

REGULATORY COMMITTEE AGENDA

Wednesday 12 September 2018

2.00pm, Council Chamber,
Level 2 Phillip Laing House, 144 Rattray Street, Dunedin

Membership

Cr Bryan Scott

Cr Sam Neill

Cr Graeme Bell

Cr Doug Brown

Cr Michael Deaker

Cr Carmen Hope

Cr Trevor Kempton

Cr Michael Laws

Cr Ella Lawton

Cr Andrew Noone

Cr Gretchen Robertson

Cr Stephen Woodhead

(Chairperson)

(Deputy Chairperson)

Disclaimer

Please note that there is an embargo on agenda items until 48 hours prior to the meeting. Reports and recommendations contained in this agenda are not to be considered as Council policy until adopted.

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1. APOLOGIES

2. LEAVE OF ABSENCE

Cr Ella Lawton
Cr Sam Neill

3. ATTENDANCE

4. 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.

5. CONFLICT OF INTEREST

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

6. PUBLIC FORUM

7. PRESENTATIONS

8. CONFIRMATION OF MINUTES

Recommendation

That the minutes of the meeting held on 1 August 2018 be received and confirmed as a true and accurate record.

Attachments

1. Minutes of Regulatory Committee - 1 August 2018 [8.1.1]

9. ACTIONS (Status report on the resolutions of the Regulatory Committee)

10. MATTERS FOR COUNCIL DECISION

11. MATTERS FOR NOTING

11.1. Director's Report on Progress

Prepared for: Regulatory Committee
Report No. EMO1824
Activity: Governance Report
Prepared by: Scott MacLean, Director Environmental Monitoring, and Operations
Date: 27 August 2018

1. Précis

This report describes regulatory activity during the period 6 July 2018 – 17 August 2018

2. Compliance

2.1 Consent Inspection Audits

90 Consent Inspections have been conducted over this period with the majority showing compliance with consent conditions. A total of 18 consents were graded as Non-compliant with 2 of these being significant. Enforcement action has been recommended where appropriate.

2.2 Forestry

Staff continue to work with forest operators in an educational role on the new NES for Plantation Forestry. Two inspections under the new NES have been conducted to date with no significant issues identified. Most of the major operators now show a good understanding of the NES, the goal over the next few months is to engage with some of the smaller operators and farm foresters.

2.3 Regionally Significant Wetlands

4 Regionally Significant Wetland inspections have been conducted over this period with no major issues identified. Re-inspections following minor non-compliance issues (grazing/pugging) showed no breach of our rules. It has been good to see an improved understanding from land owners of what can and can't be done in wetlands.

2.4 Dairy

Dairy Inspections are due to start in September. These will take a risk-based approach giving priority to those properties located in catchments with poor or declining water quality, those that have insufficient effluent storage, those with travelling irrigators (or similar high rate application systems), or properties which have inadequate fail-safe systems.

2.5 Contaminated Land

During the reporting period, staff reviewed and provided guidance and technical advice on 11 site investigation reports and responded to 71 public enquires about contaminated land.

Staff are working with the Waitaki District Council to prepare an application to the Ministry for the Environment's Contaminated Sites Remediation Fund to plan for the remediation of two historic coastal landfills. The sites, located south of Oamaru, have been exposed by coastal erosion.

3. Enforcement processes and considerations

The following describes the key differences in the suite of enforcement tools available to ORC in its capacity as a regulator; and to summarise the enforcement decision making process.

The courts have provided helpful guidelines as to what factors are appropriate to consider in Resource Management Act (RMA) cases to determine the seriousness of a breach. These factors guide enforcement decision making and include:

- What are the actual adverse effects that have occurred from the breach?
- What are the likely or potential adverse effects arising from the breach?
- What is the value or sensitivity of the environment affected by the breach?
- Was the breach a result of deliberate, negligent or careless behaviour?
- What degree of care was taken by the culpable party and how foreseeable was the incident?
- What efforts were made by the culpable party to remedy or mitigate the effects of the breach?
- How effective was that remediation or mitigation?
- Was any profit or benefit gained from the breach by the culpable party?
- Is this incident a repeat non-compliance by the culpable party or has previous enforcement action been taken against the party for the same or similar breach?
- Has the culpable party failed to act on prior instructions, advice or notice?

If prosecution is being considered, then two additional factors are considered:

- What degree of deterrence is required in relation to the culpable party?
- What degree of general deterrence is required for the wider industry or community?

Not every factor will be relevant every time. On occasion, one single factor may be so overwhelmingly influential, that it may determine the ultimate enforcement decision. When assessing a potential enforcement case, several compliance or enforcement tools are available for ORC to consider. They include both formal and informal mechanisms:

Informal enforcement tools

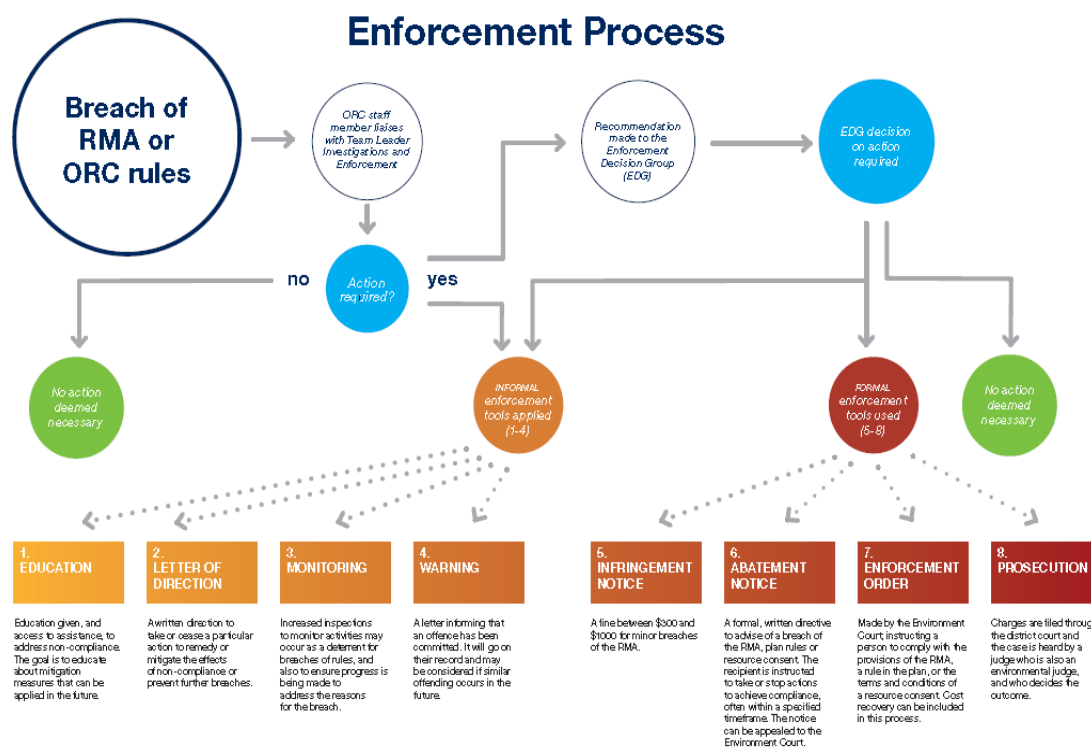
Education	Education enables information and access to assistance for a culpable party to address non-compliance matters for the future. It may also enable them to ascertain what mitigation and remediation measures could be applied
Letter of direction	To prevent further breaches, or to remedy or mitigate the effects of non-compliance, ORC can give a written direction for a party to take or cease a particular action
Monitoring	Increased inspections to monitor activities may occur, as a deterrent for breaches of rules, and to ensure progress is being made to address the reasons for the breach
Formal warning	A letter to a culpable party informing them that an offence against the Act has been committed, and that they are liable

Formal enforcement tools

Infringement notice	A written notice that requires the payment of a fine. The amount is set by law and depending on the breach is between \$300 and \$1000 (as at 2016)
Abatement notice	A formal, written directive drafted and served by council 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 are prescribed by law
Enforcement order	Directs a party to take a particular action. An application for an enforcement order must be made to the Environment Court, but can also be made during the course of a prosecution under the Act
Prosecution	A process through the criminal courts to establish innocence or guilt and if appropriate, the court will impose sanctions Heard by a District Court Judge who is also an Environmental Judge All criminal evidential rules and standards must be met in prosecution under the Act

It is recognised that each case is weighed on the individual merits of the case. Not one case is the same and ORC staff recognise that each case needs to be investigated thoroughly.

Any decisions about enforcement action are made by the ORC Enforcement Decision Group (EDG). No decisions are made in the field. Currently, the EDG is comprised of: Manager Environmental Services, Legal Counsel and the Chief Executive. Table 3 details the enforcement decision tools and authority to approve certain levels of enforcement.



4. Navigational Safety Activity

4.1 Bylaws

The navigational safety bylaws are currently out for consultation. There has been reasonable engagement to date with over 400 web interactions on the YourSay consultation platform. Submissions close in the first week of September.

4.2 Harbour safety

Capital improvements to the lighting configuration in the Eastern Channel of the Otago Harbour were undertaken this reporting period. This followed feedback from harbour users concerned at the lack of lighting, particularly for those using the harbour at night. Further improvements are planned for the coming months.

The Harbour Master participated in two marine Search and Rescue exercises this reporting period.

5. Biosecurity

5.1 Freshwater Biosecurity

A project trialling the removal of submerged willow trees from the Kawarau River channel, near the outlet of Lake Wakatipu has commenced. The project is a partnership between ORC and Land Information New Zealand. Lagarosiphon has established itself among the many submerged trees making traditional Lagarosiphon control methodologies very difficult. The trees pose a significant hazard to divers meaning underwater hand weeding of Lagarosiphon is not an option.

The presence of Lagarosiphon in this vicinity greatly increases the risk of the weed spreading into the lake if not controlled so the removal of the submerged willows is a priority activity in the Lagarosiphon work programme.

A 20 tonne excavator, fitted with a grapple is working off a certified 81m² barge, pulling the trees out of the channel. The trees are being taken to an area at Remarkables Park for disposal. It is thought the trial will take three weeks to complete. This will be a significant step forward in preventing Lagarosiphon incursion into Lake Wakatipu.



The barge and excavator working in the Kawarau River to remove submerged willows

5.2 National Wilding Conifer Programme.

Phase one of the national programme is in the last financial year. The partnership of MPI, Regional Councils and other agencies are currently preparing a business case together, in an effort to secure future funding for the next 10 years.

A presentation to Council on the programme is scheduled for 23rd October. This will include presenters from MPI, Central Otago Wilding Conifer Control Group, Wakatipu Wilding Conifer Control Group and ORC staff.

Attachments

The annual report for the ORC wallaby programme is attached.

The annual report for the Wakatipu Wilding Conifer Control Group.

The annual report for the Central Otago Wilding Conifer Control Group.

6. Recommendations

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

Endorsed by: Scott MacLean
Director Environmental Monitoring & Operations

11.2. Enforcement Activities from 7 July 2018 to 19 August 2018

Prepared for: Regulatory Committee
Report No. EMO1825
Activity: Environmental - Investigations and Enforcement Action
Prepared by: Peter Kelliher, Legal Counsel
Date: 22 August 2018

1. Précis

This report details Resource Management Act 1991, Biosecurity Act 1993 and Building Act 2004 enforcement activities undertaken by the Otago Regional Council during the period 1 July 2018 to 19 August 2018.

2. Resource Management Act 1991

a) Complaint Response

Table 1. Infringement Notices

Details	Period – 1 July 2018 to 19 August 2018	Total – from 1 July 2018
Discharge of contaminants to land in a manner where it may enter water - sediment	3	3
Discharge of contaminants to air in breach of a regional rule – burning prohibited material	3	3
Discharge of contaminants to air in breach of a regional rule – odour	3	3
TOTAL	9	9

Table 2. Abatement Notices

Details	Period – 1 July 2018 to 19 August 2018	Total – from 1 July 2018
To cease discharging contaminants to air from a domestic heating appliance in breach of a regional rule	1	1
To cease discharging contaminants in breach of a regional rule - sediment	1	1
To remove a dead animal from a river	1	1
To cease discharging contaminants from a farm landfill in breach of a regional rule	1	1
To remove debris / slash from the bed of a river	2	2
TOTAL	6	6

b) Inspections

Table 3. Authorised Legal Proceedings

Details	Period – 1 July 2018 to 19 August 2018	Total – from 1 July 2018
Discharge of contaminants to land in breach of a regional rule – effluent	1	1
TOTAL	1	1

3. Recommendation

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

Endorsed by: Scott MacLean
Director Environmental Monitoring & Operations

Attachments

Nil

11.3. Consents and Building Control

Prepared for: Regulatory Committee
Report No. EMO1826
Activity: Resource Consent, Deemed Permits and Building Act Activity
Prepared by: Kylie Galbraith, Acting Manager Consents
Date: 27 August 2018

1. Précis

This report covers consents and building control and deemed permit replacement progress for the period 1 July 2018 to 17 August 2018.

2. Consent Processing

2.1. Public Notification

There have been no publicly notified consents during this period.

2.2. Limited Notification

There have been no limited notified consents during this period.

2.3. Objections

There is one objection to consent conditions and costs, and it is being processed. Correspondence with the objector is underway. If a hearing is required, this will be set up.

2.4. Appeals

RM17.229 – Peter Ronald Graham – an application to occupy the coastal marine area with a pontoon for operating a ‘Hole in one’ golf challenge.

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

The applicant and appellant have been corresponding prior to any formal mediation process. They have reached agreement and are currently preparing a Consents Order for the Environment Court to grant.

2.5. Consent Statistics

Table 1. Consents Statistics Summary

Reporting Period	Lodged			Rejected	Decision Given		
	Consents	Variations			Consents	Variations	
		Regular	Water reporting date			Regular	Water reporting date
1/7to 17/8 2018	69	0	0	0	65	7	0
18/19 YTD	69	0	0	0	65	7	0

All decisions on consents, except one, were given within RMA mandated timeframes. The exception exceeded the timeframes by one working day.

3. Deemed Permit Replacement.

There are currently 367 deemed permits left.

4. Consent Administration

Table 2. Consent Administration Statistics

Reporting Period	Transfers Received	Transfers Issued	s417 Certs Received	s417 Certs Issued
1/7 – 17/8 2018	21	23	0	0
18/19 YTD	21	23	0	0

5. Building Consent Authority (BCA) Administration

Table 3: Building Act Statistics

Reporting Period	Building Permits		Certificate of Acceptance		Code Compliance Certificate	
	Received	Issued	Received	Issued	Received	Issued
1/7 – 17/8 2018	1	0	0	0	0	0
18/19 YTD	1	0	0	0	0	0

6. Public Enquiries

332 enquiries were received during the seven-week reporting period.

Details are set out in Appendix 1 to this report.

Table 4. Public Enquiries Statistics

Period	Number of Enquiries
17/18	2415
1/7 – 17/8 2018	332
18/19 YTD	332

7. Recommendation

a) *That this report is noted.*

Endorsed by: Tanya Winter
Director Policy Planning and Resource Management

Appendix 1 – Resource Consent Public Enquiries Report for Period 1 July 2018 to 17 August 2018

Type of Enquiry	No.	% of Total
Current Consents	129	38.86%
Pre-application	70	21.08%
Other	28	8.43%
Permitted Activities	55	16.57%
Transfers	16	4.82%
Property Enquiries	27	8.13%
TLA Enquiries	2	0.60%
Mining Privileges	5	1.51%
Enquiry Location	No.	% of Total
Queenstown Lakes District Council	66	19.88%
Dunedin City Council	40	12.05%
Throughout Otago	5	1.51%
Central Otago District Council	106	31.93%
Waitaki District Council	22	6.63%
Unspecified	82	24.70%
Clutha District Council	11	3.31%
Outside Otago	0	0.00%
Method of Enquiry	No.	% of Total
Telephone	111	33.43%
Counter	19	5.72%
Email	199	59.94%
Internet	3	0.90%

12. RESOLUTION TO EXCLUDE THE PUBLIC

12.1. Public Excluded Recommendation

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

Item Enforcement – Current Matters

12.99. PUBLIC EXCLUDED POSTAMBLE

The general subject of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under [section 48\(1\)](#) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

General subject of each matter to be considered	Reason for passing this resolution in relation to each matter	Ground(s) under section 48(1) for the passing of this resolution
Enforcement – Current Matters	LGOMIA Section 6 (a) to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial;	Section 48(1)(a); Section 48(1)(d)

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

Enforcement – Current Matters.

Section 6 (a)

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

I also move that Mr MacLean be permitted to remain at this meeting after the public has been excluded, because of his knowledge of the matters subject to the recommendations.

13. NOTICES OF MOTION

14. CLOSURE