

Regulatory Committee Agenda - 15 September 2022



Meeting will be held in the Council Chamber at Level 2, Philip Laing House
144 Rattray Street, Dunedin (Councillors and staff only)

Members of the public may view the meeting live at: [Otago Regional Council YouTube Channel](#)

Members:

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

Senior Officer: Pim Borren, Interim Chief Executive

Meeting Support: Dianne Railton, Governance Support Officer

15 September 2022 09:00 AM

| Agenda Topic | Page |
|--|-------------|
| 1. APOLOGIES Cr Michael Deaker has submitted his apology for this meeting. | |
| 2. PUBLIC FORUM Members of the public may request to speak to the Council. No requests were received prior to publication of the agenda. | |
| 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. CONFIRMATION OF MINUTES The Committee will consider minutes of meetings a true and accurate record, with or without changes. | 3 |
| 5.1 Minutes of the 29 June 2022 Regulatory Committee Meeting | 3 |
| 6. OPEN ACTIONS FROM RESOLUTIONS OF THE COMMITTEE There are no outstanding Actions for the Regulatory Committee. | |
| 7. MATTERS FOR CONSIDERATION | 6 |

| | | |
|-------|---|----|
| 7.1 | REVIEW OF CONSENT FEE SUPPORT POLICY | 6 |
| | The report updates the Committee on the newly established Financial Support for Resource Consent Processing Fees – Environmental Enhancement Projects Policy (the Policy), and make recommendations to update the Policy. | |
| 7.1.1 | Attachment 1: Applications received for Financial Support | 10 |
| 7.1.2 | Attachment 2: Financial Support for Resource Consent Fees Proposed Track Changes | 11 |
| 7.1.3 | Attachment 3: Financial Support for Resource Consent Fees Draft Policy for Approval | 16 |
| 7.2 | REGULATORY GROUP - QUARTERLY ACTIVITY REPORT | 21 |
| | The report updates the Committee on activities of the Regulatory Group between 1 July 2021 and 30 June 2022. | |
| 7.2.1 | Attachment 1: July 2021 to June 2022 Regulatory Data | 32 |
| 7.2.2 | Attachment 2: ORC RMA Enforcement Policy - September 2022 Update | 44 |
| 7.3 | INTENSIVE WINTER GRAZING UPDATE | 55 |
| | The report provides an update on the Regulatory Group approach to intensive winter grazing under the National Environmental Standard for Freshwater 2020. | |
| 7.3.1 | Attachment 1: Intensive Winter Grazing Permitted Activity Criteria | 60 |
| 8. | CLOSURE | |



Minutes of a meeting of the Regulatory Committee
held in the Council Chamber
on Tuesday 28 June 2022 at 10:00am

Membership

Cr Gary Kelliher (Co-Chair)
Cr Andrew Noone (Co-Chair)
Cr Hilary Calvert
Cr Michael Deaker
Cr Alexa Forbes
Cr Carmen Hope
Cr Michael Laws
Cr Kevin Malcolm
Cr Gretchen Robertson
Cr Bryan Scott
Cr Kate Wilson

Welcome

Chairperson Kelliher welcomed Councillors, members of the public and staff to the meeting at 10:04 am. Staff present in the Chamber included Pim Borren (Interim Chief Executive), Gavin Palmer (GM Operations), Richard Saunders (GM Regulatory and Communications), Amanda Vercoe (GM Governance, Culture and Customer), Joanna Gilroy (Manager Consents), Tami Sargeant (Manager Compliance), and Dianne Railton (Governance Support Officer), and staff present electronically included Nick Donnelly (GM Corporate Services), Anita Dawe (GM Policy and Science) and Steve Rushbrook (Harbourmaster).

1. APOLOGIES

Resolution: Cr Hope Moved, Cr Noone Seconded:

That the apologies for Cr Laws be accepted. Cr Forbes, Cr Malcolm and Cr Scott attended the meeting electronically.

MOTION CARRIED

2. PUBLIC FORUM

No public forum was held.

3. CONFIRMATION OF AGENDA

The agenda was confirmed as published.

4. CONFLICT OF INTEREST

Cr Wilson advised she would sit back from the table part of item 7, due to having a resource consent in process. Cr Noone and Cr Scott advised they would sit back from the table for any discussion on Forestry.

5. CONFIRMATION OF MINUTES

Resolution: Cr Noone Moved, Cr Hope Seconded

That the minutes of the Regulatory Committee meeting held on 10 March 2022 be received and confirmed as a true and accurate record.

MOTION CARRIED

6. ACTIONS

There were no open actions of the Regulatory Committee.

7. MATTERS FOR CONSIDERATION

7.1. Regulatory Group - Quarterly Activity Report

The report was updated the Committee on activities of the Regulatory Group between 1 July 2021 and 31 May 2022 and to approve the Compliance Audit and Performance Monitoring Schedule for 2022-23. Richard Saunders (GM Regulatory and Communications), Joanna Gilroy (Manager Consents), Tami Sargeant (Manager Compliance), and Steve Rushbrook (Harbourmaster) were present to speak to the report and respond to questions.

Mr Saunders acknowledged the work the team have done in what has been trying year particularly due to COVID, saying the numbers are very positive in terms of processing consents, number of site visits and performance monitoring returns undertaken.

Cr Scott asked about legal enforcement reporting in the RMA report, and following further discussion, Mr Saunders said that additional metrics for legal enforcement can be included in the report.

Resolution REG22-103: Cr Noone Moved, Cr Calvert Seconded

That the Regulatory Committee:

- 1) **Notes** the Quarterly Update Report from the Regulatory Group.
- 2) **Approves** the Compliance Audit and Performance Monitoring Schedule for the 2022-23 year.

MOTION CARRIED

7.2. ORC Compliance - Drinking Water Update Report

The report provided the Committee with a summary of the ORC compliance activities and responsibilities in relation to drinking water activities in Otago. Richard Saunders (GM Regulatory and Communications) and Tami Sargeant (Manager Compliance) were present to speak to the report and respond to questions.

Resolution REG22-104: Cr Hope Moved, Cr Calvert Seconded

That the Regulatory Committee:

- 1) **Notes** this report.
- 2) **Notes** that the Annual Compliance Report will include information on the compliance of consented activities that relate to drinking water in the Otago region.

MOTION CARRIED

8. CLOSURE

There was no further business and Chairperson Kelliher declared the meeting closed at 10:56am.

Chairperson

Date

DRAFT MINUTES

7.1. Review of Consent Fee Support Policy

Prepared for: Regulatory Committee
Report No. REG2204
Activity: Regulatory: Consents and Compliance
Author: Joanna Gilroy, Manager Consents
Endorsed by: Richard Saunders, General Manager Regulatory and Communications
Date: 15 September 2022

PURPOSE

- [1] The purpose of this report is to provide an update to Council on the newly established Financial Support for Resource Consent Processing Fees – Environmental Enhancement Projects Policy (the Policy), and make recommendations to update the Policy.

EXECUTIVE SUMMARY

- [2] Council approved a new Policy and associated fund to provide financial support for projects which have an environmental benefit during Long Term Plan Considerations in 2021. Staff were requested to report back to Council at the end of the 2021/2022 year.
- [3] A total of three applications for fees support were received during the 21/22 year with three being approved. The total amount of financial support allocations from the fund has been \$13,342.
- [4] Staff have undertaken a review of the Policy and are recommending two changes. These changes would ensure that more projects can receive the benefits of this funding and that ongoing compliance costs can be covered subject to full compliance being maintained.

RECOMMENDATION

That the Committee:

- 1) **Notes** this report.
- 2) **Adopts** the recommended changes to the Resource Consent Fees Support Policy being:
 - a. An amendment that allows individuals to access the fund provided they meet all other criterial and there is no commercial advantage obtained from the project.
 - b. An amendment to enable projects to claim for ongoing compliance costs provided the consent maintains a fully compliant audit grade.
- 3) **Notes** that the adopted Policy changes will be referred to full Council for final approval.
- 4) **Requests** that staff undertake a further assessment of the fund and report back to Council at the end of the 2022/2023 year.

BACKGROUND

- [5] During LTP deliberations in 2021 staff were requested to develop a policy for assisting with resource consent costs for environmental enhancement projects. A budget of \$50,000 was included in the budget for this purpose.
- [6] At the Council meeting on 23 June 2021 staff presented a draft policy for the consideration of Council. It was resolved that the Council:
- 1) *Receives this report.*
 - 2) *Approves the ORC Financial Support for Resource Consent Processing Fees - Environmental Enhancement Projects Policy – 2021, referred to as Option 1 in the paper, and its implementation from 1 July 2021*
 - 3) *Approves an update to the Otago Regional Council Delegations Manual to reflect the new Policy and delegate under the policy to the General Manager Regulatory and Communications*
 - 4) *Notes that staff will report quarterly to the Regulatory Committee on the implementation of this Policy*
 - 5) *Requests that staff review the policy at the end of the 2021/2022 year and report back to Council on any recommended changes*
- [7] Staff have promoted the new fund and actively encouraged applicants to seek financial support if they meet the criteria set in the Policy.

DISCUSSION

Summary of applications 2021/2022

- [8] During the 2021/2022 year a total of three applications for funding support were received by the Consents team. No applications were declined.
- [9] Of those approved a total of \$13,342 was allocated to resource consent fees.
- [10] Attachment 1 lists all applications received for funding support along with the outcome and where applicable the amount of financial support received.

Review of Policy

- [11] Staff have carried out an assessment of the existing policy. While for the most part it is the opinion of staff that the policy responds to the original intent of Councillors there are opportunities to broaden the scope of the policy which could provide support to additional projects.
- [12] Staff are recommending two changes to the policy. A copy of the existing policy with track changes is included as Attachment 2. A copy of the proposed new policy without track changes is included as Attachment 3.
- [13] The first change will make it possible for an individual undertaking a project to access support from the fund. This change recognises that some projects consistent with the intent of the fund are undertaken by individual landowners rather than catchment or community groups. The key criteria relating to commercial gain will still apply to these applications from individuals.

- [14] The second change will provide for compliance and administration costs associated with the granted consent to be covered by the fund subject to the applicant maintaining an audit grade of full compliance. This change ensures that all funds can be directed to further environmental work rather than covering ongoing costs associated with the granted resource consent. The criteria included in the proposed changes require the consent holder to maintain an audit grade of full compliance in order to ensure there are no adverse effects from the project and that any reporting requirements are fulfilled.

OPTIONS

- [15] There are three options available to Council.
- [16] Option 1 – Recommended Option. The Committee endorses the two recommended changes to the policy.

Advantages

- *More non-commercial environmental enhancement projects will qualify for funding support.*
- *ORC will be seen actively supporting non-commercial projects which deliver environmental enhancement for the region*
- *The recommended changes to the policy will ensure that more funding can be diverted to on the ground actions as opposed to covering the costs of regulatory activity associated with projects.*

Disadvantages

- *The inclusion of compliance fees in the scope of the policy may create some pressure on the fund in future years.*

- [17] Option 2 – The Committee recommends further changes and endorses the Policy.
- *Depending on the nature of the additional changes this option is considered to have similar advantages and disadvantages to option 1.*

- [18] Option 3 – The Committee recommends no changes to the Policy

Advantages

- *There is unlikely to be pressure on the fund in future years.*

Disadvantages

- *Some non-commercial environmental enhancement projects will fail to meet the criteria for funding support.*
- *ORC may be seen to be missing an opportunity to support additional environmental enhancement projects in the region.*
- *No changes to the policy will mean that project funding will need to be diverted to meet ongoing regulatory costs rather than being invested into on the ground actions.*

CONSIDERATIONS

Strategic Framework and Policy Considerations

- [19] The recommended changes to the policy are consistent with the ORC strategic framework.

Financial Considerations

[20] Funding for this policy is included in the 2022/2023 Annual Plan.

Significance and Engagement Considerations

[21] This decision is not considered significant when reviewed against He Mahi Rau Rika.

Legislative and Risk Considerations

[22] There are no legislative considerations associated with this decision.

[23] Without changes to the existing policy there is a potential risk to ORC's reputation. The organisation could be viewed as failing to provide adequate support to projects which aim to deliver environmental enhancements to the region.

Climate Change Considerations

[24] Projects which deliver climate change outcomes may qualify for financial support under the existing and proposed policy.

Communications Considerations

[25] This fund has previously been promoted. Should the changes be approved staff will work with the Communications and Marketing team to further promote this fund to the Otago community.

NEXT STEPS

- [26] Subject to endorsement from the Committee and final ratification at the next Council meeting staff will undertake the following actions:
- a. Update the policy information on the website.
 - b. Communicate the updates to the policy both through general channels and directly with key stakeholder groups.
 - c. Provide a report to Council at the end of the 2023/2024 year reviewing the policy and the funding provided to projects.

ATTACHMENTS

1. Applications received for Financial Support [7.1.1 - 1 page]
2. Financial Support for Resource Consent Fees Proposed Track Changes [7.1.2 - 5 pages]
3. Financial Support for Resource Consent Fees Draft Policy for Approval [7.1.3 - 5 pages]

Attachment 1: List of Consents that have Applied for Financial Support

| Number | Applicant | Project Description | Approved / Declined | Amount |
|--------|--|--|---------------------|------------------------------|
| 1 | Wanaka Community Garden Trust | Community Green Waste and Worm Farm Operation | Approved | \$1,363 |
| 2 | Mana Tahuna Charitable Trust | Environmental improvement projects at a range of sites in the Lake Hayes Catchment | Approved | \$10,000 (\$17,244 total) |
| 3 | Otago Peninsula Biodiversity Trust and Vauxhall Yacht Club | Billboard promoting biodiversity activities on the Otago Peninsula | Approved | \$1,979 |

Note: No applications were declined. Discussions at pre-lodgement stage identify suitable projects for financial support before an applicant commits time to completing an applications



Otago Regional Council

Financial Support for Resource Consent Processing Fees - Environmental Enhancement Projects

July 2021-October 2022

| | |
|--|---|
| | Document Name: Financial Support for Resource Consent Processing Fees - Environmental Enhancement Projects |
| | Document Owner: General Manager Regulatory |
| | Authorised By: Council |
| | Implementation Date: 1 July-October 2021 |
| | Review Period: Annual |

| | |
|---|--|
|  | Last Reviewed: n/a |
| | Next Review: 1 July 2024 ² |

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- 2. PURPOSE1
- 3. SCOPE.....1
- 4. DELEGATIONS1
- 5. CRITERIA.....1
- 6. PROCESS2
- 7. RELATED DOCUMENTS.....3

1. INTRODUCTION

The Financial Support for Resource Consent Processing Fees - Environmental Enhancement Projects Policy provides guidance to those groups or individuals wishing to apply for support for a project which requires a resource consent. The policy confirms the Council's support for qualifying groups or individuals who are delivering environmental enhancement projects which are consistent with the Council's Strategic Directions or priorities listed in other statutory documents.

2. PURPOSE

The purpose of the policy is to give clear direction to applicants seeking support for resource consent processing fees for environmental enhancement projects.

3. SCOPE

The scope of this policy is limited to resource consent processing fees associated with applications made by qualifying groups or individuals for eligible environmental enhancement projects and the ongoing compliance and monitoring fees associated with a granted resource consent. The following costs are not within scope of this policy and will not qualify for support:

- work required in response to any actual or potential enforcement action
- administrative charges and annual consent monitoring fees associated with a granted consent where an audit grade of full compliance has not been maintained
- costs associated with retrospective consents
- costs associated with physical work or reporting required to address non-compliance associated with a granted consent
- any costs incurred by the applicant in the preparation of the application
- costs associated with the Implementation of the activity for which consent is sought.

In addition fees support will not be provided for a publicly notified application or costs associated with a hearing for a limited notified application.

4. DELEGATIONS

Decisions on applications for fees support will be made by the General Manager Regulatory and Communications. The final decision is at Council's discretion and will be considered on a case-by-case basis. Approval of fees support is entirely at the discretion of Council and is subject to budget availability. There is no objection or appeal rights.

Budget availability and an indication of support for any application will be provided by staff at the required pre-commencement meeting.

5. CRITERIA

To qualify for fees support the application for consent must be lodged by an ~~not-for-profit~~ individual or not for profit organisation such as:

- Landowner
- Catchment Groups
- Community groups
- Iwi/hapu groups
- Incorporated societies
- Community trusts
- Resident and ratepayer groups
- Educational institutes

and they must be able to demonstrate that their activity will deliver an environmental enhancement or service. For example, it:

- Supports or delivers improved water quality in Otago
- Supports or delivers improved air quality in Otago
- Supports or delivers improved biodiversity outcomes in Otago
- Protects the Otago environment
- Enhances the Otago environment
- Promotes the Otago environment (e.g. does it inform or create an awareness in the community or educate people?)

The project must also be consistent with Council's priorities as set in the Strategic Directions, Long Term Plan or other ORC statutory documents.

Decisions on applications for fees support will be made by the General Manager Regulatory and Communications, who may approve or decline the application. No further consideration of the application will be undertaken following issue of the final decision. There are no objection or appeal rights.

The maximum amount of support offered for consent processing fees on an individual project will be \$10,000. Costs over and above this amount will be payable by the applicant in accordance with ORC's Fees and Charges Schedule. Applicants will have the right to object to these additional fees under the standard provisions of section 357B of the Resource Management Act. There is no cap on support for the ongoing compliance and monitoring charges provided the consent holder maintains an audit grade of full compliance.

Consent processing fees support is a first come first served process. If the allocation is exhausted no further applications will be considered until the following financial year.

6. PROCESS

In order to receive consent processing fees support the group or individual applying for the consent must lodge a written request to the General Manager for processing fees to be supported before the application for consent is submitted to Council for processing. The relevant application form can be found on the ORC website. Information required to enable consideration of the application includes:

- how it meets the criteria in the policy; and
- confirmation that the group is a not for profit group (where applicable) and there is no commercial gain to be generated by the project; and
- confirmation that a pre-application meeting has been or will be held with ORC consent staff prior to lodgement of the consent application.

Written confirmation of acceptance for support will be provided to the applicant within 10 working days of the request being received. This confirmation letter should be included with the application material at the time the consent application is lodged.

7. RELATED DOCUMENTS

- Resource Consent Fees Support Application Form
- Ecofund Funding Checklist and Application form (Note: your project may qualify for additional support from ORC)
- Revenue and Financing Policy



Otago Regional Council

Financial Support for Resource Consent Processing Fees - Environmental Enhancement Projects

October 2022

| | |
|--|---|
| | Document Name: Financial Support for Resource Consent Processing Fees - Environmental Enhancement Projects |
| | Document Owner: General Manager Regulatory |
| | Authorised By: Council |
| | Implementation Date: 1 October 2022 |
| | Review Period: Annual |

| | |
|---|---------------------------------|
|  Otago Regional Council | Last Reviewed: n/a |
| | Next Review: 1 July 2024 |

1. INTRODUCTION1

2. PURPOSE1

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DRAFT

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7. RELATED DOCUMENTS

- Resource Consent Fees Support Application Form
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- Revenue and Financing Policy

7.2. Regulatory Group - Quarterly Activity Report

Prepared for: Regulatory Committee
Report No. GOV2244
Activity: Regulatory: Consents and Compliance
Author: Richard Saunders, General Manager Regulatory and Communications
Endorsed by: Richard Saunders, General Manager Regulatory and Communications
Date: 15 September 2022

PURPOSE

- [1] To update the Committee on activities of the Regulatory Group between 1 July 2021 and 30 June 2022.

EXECUTIVE SUMMARY

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

RECOMMENDATION

That the Regulatory Committee:

- 1) **Notes** the Quarterly Update Report from the Regulatory Group.
- 2) **Recommends** adoption of the proposed changes to the RMA Compliance and Enforcement Policy included as Attachment 2.
- 3) **Notes** that the RMA Compliance and Enforcement Policy will be referred to full Council for formal adoption.

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 2021 to 30 June 2022.

CONSENTS

Consent Processing

- [5] Over the reporting period decisions were made on 665 individual consents (cumulative total). For context, in the same period last year decisions were made on 404 individual consents. This represents a significant increase in consenting activity which has been very well managed by the team.
- [6] 100% of consents processed in the reporting period were within timeframes. Not only does this ensure Council complies with the timeframes specified in the Resource Management Act 1991, it also means that the team achieved their service delivery target as set in the Annual Plan. Timeframe extensions were used in this period in most cases to enable the applicant to review the proposed conditions.

- [7] In total 603 applications were received, compared to 587 in the previous year. Again, this is an increased work volume, which staff have been able to process. The increase was largely due to 2021 having some key dates relating to the lodgement of consents to replace deemed permits which led to high levels of applications being received. There was a peak of 65 applications received in November 2021 and over 60 received in both March and May 2022.
- [8] Consent processing is generally being undertaken by internal staff, but consultants are still used on an as required basis typically for applications for large scale projects and where Council is the applicant. The team are looking to progress applications that have been in the system since before 2021 in order to ensure internal capacity is maintained.
- [9] Two applications were notified in the reporting period. One of these applications is the Dunedin City Council's application for consents associated with the new Smooth Hill landfill at Dunedin. The Hearing Panel for this application has closed the hearing and a decision is expected in mid to late September 2022. Sixteen applications were limited notified over the reporting period.
- [10] A summary of consents statistics for the period are included in Figures 1 to 6 of Attachment 1. These figures show that the reporting period was a very busy and constructive one. During this period the team has worked hard to improve processes and continue to deliver a high quality service for customers.
- [11] In the first two months of the new financial year the high levels of work have continued. 63 applications were received in July 2022 and 50 in August 2022, with decisions on 57 individual consents being made in July and 52 in August 2022. The team has also been making great progress at decreasing work in progress with the number of applications in progress at the start of the new reporting period being 314.

Deemed Permit Replacements

- [12] Deemed Permits and many water permits to take and use water in the region expired on 1 October 2021. Most of these permits are in Central Otago (including the Taieri catchment) and Queenstown Lakes Districts. Replacement applications for these permits were primarily lodged in 2020 and 2021. Many of the applications were placed on a time extension in 2021 awaiting the outcome of Plan Change 7 (PC 7), which was heard over the period March-June 2021. A full decision on PC 7 was released on 17 November 2021. The Plan Change was made operative on 5 March 2022 making it Chapter 10A of the Regional Plan: Water.
- [13] Prior to and immediately after the PC 7 decision, the Consents team prepared advice including practice notes and FAQs. Emails were sent to applicants and consultants guiding them through the process of what the decision meant for their application and the next steps in processing. For the majority, this required a reconsideration of their water metering data to determine their historic use. In addition, many of the applications needed to be amended so that they could meet the new rules.
- [14] The initial water metering data reviews required under Plan Change 7 decision were completed over the period December 2021-April 2022. More complex data reviews and those that have required reassessment have been undertaken since April 2022.

Processing the consents under the Plan Change 7 decision commenced in December 2021 with the simplest applications. Amendments to applications to align them with PC7 have been lodged with Council since January 2022 and continue to be lodged. The Consents team have used templated emails, reports and consent conditions to simplify the consent process where possible and to keep the applicants informed of their processing costs and anticipated costs. Applications that have included other activities (RMA damming, discharges) have required additional processing time as these applications are not processed under the Plan change 7 provisions in Chapter 10A.

- [15] Staff have a goal of completing the processing of all deemed/water permit applications lodged prior to 1 October 2021 by the end of 2022. We are working with consultants and applicants to ensure the outstanding amendments are lodged with Council so that there is adequate time for us to process these to completion within this timeframe. This should be a realistic timeframe except for a couple of very complex applications.
- [16] Table 1 shows the decisions that have been made in the last 12 months for deemed/water permit replacements. There were multiple decisions made in September 2021 for those consent holders who lodged consent applications less than 3 months before expiry. These applications had to be granted before 1 October 2021. They were often granted 12-15 month consent terms and the replacements of these consents are being relodged now (August 2022). Those processed prior to December 2021 were applicants who sought to progress their applications under the notified version of Plan Change 7. We are expecting peak decisions to be made in the next 2-3 months. From the replacement surface water/deemed permits that were in our system at 1 October 2021, we have 59 applications still to make a decision on. This represents 146 deemed permits to be replaced. We have amendments lodged for approximately half of these and are actively processing those. We are expecting the remaining amendments to be lodged by mid-November 2022.

| Month | Number of deemed permit replacement decisions | Number of decisions on surface water permits replacements lodged prior to 1 October 2021 | Total decisions |
|----------------|---|--|-----------------|
| July 2021 | 0 | 0 | 0 |
| August 2021 | 4 | 0 | 4 |
| September 2021 | 6 | 2 | 8 |
| October 2021 | 4 | 0 | 4 |
| November 2021 | 3 | 0 | 3 |
| December 2021 | 0 | 1 | 1 |
| January 2022 | 2 | 1 | 3 |
| February 2022 | 4 | 1 | 5 |
| March 2022 | 7 | 1 | 8 |
| April 2022 | 3 | 0 | 3 |
| May 2022 | 3 | 1 | 4 |
| June 2022 | 1 | 0 | 1 |
| July 2022 | 13 | 0 | 13 |
| Total | 50 | 7 | 57 |

Table 1: Number of consent decisions related to deemed permit replacements

Appeals to consent decisions

- [17] Two appeals on consent decisions were received in the reporting period. As previously reported the only appeal still in progress relates to consents issued by ORC and Central Otago District Council for the use and expansion of a quarry. The appeal has been lodged by neighbours to the proposal. ORC must be involved in the appeal process and will incur costs as a result. These are not budgeted costs. The appeal is currently in the Court process.
- [18] One objection to conditions was received in the reporting period, but this was resolved without the need for a hearing.
- [19] Six formal cost objections under Section 357B of the RMA were received by ORC in the reporting period, with only one new one in the last three months. Clearly communicating costs and being able to invoice as quickly as possible post a decision on an application remains a focus for the team. This includes working with Council's Finance team on invoicing.

Case law update

- [20] Court cases relating to consenting or RMA interpretation sets a precedent that councils then need to account for in their practice. There has been once recent Court case of note that has ramifications for the wider Regional Planning sector. In July 2022 the Court of Appeal released a decision on *Aotearoa Water Incorporated vs Canterbury Regional Council*. This case related to the granting of consents for water bottling, which had previously been heard in the High Court. The key focus of the decision was on whether separate take and use permits could be granted. In the decision, the Court found that the Canterbury Regional Council did not have the ability to grant resource consents limited to the use of water, separate to permit to take the water. Reasoning for this was that the relevant conditions and rules in the plan indicated that take and use should be considered as one activity. In Otago rules in the Regional Plan Water, including those introduced via Plan Change 7 talk about the take and use of water and this is carried through to consents.
- [21] To ensure ORC does not have any consents that may be impacted by this court decision staff are undertaking a review of all historic water take consents. This will be completed by the end of 2022.

Public Enquiries

- [22] Responding to public enquiries remains a significant part of the workload of the Consents team. In the reporting period 2,534 enquiries were received and responded to. On average the team is handling in excess of 200 enquiries a month, with a peak of over 300 in May 2022. Most enquiries are resolved within two days of being received, with the remaining generally in the three to seven days. Information on these enquiries can be seen in Attachment 1. The large number of public enquiries responded to demonstrate the value of this high level of service provided by ORC.
- [23] The Public Enquiries team have been responding to requests for comments on applications that are seeking to use the 'Fast Track' process provided by the COVID-19 Recovery (Fast-Track Consenting). The new applications that comments have been sought on relate to the Lakeview Taumata development and Flint's Park projects in Queenstown.

- [24] To enhance the public enquiries service, as well as the other projects reported to date in the last three months we have been working on:
- a. Preparing an online booking form so people can book in a time to come and see someone and ask consent questions.
 - b. Web content on:
 - i. The rules about sediment traps and explaining that there is now permitted activity criteria where people may not need consent.
 - ii. Wetlands and what activities you can do around a wetland with or without consent.
 - iii. The technical information that would be needed for an application to establish or intensify farming operations under the National Environmental Standards for Freshwater.

NES-FW and Plan Change 8 work

- [25] The Consents team and wider Regulatory Group has been heavily involved in the implementation work on the NES-FW and PC8. Key work that has carried on since our last report to this Committee includes:
- a. Continued discussions with stakeholder and industry groups about implementation and interpretation of the new regulations.
 - b. Participating in the internal cross-Council working group for the implementation of the NES-FW and PC 8.
 - c. Staff remain actively involved in the regional sector group providing input into the development of Freshwater Farm Plans. As farm plans will be a new tool for Otago it is important that staff remain connected to this work so they can understand the impact it may have on our business. This work includes attending design workshops and co-ordinating with other council's on how to best use resources.

Process Improvements

- [26] Extensive process improvement work has occurred over the financial year as previously reported. The aim of this process improvement work has been to enhance the level of information available to applicants and to increase processing efficiency. The large number of applications processed reflects the work in this area and the benefits that this has had for the team and applicants. Highlights for the year have been getting copies of consents online through Otago Maps and the increased level of consenting information on the website. This sits in parallel with the extensive work completed on the deemed permit project and implementation of the NES-FW.
- [27] In the last part of the reporting period the key focus for staff has been on processing consents as efficiently as possible and making changes to continue to improve levels of customer service. This is an ongoing process, which is driven by staff and customer feedback. Process improvement work completed in the last three months includes:
- Continued work on the consent application forms online project.
 - Preparation for consents for intensive winter grazing (see separate report).
 - More information on the website and in communications about costs for consent hearings.
 - Work continues with the Finance and Communications and Marketing teams on an infographic of an invoice to support customers understanding of the invoices.

COMPLIANCE MONITORING AND ENFORCEMENT

Performance Monitoring

- [28] In the 12 months to 30 June 2022, the Regulatory Data and Systems and Compliance teams graded 6,945 Performance Monitoring returns against an Annual Plan target of 5,400. This is up from 5,533 Performance Monitoring returns graded in the same period in the last financial year.
- [29] A summary of performance monitoring data for 2021/22 is set out in Figures 11 and 12 of Attachment 1.
- [30] Performance Monitoring for 2022/23 has started well with 1,264 returns graded in July and August 2022 against an Annual Plan target of 900.

ORC compliance audits and inspections

- [31] The ORC Long Term Plan 2021-2031 set out a new performance measure of meeting 90% or more of 'programmed inspections/audits completed each year, as per the Compliance Audit and Performance Monitoring Schedule'.
- [32] In the 2021/22 year, 1,425 on site audits and inspections were completed. This is a significant increase from 1,070 site audits and inspections completed in 2020/21. The field visits and inspections included 1,098 on site consent audits, 243 dairy inspections, 37 forestry inspections and eight regionally significant wetland audits. This is 120% of the planned compliance audits or field inspections programmed for the 2021/22 year.
- [33] The increase in compliance monitoring outputs and consents monitored relate to the business and process improvements imbedded in the last three years. Some of the improvements of note include:
- Development of the ORC Compliance Plan that sets out the priorities for compliance activities across the Otago region and supports a responsive and risk-based approach to the allocation of resources for proactive compliance monitoring.
 - Increased mobility for consent monitoring and inspections in the field that streamlined the reporting process and efficiency of audits.
 - Additional staff resources and boosting staff capability and capacity to undertake compliance monitoring activities.
- [34] A summary of the compliance field visits and inspections in the 2021/22 year, compared with the 2020/21 year and Annual Plan target is set out in Figures 13 and 14 of Attachment 1.
- [35] Consent audits and field inspections for the 2022/23 have started well and are above target with 186 site audits and inspections completed in July and August 2022 against an Annual Plan target of 155.

RMA consent audits

- [36] Compliance with consent conditions can be considered high with most consents being considered either fully compliant (52%), or low risk non-compliance (25%), and 6% graded as significantly non-compliant.

- [37] All consent audits graded with moderate non-compliances (153 consents) and significant non-compliances (69 consents) have been followed up by staff and either appropriate action has been taken in line with the RMA compliance and enforcement policy, or investigations are continuing. This includes six infringement notices, 15 abatement notices and four warnings issued in relation to consent non-compliance.
- [38] A summary of RMA consent audit data in the 2021/22 year is set out in Figures 15, 16 and 17 of Attachment 1.

Dairy programme

- [39] During the 2021/22 Dairy Inspection Compliance Project, 243 dairy inspections were undertaken. The dairy project had a particular focus on the storage of effluent pond solids and stone trap clearings, the distances that these have been kept away from waterways and monitoring their potential to discharge to the environment through ponding and overland flow. Monitoring of silage leachate ponding was undertaken as well as farm landfills and recording of the location of offal pits. There has also been a continued focus on providing awareness and engaging with farmers on the new requirements with the NES for Freshwater, Stock Exclusion Regulations, Water Measuring Regulations and Plan Change 8.
- [40] All high-risk farms were inspected, with several follow-up visits undertaken. Overall compliance can be considered high with most farms being issued a grade of either full compliance or low risk non-compliance. Six farms were graded significantly non-compliant, and 12 farms were graded moderately non-compliant. The significantly non-compliant inspections related to effluent discharges that resulted in ponding, silage leachate discharges that resulted in ponding, combined farm landfills and offal pits, and a case where inappropriate effluent pond infrastructure was being used. These matters were followed up by staff and appropriate action was taken, including issuing infringement notices, abatement notices and warnings.
- [41] The ORC Compliance team initiated a collaborative project with Environment Canterbury and Environment Southland staff to review compliance procedures, rules and monitoring for dairy effluent. The project involved completing audits in the three respective regions followed by a debrief and learnings session. This was a great opportunity for us to get a better understanding of how neighbouring regional council's monitor dairy farms and boost nationwide dairy compliance consistency.
- [42] A summary of 2021/22 dairy inspection data is set out in Figure 18 of Attachment 1.

Forestry

- [43] In the 2021/22 year, ORC received 179 forestry notifications and 95 management plans, and completed 37 on site forestry inspections. Overall compliance is high with 32 forestry sites graded fully compliant, three forestry sites graded low-risk non-compliance and one forestry site graded significant non-compliance. The significant non-compliance related to sediment discharge into a waterway from a forestry site. Staff issued an abatement notice and infringement notice and the site has been remediated.

- [44] A summary of 2021/22 forestry notifications and inspections data is set out in Figures 19 and 20 of Attachment 1.

Investigations and enforcement

- [45] In the 2021/22 year to date, 1,329 service requests were received on the pollution response hotline. This is slightly down from 1,610 service requests in the 2020/21 year. The most common reasons for requests were water pollution (326), outdoor burning (278) and domestic chimney (174).
- [46] Further details on service requests in the 2021/22 year, including comparison with the 2020/21 year can be found in Figures 21 and 22 of Attachment 1.
- [47] In the 2021/22 year, ORC issued 120 formal enforcement actions, including 13 warnings, 54 infringement notices, and 45 abatement notices. This is a significant increase from 87 formal enforcement actions taken in the 2020/21 year. The most common causes of enforcement action related to water pollution (40) and consent non-compliance (25).
- [48] For the 2021/22 year, ORC authorised 7 legal proceedings in relation to discharge of contaminants to air and sought one interim enforcement order in relation to a domestic wastewater discharge across a neighbouring property.
- [49] All formal enforcement action is taken in accordance with the RMA Compliance and Enforcement Policy.
- [50] Improvements in CME activities across the compliance monitoring and investigations teams have been a significant contributor to the increase in enforcement action. These improvements include:
- Streamlining of the enforcement decision-making process to ensure timely and consistent enforcement decisions are made.
 - Increased consents monitored, leading to more non-compliance identified and enforcement action considered.
 - Additional staff resources to enable timely attendance to pollution complaints and gathering of information.
 - Dedicated staff member overseeing all enforcement notices and ensuring consistent procedures are followed.
- [51] Further details on enforcement action in the 2021/22 year, including comparison with the 2020/21 year can be found in Figures 23 and 24 of Attachment 1.
- [52] ORC has taken 25 formal enforcement action in July and August 2022, compared with 32 formal enforcement actions for the same period in the 2021/22 year.

Compliance engagement and education activities

- [53] To support and enable compliance, ORC Compliance staff work proactively with landowners, consent holders and the community to engage with on them compliance matters and educate on good practices.

- [54] Some of the engagement and education activities that have been undertaken since the last Regulatory Committee include:
- ‘Kermit’ social media campaign reminding people that what goes into urban stormwater networks can go unfiltered into our rivers, lakes and harbours; and promoting the Pollution Hotline.
 - Encouraging property developers with residential earthworks consents to check sediment controls are in place ahead of adverse weather conditions, and spot-checking compliance.
 - Ongoing engagement with primary industry groups and farmers on IWG compliance project and good management practices, including monthly meetings with the primary industry groups and presenting at several field days and farm workshops across the Otago region.
 - Sending out educational letters to alleged offenders in relation to domestic chimney and outdoor burning complaints.
 - Radio interview with RNZ Rural report to discuss the Winter flyovers and compliance activity and actions with IWG.

Annual Compliance Report

- [55] Staff are preparing an ‘annual compliance report’ for the 2021/22 year. The compliance report will provide an overview of the compliance monitoring and enforcement (CME) activities and actions during the 2021/22 year and show delivery against the approved ORC Compliance Plan. The report will also provide an overview of compliance for activities, land uses and consent types across Otago (e.g. forestry, coastal structures, dairy, and wastewater treatment plants).
- [56] Due to reprioritisation of resources related to Covid-19 disruptions, the annual compliance report will be presented at the first Committee meeting of the new triennium.

RMA Compliance and Enforcement Policy

- [57] In March 2021, the Regulatory Committee adopted the RMA Compliance and Enforcement Policy. The Policy sets out the approach and principles by which the ORC promotes and enforces compliance with the RMA and provides an outline of how RMA compliance and enforcement is managed. The Policy also ensures a consistent and integrated approach to compliance and enforcement under the RMA by ORC.
- [58] Staff propose two minor changes to the Policy to align with the national and sector best practise (marked as track changes on Attachment 2):
- a. Include a section on ‘conflict of interest’ and how ORC will manage actual or perceived conflicts of interest (refer to Section 4, page 4).
 - b. Update purpose of warnings to align with the [Solicitor General’s Guidelines for the Use of Warnings](#) (refer to Section 8, page 10).

HARBOURMASTER

Major Incidents 2022 update

- [59] ORC’s long term plan metrics include a requirement for major incidents to be reported to Council. This incident reporting is included as part of the quarterly update reports.

Major incidents can be considered incidents which have the potential to result in one or more of the following:

- a. Significant adverse effects to the environment
- b. Pose significant risks to health and safety
- c. Significant navigational safety issues

- [60] The major incidents to report to Council in this update are as follows:
- a. March 2022 – Small commercial fishing boat foundered and sunk off the Catlins Coast, No attendance from the Harbourmaster team due to location and weather conditions at the time. Maritime New Zealand lead an investigation.
 - b. March 2022 – Jet boat aground at Portobello, Harbourmaster made aware and attended. Maritime New Zealand investigating.
 - c. June 2022 – Commercial Bulker (180m) berthed in Dunedin – Steering gear failure when departing the berth, vessel returned to berth with tugs for defect rectification prior to approval for sailing again. Harbourmaster informed throughout the incident, no attendance required. Maritime New Zealand investigating.
 - d. June 2022 - Commercial fishing vessel sunk on berth at Carey’s Bay, Deputy Harbourmaster attended with Pollution team. Vessel was re floated at the berth, pollution equipment deployed and recovered upon completion.
- [61] Buoys for navigational safety improvements in the Eastern Channel Have been ordered, once delivered these will be placed. This will improve safety of navigation on the Peninsula side of the harbour between Grassy Point and Portobello. We have engaged local users to seek thoughts and ideas. This work will see several buoys placed to improve safe navigation for users throughout this area.
- [62] Procurement of the second vessel is nearing completion. Due in Otago mid-September 2022, it is expected to be in service by the end of September 2022. Kaitiaki will then be stationed in Central Otago for Harbourmaster and waterways activities.
- [63] The Harbourmaster team has gone from strength to strength over the past three years, continued compliance with the Port and Harbour Marine Safety code has been high on the list of achievements. The department continues to raise the profile of maritime safety across Otago’s waterways for both commercial and recreational users. The addition of navigational aids and buoys on the water have been of benefit in places we did not have them previously and we continue to upgrade/improve this area of work across our waterways.

OPTIONS

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

CONSIDERATIONS

Policy Considerations

- [65] There are no policy considerations.

Financial Considerations

- [66] There are no financial considerations.

Significance and Engagement

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

Legislative Considerations

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

Risk Considerations

[69] There are a number of legal and reputational risks associated with the delivery of ORC's regulatory functions.

Climate Change Considerations

[70] There are no climate change considerations associated with this report.

Communications Considerations

[71] Communication with the Otago community occurs on a regular basis to educate and inform people on regulatory matters. This includes a quarterly regulatory newsletter which is aimed at informing RMA professionals on technical matters and relevant updates.

NEXT STEPS

[72] Regulatory activity will continue and will be reported quarterly to the appropriate Committee in the next triennium.

ATTACHMENTS

1. July 2021 to June 2022 Regulatory Data [7.2.1 - 12 pages]
2. ORC RMA Enforcement Policy - September 2022 Update [7.2.2 - 11 pages]

Attachment 1: REGULATORY REPORTING FOR THE PERIOD 1 JULY 2021 TO 30 June 2022

Consents

Figure 1: Resource Consent Applications Received

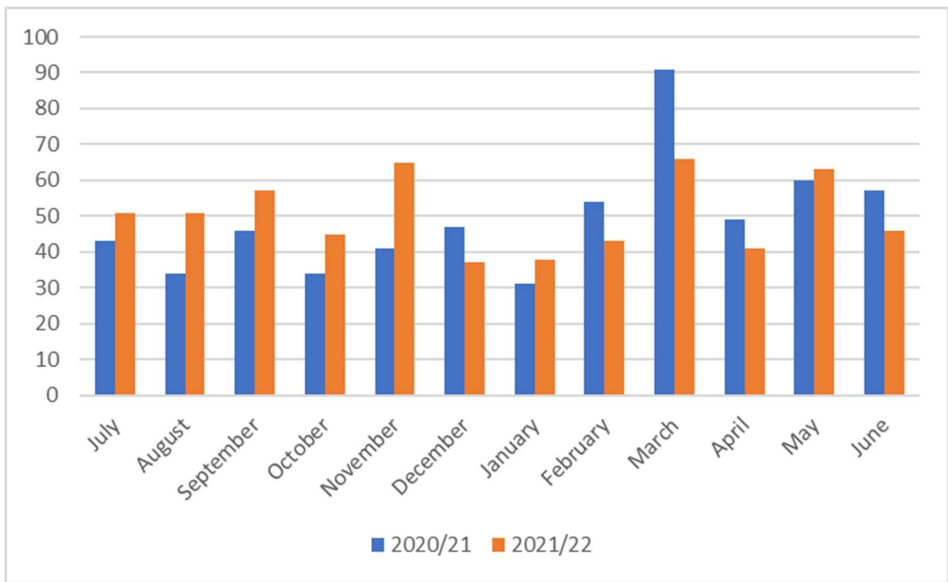


Figure 2: Notified Applications

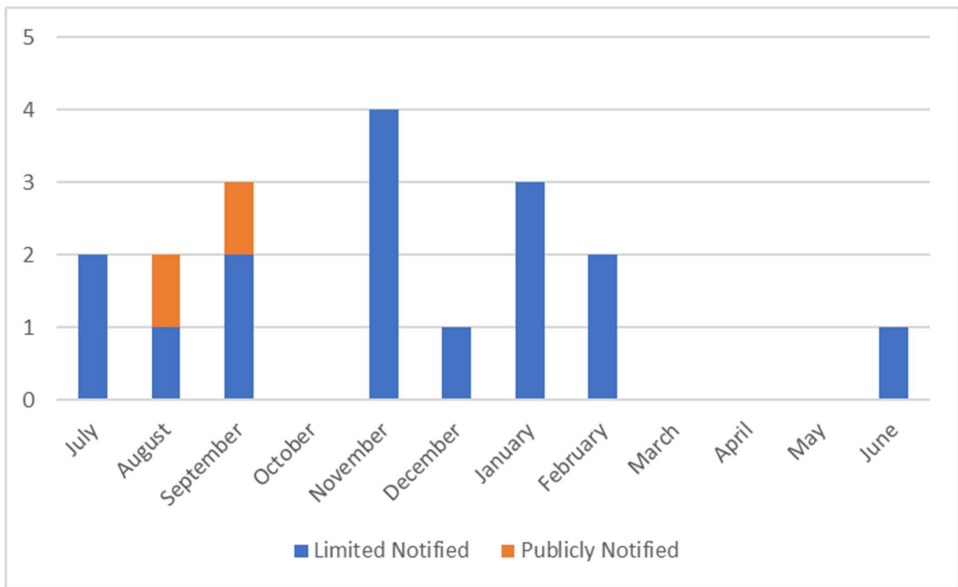


Figure 3: Resource Consents Issued

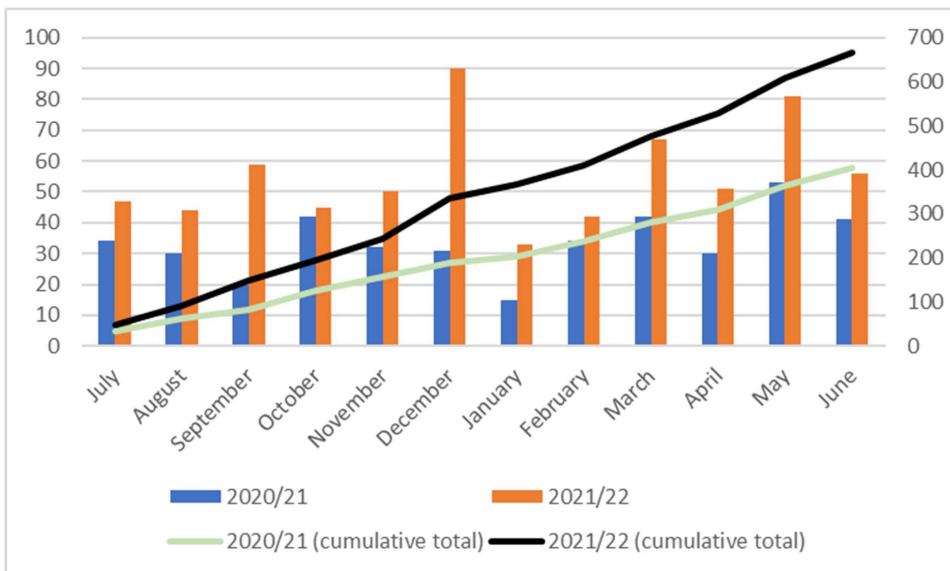


Figure 4: Resource Consent by Type

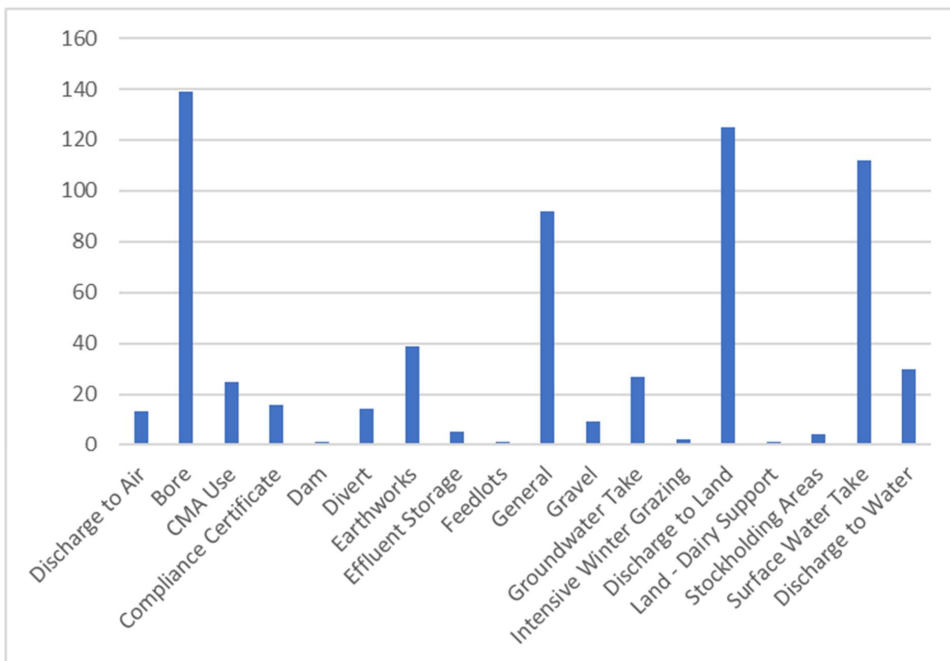


Figure 5: Other Applications Received

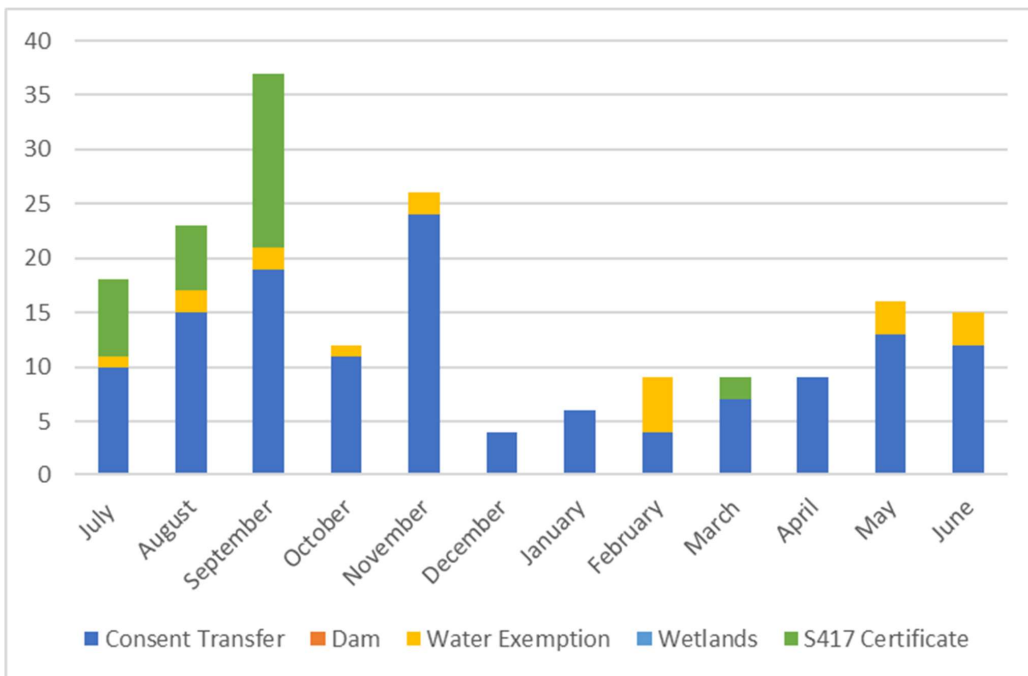


Figure 6: Other Applications Processed

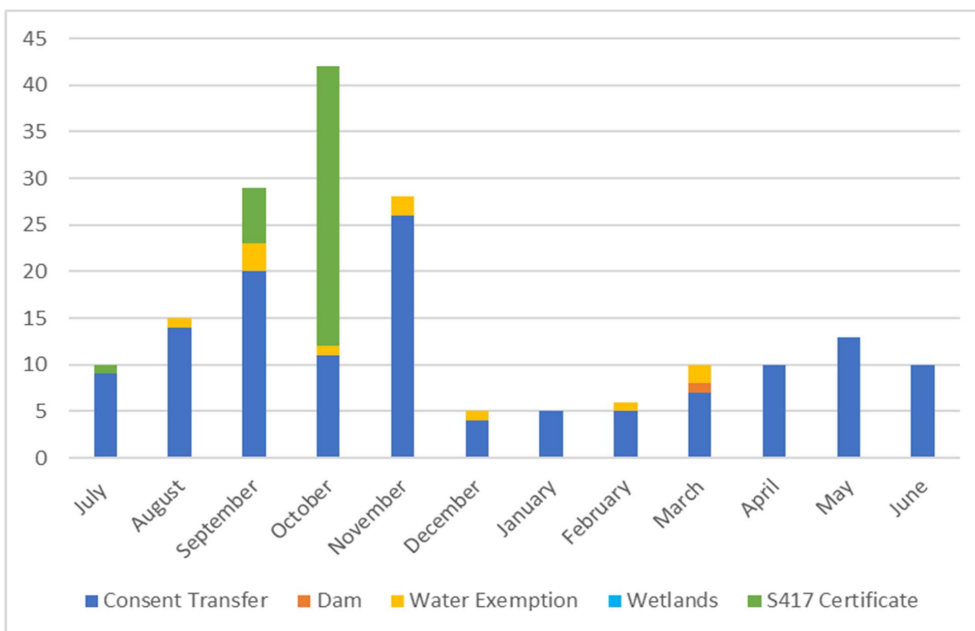


Figure 7 Consent Enquiry Response Times

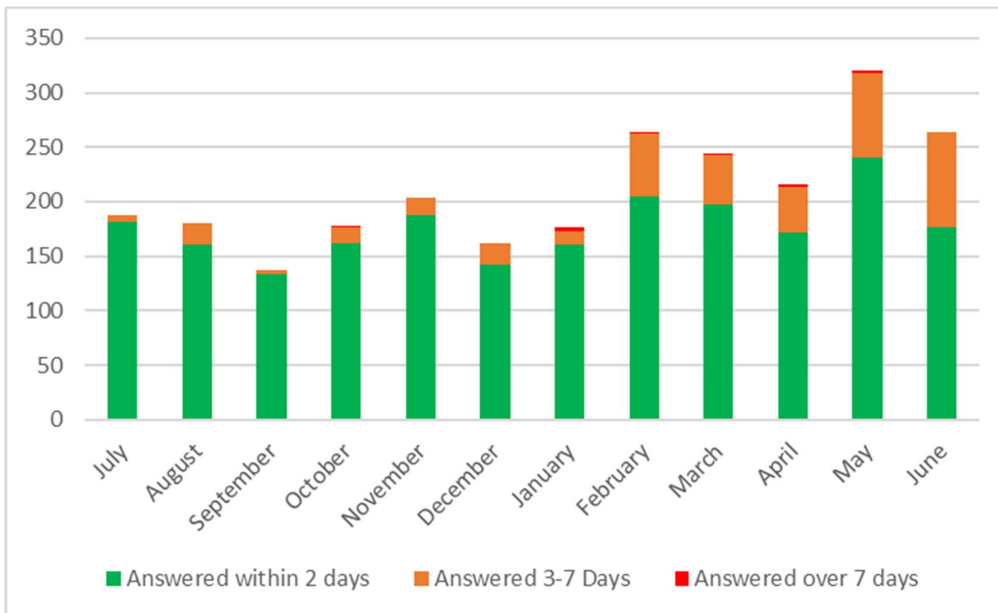


Figure 8: Consent Enquiries by Type

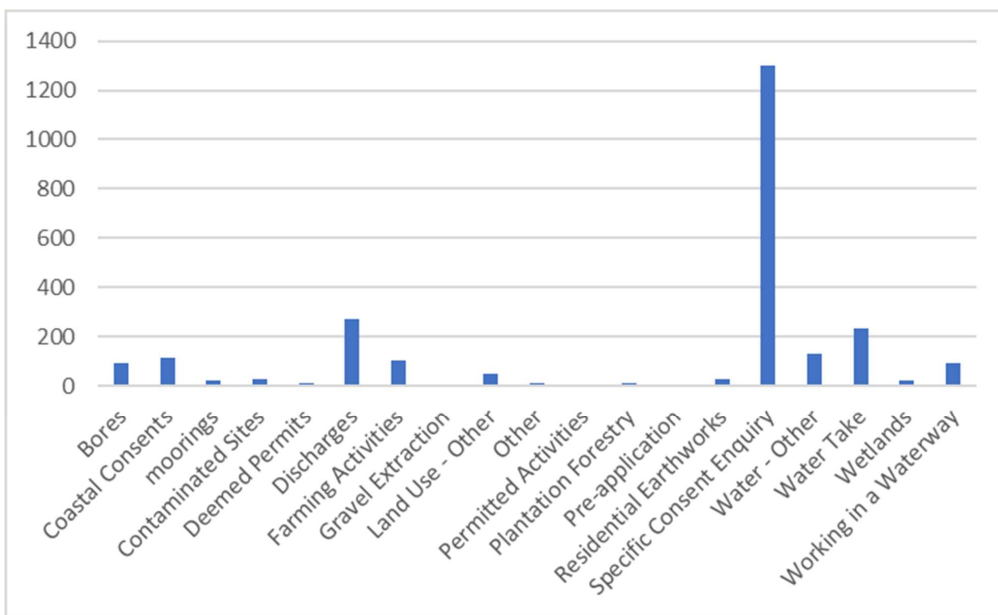


Figure 9: Consent Enquiries by Method

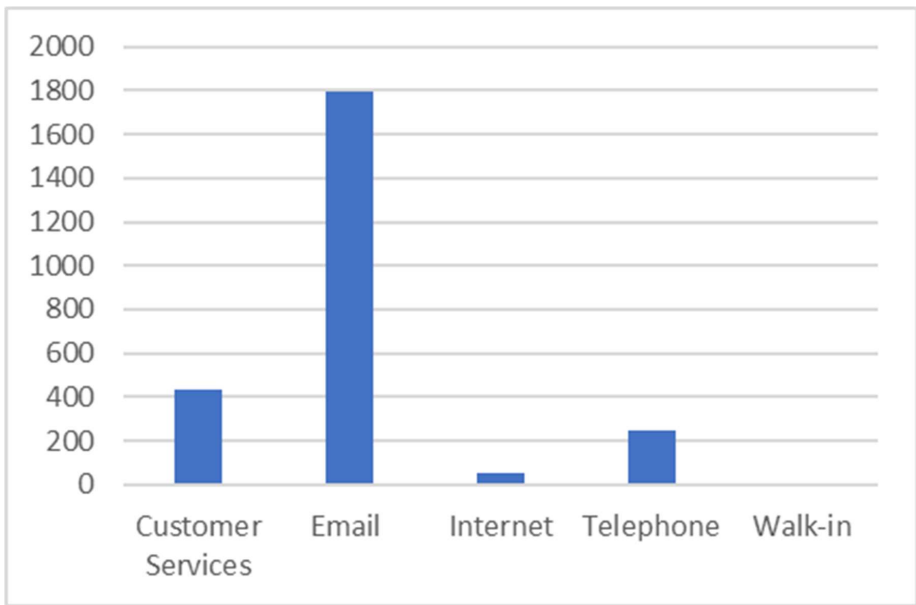
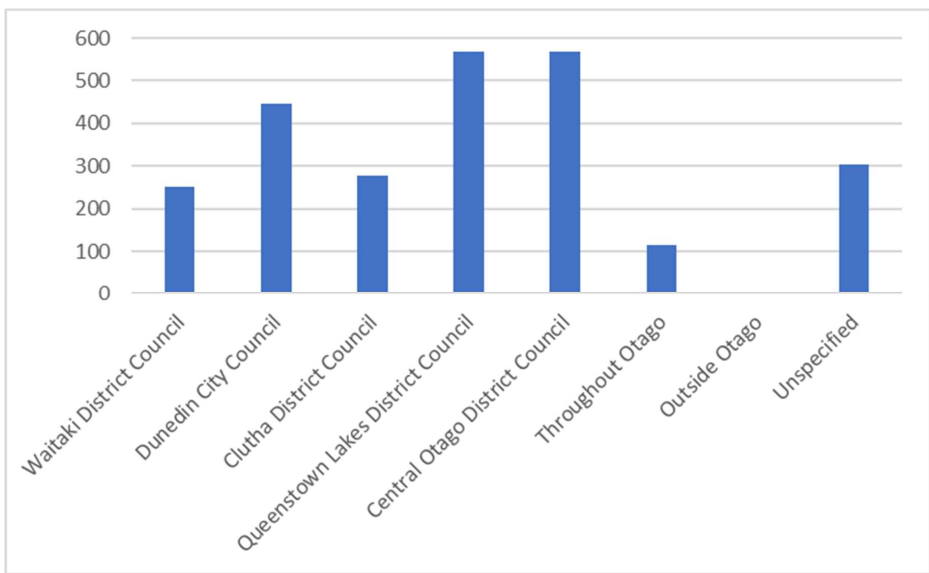


Figure 10: Consent Enquiry by Location



Compliance

Figure 11: Performance Monitoring Returns Completed
LTP Performance Measure

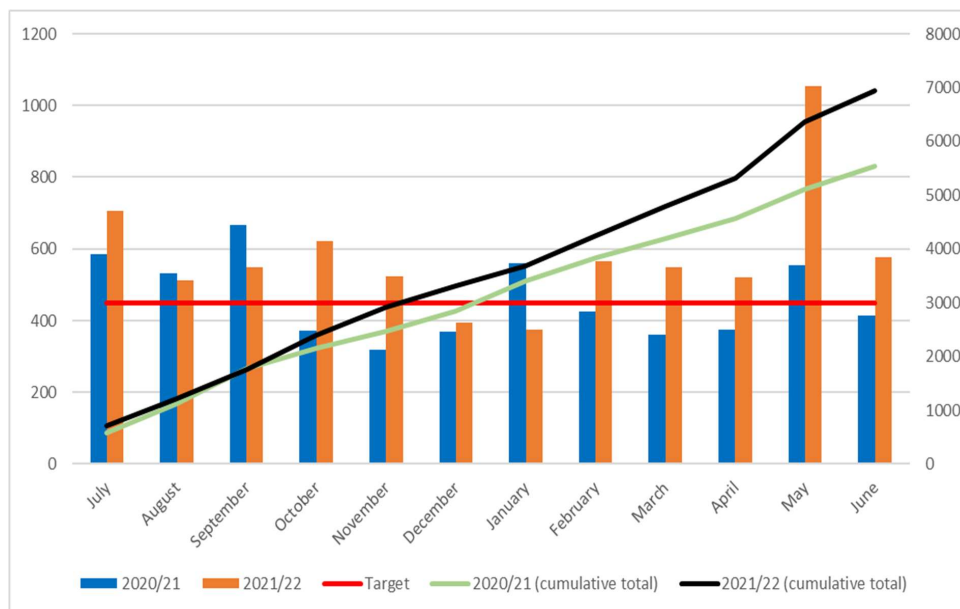


Figure 12: Performance Monitoring Grades Year on Year

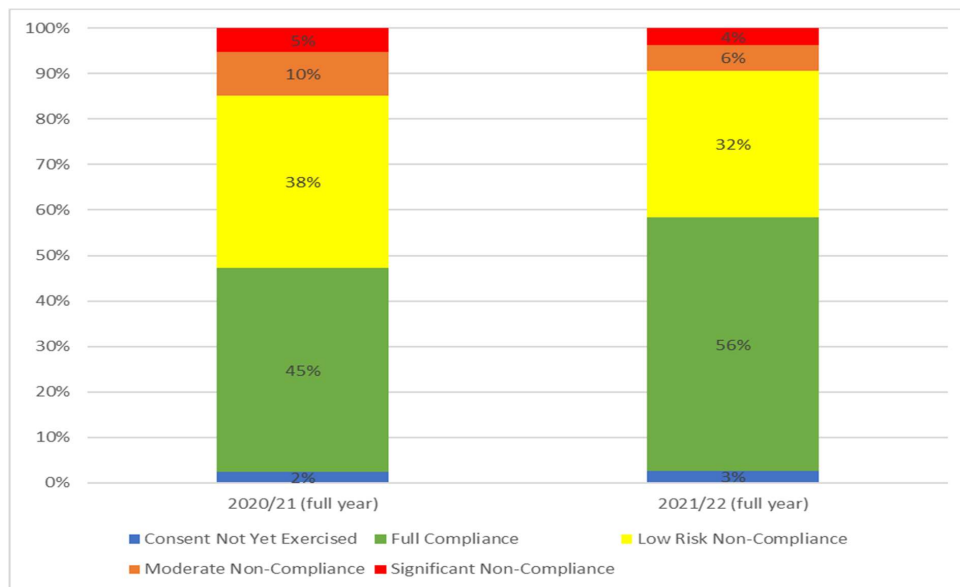


Figure 13: Compliance Field Inspections Year on Year
LTP Performance Measure

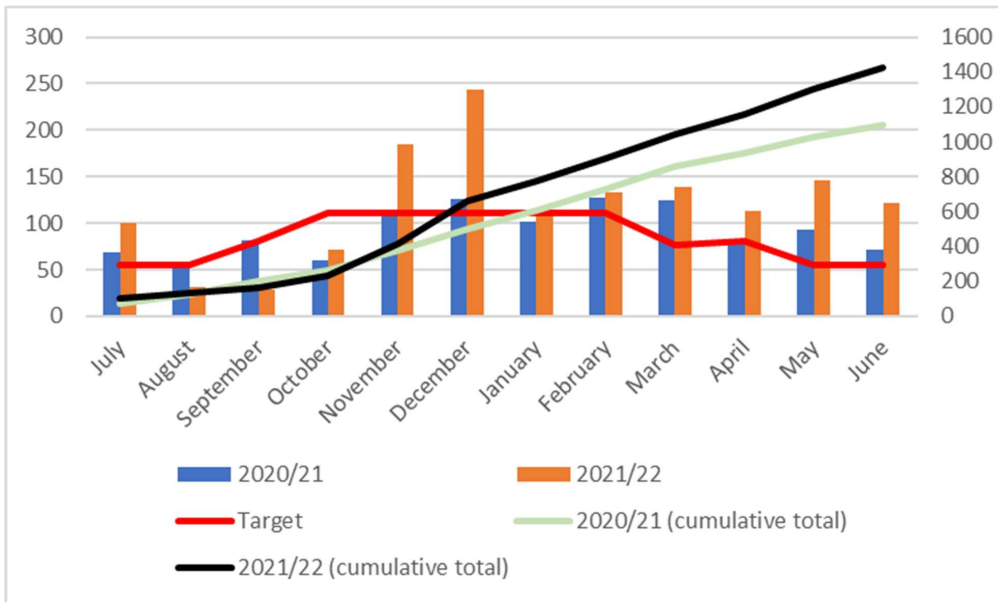


Figure 14: Compliance Field Visits by Type

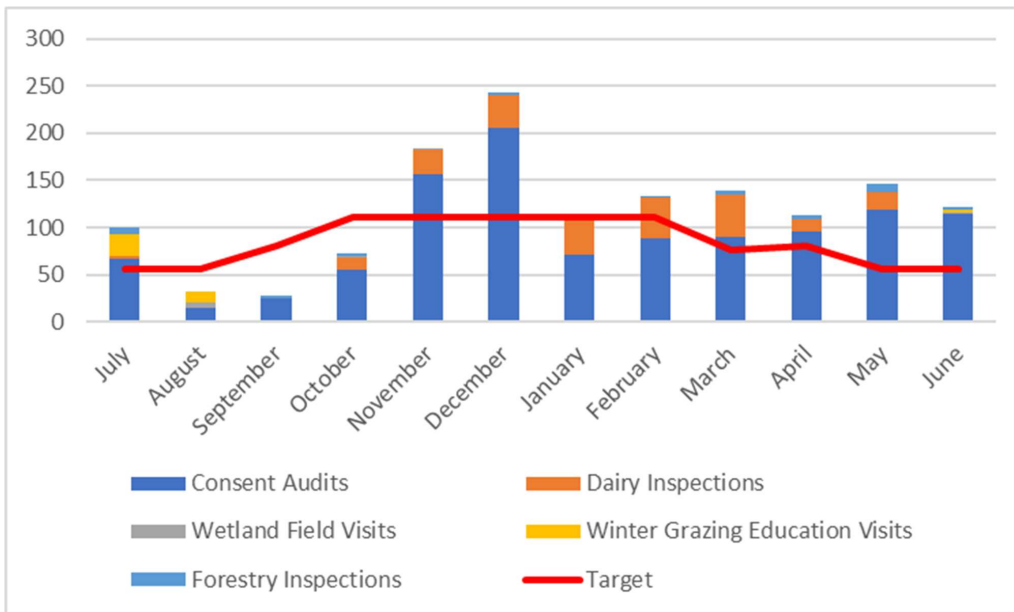


Figure 15: Consent Audits by Consent Type

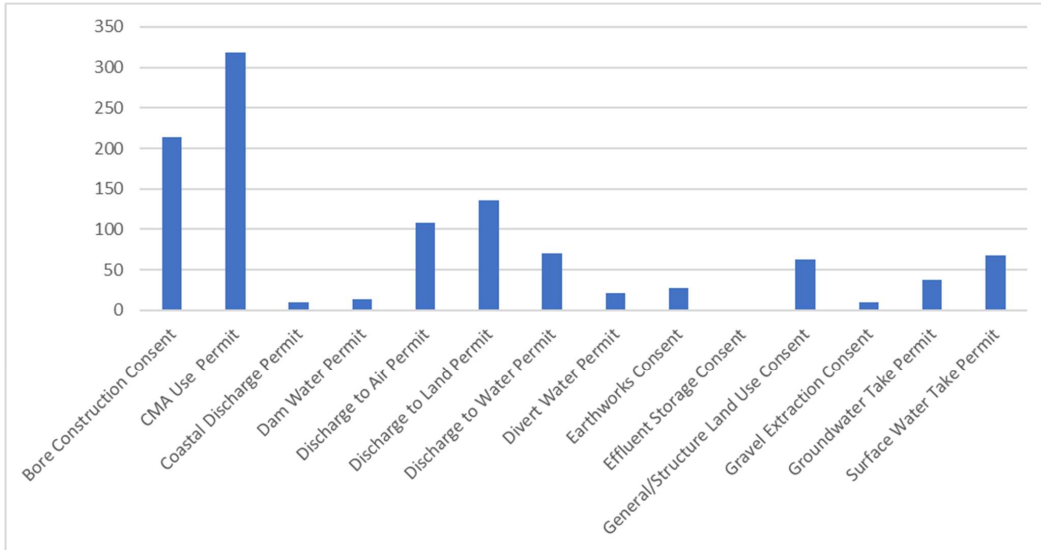


Figure 16: Consent Audit Grades Year on Year



Figure 17: Significant Non-Compliance by Consent Type

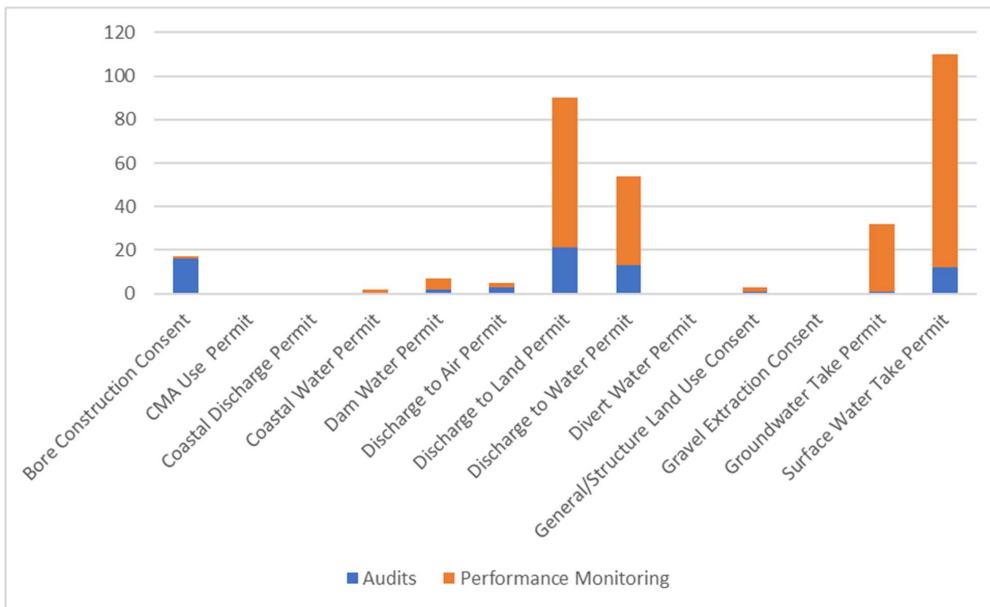


Figure 18: Dairy Inspection Grades Year on Year



Figure 19: Forestry Notifications and Inspections

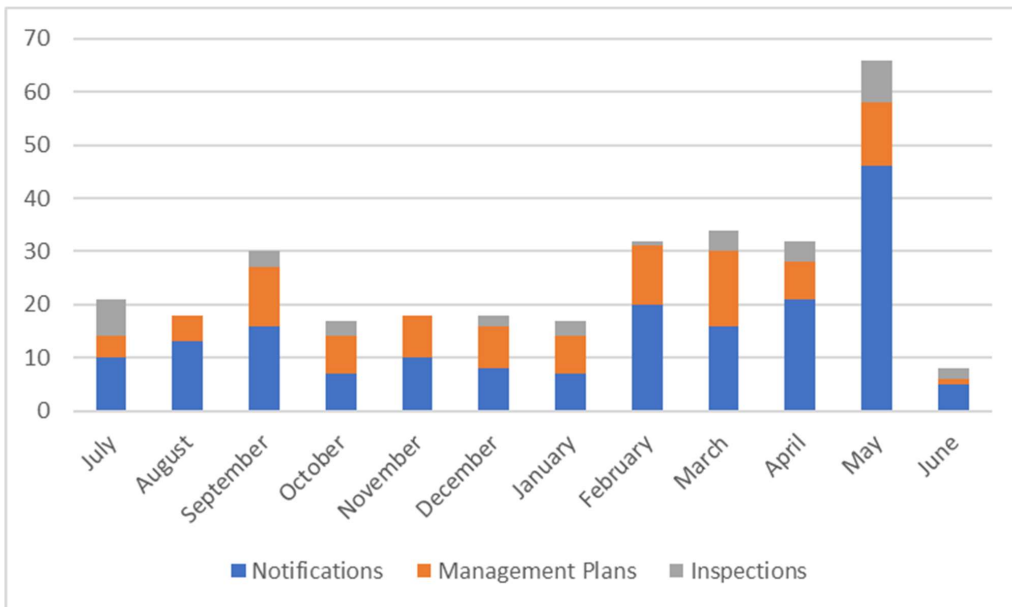


Figure 20: Forestry Inspection Grades Year on Year

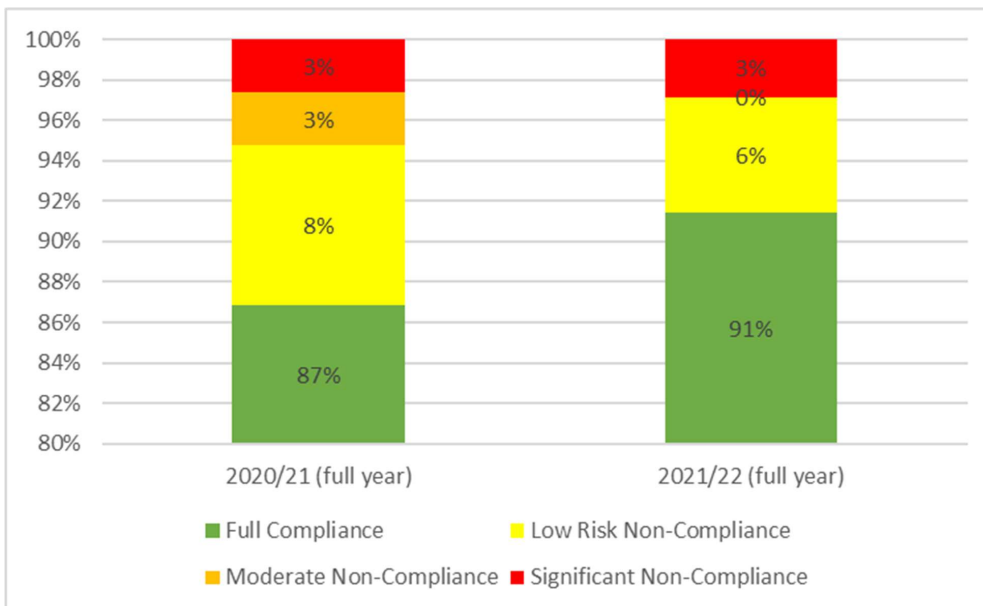


Figure 21: Service Requests

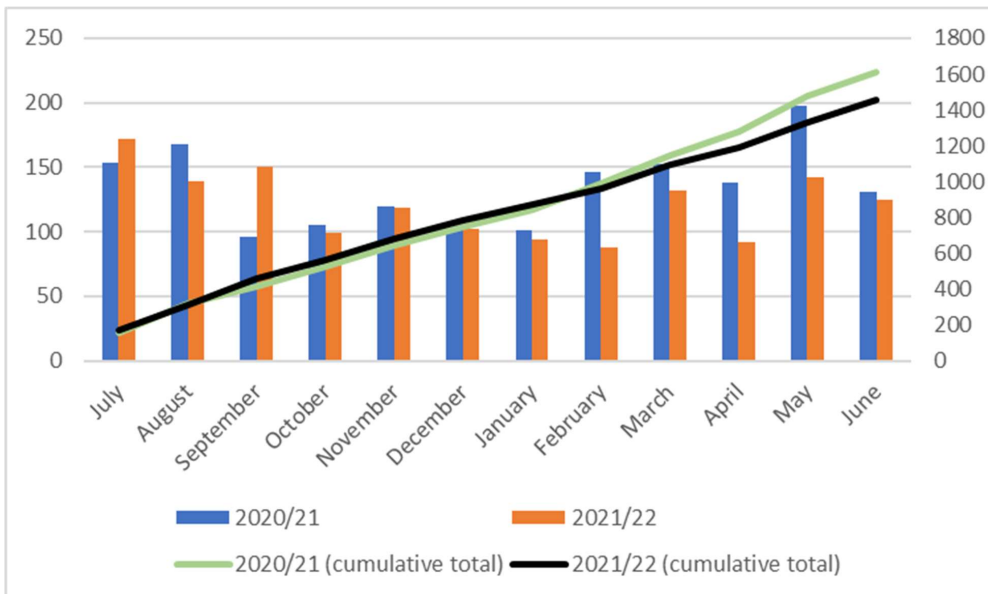


Figure 22: Service Requests by Type

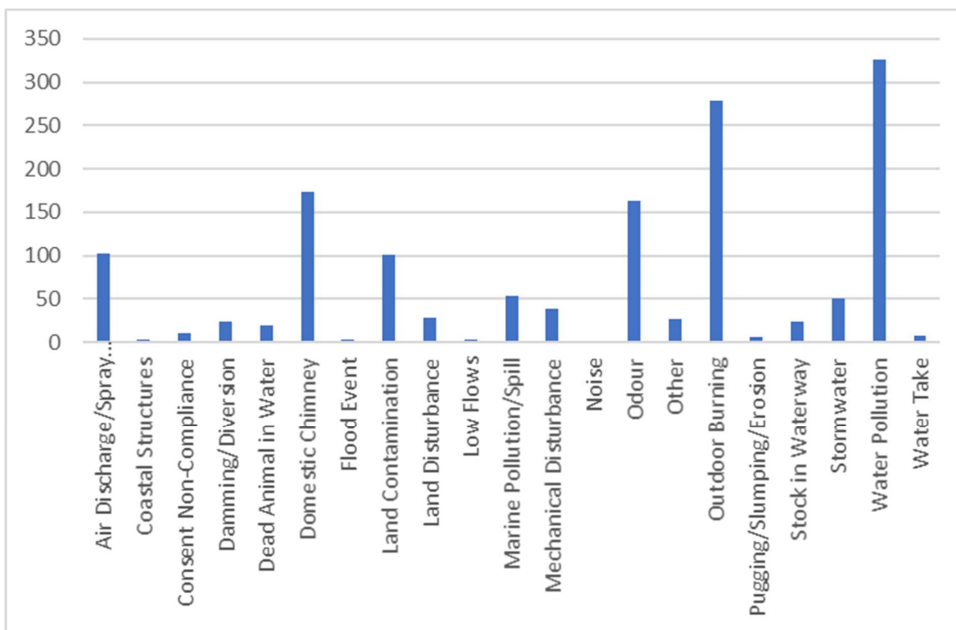


Figure 23: Enforcement Actions

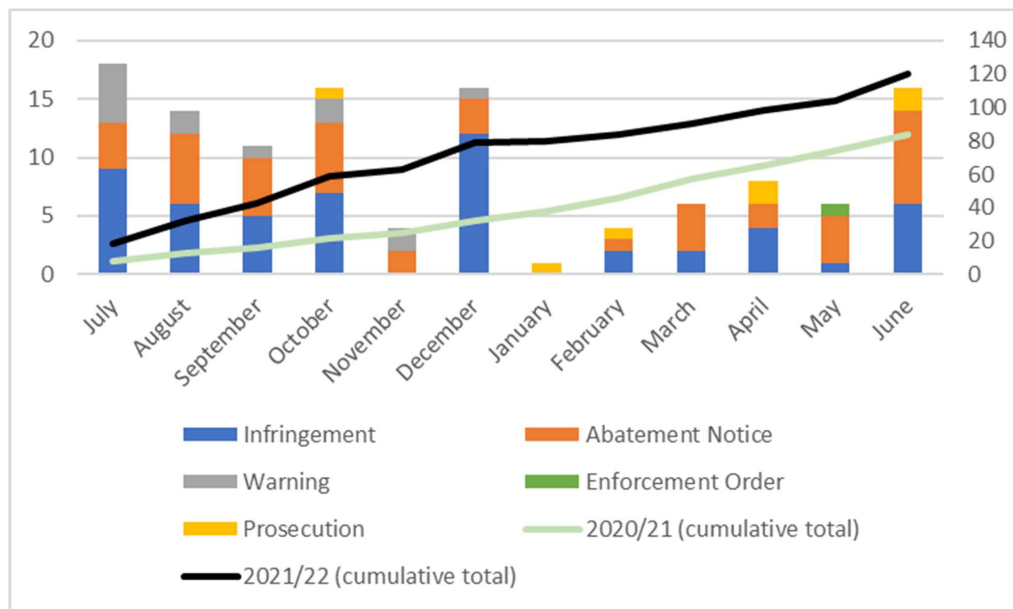
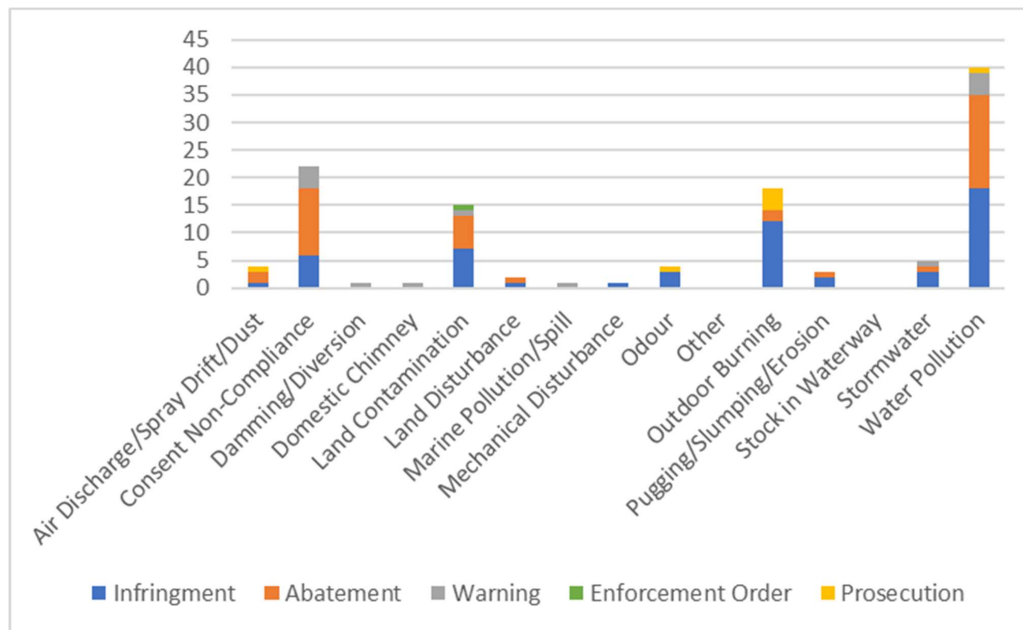


Figure 24: Enforcement Causes





Otago Regional Council

RMA Compliance and Enforcement Policy



March 2021

| | |
|----------------------|--------------------|
| Date approved | 11 March 2021 |
| Review date | March 2026 |
| Policy owner | Manager Compliance |
| Version | 1.0 |

1 Introduction

The Otago Regional Council (ORC) is responsible for regulating activities affecting water, air, land and coastal environments to promote the sustainable management of our environment. Compliance monitoring and enforcement is a significant tool in achieving the overarching sustainable management purpose of the Resource Management Act 1991 (RMA)¹.

This policy sets out the approach and principles by which the ORC promotes and enforces compliance with the RMA and provides an outline of how RMA compliance and enforcement is managed. This policy is intended to ensure a consistent and integrated approach to compliance and enforcement by ORC.

2 Approach to non-compliance

The ORC has a 'spectrum' approach to encouraging positive behaviour change and ensuring the highest levels of compliance possible.

The ORC's approach to ensuring compliance with the RMA is based on '4Es model'² of Engage, Educate, Enable and Enforce:

- **Engage** – consult with regulated parties, stakeholders and community on matters that may affect them. This will require maintaining relationships and communication until final outcomes have been reached. This will facilitate greater understanding of challenges and constraints, engender support and identify opportunities to work with others.
- **Educate** – alert regulated parties to what is required to be compliant and where the onus lies to be compliant. Education should also be utilised to inform community and stakeholders about what regulations are in place around them, so that they will better understand what is compliant and what is not.
- **Enable** – provide opportunities for regulated parties to be exposed to industry best practice and regulatory requirements. Link regulated parties with appropriate industry advisors. Promote examples of best practice.

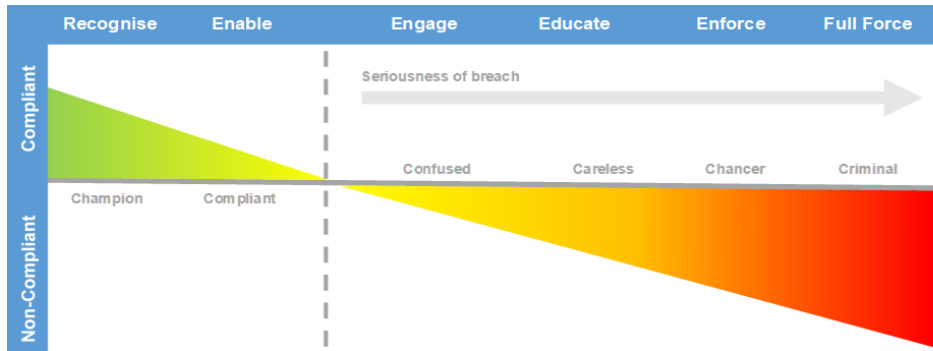
¹ Section 5 of the Resource Management Act 1991

² The 4Es model is drawn from the CESIG Regional Sector Strategic Compliance Framework 2019-2024

- **Enforce** – when breaches of regulation, or non-compliance, are identified then an array of enforcement tools and actions are available to bring about positive behaviour change. Enforcement outcomes should be proportional to individual circumstances of the breach and culpability of the party.

Non-compliance with the RMA is taken seriously by the ORC. Except in exceptional circumstances some form of action will be taken in response to non-compliance.

ORC’s approach and use of enforcement tools and actions depends on the issue, context and seriousness of the breach as illustrated below³:



3 Principles of enforcement

Underlying the ORC’s approach to compliance and enforcement action are the following principles⁴.

Transparency - We will provide clear information and explanations to the community, and those being regulated, about the standards and requirements for compliance. We will ensure that the community has access to information about the change to environmental impacts of industry as well as actions taken by us to address environmental issues and non-compliance.

Consistency of process– Our actions will be consistent with the legislation and within our powers. Compliance and enforcement outcomes will be consistent and predictable for similar circumstances. We will ensure that our staff have the necessary skills and are appropriately trained, and that there are effective systems and policies in place to support them.

Fair, reasonable and proportional approach – We will apply regulatory interventions and actions appropriate for the situation. We will use our discretion justifiably and ensure our decisions are appropriate to the circumstances, and that our interventions

³ Influencing behaviour change is based on the CESIG Regional Sector Strategic Compliance Framework

⁴ These principles are drawn from the CESIG Regional Sector Strategic Compliance Framework 2019-2024

and actions will be proportionate to the seriousness of the non-compliance and the risks posed to people and the environment.

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

Collaborative – We will work with and, where possible, share information with other regulators and stakeholders to ensure the best compliance outcomes for our region. We will engage with the community, those we regulate and government to explain and promote environmental requirements and achieve better community and environmental outcomes.

Lawful, ethical and accountable – We will conduct ourselves lawfully and impartially and in accordance with these principles and relevant policies and guidance. We will document and take responsibility for our regulatory decisions and actions. We will measure and report on our regulatory performance.

Targeted – We will focus on the most important issues and problems to achieve the best environmental outcomes. We will target our regulatory intervention at poor performers and illegal activities that pose the greatest risk to the environment. We will apply the right tool for the right problem at the right time.

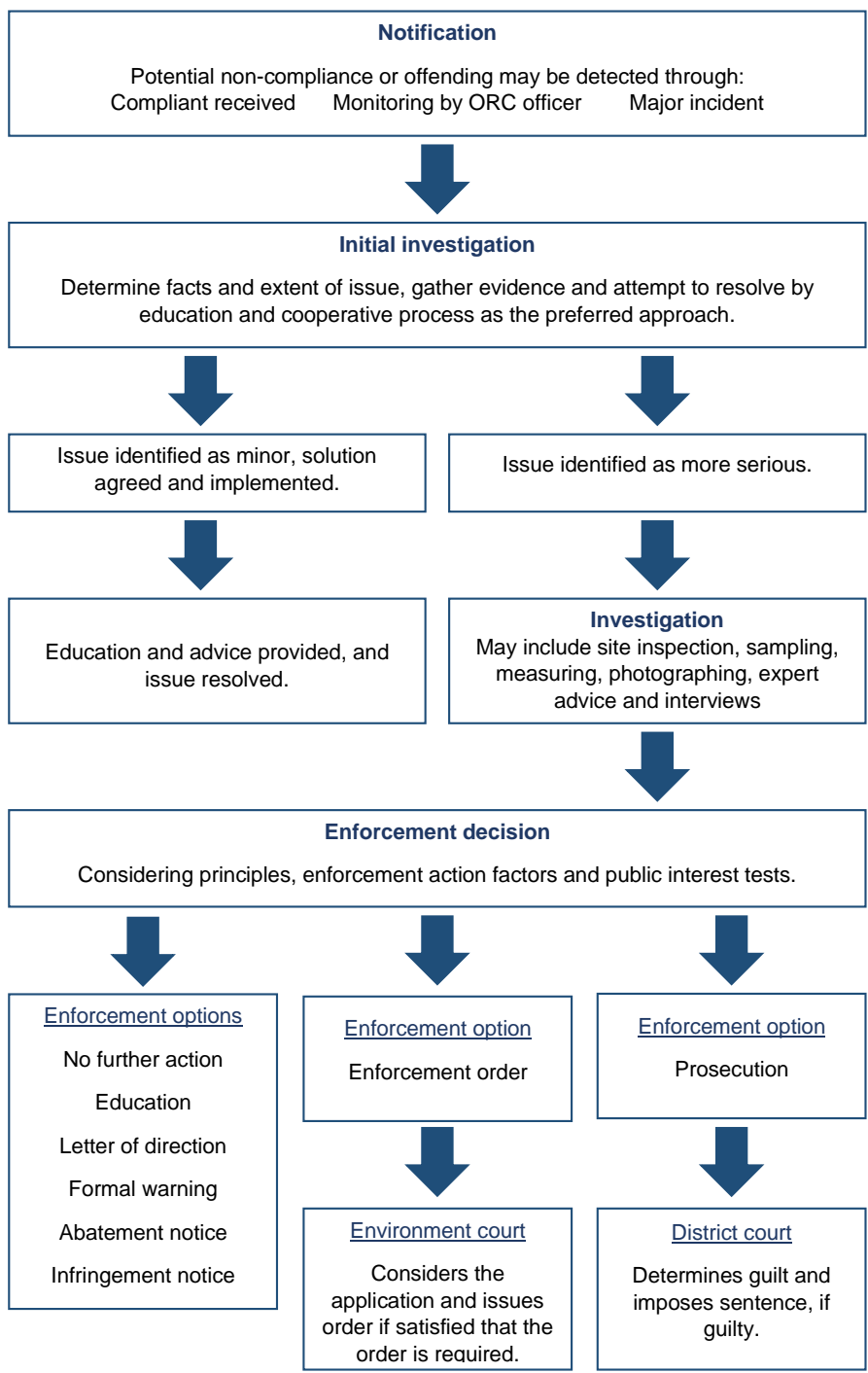
Responsive and effective – We will consider all alleged non-compliances to determine the necessary interventions and action to minimise impacts on the environment and the community and maximise deterrence. We will respond in an effective and timely manner in accordance with legislative and organisational obligations.

4 Conflict of interest

From time to time ORC may be in a position where an actual or perceived conflict of interest associated with compliance activity exists. In these situations it may be appropriate to request the support of an independent party which may include undertaking any investigation; making recommendations on potential enforcement action; or reviewing an investigation. This ensures any action is consistent with the principles of enforcement set out in section 3 of the Policy. In particular, that compliance and enforcement action is lawful, ethical and accountable.

The decision to request independent support for an investigation is made by the General Manager Regulatory and Communications following a recommendation from the Manager Compliance.

54 The investigation and enforcement process at a glance



65 Gathering information

If a breach, or potential breach, of the RMA occurs then information must be gathered about how and why the breach occurred. The purpose of an investigation is to establish the truth of what has occurred and enable informed decisions to be made. The depth and scope of the investigation will be dependent on the seriousness of the incident.

Investigation activities may include:

- Visiting private property to collect information or potential evidence such as samples, photographs, measurements, or ecological assessments.
- Talking to people about what they know about the incident. People interviewed may be witnesses to an incident or potentially liable parties. These conversations will be recorded in writing or by electronic means.
- For serious matters interviews of potentially liable parties are conducted under caution to ensure their rights are understood.

When visiting private property it is vital to respect the rights of the lawful owner or occupier. ORC staff must ensure that all entry to private property is done so lawfully.

The Chief Executive Officer of the ORC has the authority to issue staff with warrants of authority. A warranted enforcement officer has the ability to enter private property (excluding dwelling houses) for the purpose of assessing compliance with environmental regulation. This can be completed without providing prior notice to the occupier or landowner.

However, there are times when access to property has to be conducted with informed consent or search warrant. Staff must attend specific training⁵ and be familiar with all of their statutory obligations before carrying out any enforcement functions.

76 Enforcement decision

The ORC takes a rational and principled approach to regulation. In general, the ORC advocates a policy of education-first and co-operation towards compliance. However, the Council recognises that there are times when the use of punitive measures is necessary.

Enforcement of the RMA can be complex. The Sentencing Act 2002 and the courts have provided helpful guidelines⁶ as to what factors are appropriate to consider in RMA cases to determine the seriousness of a breach. It is widely accepted across the regional sector that these are the appropriate factors to consider in enforcement decision making.

⁵ Warranted ORC staff gather information in keeping with best practice detailed in *Basic Investigative Skills for Local Government*

⁶ *Machinery Movers Limited v Auckland* [1994] 1 NZLR 492 & *Selwyn Mews Ltd v Auckland City Council* HC Auckland CRI-2003-404-159

Factors to consider when considering enforcement action:

- What were, or are, the actual adverse effects on the environment?
- What were, or are, the potential adverse effects on the environment?
- What is the value or sensitivity of the receiving environment or area affected?
- What is the toxicity of discharge?
- Was the breach as a result of deliberate, negligent or careless action?
- What degree of due care was taken and how foreseeable was the incident?
- What efforts have been made to remedy or mitigate the adverse effects?
- What has been the effectiveness of those efforts?
- Was there any profit or benefit gained by alleged offender(s)?
- Is this a repeat non-compliance or has there been previous enforcement action taken against the alleged offender(s)?
- Was there a failure to act on prior instructions, advice or notice?
- Is there a degree of specific deterrence required in relation to the alleged offender(s)?
- Is there a need for a wider general deterrence required in respect of this activity or industry?

Not every factor will be relevant every time. On occasion one single factor may be sufficiently aggravating, or mitigating, that it may influence the ultimate decision. It is inappropriate to take a matrix or numerical approach to weighing and balancing these factors. Each case is unique and the individual circumstances need to be considered on each occasion to achieve a fair and reasonable outcome.

The discretion to take enforcement action, or not, sits solely with those delegated to make decisions in the regulatory agency⁷, including:

- The appropriate defendant to pursue;
- The appropriate enforcement tools to use in the circumstances; and
- Withdrawal of an enforcement action that has been commenced.

⁷ New Zealand Law Commission 'Prosecution decisions and the discretion to prosecute'
<http://www.nzlii.org/nz/other/nzlc/report/R66/R66-5.html>

The prosecution test:

The Solicitor-General's Prosecution Guidelines provides direction on what factors should be considered before a decision to prosecute is made. There are two parts of the test to be met. The first part of the test is the **evidential test** and requires a legal assessment of whether:

- A specific person being responsible for the offending (whether natural or legal).
- The evidence is credible.
- The ORC can produce the evidence before the court and it is likely it will be admitted by the court.
- The evidence can reasonably be expected to satisfy a court beyond a reasonable doubt, that the person has committed a criminal offence.
- Whether the defendant can successfully make out a statutory defence based on the information available to the ORC; which will include any information supplied by the likely defendant as well as other persons.
- There is any other evidence the ORC should seek out which may support or detract from the case.

Once it has been established that there is sufficient evidence to provide a reasonable prospect of conviction, the test for prosecution requires a consideration of whether the **public interest**. The Solicitor-General's Prosecution Guidelines states that broadly the presumption is that the public interest requires prosecution where there has been a contravention of the criminal law. A case-by-case assessment is necessary to displace that presumption.

87 Enforcement options

Part XII of the RMA includes "formal" enforcement tools that are available to deal with breaches of the RMA. Informal enforcement tools are also used by the ORC as part of its enforcement options. It is important to ensure these tools (both formal and informal) are applied consistently across the myriad of activities and resource use across the region.

Enforcement tools can be categorised into three general areas.

- **Informal actions** are focused on providing education and incentive-based responses to allow the person to become better informed and develop their own means to improved compliance.
- **Directive actions** are about looking forward and giving direction and righting the wrong.
- **Punitive actions** are about looking back and holding people accountable for what they have done.

| | Description of action | Potential impacts for the liable party | When this action may be appropriate |
|-------------------|---|---|---|
| Informal actions | <p>Education and engagement</p> <p>To prevent further breaches, or to remedy or mitigate the effects of non-compliance, ORC can provide information or guidance around rules and regulations to enable parties to achieve compliance.</p> | This is a non-formal process and as such has no legal implication. | Education and other incentive-based interactions are reserved for low level offending and when dealing with cooperative parties, who are motivated to do the right thing but lack the knowledge or skills necessary to achieve and maintain compliance. |
| | <p>Letter of direction</p> <p>To prevent further breaches, or to remedy or mitigate the effects of non-compliance, ORC can give a written direction for a party to take or cease a particular action.</p> | Such a direction is not legally enforceable. | Letters of direction should be reserved for dealing with cooperative parties, who are motivated to follow the direction, and where the breach is of a minor nature, consistent with a breach that would perhaps also receive a formal warning. |
| Directive actions | <p>Abatement notice</p> <p>An abatement notice is a formal, written directive. It is drafted and served by ORC instructing an individual or company to cease an activity, prohibit them from commencing an activity or requiring them to do something. The form, content and scope of an abatement notice are prescribed in statute.</p> | A direction given through an abatement notice is legally enforceable. To breach an abatement notice is to commit an offence against the RMA and make liable parties open to punitive actions. | <p>An abatement notice may be appropriate any time that there is a risk of further breaches of environmental regulation or when remediation of mitigation is required as a result of non-compliance.</p> <p>Other considerations are where no action has been taken to rectify a situation when less formal processes have been used, and/or where non-compliance is ongoing.</p> |

| | Description of action | Potential impacts for the liable party | When this action may be appropriate |
|--------------------------|---|---|--|
| Directive actions | <p>Enforcement order</p> <p>Like an abatement notice, an enforcement order can direct a party to take particular action. However, an application for an enforcement order must be made to the Environment Court but can also be made during the course of an RMA prosecution, or sentencing.</p> | <p>A direction given through an enforcement order is legally enforceable.</p> <p>To breach an enforcement order is to commit an offence against the RMA and make liable parties open to punitive actions.</p> | <p>An application for an enforcement order may be appropriate any time there is a risk of continuing breaches of environmental regulation, or remediation or mitigation is required as a result of non-compliance.</p> <p>Other considerations are for a repeat offence where effects are significant and where no progress has been made when using other enforcement tools.</p> |
| Punitive actions | <p>Formal warning</p> <p>A formal warning is documented by way of a letter to a culpable party informing them that an offence against the RMA has been committed, and that they are liable.</p> | <p>No further action will be taken in respect of that breach.</p> <p>However, the warning forms part of a history of non-compliance and will be considered if there are future incidents of non-compliance.</p> | <p>A formal warning may be given when an administrative, minor or technical breach has occurred <u>and is issued in lieu of an infringement</u>; and the environmental effect or potential effect, is minor or trivial in nature; and the subject does not have a history of non-compliance; and the matter is one which can be quickly and simply put right; and a written warning would be appropriate in the circumstances.</p> |

| | Description of action | Potential impacts for the liable party | When this action may be appropriate |
|-------------------------|--|--|---|
| | <p>Infringement notice</p> <p>An infringement notice is a written notice which requires the payment of a fee. The amount of the fee is set in law. Depending on the breach the fine will be between \$300 and \$1000.</p> | <p>No further action will be taken in respect of that breach. However, the infringement notice forms part of the history of non-compliance and will be considered if there are future incidents of non-compliance.</p> | <p>An infringement notice may be issued when:</p> <p>There is prima facie (on the face of it) evidence of a legislative breach; and a one-off or isolated legislative breach has occurred which is of minor impact and which can be remedied easily; and where an infringement notice is considered to be a sufficient deterrent.</p> |
| Punitive actions | <p>Prosecution</p> <p>A prosecution is a process taken through the criminal courts to establish guilt or innocence and, if appropriate, the court will impose sanctions.</p> <p>RMA matters are heard by a District Court Judge with an Environment Court warrant.</p> <p>All criminal evidential rules and standards must be met in a RMA prosecution.</p> | <p>A successful prosecution will generally result in a conviction, a penalty imposed and consideration to costs of the investigation.</p> <p>A prosecution forms part of the history of non-compliance and will be considered if there are future incidents of non-compliance.</p> | <p>A prosecution may be considered appropriate when the factors listed in section 6 indicate that the matter is sufficiently serious to warrant the intervention of the criminal law.</p> |

7.3. Intensive Winter Grazing Update

Prepared for: Regulatory Committee
Report No. REG2205
Activity: Regulatory: Consents and Compliance
Author: Joanna Gilroy, Manager Consents
Tami Sargeant, Manager Compliance
Endorsed by: Richard Saunders, General Manager Regulatory and Communications
Date: 15 September 2022

PURPOSE

- [1] This paper provides an update on the consent pathway available for intensive winter grazing (IWG) and summarises Otago Regional Council's (ORC) compliance approach to this activity.

EXECUTIVE SUMMARY

- [2] The National Environmental Standards – Freshwater (NES-FW) sets out requirements for certain activities including IWG. If people cannot meet the permitted activity criteria in the regulations, then resource consent is required.
- [3] The regulation in the NES-FW come into effect on 1 November 2022

RECOMMENDATION

That the Committee:

- 1) **Notes** this report on Intensive Winter Grazing.

BACKGROUND

- [4] In 2020 a regulatory reform package with national direction on freshwater management was released by the Government. This package included the new National Environmental Standards – Freshwater (NES-FW). The NES-FW sets out requirements for carrying out certain activities that have the potential to impact on freshwater, by setting out standards to be met and identifying when resource consents will be required. One of the activities managed by the NES-FW is intensive winter grazing (IWG). This is the practice of grazing on an annual forage crop between 1 May and 30 September each year.
- [5] The regulations relating to IWG were originally meant to apply to winter 2022, however the implementation of the regulations was deferred by the Minister. As a result of changes made by the Government, the regulations relating to intensive winter grazing (IWG) under the NES-FW now come into effect from 1 November 2022. This means that if people cannot meet the permitted criteria contained in the NES-FW, consents will need to be applied for and granted by 1 May 2023.

- [6] There are three pathways for compliance contained within the NES-FW regulations:
- Permitted activity by meeting the relevant criteria;
 - Applying for a consent; or
 - Having a certified freshwater farm plan (this option is not yet available).
- [7] A copy of the permitted activity criteria contained in the NES-FW is included as Attachment 1. People are encouraged in the first instance to manage IWG in a manner that achieves compliance with the permitted criteria. As outlined above, if people cannot meet this criteria, then they will need a resource consent. If people are unsure if they need consent, they are encouraged to contact ORC's Consent Enquiries team and the Council's Catchment Advisors are also available to provide good management practice-based advice.
- [8] When the regulations relating to IWG commence on 1 November 2022 the related rule in the Regional Plan Water introduced by Plan Change 8 is 'superseded' by the NES rules. This is intentional and was an approach supported by the Court. Consequently, once the regulation commences on 1 November 2022 consents in Otago will only be needed under the NES-FW and not under the Regional Plan Water as well. This is a more streamlined approach. However, if for any reason there are changes made to the commencement date of the NES-FW regulations then consents will still be required for IWG for 2023 in the Otago region under the rules in the Regional Plan Water.

DISCUSSION

- [9] To engage with farmers and groups about the rules relating to the NES-FW staff have been involved in and led several initiatives over the last two years. Predominantly this work has been attending catchment group or farmer led sessions explaining the new regulations. These sessions have been attended by Consents, Compliance and Catchment Advisors and are reflective of the cross-organisation approach to this activity. In August the content of these sessions moved from explaining the rules, to providing advice on how to apply for a consent for grazing as well as sharing information on good management practices. Media releases have also been issued to inform people about the consent requirements and resources available. Information has also been updated on Council's website regularly and includes:
- General information on IWG including the permitted activity criteria.
 - Good management practice advice.
 - Information on defining and managing critical source areas.
 - Consent information relating to IWG.
- [10] Staff will continue to work with the Otago farming community including attending sessions on IWG and providing advice about the rules and the pathways available for IWG activities.
- [11] Staff have continued to engage with industry groups, recognising the key role that these groups play in communicating with the farming community. These groups are doing a significant volume of work to support their members. Staff have met with, or attended events at the request of groups including Beef+Lamb NZ, Deer Industry New Zealand, fertiliser and feed reps, Federated Farmers and DairyNZ. Work with these groups to date includes meetings to discuss the compliance approach to winter 2022, the approach to consenting and opportunities for input into application forms and consent conditions.

- [12] Meetings have been held and will continue to be held with key stakeholder groups and partners that are typically involved in the consent process. This has been to provide an overview of the package of legislation, understand how we can support these partners/stakeholders and to outline the work that ORC is doing. It is intended that these meetings will continue.
- [13] The regional sectors response to IWG has been led by staff from ORC and includes the development of application forms and other material for consents required for IWG. These have been shared with other Councils in the hope of ensuring consistency. This sector wide project is part of the collaborative approach being taken to this activity.
- [14] The resource consent application form has been streamlined and enables farmers to complete these without the support of a farm consultant. Staff are committed to taking a pragmatic and customer focused approach to these consents, but still need to give effect to the legislation and the environmental risks of the activity. This is the approach that is taken to all consent applications processed by the team.
- [15] The critical part of any consent application is the Grazing Management Plan. This document contains an assessment of risk on the farm and the actions and mitigations that will be put in place to minimise the chance of any environmental effects. The use of these plans will ensure a smooth transition from a consenting pathway to FWFP pathway when they are introduced.
- [16] The cost of processing a resource consent is based on an hourly rate charge and the bigger and more complex an application the higher the costs. For IWG applications a deposit of \$1,900 is required, which includes a \$150 Compliance fee. Staff have worked hard to have a very efficient and cost-effective consent pathway. Template reports and conditions have been developed and enable the majority of applications to be processed without exceeding the deposit amount. If there are circumstances that may result in additional costs being incurred staff will contact the applicant to discuss this.
- [17] The process developed by staff means ORC is providing a pathway for farmers in Otago to achieve compliance with IWG rules contained in the NES-FW. By focussing the application material on the preparation and submission of a grazing management plan appropriate actions will be taken to mitigate the risks of IWG and farmers will be in a good position to respond to the requirements of freshwater farm planning when these are introduced.

IWG compliance project

- [18] An IWG compliance project has been undertaken to monitor practices across Otago throughout the 2022 winter season. While PC8 rules applied this winter the focus for compliance was on general good management practice and identifying those farms which may pose a risk to the environment.
- [19] A key component of the IWG compliance project are flyovers. The Compliance team completed two sets of three flights this year across the Otago region. The first set of flights was undertaken in late May / early June 2022. The second set of flights was planned for July 2022 but due to Covid-19 disruptions and weather was delayed to August 2022.

- North Otago – From Dunedin, north to the Waitaki River and inland to include the Maniototo.
- South Otago – From Dunedin, south to the Catlins and inland to include Southwest Otago.
- Central Otago – To cover Beaumont through to Queenstown, and north to the Lakes, including Makarora and down through the Ida Valley.

- [20] Staff observed good improvement from the last season with few follow-up visits or letters required. Generally, compliance was considered good with appropriate measures in place to mitigate the risks associated with IWG.
- [21] Staff followed up 'on the ground' with 14 education visits where potential breaches or high-risk sites were identified. This concerned the management of critical source areas and proximity of grazing crops to waterways. These follow-ups provided an opportunity to 'ground truth' what was observed from the air, and the site visit either showed that there was not a breach or that the breach was low risk non-compliance. The ground truthing also allowed for educational support for the properties involved.
- [22] In addition to the 'on the ground' follow-ups, 20 farms were followed up with phone calls or letters highlighting that observed practices may not comply under the incoming NES-FW rules. No formal enforcement action was taken.

Compliance engagement

- [23] Regulatory staff provided advice and information to farmers on the IWG regulations and compliance approach at catchment group sessions, workshops and field days. Work across ORC continues through the Council wide NES-FW and Plan Change 8 staff working group that discuss interpretation issues and resource needs.
- [24] ORC regulatory staff have also worked closely with primary industry groups, holding monthly online meetings to discuss the IWG compliance approach, follow-ups from the flyovers as well as other regulatory issues. Staff have also provided information on IWG compliance approach and regulations at meetings organised by the primary industry groups.
- [25] A new initiative for the 2022 winter was weekly check-ins with Ministry for Primary Industry (MPI) animal welfare staff and Environment Southland (ES) compliance staff. These meetings provided an opportunity to share observations of IWG practices, and learnings. MPI and ES compliance staff also observed an improvement in grazing practises from last year. These meetings will continue on a monthly basis.

CONSIDERATIONS

Strategic Framework and Policy Considerations

- [26] The IWG consenting and compliance programme are consistent with the ORC Strategic framework. This includes supporting our vision for Otago including;
- An environment that supports healthy people and ecosystems
 - A sustainable way of life for everyone in Otago
 - Te Ao Māori and Mātauranga Kāi Tahu are embedded in Otago communities
- [27] The programme also delivers on a number of commitments made in the strategic directions including;

- Effectively engaging communities
- Collaborating to deliver
- Mātauranga Kāi Tahu is an integral part of our decision-making
- Focus on Community Needs

Financial Considerations

[28] This work programme is included within existing budgets. Consent fees are recovered in accordance with existing policy.

Significance and Engagement Considerations

[29] As this is an item for noting there are no significance and engagement considerations.

Legislative and Risk Considerations

[30] There is a risk to ORC's reputation if the community and stakeholders do not feel supported through this process.

[31] There is a legal risk if Council does not implement or give effect to the NES-FW.

Climate Change Considerations

[32] There are no climate change considerations associated with this paper.

Communications Considerations

[33] Staff will continue to work with the Communications team to ensure that messaging about the permitted criteria and consent pathway is provided to the community.

NEXT STEPS

[34] Staff will continue to with the IWG consenting and compliance programmes that are already underway. We will continue to work closely with the wider regional sector, industry groups, key stakeholder groups and MfE to successfully implement these new rules for IWG activities.

ATTACHMENTS

1. Intensive Winter Grazing Permitted Activity Criteria [7.3.1 - 2 pages]

Attachment 1 – Intensive Winter Grazing Permitted Activity Criteria

National Environmental Standards for Freshwater

Subpart 3 – Intensive Winter Grazing

Regulation 26 – Permitted activities

...

4. In any other case, the conditions are that,—
 - (a) at all times, the area of the farm that is used for intensive winter grazing must be no greater than 50 ha or 10% of the area of the farm, whichever is greater; and
 - (b) the slope of any land under an annual forage crop that is used for intensive winter grazing must be 10 degrees or less, determined by measuring the slope over any 20 m distance of the land; and
 - (c) [Revoked]
 - (d) livestock must be kept at least 5 m away from the bed of any river, lake, wetland, or drain (regardless of whether there is any water in it at the time); and
 - (e) on and from 1 May to 30 September of any year, in relation to any critical source area that is within, or adjacent to, any area of land that is used for intensive winter grazing on a farm,—
 - I. the critical source area must not be grazed; and
 - II. vegetation must be maintained as ground cover over all of the critical source area; and
 - III. maintaining that vegetation must not include any cultivation or harvesting of annual forage crops.

