compliant and one to the total for Technical Non-compliance.

Note 2: The compliance grade is based on the condition with the worst compliance grade. (e.g., a consent with five conditions Fully Compliant and one condition Moderate Non-Compliance has an overall compliance grade of Minor Non-Compliance)

Note 3: Daily telemetry water readings where compliance with water take limits is continuously monitored are to be excluded from compliance grade totals.

Councils record compliance levels in varying ways and this report does not analyse them. Instead the focus of this section is on the levels of compliance found among the consents monitored in line with the MfE suggested framework (although allowing for an 'other' category during the transition period).⁴ It should be noted that numbers provided will not exactly equate with the figures in Table 4, because some sites had more than one monitoring visit over the year. Hence Table 5 relates to the percentage of monitoring visits (not consents) that fit within the different categories. The grading is based on the worst grade recorded across all monitoring events and consent conditions (e.g., a consent with five conditions fully compliant and one condition moderately non-compliant has an overall compliance grade of Moderate Non-Compliance).

Analysis

These data reflect the compliance gradings of more than 50,000 consent monitoring events sector-wide. The spread across the gradings is similar to last year, however with a slightly lower proportion considered fully compliant and larger proportions in Low Risk/Technical and Moderate Non-Compliance. The unitary authorities had a greater cumulative proportion in 'other' categories, but less than last year. As recording becomes standardised, these data will become more helpful. The highest proportion of gradings in the 'other' category was Nelson at 40% compared with last year were Auckland Council recorded the highest proportion in the 'other' category (52%). There have been clear efforts to align with the national framework.

Approximately two thirds of consents in the regional sector are reported to be fully compliant, and just over 60% for

⁴ It is expected that councils may maintain sub-categories within the four key categories prescribed in the Best Practice Guidelines, but that those categories can be merged to generate a nationally consistent picture.

unitary authorities. This indicates that most of the non-compliance is reported to be moderate in nature. It is difficult to validate and compare the levels of compliance until every council is working with the same framework. It is also difficult to validate at a national level that the categorisation of the compliance issues is fair and reasonable.

The levels of compliance varied considerably between councils (Table 5). The highest proportion considered to be fully compliant was in Hawkes Bay (95%) and the lowest was in the Waikato (25%). The average for the regional councils was slightly higher than the unitary authorities, but this change was largely driven by changes in Auckland's recording framework as it moves to align with the new categories. The levels of significant non-compliance detected was reasonably static among the unitary authorities (0.68 to 0.73%) but increased from 2.21 to 3.84% for the regional councils. The levels of significant non-compliance seem surprisingly low with some councils recording less than 1% to fall within this category (e.g., Hawkes Bay Regional Council at 0.01% of almost 3200 consent monitoring visits). The degree of variance suggests that – notwithstanding increasing consistency in the framework applied – that the definition of full compliance in practice varies across regions.

Where councils are encountering significant levels of non-compliance, they are likely to need to employ project or programme-based approaches to improve behaviour in the relevant industry or activity area. Such approaches would be supported in a risk-based context and potentially lead to better outcomes. Overall however, the focus should be on ensuring that what counts as significant non-compliance is the same at a sector level and that behaviour resulting in significant unauthorised effects is addressed. Further, high levels of compliance can potentially indicate that regulatory bottom lines are insufficiently stringent, leading to poor environmental outcomes, a variable not captured by this survey. Further analysis would be required, including additional data, to determine what is driving these trends and they may differ region to region.

Key findings

- Councils report encountering relatively low levels of significant non-compliance (3.84% in the regional sector and 0.7% in the unitary councils).
- Most non-compliance encountered is reported to be moderate or less
- Councils record varying levels of full compliance suggesting that what counts as 'fully compliant' may vary between regions.

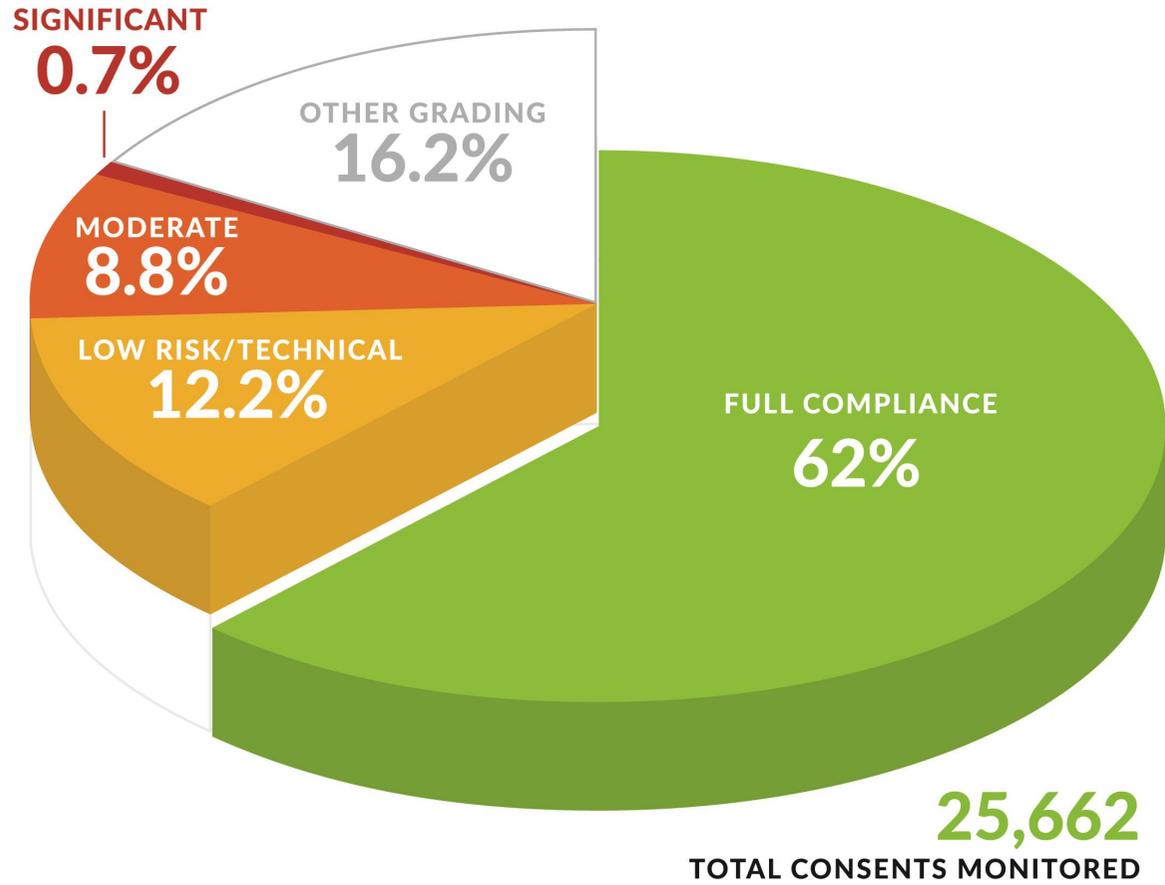


Table 5: Percentages of consents in different categories of compliance on a per monitoring event basis

| | Full Compliance | | Low Risk/Technical Non-Compliance | | Moderate Non-Compliance | | Significant Non-Compliance | | Other compliance grading | | TOTAL number of consents (#) | |
|-------------------------------------|-----------------|---------|-----------------------------------|---------|-------------------------|---------|----------------------------|---------|--------------------------|---------|-------------------------------|---------|
| | 2017/18 | 2018/19 | 2017/18 | 2018/19 | 2017/18 | 2018/19 | 2017/18 | 2018/19 | 2017/18 | 2018/19 | 2017/18 | 2018/19 |
| Regional Councils | | | | | | | | | | | | |
| Northland Regional Council | 72.7 | 75.9 | 0 | 0 | 19.6 | 18.7 | 7.7 | 5.40 | 0.00 | 0.00 | 3803 | 3561 |
| Waikato Regional Council | 44.4 | 25 | 22 | 35 | 30.9 | 25 | 2.7 | 12.00* | 0.00 | 3.00 | 1078 | 1157 |
| Bay of Plenty Regional Council | 76.4 | 80.5 | 14.4 | 23.6 | 7.3 | 5.75 | 1.9 | 0.95 | 0.00 | 0.00 | 1842 | 3059 |
| Hawkes Bay Regional Council | 92.8 | 95.35 | 0 | 0.01 | 6.90 | 2.09 | 0.30 | 0.01 | 0.00 | 0.00 | 2943 | 3198 |
| Taranaki Regional Council | 94.2 | 88.5 | 0 | 4.2 | 0 | 5.35 | 0.8 | 1.90 | 5.00 | 0.00 | 4119 | 2743 |
| Horizons Regional Council | 84 | 44.54 | 0 | 22.49 | 8.1 | 10.37 | 7.9 | 8.84 | 0.00 | 13.70 | 1131 | 916 |
| Greater Wellington Regional Council | 76.3 | 63.6 | 17.5 | 14.78 | 0 | 0 | 0 | 7.98 | 6.20 | 13.60 | 1457 | 1692 |
| Environment Canterbury | 63 | 85.16 | 5.2 | 4.01 | 8.3 | 9.47 | 1.40 | 1.35 | 21.80 | 0.00 | 7274 | 3315 |
| Otago Regional Council | 59.5 | 35.9 | 9.6 | 6.09 | 7.8 | 36.24 | 1.60 | 1.98 | 21.50 | 19.77 | 7025 | 607 |
| West Coast Regional Council* | 96.3 | 95.29 | 0 | 2.84 | 0 | 0.98 | 0.00 | 0.89 | 3.70 | 0.00 | 1309 | 1126 |
| Southland Regional Council | 70.6 | 83.11 | 0 | 8.82 | 0 | 7.18 | 0.00 | 0.89 | 29.40 | 0.00 | 3188 | 3594 |
| Average (RCs) | 75.47 | 70.26 | 6.25 | 11.08 | 8.08 | 11.01 | 2.21 | 3.84 | 7.96 | 4.55 | 35,169 | 24,968 |
| Unitary Authorities | | | | | | | | | | | | |
| Auckland Council | 22.1 | 59.13 | 21.3 | 18.38 | 3 | 2.86 | 1.20 | 0.50 | 52.40 | 19.12 | 18732 | 20,188 |
| Gisborne District Council | Unknown | Unknown | Unknown | Unknown | Unknown | Unknown | Unknown | Unknown | Unknown | Unknown | Unknown | Unknown |
| Nelson City Council | 86.4 | 59.52 | 0 | 0 | 0 | 0 | 0.00 | 0.00 | 13.60 | 40.49 | 550 | 1245 |
| Marlborough District Council | 65 | 64.26 | 2 | 2.92 | 31 | 27.38 | 0.00 | 0.08 | 2.00 | 5.34 | 2219 | 2359 |
| Tasman District Council | 63 | 65.03 | 7.1 | 27.54 | 5.2 | 5.08 | 1.50 | 2.35 | 23.10 | 0.00 | 1940 | 1870 |
| Average (unitaries) | 59.13 | 61.99 | 7.6 | 12.21 | 9.8 | 8.83 | 0.68 | 0.73 | 22.78 | 16.24 | 23,441 | 25,662 |

- The noncompliance rating system used at WRC considers multiple factors, and not solely whether the noncompliance results in actual significant environmental effect. As such the data is not directly comparable to those Councils that apply the MfE compliance rating system

COMPLIANCE RATING OF CONSENTS MONITORED



Monitoring permitted activities

Q17. Which permitted activities do you have a monitoring programme for?
List of activities with tick box if yes:

- Agriculture (excluding dairy)
- Aquaculture
- Construction
- Dairy
- Forestry
- Horticulture
- Mining
- Oil and gas
- Tourism
- Vineyards
- Wineries
- Other (please specify)

Permitted activity status is generally reserved for low risk activities. They are the things people can do without seeking resource consent, and most entail implicit or explicit standards. Permitted activity monitoring programmes are structured or semi-structured approaches to managing the risk of a particular type or group of permitted activities.

There is substantial regional variation in (a) the numbers and types of activities which are permitted, (b) the extent to which those activities warrant regular oversight and (c) the resources consequently allocated to monitoring them. With the exception of forestry (within the limits of the National Environmental Standard: Plantation Forestry), virtually all permitted activity monitoring programmes are conducted without the option of cost-recovery from the proponents of those activities.

Analysis

Dairy and forestry account for 60% of all permitted activity monitoring programmes (Figure 1). The 'other' category includes wastewater (HBRC), earthworks (Waikato) and stock access to water (Otago) and forestry. Last year the report observed:

'The robustness of the CME regime is underpinned by whether it is appropriate in the first place for the activity in question to be approached in a non-regulatory way. If activities that potentially constitute significant environmental risk are permitted, then they may cause an unreasonable burden on the CME unit, particularly considering opaque cost recovery mechanisms.'

These observations stand and are reinforced by the very high proportion of complaints that relate to breaches of permitted activity standards compared with those relating to breaches of consent.



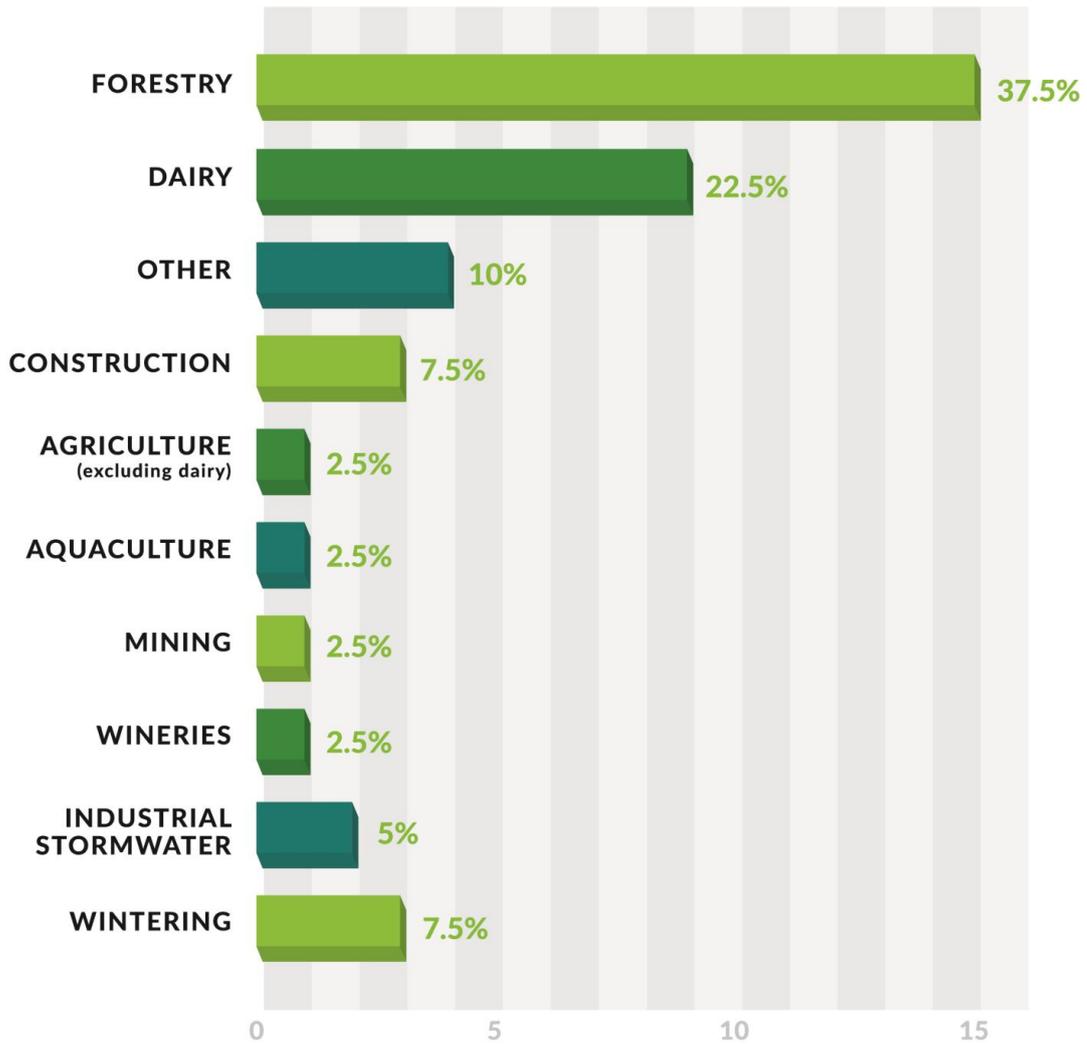


Figure 1: Proportion of permitted activity monitoring programmes for different industries

Key findings

- Dairy (22%) and forestry (38%) account for collectively 60% of all proactive permitted activity monitoring programmes.
- Systematic permitted activity monitoring programmes for activities beyond these two are rare

Making decisions on priorities

Q18. What basis is used for determining what notifications/complaints/incidents are physically attended and with what urgency or priority?

Q19. Describe how you determine which consents are monitored and how frequently?

If there is a prioritisation model or compliance strategy, add link

Q20. Describe the basis, which was used for determining what, if any, permitted activities were monitored.

If there is a prioritisation model or compliance strategy, add link

In any regulatory compliance system, robust prioritisation should ensure that the most important matters are addressed, and the attention other matters enjoy depends on relative importance (i.e., risk to the environment and people) and available resources.

Questions 18–20 inquired of councils their rationale for prioritising the three main workstreams. As in the previous survey, it was out of scope to assess the effectiveness of the individual risk-based approaches and the extent to which they are implemented in practice. It would be expected that the extent to which the council aligns in practice with its risk matrix may vary. Further questions or analysis would be needed to understand the level of adherence and the factors that influence it.

Analysis

Most councils have some form of codification as to the response that a complaint will receive. The factors that influence urgency include the degree and nature of the environmental impact, the type of activity, effects on humans and amenity among other issues (e.g., staff safety). Based on the narrative responses, most councils determine these on a 'case by case' basis having regard to a suite of issues. The greatest degree of codification was in regard to the monitoring of resource consents, for which most councils have a detailed structured response protocol in place, influenced by the type of activity and the risks involved, among other factors (e.g., commitments in annual plans etc.). Permitted activity response remains the least well-codified response stream and appears heavily focused on two industries (Figure 1).

The 2017/2018 report demonstrated that most councils had implemented a risk-based approach in their prioritisation of their incoming workloads. Some also had annual plan undertakings that required a certain level of response. The key outtake from the questions last year was that while there was clear codification of incident response and consent monitoring, permitted activity monitoring was much less systematic overall. The exception to this was where a national instrument (with a provision for cost recovery) was in place, specifically the National Environmental Standard for Plantation Forestry. These same trends are still evident.

The 2017/2018 report noted the following;

'It is acknowledged that the cost recovery mechanisms for both incident response and permitted activity monitoring are opaque and not fit for purpose. Providing councils with a more clear-cut statutory context for cost recovery would assist in addressing this matter. In addition, if significant non-compliance events are occurring from permitted activity standards, then it may – in the long term- be desirable for that council to reconsider its non-regulatory approach to that activity.'

These comments still stand.

Key findings

- Councils have well established systems generally for determining the relative priority of consents and incidents.
- There is limited codification of permitted activity monitoring across most of the sector.
- Cost recovery mechanisms appear influential in determining priorities.



Staffing levels

Note: FTEs should only be counted once under each of these categories. However, if a team member has more than one role then calculate what portion of their time is generally spent in each role, or only answer question 24 if your officers do a combination of roles. An example of an answer to each of the questions in this section might look like 22 FTEs spread across 40 individuals. Exclude any in-house or contract lawyers. Include managers in your count. Include any vacant positions in your counts.

Q21. How many FTEs does your council have who carry out monitoring roles?

Q22. How many FTEs does your council have who carry out environmental incident or pollution response roles?

Q23. How many FTEs does your council have who carry out investigation or enforcement roles?

Q24. How many FTEs does your council have who carry out a combination of the above roles?

Note 1: Include contractors

Note 2: Only answer this question if you have not included these staff in questions 21, 22 or 23

Q25. How many FTEs does your council have in CME support roles?

This includes administrative roles, e.g., staff who assist with issue of notices, reminder notices, upload of unpaid infringements to Ministry of Justice.

Questions 21–25 asked councils to provide details of the resourcing available to the RMA CME function. The purpose of using FTEs compared with number of individuals is to recognise that a mix of duties for the same person is commonplace, particularly in smaller councils. It is reasonable to assume that resourcing would differ substantially across the sector, given differences in population, area, development type and intensity and council funding base. Auckland manages approximately half of all resource consents and is a very large organisation, to account for this the totals in this section were separated to distinguish trends relevant to the sector and those applying only to Auckland (Table 6).



Table 6: Council FTEs for different aspects of the CME role

| | Monitoring | | Environmental incident or pollution | | Investigation or enforcement | | Combination | Support | | Total | |
|-------------------------------------|---------------|---------------|-------------------------------------|--------------|------------------------------|--------------|--------------|--------------|--------------|---------------|---------------|
| | 2017/18 | 2018/19 | 2017/18 | 2018/19 | 2017/18 | 2018/19 | 2018/19 | 2017/18 | 2018/19 | 2017/18 | 2018/19 |
| Regional Councils | | | | | | | | | | | |
| Northland Regional Council | 13.3 | 0 | 4 | 0 | 2.7 | 1 | 20 | 2.4 | 2 | 22.4 | 23 |
| Waikato Regional Council | 22.5 | 19.65 | 9 | 8.7 | 6 | 9.5 | 0 | 9 | 7.08 | 46.5 | 44.93 |
| Bay of Plenty Regional Council | 14 | 17 | 2 | 3.5 | 3 | 3.5 | 0 | 12 | 11.5 | 31 | 35.5 |
| Hawkes Bay Regional Council | 6 | 9 | 3 | 2 | 0 | 1 | 0 | 1 | 2 | 10 | 14 |
| Taranaki Regional Council | 27 | 27 | 3 | 3 | 4 | 4 | 2 | 2 | 2 | 36 | 38 |
| Horizons Regional Council | 4 | 0 | 4 | 0 | 1 | 1 | 9.5 | 1 | 1 | 10 | 11.5 |
| Greater Wellington Regional Council | 10 | 0 | 4 | 0 | 1 | 0 | 12.5 | 0.5 | 1 | 15.5 | 13.5 |
| Environment Canterbury | 28 | 31 | 10.5 | 8 | 3 | 4 | 0 | 2.2 | 1 | 43.7 | 44 |
| Otago Regional Council | 9.7 | 14.6 | 6.3 | 0 | 1.7 | 0 | 8 | 5.5 | 1 | 23.2 | 23.6 |
| West Coast Regional Council | 1.5 | 0 | 1.5 | 0 | 1.5 | 0 | 4.5 | 0.5 | 1 | 5.5 | 5.5 |
| Southland Regional Council | 7.5 | 7.5 | 1 | 1 | 2 | 2 | 0 | 2.6 | 2.6 | 13.1 | 13.1 |
| Regional subtotal | 143.5 | 125.75 | 48.3 | 26.2 | 25.9 | 26 | 56.5 | 38.7 | 32.18 | 256.9 | 266.63 |
| Unitary authorities | | | | | | | | | | | |
| Auckland Council | 54 | 65 | 31 | 32 | 35 | 49 | 19 | 26 | 14 | 146 | 179 |
| Gisborne District Council | 6 | 4 | 1 | 0 | 1 | 1 | 0 | 0 | 1 | 8 | 6 |
| Nelson City Council | 1.33 | 0 | 1.33 | 0 | 1.34 | 0 | 5 | 0.5 | 0.5 | 4.5 | 5.5 |
| Marlborough District Council | 2.6 | 2 | 3.2 | 0 | 2.6 | 1 | 7 | 1 | 0.25 | 9.4 | 10.25 |
| Tasman District Council | 2 | 0 | 3 | 0 | 4 | 0 | 10 | 2 | 2 | 11 | 12 |
| Unitary subtotal | 65.93 | 71.00 | 39.53 | 32.00 | 43.94 | 51.00 | 41.00 | 29.50 | 17.75 | 178.90 | 212.75 |
| Unitary minus Auckland | 11.93 | 6.00 | 8.53 | 0.00 | 8.94 | 2.00 | 22.00 | 3.50 | 3.75 | 32.90 | 33.75 |
| TOTAL | 209.43 | 196.75 | 87.83 | 58.20 | 69.84 | 77.00 | 97.50 | 68.20 | 49.93 | 435.80 | 479.38 |
| TOTAL (minus Akl) | 155.43 | 131.75 | 56.83 | 26.20 | 34.84 | 28.00 | 78.50 | 42.20 | 35.93 | 289.80 | 300.38 |

Analysis

Staffing numbers sector wide stayed relatively static, but Auckland Council staffing levels sharply increased (see case study on prioritisation of resourcing away from bylaws). It is difficult to assess the changes in the individual categories as several councils altered how they counted the same FTEs from last year and the category of 'combined FTE' was added, so for this report the focus is on the aggregated numbers per council.

The largest change besides Auckland (see case study) was Bay of Plenty Regional Council with an increase of 4.5 FTE. At a sector level there was an overall increase of 10.58 FTE (virtually all confined to regional councils). In comparison, Auckland alone grew by 33 staff. Most councils had an increase (albeit usually marginal). These changes occur against a background of varying workload and changing populations, and to provide regional context, FTEs are presented per 1000 head of population (Table 7). It is noted that there are many possible drivers for resourcing and determining what these are as part of a dedicated analysis would likely be quite interesting.

Case study - shifting priorities from bylaws to RMA

In the 2017/2018 year, Auckland Council reported a total FTE for CME of 146. In 2018/2019 this number rose dramatically to 179 (an increase of 33 FTE). This marked change was, in part due to additional compliance functions being funded out of a Natural Environment Targeted Rate but was mostly due to resource being reallocated from bylaw compliance and deployed to focus on higher harms, including RMA compliance. The former bylaws team were given additional duties and a new operating model – focusing on quick response and resolution rather than a single statutory focus. This is the primary driver for the increase in staffing covering RMA matters.

This change represents a real example of prioritisation of complaints based on risk to the environment and the community. The change in FTE still represents largely the same individual staff members. Where additional duties are allocated to people that have had different jobs, it is important to ensure they are adequately trained to manage in that new role and to undertake the RMA CME role effectively.



Table 7: Comparison of council FTEs, population and number of formal actions (excluding prosecutions but including warnings)

| Councils | FTE/1000 2017/2018 | FTE 2018/2019 | Population (2018) | FTE/1000 2018/019 | Formal actions/1000 |
|---------------------------------------|-----------------------|------------------|----------------------|----------------------|------------------------|
| Northland Regional Council | 0.13 | 23 | 181,047 | 0.13 | 2.56 |
| Waikato Regional Council | 0.10 | 44.93 | 466,110 | 0.10 | 1.17 |
| Bay of Plenty Regional Council | 0.10 | 35.5 | 313,380 | 0.11 | 0.38 |
| Hawkes Bay Regional Council | 0.06 | 14 | 170,448 | 0.08 | 0.83 |
| Taranaki Regional Council | 0.31 | 38 | 118,215 | 0.32 | 2.98 |
| Horizons Regional Council | 0.04 | 11.5 | 241,182 | 0.05 | 0.84 |
| Greater Wellington Regional Council | 0.03 | 13.5 | 514,752 | 0.03 | 0.17 |
| Environment Canterbury | 0.07 | 44 | 614,628 | 0.07 | 0.46 |
| Otago Regional Council | 0.10 | 23.6 | 239,313 | 0.10 | 0.23 |
| West Coast Regional Council | 0.17 | 5.5 | 35,202 | 0.16 | 2.13 |
| Southland Regional Council | 0.13 | 13.1 | 101,571 | 0.13 | 0.91 |
| Regional Council average/total | 0.11 | 24.24 | 272,350 | 0.12 | 1.15 |
| Auckland Council | 0.09 | 179 | 1,590,261 | 0.11 | 2.77 |
| Gisborne District Council | 0.19 | 6 | 47,565 | 0.13 | 0.25 |
| Marlborough District Council | 0.20 | 10.25 | 50,562 | 0.20 | 2.25 |
| Tasman District Council | 0.15 | 12 | 55,206 | 0.22 | 2.57 |
| Nelson City Council | 0.10 | 5.5 | 53,082 | 0.10 | 0.63 |
| Unitary council average/total | 0.15 | 42.55 | 359,335 | 0.15 | 1.67 |
| AVERAGE | 0.13 | | | 0.14 | |

Staffing relative to population was relatively static compared with 2017/2018, rising to 0.14FTE/1000 instead of 0.13FTE/1000. The lowest relative resourcing remains in Wellington, followed by Horizons, Canterbury and Hawkes Bay Councils. Highest relative resourcing remains at Taranaki Regional Council, followed by Tasman then Marlborough District Councils. A further analysis was undertaken which compared the population level with the number of formal

actions taken (excluding prosecution). The purpose of this was to determine if there was a relationship between the number of staff and the number of formal enforcement actions taken. There was something of a trend wherein councils which have on or above average levels of resourcing tended to take a higher number of enforcement actions.

The low n value (n = 16, i.e., number of councils) does not ensure these trends are robust, but it is interesting to note that some relationship is evident. It is very likely that other factors are in play. The completeness of the function's execution is the ultimate indicator of adequate resourcing however, and It may be that a clear picture will only emerge once a more robust dataset can be compiled. In the meantime, indications of the percentage of consents needing monitoring that get monitored and the like are useful litmus tests of resourcing adequacy.

It is difficult to ascertain what level of staffing is 'enough' however. Certainly, councils should have resource to address the important issues, to undertake necessary monitoring and to carry act proactive programmes such as education and engagement. Last year staffing levels were compared with population. Feedback indicated that that may not be an optimal yardstick (which was acknowledged last year). However, it does provide an indication of relative resourcing. This year both population and the number of formal actions (excluding prosecutions) per 1000 head of population were compared and trends were evident in respect of both, despite a relatively low n value (n = 16) (Figure 2).

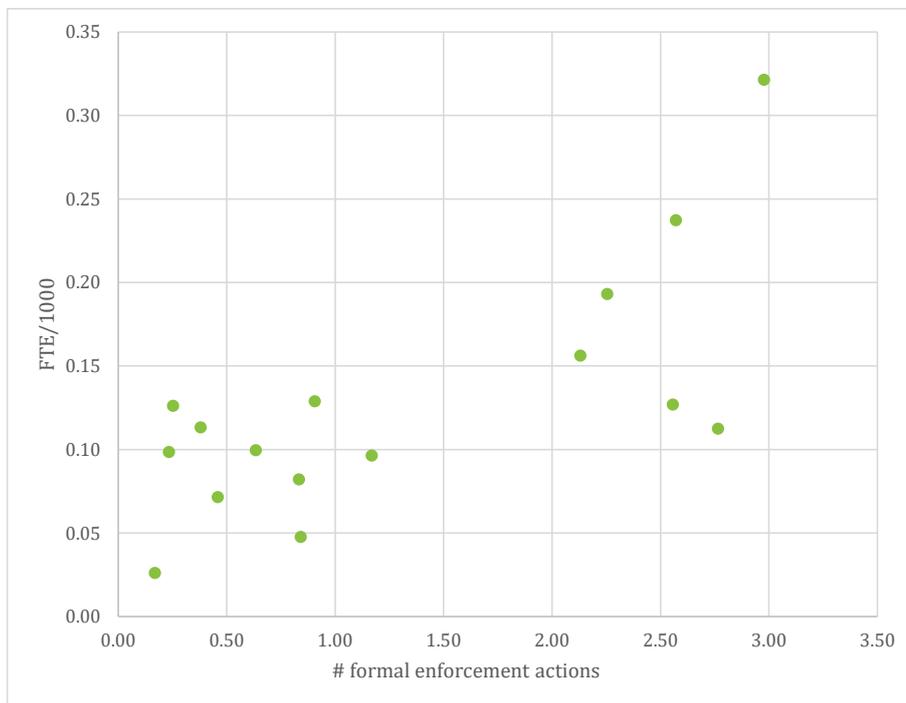


Figure 2: Comparison of CME resourcing and number of formal enforcement actions

Key findings

- Across the sector, 480 FTE work within RMA CME, with the majority in monitoring or combination roles.
- Changes in categories constrained sector level trend analysis, but overall FTE numbers marginally increased and there were no very significant reductions in staffing.
- Staffing levels have a moderate relationship with the number of formal enforcement actions taken per 1000 head of population (excluding prosecutions).
- The number of formal enforcement actions per 1000 head of population, when compared with staffing levels indicate that better resourcing leads to greater use of formal actions (because logically more people can do more things).



CME policies and procedures

- Q26. Does your council have an enforcement policy? Yes No
- Q27. What is your process for making decisions on prosecutions?
- Q28. Who has the delegation to authorise filing of charges for a prosecution at your council?
- Q29. Does your council have a conflict of interest policy? Yes No

Provision of a coherent policy context for CME within the councils’ overall operations is important to maintain the credibility of a regulator. Questions 26–29 addressed the ways in which policy informed councils’ CME operations and the role of individuals involved in decision-making. Question 28 was a new addition for the reporting year and concerned the role of Chief Executives in decision-making.

The decision-making process for prosecutions can vary between councils. It is important that it is fair, transparent and consistent, and much detail is contained within the MfE Best Practice Guidelines on them. The Guidelines state that all councils ‘*should have an operational enforcement policy, which the council uses to determine what enforcement action (if any) to take in response to non-compliance*’.⁵ For this reporting year, in addition to a question relating to the process, a question was added that inquired as to who had the delegation to authorise the filing of charges.

Analysis

Only Otago and Gisborne Councils do not have enforcement policies, although Gisborne District did have informal guidelines in place (rather than a policy accepted by the elected representatives) last year. All other councils have an enforcement policy in place. The need for an active enforcement policy is set out in the newly promulgated Best Practice Guidelines. Note that for the purposes of the analysis, enforcement policies in draft were still counted in this year’s survey, as was the case in the 2017/2018 reporting year also. It is understood that Gisborne Council is currently preparing a new enforcement policy.

Gisborne District Council also does not have a conflict of interest policy, and is the only council lacking one. A conflict of interest policy is strongly recommended for public entities. There is a high potential for local government matters to generate conflicts of interest for elected representatives and staff, as their activities are so wide-ranging. Where councils do not have one, or it is not up to date or adhered to, they should address that gap as a matter of priority.

Within CME, the potential for conflicts is also very acute, and most intense where the proponent is close to the decision-making circle (i.e., is an offender). Having a clear process for managing both conflicts of interest more generally and those that apply to enforcement matters is critical to maintaining integrity as a regulator. Many councils encounter instances where they are faced with the prospect of prosecuting council itself, an elected representative or a staff member, and clear decision-making frameworks are needed. There is of course no easy way to capture the degree to which policies are adhered to but having them in the first place is important.

⁵ MfE Best Practice Guidelines at p73



All councils use a multi-party process to consider prosecutions – usually called an Enforcement Decision Group (EDG) or similar. The membership of the panels varies but usually includes senior management and often legal advice. In the case of four councils, the Chief Executive has the sole delegation to approve the filing of charges. Several councils have a panel comprised of senior managers and the Chief Executive, and the remainder have processes that confine technical decisions on prosecution to Tier 2 managers and below (Table 8).



Table 8: Council decision-making and delegations for prosecutions

| | Enforcement policy? | Decisions on prosecution | Delegation | Conflict of interest policy? |
|--------------------------------|---------------------|---|--|------------------------------|
| Regional Councils | | | | |
| Northland Regional Council | Yes | An enforcement decision group (EDG) meeting is held to consider and make a decision. The composition of the group changes depending on the activity which is being considered for prosecution. However, the group always consists of the officer(s) who have done the investigation and at least two managers (one of which is the GM or Deputy GM). | Two GMs and the Reg Services Deputy GM. | Yes |
| Waikato Regional Council | Yes | Investigating officer reports to a panel of three senior managers with recommendations. If the panel authorises prosecutions, this will be conditional on an independent legal review, which studies the file in entirety and applies the Evidential and Public Interest Tests. If the legal review is satisfied that the tests are met, charges are filed. | 3 senior managers | Yes |
| Bay of Plenty Regional Council | Yes | Investigators present case to an EDG (consisting of compliance management team, investigators and legal representatives). Compliance managers sign off on recommendations to prosecute, based on consensus of EDG, which is passed to counsel for legal advice. Legal advice presented to GM for regulatory services to make final decision. | General Manager for Regulatory Services | Yes |
| Hawkes Bay Regional Council | Yes | Enforcement Decision Group makes recommendations through to Compliance Manager, then Group Manager and then to CEO. Legal review undertaken prior to consideration by CEO. | CEO | Yes |
| Taranaki Regional Council | Yes | Chief Executive in consultation with Director Resource Management and Compliance Manager | Chief Executive | Yes |
| Horizons Regional Council | Yes | Upon completion of a formal investigation, staff make a recommendation to the Regulatory Manager and Strategy and Regulation Group Manager, which is also accompanied by a legal review of the file by the Crown. | Chief Executive or Group Manager Strategy and Regulation | Yes |

| | Enforcement policy? | Decisions on prosecution | Delegation | Conflict of interest policy? |
|-------------------------------------|---------------------|--|---|------------------------------|
| | | This review assesses both the evidential sufficiency and public interest matters. The matter is then put to the Chief Executive, via a formal report, for consideration. | | |
| Greater Wellington Regional Council | Yes | Case summary with recommendation for prosecution is taken to an Enforcement Decision Group (EDG), if decision is to prosecute then legal opinion is sought, this then goes to a Prosecution Decision Group consisting of Investigating Officer, Team Leader – Environmental Protection, Manager – Environmental Regulation and General Manager – Environment Group | General Manager – Environment Group | Yes |
| Environment Canterbury | Yes | ECan takes all possible prosecutions through an Enforcement Decision Panel (EDP) who review a case before deciding on what further action is to be taken. This panel may include three from: Regional Leader RMA Investigations, Zone Lead, Zone Manage, Zone Delivery Manager, Regional Leader Compliance Delivery | CEO | Yes |
| Otago Regional Council | No | Council has an Enforcement Decision Group (EDG). The case is presented by the Team Leader Investigations with the Investigating Officer in attendance. The EDG is made up of Compliance Manager, Legal Counsel and CEO (prosecutions) | The CEO in consultation with the other members of the EDG. | Yes |
| West Coast Regional Council | Yes | Compliance officer prepares a recommendation report for the Enforcement Decision Panel (EDP) who make the decision. The EDP consists of the CEO and one other manager. Decisions are reviewed by a lawyer. | CEO or one of two other managers (Consents & Compliance, Planning & Science). | Yes |
| Southland Regional Council | Yes | Incident response – investigation – enforcement decision group meeting – legal opinion – CEO approval | Chief Executive | Yes |
| Unitary authorities | | | | |

| | Enforcement policy? | Decisions on prosecution | Delegation | Conflict of interest policy? |
|------------------------------|---------------------|--|--|------------------------------|
| Auckland Council | Yes | Officer in charge presents case to panel consisting of Regulatory Compliance Manager, Investigations Manager and Legal Team Leader | Manager | Yes |
| Gisborne District Council | No | Enforcement Decision Group | Either Director or CME Manager after consultation with the Chief Executive. | No |
| Nelson City Council | Yes | Investigating officer prepares a report that is reviewed by a team leader and manager. Discussed with Group Manager (Tier 2), legal advice obtained then GM makes decision | Group Manager | Yes |
| Marlborough District Council | Yes | Stage one QA peer review panel Stage two Enforcement and Prosecution Committee Stage three Legal Counsel review | Officers, Compliance manager or Consents and Compliance Manager following approval from Enforcement and Prosecution Committee. | Yes |
| Tasman District Council | Yes | Through a decision-making group. | Tier 2 Manager. | Yes |



The MfE Best Practice Guidelines are clear that elected representatives should not be involved in any enforcement decision-making. In relation to the involvement of Chief Executives the guidelines are much less clear. They acknowledge that there is a risk of actual or perceived bias because Chief Executives are appointed by the elected Council and note that it is *'good practice for final enforcement decisions to be delegated to the regulatory manager or other suitable decisionmaker in the council'*.

The final paragraph in that section goes on to qualify that statement, suggesting that the Chief Executive having the delegation to approve prosecutions is acceptable *'provided appropriate measures are in place to ensure a robust and transparent decision-making process. The chief executive must be independent of political influence, have enforcement knowledge and experience, and an understanding of the council's enforcement policies and priorities'*. Ensuring the Chief Executive is independent of political influence would require very robust systems, a high degree of transparency and a sound culture of fair governance, as the direct employer of the Chief Executive is the elected Council.

Key findings

- Two councils still do not have an enforcement policy and this gap should be addressed.
- All councils involve multiple parties in a discussion of whether a prosecution should proceed, and delegation to file charges sits at a range of levels
- Four Councils give sole delegation to approve prosecution to the Chief Executive



Educating and engaging with the regulated community

Q45. Does your council have, or support, any education or engagement projects relating to compliance with the RMA or any of its derivative regulation? For example, workshops for earthworks contractors around erosion and sediment controls. Yes No
If yes, briefly describe

A robust approach to CME includes giving clear direction on what is expected to the regulated community (in line with the 'four E approach'). Engaging with the regulated community in appropriate ways gives important balance to a CME regime. This question related to whether councils undertook programmes to educate or engage and to describe what they were. It is unlikely that councils' descriptions of their activities are exhaustive. Most councils are likely to do more than they would list in response to this question and that is understood. However, it is interesting to see what some of the common and novel approaches are to enable the sharing of ideas. In an ideal situation, education and engagement programmes would be subject to outcome monitoring to consider how effective they have been in improving compliance levels.

Analysis

The most common (9 councils) form of education and engagement are the running of workshops in specific matters for the regulated community (commonly erosion and sediment control), followed by targeted industry engagement (that may also include specific workshops). The third most common is 'general outreach' (7 councils). General outreach is considered to be reactive information provided on request to the community, such as during site visits or on phone calls. It may be incidental to the purpose of the visit also. Although only 7 councils noted they provided it, there is a reasonable chance that all do.

Four councils referred to media releases and education campaigns, while four others referred to liaison committees with territorial local authorities (TLAs) with the purpose of working together more effectively, and attendance at events and expos respectively. One council (Gisborne District) noted that their education and engagement programmes were under development, but all others had at least one initiative in place. All in all, a reasonable breadth and depth of initiatives are undertaken sector-wide.

From a policy perspective, it is important to consider the overall costs and benefits of education and engagement programmes. But most important is to consider whether they are effective in improving rates of compliance. The question did not ask, nor did councils provide, an indication of the effectiveness of these interventions and this is perhaps ground next year's survey could seek to break. It is acknowledged that capturing the efficacy of informal approaches to engendering compliance can be technically difficult, but knowing 'what works' can help prioritise the strategies used in this space.

Key findings

- All councils are active in education and engagement approaches to regulated communities.
- There is no evidence that the effectiveness of those programmes is assessed.

Acting on non-compliance

Questions 30–33 relate to the instruments issued in relation to the different sections of the Act (listed once for brevity)

- Section 9 Use of land
- Section 12 Coastal marine area
- Section 13 Beds of lakes and rivers
- Section 14 Water
- Section 15 Discharges of contaminants
- Section 17 Duty to avoid, remedy & mitigate
- Other breach e.g., Section 22

Q30. Formal warnings issued

Q31. Abatement notices issued

Q32. Infringement notices issued

Q33. Enforcement orders applied for

Question 30–33 required councils to not only report on the formal instruments used, but to also advise of the section of the act the offence applied to. This is important to understand what – at a sector level – occupies the largest proportion of resources, helps identify priorities for compliance programmes and helps us understand the challenges that the regulated community are facing in achieving compliance. The data generated by this question are complex and effort has been made to streamline their presentation.

Analysis

In the 2017/2018, Section 15 offences dominated the use of formal instruments (excluding prosecutions). This year the trend is the same. The complexity of the table means it is not reproduced here – instead a summary table is included. Overall as a sector the councils issued 642 formal warnings, 4353 abatement notices, 2141 infringement fines and applied for 10 enforcement orders. More than half of the total number of notices in each case were section 15 offences. Section 15 concerns discharges of contaminants into the environment. In total across the sector, 7105 notices were issued. Of these 4018 were section 15 offences. The next largest group were offences under 'other breaches' including section 22 (Table 9).



|  NATIONWIDE: ENFORCEMENT ACTIONS AND SECTIONS BREACHED | | | | | |
|--|---|---|--|--|-----------------------|
| |  Formal warnings |  Abatement notices |  Infringement fines |  Enforcement orders | TOTAL BREACHES |
| | 642 | 4353 | 2141 | 10 | 7146 |
| SECTION 9 Use of land | 67 | 246 | 146 | 4 | 463 |
| SECTION 12 Coastal marine area | 13 | 46 | 8 | 0 | 67 |
| SECTION 13 Beds of lakes and rivers | 64 | 74 | 62 | 0 | 200 |
| SECTION 14 Water | 9 | 87 | 67 | 0 | 163 |
| SECTION 15 Discharges of contaminants | 299 | 2843 | 870 | 6 | 4018 |
| SECTION 17 Duty to avoid, remedy & mitigate | 0 | 3 | 0 | 0 | 3 |
| OTHER e.g. Section 22 | 18 | 1014 | 909 | 0 | 1941 |

Table 9:

Total use of formal instruments against relevant section of the Act (i. e., group of possible offences - summary of Table 10). Figures do not exactly match those in Table 10.

Table 10: Total use of formal instruments (excluding prosecution)

| | Total formal warnings | | Total abatement notices | | Total infringement fines | | Total enforcement orders | | Total formal actions (including warnings) | | Total formal actions (excluding warnings) | |
|----------------------------|-----------------------|---------|-------------------------|---------|--------------------------|---------|--------------------------|---------|---|---------|---|---------|
| | 2017/18 | 2018/19 | 2017/18 | 2018/19 | 2017/18 | 2018/19 | 2017/2018 | 2018/19 | 2017/18 | 2018/19 | 2017/18 | 2018/19 |
| Regional Councils | | | | | | | | | | | | |
| Northland | 6 | 4 | 373 | 271 | 253 | 187 | 0 | 1 | 632 | 463 | 626 | 459 |
| Waikato | 198 | 301 | 89 | 134 | 100 | 107 | 0 | 3 | 387 | 545 | 189 | 244 |
| Bay of Plenty | DNA | 0 | 106 | 87 | 29 | 31 | 2 | 1 | 137 | 119 | 137 | 119 |
| Hawke's Bay | 14 | 0 | 46 | 40 | 91 | 101 | 0 | 1 | 151 | 142 | 137 | 142 |
| Taranaki | 0 | 0 | 200 | 240 | 67 | 112 | 1 | 0 | 268 | 352 | 268 | 352 |
| Horizons | 46 | 52 | 41 | 82 | 23 | 69 | 0 | 0 | 110 | 203 | 64 | 151 |
| Wellington | 57 | 43 | 11 | 17 | 25 | 27 | 0 | 0 | 93 | 87 | 36 | 44 |
| Canterbury | 415 | 172 | 72 | 39 | 127 | 71 | 1 | 0 | 615 | 282 | 200 | 110 |
| West Coast | 50 | 28 | 24 | 20 | 10 | 27 | 0 | 0 | 84 | 75 | 34 | 47 |
| Otago | 5 | 5 | 12 | 14 | 22 | 36 | 0 | 1 | 39 | 56 | 34 | 51 |
| Southland | 19 | 31 | 80 | 29 | 35 | 32 | 3 | 0 | 137 | 92 | 118 | 61 |
| Subtotal | 810 | 636 | 1054 | 973 | 782 | 800 | 7 | 7 | 2653 | 2416 | 1843 | 1780 |
| Unitary Councils | | | | | | | | | | | | |
| Auckland | DNA | 0 | 648 | 3186 | 456 | 1210 | 10 | 2 | 1114 | 4398 | 1114 | 4398 |
| Gisborne ¹ | 50* | 0 | 19 | 11 | 4 | 1 | 1 | 0 | 74 | 12 | 24 | 12 |
| Nelson | 41 | 0 | 28 | 18 | 13 | 17 | 1 | 0 | 83 | 35 | 42 | 35 |
| Marlborough | 4 | 6 | 45 | 56 | 11 | 50 | 2 | 2 | 62 | 114 | 58 | 108 |
| Tasman | DNA | 0 | 33 | 67 | 23 | 63 | 0 | 0 | 56 | 130 | 56 | 130 |
| Subtotal | 45 | 6 | 773 | 3338 | 507 | 1341 | 14 | 4 | 1389 | 4689 | 1294 | 4683 |
| TOTAL (excluding Auckland) | 855 | 642 | 1179 | 1125 | 833 | 931 | 11 | 9 | 2928 | 2707 | 2023 | 2065 |
| TOTAL | 855 | 642 | 1827 | 4311 | 1289 | 2141 | 21 | 11 | 4042 | 7105 | 3137 | 6463 |

Councils issue a highly variable number of notices year on year and between different agencies. Relatively fewer formal warnings were issued this year and the vast majority were issued by regional councils (mainly Waikato and Canterbury Councils). The total number of abatement notices more than doubled this year, but the increase was almost entirely a result of a special compliance programme administered by the Auckland Council. Infringement fines exhibited a similar trend and for the same reasons. Enforcement orders halved however (Table 10).

Auckland Council quadrupled its CME activity for the reporting year, issuing 4398 formal actions up on last year's 1114 (Table 10). This is a result of project-based focus on erosion and sediment control and other bespoke approaches that netted additional actions. The council also significantly increased its FTE by reprioritising multiple staff engaged in enforcing bylaws and adding RMA responsibilities (see case study). These significant shifts in resourcing and focus have dominated the dataset this year.

Auckland Council aside, the regional councils had an overall decrease in enforcement activities while the unitaries had a mix of halving and doubling. There is no 'right number' with formal notices, it is instead most important that the right type of notice is used in the right instance. Further improvement to data recording and management and enhanced reporting requirements would help to address this gap.

Key findings

- Section 15 (discharges of contaminants) is the dominant category of offence.
- The sector issued 7105 formal notices, more than half of which were section 15 based.
- Abatement notices following by infringement fines are the most commonly used instruments.
- Notwithstanding Auckland's significant changes, the remainder of the sector issued a relatively similar amount of formal notices compared to last year.
- The number of enforcement orders halved from 21 to 11, and further analysis as to why the use of this instrument continues to be so low could be useful.



Prosecutions

| |
|---|
| <p>Q34. How many RMA prosecutions were: <i>Note: For this question please consider an entire case (regardless of number of charges and defendants) as one prosecution.</i></p> <ul style="list-style-type: none"> • Concluded in the period? • Still in progress in the period? |
| <p>Q35. What is the total number of individual (person) defendants convicted as a result of RMA prosecutions concluded in this period?</p> |
| <p>Q36. For all of these (person) defendants what is the total number of convictions entered against them? <i>For example, there may be a total of 27 separate convictions entered against a total of nine 'individual' defendants.</i></p> |
| <p>Q37. What is the total number of corporate (e.g., Crown, company, body corporate etc.) defendants convicted as a result of RMA prosecutions concluded in this period?</p> |
| <p>Q38. For all of these (corporate) defendants what is the total number of convictions entered against them? <i>For example, there may be a total of 30 separate convictions entered against a total of 12 corporate defendants.</i></p> |
| <p>Q39. Total number of convictions against an individual [see categories for sections of the Act as above] Total fine potential (Total x \$300,000)</p> |
| <p>Q40. Total number of convictions against a corporate entity [see categories for sections of the Act as above] Total fine potential (Total x \$600,000)</p> |

The degree to which prosecution is used in a regulatory regime can reflect the willingness of agencies to use tools at the heavy end of the spectrum. Use of such tools where appropriate is critical for engendering compliance and deterring offenders.

Analysis

In the reporting year, the sector overall concluded 61 prosecutions and has 99 in progress. Overall the sector convicted 29 individuals on a total of 106 charges (compared with 49 individuals of 114 charges last year) (Table 11). This may be indicative of the seriousness of the offences and the complexity of the cases varying year to year. This trend was reflected in an identical number of convictions (102) being entered against 47 corporates this year compared with 60 last year. It is likely too soon in the reporting framework to know what level of enforcement constitutes 'the norm' as there are so many variables in play



Table 11: Prosecutions across the regional sector for the 2018/2019 year

| | Number concluded | Number in progress | Number of individuals convicted | | Number of convictions entered | | Number of corporates convicted | | Number of convictions entered | |
|-------------------------------------|------------------|--------------------|---------------------------------|-----------|-------------------------------|------------|--------------------------------|-----------|-------------------------------|------------|
| | 2018/2019 | 2018/2019 | 2017/2018 | 2018/2019 | 2017/2018 | 2018/2019 | 2017/2018 | 2018/2019 | 2017/2018 | 2018/2019 |
| Regional Councils | | | | | | | | | | |
| Northland Regional Council | 0 | 4 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 |
| Waikato Regional Council | 15 | 27 | 3 | 8 | 4 | 25 | 8 | 12 | 18 | 37 |
| Bay of Plenty Regional Council | 12 | 17 | 6 | 4 | 6 | 8 | 2 | 10 | 2 | 12 |
| Hawkes Bay Regional Council | 1 | 4 | 1 | 0 | 2 | 0 | 3 | 0 | 5 | 0 |
| Taranaki Regional Council | 1 | 0 | 3 | 0 | 3 | 0 | 1 | 3 | 2 | 8 |
| Horizons Regional Council | 5 | 2 | 0 | 1 | 0 | 3 | 0 | 5 | 0 | 5 |
| Greater Wellington Regional Council | 0 | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Environment Canterbury | 2 | 7 | 1 | Unknown | 2 | Unknown | 4 | Unknown | 8 | Unknown |
| Otago Regional Council | 4 | 2 | 10 | 0 | 12 | 0 | 10 | 5 | 13 | 5 |
| West Coast Regional Council | 3 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 1 | 1 |
| Southland Regional Council | 6 | 5 | 11 | 5 | 41 | 11 | 11 | 4 | 25 | 9 |
| REGIONAL SUBTOTAL | 49 | 71 | 36 | 18 | 71 | 47 | 40 | 40 | 74 | 77 |
| Unitary Authorities | | | | | | | | | | |
| Auckland Council | 7 | 12 | 11 | 7 | 35 | 47 | 16 | 4 | 18 | 15 |
| Gisborne District Council | 0 | 12 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Nelson City Council | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 3 | 0 |
| Tasman District Council | 1 | 0 | 2 | 2 | 8 | 6 | 2 | 1 | 5 | 3 |
| Marlborough District Council | 4 | 4 | 0 | 2 | 0 | 6 | 1 | 2 | 2 | 7 |
| UNITARY SUBTOTAL | 12 | 28 | 13 | 11 | 43 | 59 | 20 | 7 | 28 | 25 |
| TOTAL | 61 | 99 | 49 | 29 | 114 | 106 | 60 | 47 | 102 | 102 |



**NATIONWIDE:
PROSECUTIONS**

CONCLUDED **61**

IN PROGRESS **99**

Waikato Regional Council concluded 15 prosecutions in the reporting year and has 27 in progress, and Bay of Plenty concluded 12 with 17 in progress. Auckland Council concluded 7 prosecutions, and still has 12 in progress. Auckland is very active in issuing lower order notices, but the marked increase in numbers there has not been evident in increased prosecutions – both conviction numbers and defendant numbers have reduced this reporting year. Environment Canterbury was unable to provide a significant proportion of the data, despite reporting last year – it is not clear why this is the case.

Five councils concluded no prosecutions for the reporting year, and the same number have none in progress. Taranaki and Tasman Councils both concluded one and have none in progress. Gisborne District Council also concluded no prosecutions, but has 12 in progress, two of which are awaiting sentencing. West Coast Council concluded 3 prosecutions, securing a conviction against one corporate defendant only. Nelson appears to have secured convictions however despite reporting having concluded no hearings.

There is a high degree of variability in prosecutions being taken, and it is unlikely that this is only due to variation in levels of compliance region to region. Where councils are demonstrably unlikely to take prosecutions, they may struggle to achieve behaviour change, as it may be perceived that non-compliance is unlikely to result in serious consequences. Many councils report limited resourcing and these two matters may be related. The growing role of the Environmental Protection Authority may be useful in this space, enabling poorly resourced councils to access assistance with often time-consuming enforcement processes. The sector should consider the pattern of use of formal instruments and conduct analysis at a strategic level to consider why it occurs as it does.

Key findings

- Waikato, Bay of Plenty and Auckland collectively carried out approximately half of the prosecutions in the sector, and many councils did little or none
- Geographical variation in prosecution is evident, with most enforcement activity occurring in 3 jurisdictions

Penalties

Q41. What is the total amount of fines imposed by the courts as a result of RMA prosecutions concluded in this period? Individual / Corporate

Q42. What other sanctions, if any, have been imposed by the courts as a result of RMA prosecutions concluded in this period?
Prison sentence / Enforcement order / Reparation / Community Service / Discharge without conviction / Other

Q43. How many prosecutions involved restorative justice, diversion or other alternative justice process?

- Restorative justice
- Diversion
- Alternative justice

Q44. Describe any outcomes relating to these processes.

Questions 41– 44 asked councils to report on the sanctions they had secured as part of their prosecutions. Upon a successful prosecution under the RMA, a fine is the most common sanction. Other sanctions included enforcement orders, community service and processes such as diversion (Table 12).

Table 12: *Other sanctions handed down under the RMA*

| Other sanctions | Number |
|------------------------------|--------|
| Prison sentence | 1 |
| Enforcement orders | 9 |
| Reparation | 3 |
| Community service | 6 |
| Discharge without conviction | 5 |
| Other | 9 |
| Restorative justice | 5 |
| Diversion | 0 |
| Alternative justice | 2 |
| TOTAL | 40 |

More than \$1.8 million in fines were handed down in 2018/2019. For the reporting year, councils secured \$1.3 million in corporate fines and half a million dollars in individual fines (Table 13). The majority of both figures were secured collectively by Waikato and Bay of Plenty Regional Councils. Eleven councils secured no individual fines, and six secured no corporate fines. In the 2017/2018 reporting year, it was noted that the fines issued were a very small subset of the potential fines (c.2%) and this trend is also present this year. A total of 106 convictions against individuals had the potential to net \$31.8 million in fines, while 102 convictions against corporates had a total potential fine quantum of \$61.2 million (\$93 million total). Auckland Council also secured a prison sentence in the last year, which is a rare event under the RMA. A range of other sanctions were also handed down. Several councils secured no penalties of any kind as they undertook no prosecutions.



Table 13: Prosecution outcomes

| | What is the total amount of fines imposed by the courts as a result of RMA prosecutions concluded in this period? | | What other sanctions, if any, have been imposed by the courts as a result of RMA prosecutions concluded in this period? | | | | | | How many prosecutions involved restorative justice, diversion or other alternative justice process? | | |
|-------------------------------------|---|-----------------|---|-------------------|------------|---------------------|------------------------------|---------|---|-----------|---------------------|
| | Individual fines | Corporate fines | Prison sentence | Enforcement order | Reparation | Community Service | Discharge without conviction | Other | Restorative justice | Diversion | Alternative justice |
| Regional Councils | | | | | | | | | | | |
| Northland Regional Council | - | \$ - | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Waikato Regional Council | \$250,740.00 | \$588,837.50 | 0 | 3 | 0 | 1 (40hrs) | 1 | 0 | 1 | 0 | 0 |
| Bay of Plenty Regional Council | \$101,200.00 | \$ 419,325.00 | 0 | 1 | 0 | 2 (1*95hr, 1*400hr) | 0 | 0 | 0 | 0 | 0 |
| Hawkes Bay Regional Council | - | \$- | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Taranaki Regional Council | - | \$ 204,000.00 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Horizons Regional Council | - | \$ 290,000.00 | | | | 1 | 0 | | 0 | 0 | 0 |
| Greater Wellington Regional Council | - | \$ - | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Environment Canterbury | Unknown | Unknown | Unknown | Unknown | Unknown | Unknown | Unknown | Unknown | Unknown | Unknown | Unknown |
| Otago Regional Council | - | \$ 87,975.00 | 0 | 1 | 0 | 0 | 0 | 0 | 1 | 0 | 0 |

| | What is the total amount of fines imposed by the courts as a result of RMA prosecutions concluded in this period? | | What other sanctions, if any, have been imposed by the courts as a result of RMA prosecutions concluded in this period? | | | | | | How many prosecutions involved restorative justice, diversion or other alternative justice process? | | |
|------------------------------|---|------------------------|---|-------------------|---------------|-------------------|------------------------------|-----------------------------|---|-----------|---------------------|
| | Individual fines | Corporate fines | Prison sentence | Enforcement order | Reparation | Community Service | Discharge without conviction | Other | Restorative justice | Diversion | Alternative justice |
| West Coast Regional Council | - | \$ 33,750.00 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 |
| Southland Regional Council | \$ 59,550.00 | \$ 101,775.00 | 0 | 2 | 0 | 0 | 2 | 8 | 0 | 0 | 0 |
| REGIONAL SUBTOTAL | \$ 411,490.00 | \$ 1,136,825.00 | 0 | 7 | 0 | 5 | 3 | 8 | 2 | 0 | 2 |
| Unitary authorities | | | | | | | | | | | |
| Auckland Council | \$ 84,775.00 | \$ 24,975.00 | 1 (2 years) | 1 | 1 (173095.61) | 1 (300 hours) | 0 | 1 (3 months home detention) | 1 | 0 | 0 |
| Gisborne District Council | \$ - | \$ - | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Nelson City Council | \$ - | \$ - | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Marlborough District Council | \$ 5,000.00 | \$ 85,250.00 | | 1 | 2 | 0 | 1 | 0 | 2 | 0 | 0 |
| Tasman District Council | \$ - | \$ 76,500.00 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 |
| UNITARY SUBTOTAL | \$ 89,775.00 | \$ 186,725.00 | 1 | 2 | 3 | 1 | 2 | 1 | 3 | 0 | 0 |
| TOTAL | \$ 501,265.00 | \$ 1,323,550.00 | 1 | 9 | 3 | 6 | 5 | 9 | 5 | 0 | 2 |



CME reporting

Q46. What mechanisms do your council use to report CME data to the public? (e.g., annual reports, reports to councillors) *Provide links or examples.*

- Annual Report
- Report to Councillors
- Snapshot
- Report(s) to Council committee meetings (open to public)
- Other (please specify)

Except for the contribution of data to the National Monitoring System, councils are responsible for determining the scope and content of the reporting on their RMA CME functions. Question 46 addressed the ways in which this operational function was carried out, providing a range of 'standard' options and giving council respondents space to describe alternate approaches.

The most common type of reporting (14 councils) is a report to committees of councillors (open to the public) about CME activities and outcomes followed closely by the inclusion of CME information in an annual report (11 councils). Canterbury, West Coast, Southland, Marlborough and Northland Councils all report across all four standard reporting approaches. Overall results are similar to last year, with subtle variations in the reporting undertaken, and a greater number of reporting identified in the 'other' category.



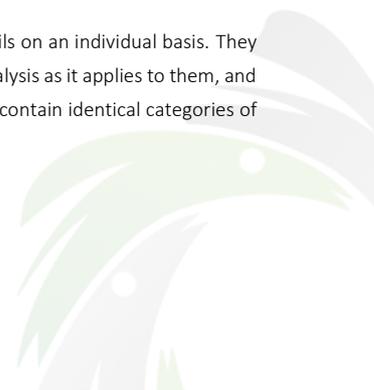
Table 14: CME reporting channels

| Regional councils | Annual report | Report to councillors | Snapshot | Report to council committee (open to public) | Other | Total |
|-------------------------------------|---------------|-----------------------|----------|--|-------|-------|
| Regional councils | | | | | | |
| Northland Regional Council | 1 | 1 | 1 | 1 | 0 | 4 |
| Waikato Regional Council | 0 | 0 | 0 | 1 | 1 | 2 |
| Bay of Plenty Regional Council | 1 | 0 | 1 | 1 | 1 | 4 |
| Hawkes Bay Regional Council | 1 | 0 | 0 | 0 | 0 | 0 |
| Taranaki Regional Council | 1 | 1 | 0 | 1 | 0 | 3 |
| Horizons Regional Council | 0 | 0 | 0 | 1 | 0 | 1 |
| Greater Wellington Regional Council | 1 | 1 | 0 | 1 | 0 | 3 |
| Environment Canterbury | 1 | 1 | 1 | 1 | 0 | 4 |
| Otago Regional Council | 0 | 1 | 0 | 0 | 1 | 2 |
| West Coast Regional Council | 1 | 1 | 1 | 1 | 0 | 4 |
| Southland Regional Council | 1 | 1 | 1 | 1 | 0 | 4 |
| Unitary authorities | | | | | | |
| Auckland Council | | | | 1 | 1 | 2 |
| Gisborne District Council | | | | 1 | 1 | 2 |
| Nelson City Council | 1 | | | 1 | 1 | 3 |
| Marlborough District Council | 1 | 1 | 1 | 1 | 0 | 4 |
| Tasman District Council | 1 | 1 | | 1 | 0 | 3 |

Whether the enforcement regime is having the right effect is ultimately going to be reflected in state of the environment reporting. Last year, a question was asked regarding the linkage between CME reporting and SOE reporting. There didn't appear to be a strong relationship. Most councils had relatively underdeveloped links between reporting on CME activities and the council's overall state of the environment reporting programme. It is important to foster these links and to ensure that the effectiveness of council's CME regime is recognised as a key lever in implementing and achieving the purpose of the Act.

PART 2 REGIONAL SCORECARDS

The following pages are summaries of the key data for the regional and unitary councils on an individual basis. They enable councils to quickly and easily communicate the findings of the national scale analysis as it applies to them, and to use these figures as a basis for regional scale performance improvement. All pages contain identical categories of information, all of which is based on tables found elsewhere throughout the report.



NORTHLAND REGIONAL COUNCIL

 **181,047**
Population (2018)

 **16.2%**
Population growth (2013-2018)

 **13778km²**
Geographic area

 **\$7,415m**
Regional GDP to March 2018



 **STAFF**

Full time employees **23**

FTE/1000 **0.13**

National average ↗ 0.14

POLICY CHECKLIST

- Conflict of interest policy ✓
- Education / engagement programmes ✓
- Enforcement policy ✓

| | | | |
|-----------------|---|--|--|
| CONSENTS |  9738 Administered |  3847 Required monitoring |  Consents monitored of those requiring it 92.6% National average ↗ 89.5% |
|-----------------|---|--|--|

| | | |
|------------------|--|--|
| INCIDENTS |  1026 INCIDENTS |  100% RESPONSE RATE National average ↗ 98.7% |
|------------------|--|--|

| | | | |
|--------------------|--|--|---|
| ENFORCEMENT | 4 Warnings issued | 271 Abatement notices issued | 187 Infringement fines issued |
| | 1 Enforcement order applications | 0 Prosecutions concluded 2018/2019 | 4 Prosecutions in progress |

INDEPENDENT ANALYSIS | 2018/2019 COMPLIANCE MONITORING AND ENFORCEMENT METRICS

WAIKATO REGIONAL COUNCIL

 **466,110**
Population (2018)

 **12.8%**
Population growth (2013-2018)

 **24147km²**
Geographic area

 **\$23,914m**
Regional GDP to March 2018



 **STAFF**

Full time employees **45**

FTE/1000 **0.10**

National average \nearrow 0.14

POLICY CHECKLIST

- Conflict of interest policy
- Education / engagement programmes
- Enforcement policy

| | | | |
|-----------------|---|---|--|
| CONSENTS |  4787 Administered |  525 Required monitoring |  Consents monitored of those requiring it 100% National average \nearrow 89.5% |
|-----------------|---|---|--|

| | | |
|------------------|--|---|
| INCIDENTS |  1838 INCIDENTS |  100% RESPONSE RATE National average \nearrow 98.7% |
|------------------|--|---|

| | | | |
|--------------------|--|--|---|
| ENFORCEMENT | 301 Warnings issued | 134 Abatement notices issued | 107 Infringement fines issued |
| | 3 Enforcement order applications | 15 Prosecutions concluded 2018/2019 | 27 Prosecutions in progress |

INDEPENDENT ANALYSIS | 2018/2019 COMPLIANCE MONITORING AND ENFORCEMENT METRICS

BAY OF PLENTY REGIONAL COUNCIL

 **313,380**
Population (2018)

 **14.6%**
Population growth (2013-2018)

 **12303km²**
Geographic area

 **\$15,833m**
Regional GDP to March 2018



 **STAFF**

Full time employees **35.5**

FTE/1000 **0.11**

National average \nearrow 0.14

POLICY CHECKLIST

- Conflict of interest policy
- Education / engagement programmes
- Enforcement policy

| | | | |
|-----------------|---|--|---|
| CONSENTS |  9057 Administered |  2380 Required monitoring |  Consents monitored of those requiring it 69.6% National average \nearrow 89.5% |
|-----------------|---|--|---|

| | | |
|------------------|--|--|
| INCIDENTS |  3519 INCIDENTS |  100% RESPONSE RATE National average \nearrow 98.7% |
|------------------|--|--|

| | | | |
|--------------------|--|--|--|
| ENFORCEMENT | 0 Warnings issued | 87 Abatement notices issued | 31 Infringement fines issued |
| | 1 Enforcement order applications | 12 Prosecutions concluded 2018/2019 | 17 Prosecutions in progress |

INDEPENDENT ANALYSIS | 2018/2019 COMPLIANCE MONITORING AND ENFORCEMENT METRICS

HAWKES BAY REGIONAL COUNCIL

 **170,448**
Population (2018)

 **9.2%**
Population growth (2013-2018)

 **14138km²**
Geographic area

 **\$8,070m**
Regional GDP to March 2018



STAFF

Full time employees **14**

FTE/1000 **0.08**
National average > 0.14

POLICY CHECKLIST

- Conflict of interest policy ✓
- Education / engagement programmes ✓
- Enforcement policy ✓

| | | | |
|-----------------|---|--|---|
| CONSENTS |  5928 Administered |  3446 Required monitoring |  Consents monitored of those requiring it 92.8% <i>National average</i> > 89.5% |
|-----------------|---|--|---|

| | | |
|------------------|--|--|
| INCIDENTS |  1116 INCIDENTS |  100% RESPONSE RATE <i>National average</i> > 98.7% |
|------------------|--|--|

| | | | |
|--------------------|--|---|---|
| ENFORCEMENT | 0 Warnings issued | 40 Abatement notices issued | 101 Infringement fines issued |
| | 1 Enforcement order applications | 1 Prosecutions concluded 2018/2019 | 4 Prosecutions in progress |

INDEPENDENT ANALYSIS | 2018/2019 COMPLIANCE MONITORING AND ENFORCEMENT METRICS

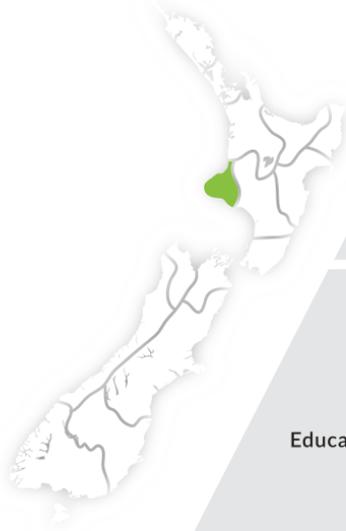
TARANAKI REGIONAL COUNCIL

 **118,215**
Population (2018)

 **7.4%**
Population growth (2013-2018)

 **7256km²**
Geographic area

 **\$8,136m**
Regional GDP to March 2018



 **STAFF**

Full time employees **38**

FTE/1000 **0.32**
National average > 0.14

POLICY CHECKLIST

- Conflict of interest policy ✓
- Education / engagement programmes ✓
- Enforcement policy ✓

| | | | |
|-----------------|---|--|--|
| CONSENTS |  4784 Administered |  2743 Required monitoring |  Consents monitored of those requiring it 100% <i>National average</i> > 89.5% |
|-----------------|---|--|--|

| | | |
|------------------|---|--|
| INCIDENTS |  452 INCIDENTS |  100% RESPONSE RATE <i>National average</i> > 98.7% |
|------------------|---|--|

| | | | |
|--------------------|--|---|---|
| ENFORCEMENT | 0 Warnings issued | 240 Abatement notices issued | 112 Infringement fines issued |
| | 0 Enforcement order applications | 1 Prosecutions concluded 2018/2019 | 0 Prosecutions in progress |

HORIZONS REGIONAL COUNCIL

 **241,182**
Population (2018)

 **7.0%**
Population growth (2013-2018)

 **22220km²**
Geographic area

 **\$10,709m**
Regional GDP to March 2018



 **STAFF**

Full time employees **11.5**

FTE/1000 **0.05**

National average ↗ 0.14

POLICY CHECKLIST

- Conflict of interest policy ✓
- Education / engagement programmes ✓
- Enforcement policy ✓

| | | | |
|-----------------|---|--|--|
| CONSENTS |  5204 Administered |  1648 Required monitoring |  Consents monitored of those requiring it 80% National average ↗ 89.5% |
|-----------------|---|--|--|

| | | |
|------------------|--|---|
| INCIDENTS |  1298 INCIDENTS |  100% RESPONSE RATE National average ↗ 98.7% |
|------------------|--|---|

| | | | |
|--------------------|--|---|--|
| ENFORCEMENT | 52 Warnings issued | 82 Abatement notices issued | 69 Infringement fines issued |
| | 0 Enforcement order applications | 5 Prosecutions concluded 2018/2019 | 2 Prosecutions in progress |

GREATER WELLINGTON REGIONAL COUNCIL

 **514,752**
Population (2018)

 **7.6%**
Population growth (2013-2018)

 **8142km²**
Geographic area

 **\$37,107m**
Regional GDP to March 2018



 **STAFF**

Full time employees **13.5**

FTE/1000 **0.03**
National average ↗ 0.14

POLICY CHECKLIST

- Conflict of interest policy ✓
- Education / engagement programmes ✓
- Enforcement policy ✓

| | | | |
|-----------------|---|--|---|
| CONSENTS |  6604 Administered |  1782 Required monitoring |  Consents monitored of those requiring it 94.9% <i>National average</i> ↗ 89.5% |
|-----------------|---|--|---|

| | | |
|------------------|--|--|
| INCIDENTS |  1244 INCIDENTS |  100% RESPONSE RATE <i>National average</i> ↗ 98.7% |
|------------------|--|--|

| | | | |
|--------------------|--|--|--|
| ENFORCEMENT | 43 Warnings issued | 17 Abatement notices issued | 27 Infringement fines issued |
| | 0 Enforcement order applications | 0 Prosecutions concluded 2018/2019 | 3 Prosecutions in progress |

INDEPENDENT ANALYSIS | 2018/2019 COMPLIANCE MONITORING AND ENFORCEMENT METRICS

ENVIRONMENT CANTERBURY

 **614,628**
Population (2018)

 **10.8%**
Population growth (2013-2018)

 **44633km²**
Geographic area

 **\$35,392m**
Regional GDP to March 2018



 **STAFF**

Full time employees **44**

FTE/1000 **0.07**
National average ↗ 0.14

POLICY CHECKLIST

- Conflict of interest policy ✓
- Education / engagement programmes ✓
- Enforcement policy ✓

| | | | |
|-----------------|---|--|---|
| CONSENTS |  18,500 Administered |  4625 Required monitoring |  Consents monitored of those requiring it 71.7% <i>National average</i> ↗ 89.5% |
|-----------------|---|--|---|

| | | |
|------------------|--|---|
| INCIDENTS |  3599 INCIDENTS |  88.9% RESPONSE RATE <i>National average</i> ↗ 98.7% |
|------------------|--|---|

| | | | |
|--------------------|--|---|--|
| ENFORCEMENT | 172 Warnings issued | 39 Abatement notices issued | 71 Infringement fines issued |
| | 0 Enforcement order applications | 2 Prosecutions concluded 2018/2019 | 7 Prosecutions in progress |

OTAGO REGIONAL COUNCIL

 **239,313**
Population (2018)

 **7.3%**
Population growth (2013-2018)

 **31280km²**
Geographic area

 **\$12,658m**
Regional GDP to March 2018



 **STAFF**

Full time employees **23.6**

FTE/1000 **0.10**
National average ↗ 0.14

POLICY CHECKLIST

- Conflict of interest policy
- Education / engagement programmes
- Enforcement policy

| | | | |
|-----------------|---|--|---|
| CONSENTS |  5588 Administered |  1161 Required monitoring |  Consents monitored of those requiring it 52.3% <i>National average</i> ↗ 89.5% |
|-----------------|---|--|---|

| | | |
|------------------|--|--|
| INCIDENTS |  2056 INCIDENTS |  100% RESPONSE RATE <i>National average</i> ↗ 98.7% |
|------------------|--|--|

| | | | |
|--------------------|---|--|--|
| ENFORCEMENT | 5 Warnings issued | 14 Abatement notices issued | 36 Infringement fines issued |
| | 1 Enforcement order application | 4 Prosecutions concluded 2018/2019 | 2 Prosecutions in progress |

WEST COAST REGIONAL COUNCIL

 **35,202**
Population (2018)

 **-3.0%**
Population decrease (2013-2018)

 **23277km²**
Geographic area

 **\$1,600m**
Regional GDP to March 2018



 **STAFF**

Full time employees **5.5**

FTE/1000 **0.16**
National average > 0.14

POLICY CHECKLIST

- Conflict of interest policy
- Education / engagement programmes
- Enforcement policy

| | | | |
|-----------------|---|---|--|
| CONSENTS |  3474 Administered |  868 Required monitoring |  Consents monitored of those requiring it 100% <i>National average</i> > 89.5% |
|-----------------|---|---|--|

| | | |
|------------------|---|--|
| INCIDENTS |  233 INCIDENTS |  100% RESPONSE RATE <i>National average</i> > 98.7% |
|------------------|---|--|

| | | | |
|--------------------|--|--|--|
| ENFORCEMENT | 28 Warnings issued | 20 Abatement notices issued | 27 Infringement fines issued |
| | 0 Enforcement order applications | 3 Prosecutions concluded 2018/2019 | 0 Prosecutions in progress |

SOUTHLAND REGIONAL COUNCIL

 **101,571**
Population (2018)

 **3.8%**
Population growth (2013-2018)

 **32184km²**
Geographic area

 **\$5,826m**
Regional GDP to March 2018



 **STAFF**

Full time employees **13.1**

FTE/1000 **0.13**
National average > 0.14

POLICY CHECKLIST

- Conflict of interest policy ✓
- Education / engagement programmes ✓
- Enforcement policy ✓

| | | | |
|-----------------|---|--|---|
| CONSENTS |  5590 Administered |  4586 Required monitoring |  Consents monitored of those requiring it 78.4% <i>National average</i> > 89.5% |
|-----------------|---|--|---|

| | | |
|------------------|---|---|
| INCIDENTS |  813 INCIDENTS |  86.1% RESPONSE RATE <i>National average</i> > 98.7% |
|------------------|---|---|

| | | | |
|--------------------|--|--|--|
| ENFORCEMENT | 31 Warnings issued | 29 Abatement notices issued | 32 Infringement fines issued |
| | 0 Enforcement order applications | 6 Prosecutions concluded 2018/2019 | 5 Prosecutions in progress |

INDEPENDENT ANALYSIS | 2018/2019 COMPLIANCE MONITORING AND ENFORCEMENT METRICS

AUCKLAND COUNCIL

 **1,590,261**
Population (2018)

 **10.6%**
Population growth (2013-2018)

 **5945km²**
Geographic area

 **\$107,754m**
Regional GDP to March 2018



 **STAFF**

Full time employees **179**

FTE/1000 **0.11**
National average ↗ 0.14

POLICY CHECKLIST

- Conflict of interest policy ✓
- Education / engagement programmes ✓
- Enforcement policy ✓

| | | | |
|-----------------|--|--|---|
| CONSENTS |  108,326 Administered |  11,778 Required monitoring |  Consents monitored of those requiring it 59.9% <i>National average</i> ↗ 89.5% |
|-----------------|--|--|---|

| | | |
|------------------|---|--|
| INCIDENTS |  11743 INCIDENTS |  100% RESPONSE RATE <i>National average</i> ↗ 98.7% |
|------------------|---|--|

| | | | |
|--------------------|--|--|--|
| ENFORCEMENT | 0 Warnings issued | 3186 Abatement notices issued | 1210 Infringement fines issued |
| | 2 Enforcement order applications | 7 Prosecutions concluded 2018/2019 | 12 Prosecutions in progress |

GISBORNE DISTRICT COUNCIL

 **47,565**
Population (2018)

 **8.3%**
Population growth (2013-2018)

 **8386km²**
Geographic area

 **\$2,011m**
Regional GDP to March 2018



 **STAFF**

Full time employees **6**

FTE/1000 **0.13**
National average ↗ 0.14

POLICY CHECKLIST

- Conflict of interest policy
- Education / engagement programmes
- Enforcement policy

| | | | |
|-----------------|--|---|---|
| CONSENTS |  Unknown Administered |  Unknown Required monitoring |  Consents monitored of those requiring it Unknown <i>National average</i> ↗ 89.5% |
|-----------------|--|---|---|

| | | |
|------------------|---|--|
| INCIDENTS |  539 INCIDENTS |  100% RESPONSE RATE <i>National average</i> ↗ 98.7% |
|------------------|---|--|

| | | | |
|--------------------|--|--|---------------------------------------|
| ENFORCEMENT | 0 Warnings issued | 11 Abatement notices issued | 1 Infringement fines issued |
| | 0 Enforcement order applications | 0 Prosecutions concluded 2018/2019 | 12 Prosecutions in progress |

TASMAN DISTRICT COUNCIL

 **55,206**
Population (2018)

 **7.7%**
Population growth (2013-2018)

 **9764km²**
Geographic area

 **\$5,239m**
Regional GDP to March 2018
(Includes Nelson City Council)



STAFF

Full time employees **12**

FTE/1000 **0.22**
National average ↗ 0.14

POLICY CHECKLIST

- Conflict of interest policy ✓
- Education / engagement programmes ✓
- Enforcement policy ✓

| | | | |
|-----------------|--|--|---|
| CONSENTS |  13042 Administered |  2478 Required monitoring |  Consents monitored of those requiring it 75.5% <i>National average</i> ↗ 89.5% |
|-----------------|--|--|---|

| | | |
|------------------|--|--|
| INCIDENTS |  2631 INCIDENTS |  100% RESPONSE RATE <i>National average</i> ↗ 98.7% |
|------------------|--|--|

| | | | |
|--------------------|--|---|--|
| ENFORCEMENT | 0 Warnings issued | 67 Abatement notices issued | 63 Infringement fines issued |
| | 0 Enforcement order applications | 1 Prosecutions concluded 2018/2019 | 0 Prosecutions in progress |

INDEPENDENT ANALYSIS | 2018/2019 COMPLIANCE MONITORING AND ENFORCEMENT METRICS

NELSON CITY COUNCIL

 **53,082**
Population (2018)

 **9.6%**
Population growth (2013-2018)

 **477km²**
Geographic area

 **\$5239m**
Regional GDP to March 2018
(Tasman District Council region)



 **STAFF**

Full time employees **5.5**

FTE/1000 **0.10**
National average *↗* 0.14

POLICY CHECKLIST

- Conflict of interest policy ✓
- Education / engagement programmes ✓
- Enforcement policy ✓

| | | | |
|-----------------|--|---|--|
| CONSENTS |  784 Administered |  619 Required monitoring |  Consents monitored of those requiring it 100% National average <i>↗</i> 89.5% |
|-----------------|--|---|--|

| | | |
|------------------|---|--|
| INCIDENTS |  537 INCIDENTS |  100% RESPONSE RATE National average <i>↗</i> 98.7% |
|------------------|---|--|

| | | | |
|--------------------|--|--|--|
| ENFORCEMENT | 0 Warnings issued | 18 Abatement notices issued | 17 Infringement fines issued |
| | 0 Enforcement order applications | 0 Prosecutions concluded 2018/2019 | 0 Prosecutions in progress |

INDEPENDENT ANALYSIS | 2018/2019 COMPLIANCE MONITORING AND ENFORCEMENT METRICS

MARLBOROUGH DISTRICT COUNCIL

 **50,562**
Population (2018)

 **9.2%**
Population growth (2013-2018)

 **10773km²**
Geographic area

 **\$3,020m**
Regional GDP to March 2018



 **STAFF**

Full time employees **10.3**

FTE/1000 **0.20**
National average ↗ 0.14

POLICY CHECKLIST

- Conflict of interest policy ✓
- Education / engagement programmes ✓
- Enforcement policy ✓

| | | | |
|-----------------|---|--|---|
| CONSENTS |  21,377 Administered |  3261 Required monitoring |  Consents monitored of those requiring it 88.7% <i>National average</i> ↗ 89.5% |
|-----------------|---|--|---|

| | | |
|------------------|---|--|
| INCIDENTS |  633 INCIDENTS |  100% RESPONSE RATE <i>National average</i> ↗ 98.7% |
|------------------|---|--|

| | | | |
|--------------------|--|--|--|
| ENFORCEMENT | 6 Warnings issued | 56 Abatement notices issued | 50 Infringement fines issued |
| | 2 Enforcement order applications | 4 Prosecutions concluded 2018/2019 | 4 Prosecutions in progress |

APPENDIX 1 – SURVEY QUESTIONS

1. Which council are you completing this survey on behalf of? [Regional/ Unitary]
2. What is your name and contact details?

Regional context

In contrast to the 2017/2018 report, the 2018/2019 report drew regional context data from common national sources (e.g. Statistics New Zealand) instead of requiring councils to submit it. This also helped ensure comparability

3. In no more than 300 words describe your regional key commitments to work with iwi/Maori on CME.
For example, joint management agreements or other co-management agreements.
Note: The report author may contact you for further information or clarification of your response.

CME Operations (managing the workload)

Complaints

4. Does your council register/count:
an individual “incident” per notification?
one incident per event, regardless of the number of separate complainants?
5. How many notifications (complaints) were received from members of the public (or other sources, but excluding information from council monitoring activity) relating to environmental incidents or potential breaches of environmental regulation?
This might include information from, for example, emergency services attending an incident or perhaps a council staff member observing something while on other duties, but excludes information from council monitoring activity. Please note answer unknown if your council does not record the information requested.
6. How many of these notifications were responded to by council?
This response may be in any form – e.g. phone call, site visit, desktop audit
7. How many of these notifications were physically attended by council staff?
If one incident had multiple visits, only count this as one.
8. How many of these notifications were confirmed as breaches of the RMA or subsidiary instruments?
9. How many of the breaches were for:
 - Breach of a resource consent?
 - Breach of permitted activity rules?

Resource consents

10. How many individual, active resource consents exist in your region?
Exclude Land Use Consents where the activity is completed e.g. Land use subdivisions where the subdivision is complete and certificates issued or land use – building where the building has been constructed.
11. How many consents required monitoring during this period, in accordance with your monitoring prioritisation model/strategy?
12. How many of these consents were monitored (including desktop audit) in the period?

Compliance gradings

13. In the 2018/19 year, did you use the four compliance grades as recommended by Ministry for Environment?
Yes/No



14. What grades do you apply to non-compliance? (e.g. technical non-compliance, significant non-compliance)
 - Fully Compliant
 - Technical/Low Non-Compliance
 - Moderate Non-Compliance
 - Significant Non-Compliance
 - Other (please specify)
15. When will your council be adopting the four compliance grades recommended by Ministry for Environment?
16. What were the levels of compliance with consents according to the grades you use?

Note 1: Numbers provided under each grade is per monitoring event not per consent. E.g. a consent may be monitored 4 times in the year on one occasion it may be Technically Non-Compliance and on three occasions it may be Fully Compliant, this would add 3 to the total of Fully Compliant and one to the total for Technical Non-compliance.

Note 2: The compliance grade is based on the condition with the worst compliance grade. (e.g. a consent with five conditions Fully Compliant and one condition Moderate Non-Compliance has an overall compliance grade of Minor Non-Compliance)

Note 3: Daily telemetry water readings where compliance with water take limits is continuously monitored are to be excluded from compliance grade totals.

Monitoring permitted activities

17. Which permitted activities do you have a monitoring programme for?

List of activities with tick box if yes:

- Agriculture (excluding dairy)
- Aquaculture
- Construction
- Dairy
- Forestry
- Horticulture
- Mining
- Oil and gas
- Tourism
- Vineyards
- Wineries
- Other (please specify)

Making decisions on priorities

18. What basis is used for determining what notifications/complaints/incidents are physically attended and with what urgency or priority?
19. Describe how you determine which consents are monitored and how frequently?
If there is a prioritisation model or compliance strategy, add link
20. Describe the basis, which was used for determining what, if any, permitted activities were monitored.
If there is a prioritisation model or compliance strategy, add link

Staffing levels

Note: FTEs should only be counted once under each of these categories. However, if a team member has more than



one role then calculate what portion of their time is generally spent in each role, or only answer question 24 if your officers do a combination of roles. An example of an answer to each of the questions in this section might look like 22 FTEs spread across 40 individuals. Exclude any in-house or contract lawyers. Include managers in your count. Include any vacant positions in your counts.

21. How many FTEs does your council have who carry out monitoring roles?
Include contractors.
22. How many FTEs does your council have who carry out environmental incident or pollution response roles?
Include contractors.
23. How many FTEs does your council have who carry out investigation or enforcement roles?
24. How many FTEs does your council have who carry out a combination of the above roles?
Note 1: Include contractors
Note 2: Only answer this question if you have not included these staff in questions 21, 22 or 23
25. How many FTEs does your council have in CME support roles ?
This includes administrative roles, e.g. staff who assist with issue of notices, reminder notices, upload of unpaid infringements to MoI.

CME policies and procedures

26. Does your council have an enforcement policy? Yes No
27. What is your process for making decisions on prosecutions?
28. Who has the delegation to authorise filing of charges for a prosecution at your council?
29. Does your council have a conflict of interest policy? Yes No

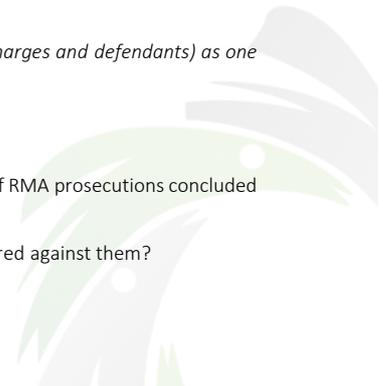
Acting on non-compliance

Questions 30-33 relate to the instruments issued in relation to the different sections of the Act (listed once for brevity)

- Section 9 Use of land
 - Section 12 Coastal marine area
 - Section 13 Beds of lakes and rivers
 - Section 14 Water
 - Section 15 Discharges of contaminants
 - Section 17 Duty to avoid, remedy & mitigate
 - Other breach e.g. Section 22
30. Formal warnings issued
 31. Abatement notices issued
 32. Infringement notices issued
 33. Enforcement orders applied for

Prosecution

34. How many RMA prosecutions were:
Note: For this question please consider an entire case (regardless of number of charges and defendants) as one prosecution.
 - Concluded in the period?
 - Still in progress in the period?
35. What is the total number of individual (person) defendants convicted as a result of RMA prosecutions concluded in this period?
36. For all of these (person) defendants what is the total number of convictions entered against them?



For example, there may be a total of 27 separate convictions entered against a total of nine 'individual' defendants.

37. What is the total number of corporate (e.g. Crown, company, body corporate etc) defendants convicted as a result of RMA prosecutions concluded in this period?
38. For all of these (corporate) defendants what is the total number of convictions entered against them?
For example, there may be a total of 30 separate convictions entered against a total of 12 corporate defendants.
39. Total number of convictions against an individual [see categories for sections of the Act as above]
Total fine potential (Total x \$300,000)
40. Total number of convictions against a corporate entity [see categories for sections of the Act as above]
Total fine potential (Total x \$600,000)
41. What is the total amount of fines imposed by the courts as a result of RMA prosecutions concluded in this period?
 - Individual fines
 - Corporate fines
42. What other sanctions, if any, have been imposed by the courts as a result of RMA prosecutions concluded in this period?
 - Prison sentence
 - Enforcement order
 - Reparation
 - Community Service
 - Discharge without conviction
 - Other
43. How many prosecutions involved restorative justice, diversion or other alternative justice process?
 - Restorative justice
 - Diversion
 - Alternative justice
44. Describe any outcomes relating to these processes.

Educating and engaging with the regulated community

45. Does your council have, or support, any education or engagement projects relating to compliance with the RMA or any of its derivative regulation? For example, workshops for earthworks contractors around erosion and sediment controls. Yes/No
If yes, briefly describe

CME reporting

46. What mechanisms do your council use to report CME data to the public? (e.g. annual reports, reports to councillors) *Provide links or examples.*
 - Annual Report
 - Report to Councillors
 - Snapshot
 - Report(s) to Council committee meetings (open to public)
 - Other (please specify)



APPENDIX 2 - LONG FORM RESPONSES (QUESTION 3)

| | |
|--------------------------------|--|
| Northland Regional Council | NRC has a range of initiatives to work in partnership with Maori. The main one is the Te Tai Tokerau Maori & Council Working Party (TMAC), which is an advisory committee established in 2014. Membership of this standing committee consists of 26 hapu/iwi representatives and four regional councillors. This group meet monthly. Council is currently working with TMAC to develop a Mana Whakahono ā Rohe (a binding statutory arrangement that provides for a structured relationship under the Resource Management Act 1991 between tangata whenua and councils). It is expected it will include an agreed process for hapū signatories to meet with the Northland Regional Council to discuss opportunities for hapū to be involved in a range of council compliance and monitoring activities. |
| Auckland Council | Regular contact with 19 Mana Whenua groups through Kaitiaki forum (hosted by AC) and more recently have held a series of wananga to workshop our CVA processes. Work specifically on CME includes assistance with impact statements in enforcement proceedings and remediation. |
| Waikato Regional Council | The WRC has operative Joint Management Agreements (JMAs) with five "River" Iwi – Waikato-Tainui, Raukawa, Te Arawa, Ngati Maniapoto and Ngati Tuwharetoa – as required by legislation. A key purpose of JMAs is to provide a framework for Iwi and the Council to discuss and agree processes for enabling co-management of planning, regulatory and other functions within the relevant Iwi's geographic area of interest. For all currently operative JMAs, this includes RMA compliance, monitoring and enforcement (CME) functions of Council. Whilst each of the JMAs was individually negotiated, there are common themes across all in relation to CME. The key commitments relating to CME within the JMAs generally include biannual operational meetings to discuss monitoring priorities, extent and methods; the potential for Iwi involvement in monitoring and enforcement processes; responses to non-compliance; consent review opportunities; the effectiveness of conditions and the effectiveness of compliance policies and procedures generally. The JMAs require various CME-related information to be provided, at different times – for example, summary updates of enforcement actions (prosecutions, enforcement orders, abatement notices and infringement notices) undertaken by the Council under the RMA for the JMA area. Agreed outcomes and actions from biannual operational meetings will, where appropriate, be reported up to the corresponding co-governance committees. |
| Bay of Plenty Regional Council | We do not currently have any formal CME focussed arrangements with tangata whenua; however, the role and importance of maori is considered in the day to day implementation of our compliance programme. In practical terms, this may include ensuring tangata whenua are notified of incidents in their rohe ("no surprises" approach) and involved in project where appropriate (eg. marae wastewater). CME information is also formally reported to co-governance groups (eg. Rangitaiki River Authority and Te Maru o Kaituna) |



| | |
|-------------------------------------|--|
| Hawkes Bay Regional Council | <p>A fundamental relationship exists between HBRC and the Treaty settlement groups within Hawke's Bay. While this is tangibly demonstrated through the Regional Planning Committee (RPC) (a co-governance arrangement created by statute and responsible for the development and review of regional policy statements and regional plans) HBRC regularly meets with the Post settlement governance entities to discuss matters of concern beyond the remit of the RPC. This includes regulatory matters within the relevant rohe and CME issues.</p> <p>In the 2018/19 financial year HBRC created the role of Tumuaki to strengthen our knowledge of Mātauranga Māori and to further enhance relationships with tangata whenua within the region on matters of importance to them. The Maori Partnerships Unit now has three fulltime staff who liaise with staff in other areas including CME.</p> <p>HBRC staff and councillors attend hui throughout the region involving particularly marae communities to listen to particular issues that those communities have and to assess where Council can best help.</p> <p>Finally since 1991 we have had a Maori Committee as a representative group of Ngāti Kahungunu tangata whenua. This committee is where formal reporting on CME issues, including formal reports, are put forward for discussion and recommendations to Council.</p> |
| Taranaki Regional Council | <p>The Council has 3 iwi appointed representatives on each of its Consents and Regulatory and Policy and Planning Committees. This provides for CME input at this level. In addition the Council engages directly with iwi over prosecutions and obtains victim impact statements for sentencing. The 4 local authorities in the region are currently trying to develop Iwi Relationship Agreements, under the Mana Wakahono a Rohe provisions of the RMA, with the 8 iwi in the region, which potentially includes CME provisions.</p> |
| Gisborne District Council | <p>Yes. Council have joint management plans in place with local iwi as part of the resource consent application process. Part of this is around obligations of the consent holder to provide management plans in consultation with local iwi.</p> |
| Horizons Regional Council | <p>No formal agreements at this stage with Iwi around CME, however, in the event of a comprehensive investigation or major incident Iwi are advised. Regarding the former, Council endeavours to obtain cultural impact statements from Iwi that are then put before the court as part of the sentencing process.</p> |
| Greater Wellington Regional Council | <p>As well as the items referred to in last years response. Introduction Chapter to our proposed Natural Resources Plan lays out the collaborative work and strategy for involving iwi. http://www.gw.govt.nz/assets/Proposed-Natural-Resources-Plan/Web-update-docs/Chapter-1-Introduction.pdf The Whaitua Committee Pages expand on the above and how we will engage and collaborate with Iwi and communities in the CME space http://www.gw.govt.nz/whaitua-committees/</p> |
| Nelson City Council | <p>There are no formal agreements for CME. Consent holders are sometimes required to engage an iwi monitor. Council is currently updating procedures/agreements for working with iwi for both undertaking works and processing resource consents. It is anticipated CME agreements will follow the resource consent processing agreements.</p> |
| Marlborough District Council | <p>Draft Iwi Engagement Policy Iwi Impact statements sought for enforcement proceedings.</p> |
| Tasman District Council | <p>We don't currently have any formal agreements with iwi in respect to CME activities.</p> |

| | |
|-----------------------------|--|
| Environment Canterbury | While the Local Government Act 2002 sets out provisions relating to all Māori, it is recognised that within the Canterbury region, Ngāi Tahu are the tangata whenua. They have special status in terms of Environment Canterbury’s resource management activities and are not just another interest group. The Resource Management Act 1991 gives regional councils specific obligations regarding kaitiakitanga, the principles of the Treaty of Waitangi and the relationship between Māori and their culture and their traditions with their ancestral lands, sites, wāhi tapu and other taonga. To give effect to the obligations under the Local Government Act 2002 and the related obligations under the Resource Management Act 1991, we have committed with Ngāi Tahu to improve relations and interaction and integrate improved working practices across Environment Canterbury. The way we do this falls under the umbrella of our joint work programme Tuia. Best practice examples of working with Ngāi Tahu are also included. This is especially noted in our co-governance agreement for Te Waihora and the way we implement improvements under Tuia. |
| Otago Regional Council | We have used iwi recently for cultural impact assessment reports on prosecution cases. |
| West Coast Regional Council | Representatives from iwi sit on the Council Resource Management Committee with full voting rights. All complaints received, noncompliance and enforcement action is reported to this committee. A list of all consent applications received is reported to iwi. WCRC is in the process of developing a mana whakahono a rohe agreement with iwi. |
| Southland Regional Council | Ngāi Tahu ki Murihiku (tangata whenua) have a particular interest in the work of Environment Southland. And mutually, the council has responsibilities towards Māori and Māori cultural and spiritual values. The approach we have in Southland today is unique in the South Island. Its aim is to ensure Māori values are reflected in the council’s decision-making, so that Southland’s mauri is protected for now and generations to come. Te Aō Marama Incorporated (the environmental arm of Ngāi Tahu ki Murihiku) was one of the key facilitators when the relationship between the council and iwi began in the early 90s. Te Aō Marama was delegated the responsibility of dealing with councils on environmental matters, on behalf of the four patatipu rūnanga who hold mana whenua over all ancestral lands in Murihiku – Awarua, Hokonui, Ōraka Aparima and Waihōpai. For 25 years the relationship with Environment Southland continues to grow, with various protocols being developed to ensure smooth and efficient processes for plan development and consents management, a jointly funded iwi policy advisor position, an iwi management plan Te Tangi a Tauria, and a partnership to improve Southland’s water and land through the People Water and Land programme – Te Mana o te Tangata, te Wai, te Whenua. The most recent milestone in the council’s relationship with iwi is the inclusion of mana whenua positions on two of Environment Southland’s committees. The successful candidates for these positions will start their work after the elections in October. Environment Southland, refers to the iwi relationship as te kōura tuia – the ‘golden thread’ that we weave through all our work. It’s just part of how we operate. There is a commitment to the responsibility of improving Southland’s local government understanding of all things Māori. |





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8.2. Report on Dairy Inspections 2019/20

| | |
|----------------------|---|
| Prepared for: | Regulatory Committee |
| Report No. | GOV1931 |
| Activity: | Regulatory - Resource Consent Compliance and Bylaw Monitoring |
| Author: | Richard Saunders, General Manager Regulatory |
| Endorsed by: | Richard Saunders, General Manager Regulatory |
| Date: | 30 June 2020 |

PURPOSE

- [1] To update the Regulatory Committee on the dairy inspection compliance programme for the 2019/20 year.

EXECUTIVE SUMMARY

- [2] ORC carries out a dairy inspection compliance programme to ensure compliance with current permitted activity rules. This report summarises the compliance programme for the 2019/20 year.
- [3] Overall compliance with the rules can be considered high. These findings only represent compliance with the current rule framework and are not a full assessment of farm operations.

RECOMMENDATION

That the Committee:

- 1) **Notes** the report on the Dairy Inspection Compliance Programme for the 2019/20 year.

BACKGROUND

- [4] The purpose of annual dairy inspections is to determine whether farms comply with the permitted activity rules and confirm that there are no breaches of the prohibited activity rules, specifically discharges from animal waste collection systems.
- [5] All known dairy farms are risk assessed to prioritise the inspections undertaken. Applying a risk-based approach enables monitoring efforts to be focused on the most significant risks to the environment. The risk assessment framework for dairy monitoring uses a Low, Medium and High-risk assessment of properties.
- [6] Risk assessment is determined by a number of factors including:
- Amount of animal waste storage and infrastructure
 - Application method of animal waste to land
 - Land volume that animal waste can be applied to
 - Number of cows (relative to storage)
 - Silage storage and collection
 - Topography

- g. Underpass and storage
 - h. Rivers
 - i. State of the water quality in the catchment, SOE monitoring related
 - j. Drains (Includes tile/mole and open drains) in effluent disposal areas
 - k. Location of property with respect to risk of soils becoming saturated
 - l. Previous Non-Compliances
 - m. Complaints from public
- [7] Council has a cold calling policy with dairy farm inspections. This allows for a snapshot of what the property is like on any given day. On arrival at the property the Inspector will contact an appropriate person (Owner/Sharemilker/Manager) by phone or in person.
- [8] During the visit the farm is visually inspected for compliance with rules in Regional Plans Water, Waste and Air. The irrigation system and other infrastructure is assessed, and a series of questions asked of the farm owner, manager or sharemilker. Some properties hold consents for the discharge of odour to air from dairy effluent ponds which are also assessed during site visits. Crossings and stock access to water where banks may be degraded are also considered.
- [9] Any identified breaches of the rules are noted, with photographic evidence taken of any serious ponding or discharges to water. If there is evidence of discharge to water, water samples may be taken for laboratory analysis. Where problems have been identified, a follow-up visit is arranged with the farmer to ensure that remedial measures have been put in place.
- [10] A copy of the dairy inspection sheet used by staff is included as attachment 1.
- [11] The annual dairy inspection is also an excellent opportunity for the land managers to seek advice and education from the environmental officer on aspects of their operations that relate to compliance with the Regional Plan: Water or any other Regional Plan.

DISCUSSION

- [12] A total of 268 dairy audits were undertaken during the 2019/2020 year. This number was lower than originally planned due to Covid 19 restrictions. The total number of known dairy farms in Otago is 479.
- [13] 75 Dairy Farms are assessed as Grade 3. Of these 74 were inspected. The remaining 194 inspections were undertaken on a geographic basis focussing on areas that had not been subject to inspections in previous years.
- [14] A summary of the inspection results is shown in Table 1. These results show that overall, there was a high level of compliance for dairy farm inspections.

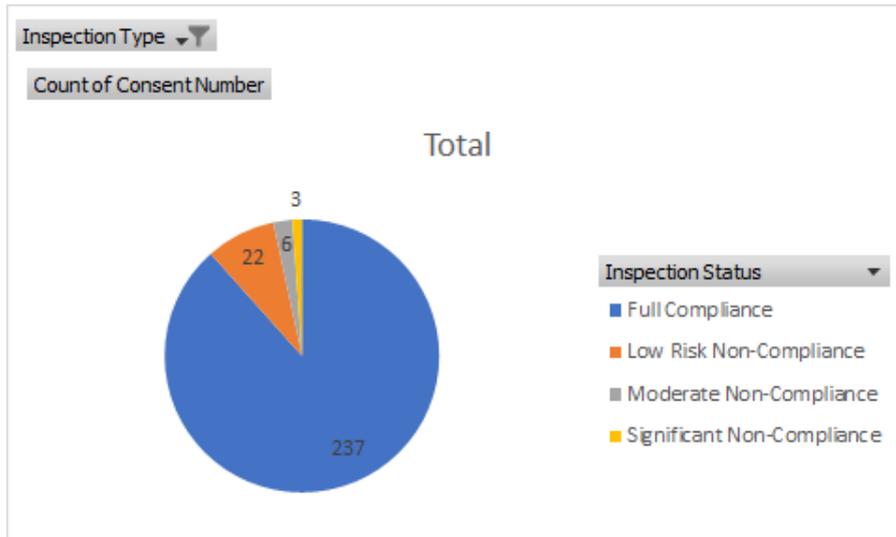


TABLE 1: Summary of Dairy Inspection Results for 2019/20

- [15] There were 9 properties that were graded as moderately or significantly non-compliant during the first inspection. One infringement and one formal warning was issued. Re-inspections and education were undertaken with the remaining non-compliant properties.
- [16] Staff identified two key improvements during this year's inspection programme.
- a. In North Otago there were a number of new effluent ponds constructed to assist in managing effects on those properties.
 - b. Overall staff found that there was a better understanding of the risks associated with irrigating on farms. This awareness resulted in better management of on farm activities.
- [17] There were also a number of potential issues identified during site visits. These issues could form the basis of future education material with the industry, as well as be used to better target compliance activity.
- a. Landowners not being clear on the definition of a river and irrigating within 50m
 - b. Landowners not knowing where their tile drains are
 - c. Owners not providing sharemilkers with tools to enable compliance (tile drain maps, adequate storage, suitable areas to irrigate in wetter weather)
 - d. Use of old high rate irrigators, particularly in areas where soils are frequently saturated.
 - e. Insufficient storage for the number of cows/geographic location
 - f. Lack of fail-safe devices on irrigators
 - g. Inadequate infrastructure on farms in low lying area or aquifers where there is a risk of effluent leaching to groundwater.
- [18] Overall engagement with compliance staff was very good. A focus was placed on education and ensuring that any potential risks were addressed before they resulted in adverse environmental effects.

OPTIONS

[19] As this is a report for noting there are no options.

CONSIDERATIONS

Policy Considerations

[20] There are no policy considerations associated with this report.

Financial Considerations

[21] There are no financial considerations associated with this report.

Significance and Engagement

[22] Significance and Engagement considerations are not relevant for this paper.

Legislative Considerations

[23] Dairy Inspections are undertaken as part of ORC's responsibilities under the RMA.

Risk Considerations

[24] There are environmental, legal, social and reputational risks associated with compliance monitoring activities.

NEXT STEPS

[25] Staff are currently working on an updated compliance plan for the 2020/21 year. This will take into account changes associated with Plan Change 8 and the National Environmental Standards for Freshwater.

ATTACHMENTS

1. Dairy Inspection Template [8.2.1 - 2 pages]

| Supply # | PA # | Date | Time | Officer |
|--|---|---|--|----------------|
| <u>Warrant shown:</u> | | Y / N | <u>Hazards/risks on site that I need to be aware of:</u> | |
| <u>Notice of inspection left:</u> | | Y / N | | |
| <u>Dairy shed location:</u> | | | | |
| <u>Person spoken to:</u> | | | | |
| <u>Relationship:</u> | | | | |
| <u>Owner:</u> | | | | |
| <u>Address for service:</u> | | | | |
| <u>Postal Address:</u> | | | | |
| <u>Email:</u> | | <u>Landline:</u> | | <u>Mobile:</u> |
| <u>Sharemilker/Manager:</u> | | | | |
| <u>Address for service:</u> | | | | |
| <u>Postal Address:</u> | | | | |
| <u>Email:</u> | | <u>Landline:</u> | | <u>Mobile:</u> |
| <u>Number of cows:</u> | | <u>Effluent pond construction:</u> | Clay / Clip Tank / Concrete / Liner / Unknown | |
| <u>Area available for effluent application (hectares):</u> | | <u>Method of effluent application:</u> | Kline / Travelling / Centre Pivot / Cobra / Large Pods / Gun Irrigator / Slurry Tanker / Umbilical | |
| <u>Available effluent storage if pond was empty (days):</u> | | <u>Pond maintenance required:</u> | Y / N | |
| <u>Actual effluent storage at time of inspection (days):</u> | | <u>Pond maintenance description:</u> | | |
| <u>Silage pit(s):</u> | Y / N | <u>Description:</u> | | |
| <u>Silage Pit(s) Sealed:</u> | Y / N / NA | <u>Description:</u> | | |
| <u>Underpass:</u> | Y/N | | | |
| <u>Underpass collection facility:</u> | Y / N / NA | <u>Description:</u> | | |
| <u>Culverts and crossings:</u> | Y / N / NA | <u>Fitted with bunds or similar:</u> Y / N / NA | | |
| <u>Infrastructure is adequate to ensure compliance is able to be achieved at all times:</u> Y / N | | | | |
| <u>Open drains, tile drains, or a water race that flows to a waterway:</u> Y / N | | | | |
| <u>Owner/Sharemilker is aware of the rural water quality rules:</u> Y / N | | | | |
| <u>Referred to Dairy Working Group:</u> Y / N | | | | |
| <u>Info pack given:</u> Y / N | | | | |
| <u>Other comments/observations:</u> Flat/Rolling. Green Water Wash. Decontaminated. Avr Stocking Rate. Fail Safe. Closest River. Map of irrigation area, rate of irrigation, water irrigation method, water irrigation rate | | | | |
| <u>Compliance grading:</u> | Compliant / Non Compliant Minor / Non Compliant Significant | | | |
| <u>Risk ranking:</u> | High / Med / Low | <u>Follow up Inspection:</u> | Y / N | |
| <u>Signature:</u> | | | | |

If you have any questions regarding the inspection, please call the Otago Regional Council on 0800 474 082

Criteria that is used to determine compliance grading includes;

- Contaminant (e.g. effluent, silage, compost) system including the application to land complies
- Contaminant system is managed to a high standard
- No surface ponding of contaminant
- Contaminant is not applied to saturated soils
- There is no direct discharge of contaminant to a waterway
- Contaminant storage pond or facility is not leaching or overflowing
- There is no discharge or leaching of contaminants, including from laneways and/or underpasses.

Where follow-up inspections are required to check on non-compliance issues, all costs incurred will be recovered.

12.C.0 Prohibited Activities: No resource consent will be granted.

12.C.0.1: The discharge of any contaminant to water, that produces an objectionable odour, or a conspicuous oil or grease film, scum, or foam in any:

- (i) Lake, river or Regionally Significant Wetland; or
- (ii) Drain or water race that flows to a lake, river, Regionally Significant Wetland or coastal marine area; or
- (iii) Bore or soak hole, is a prohibited activity.

12.C.0.2: The discharge of any contaminant from an animal waste system, silage storage or a composting process:

- (i) To any lake, river or Regionally Significant Wetland; or
- (ii) To any drain or water race that goes to a lake, river, Regionally Significant Wetland or coastal marine area; or
- (iii) To the bed of any lake, river or Regionally Significant Wetland; or
- (iv) To any bore or soak hole; or
- (v) To land in a manner that results in overland flow entering any:
 - (a) Lake, river, Regionally Significant Wetland or coastal marine area that is not permitted under Rule 12.C.1.1 or 12.C.1.1A; or
 - (b) Drain or water race that goes to any lake, river, Regionally Significant Wetland or coastal marine area that is not permitted under Rule 12.C.1.1 or 12.C.1.1A; or
- (vi) To land within 50 metres of:
 - (a) Any lake, river or Regionally Significant Wetland; or
 - (b) Any bore or soak hole; or
- (vii) To saturated land; or
- (viii) That results in ponding, is a ***prohibited*** activity.

| 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 |
|--|--|---|
| 1.1 Clutha District Council WWTP Investigation Update | Section 6(a) of LGOIMA – 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. | Section 48(1)(a) |

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.