

Regulatory Committee Agenda - 15 October 2020

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



Members:

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

Senior Officer: Sarah Gardner, Chief Executive

Meeting Support: Liz Spector, Committee Secretary

15 October 2020 10:15 AM

Agenda Topic	Page
1. APOLOGIES Cr Noone has submitted an apology for the meeting.	
2. ATTENDANCE Staff present will be identified as they present reports.	
3. CONFIRMATION OF AGENDA Note: Any additions must be approved by resolution with an explanation as to why they cannot be delayed until a future meeting.	
4. CONFLICT OF INTEREST Members are reminded of the need to stand aside from decision-making when a conflict arises between their role as an elected representative and any private or other external interest they might have.	
5. PUBLIC FORUM Members of the public may request to speak to the Council. No requests were received prior to publication of the agenda.	
6. CONFIRMATION OF MINUTES	3
6.1 Minutes of the 9 July 2020 Regulatory Committee Meeting The Committee will consider minutes of the 9 July 2020 Regulatory Committee meeting as a true and accurate record, with or without changes.	3
7. ACTIONS (STATUS OF COMMITTEE RESOLUTIONS) The Committee will be updated on its outstanding Actions.	7
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	To update the Committee on activities of the Regulatory Group for the period 1 January to 31 May 2020	
9.1.1	Attachment 1: Regulatory Data Appendix (July to September 2020)	60
9.1.2	Attachment 2: Deemed Permit Report	68
9.2	UPDATE ON IMPLEMENTATION OF NES FW AND PC8	71
	To provide an overview of the actions taken by the Regulatory Group to implement the 'Action Plan for Healthy Waterways' and Council's Plan Changes.	
10.	CLOSURE	



Minutes of a meeting of the
Regulatory Committee held in the Council Chamber
on Thursday 9 July 2020 at 10:30 am

Membership

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

Welcome

Cr Robertson welcomed Councillors, members of the public and staff to the meeting at 01:02 pm.

For our future

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1. APOLOGIES

Resolution

That the apologies for Cr Deaker, Cr Hobbs, and Cr Malcolm be accepted.

Moved: Cr Wilson

Seconded: Cr Noone

CARRIED

2. ATTENDANCE

Sarah Gardner (Chief Executive)
Nick Donnelly (General Manager Corporate Services and CFO)
Gavin Palmer (General Manager Operations)
Sally Giddens (General Manager People, Culture and Communications)
Richard Saunders (General Manager Regulatory)
Gwyneth Elsum (General Manager Policy, Strategy and Science)
Amanda Vercoe (Executive Advisor)
Liz Spector (Committee Secretary)

Also present were Joanna Gilroy (Manager Consents), Ryan Tippet (Media Communications Lead), Steve Rushbrook (Harbourmaster), Rachel Brennan (Team Leader Compliance - Coastal).

3. CONFIRMATION OF AGENDA

The agenda was confirmed as published.

4. CONFLICT OF INTEREST

Cr Kelliher advised of a conflict of interest during discussions on Plan Change 7 and resource consent renewals.

Cr Wilson advised of a conflict of interest during discussion on Plan Change 7 and resource consent renewals.

5. PUBLIC FORUM

No public forum was held.

6. CONFIRMATION OF MINUTES

Resolution

That the minutes of the meeting held on 11 March 2020 be received and confirmed as a true and accurate record, with or without corrections.

Moved: Cr Wilson

Seconded: Cr Hope

CARRIED

7. ACTIONS

Outstanding recommendations of the Regulatory Committee were reviewed.

8. MATTERS FOR NOTING

8.1. Regulatory Group - Quarterly Activity Report

Richard Saunders (GM Regulatory), Joanna Gilroy (Manager Consents), Steve Rushbrook (Harbourmaster) and Rachel Brennan (Team Leader Compliance - Coast) were present to answer questions about the quarterly Regulatory activity report. Cr Kelliher and Cr Wilson left the Council Chamber during discussions about water consents/deemed permits as they had declared conflicts. After a discussion about outstanding water consent permits, Mr Saunders agreed to provide monthly updates on metrics for deemed permits to Councillors to keep them informed.

Cr Kelliher and Cr Wilson returned to the chamber to continue discussions on the report. Cr Laws noted the number of enforcement complaints that had been submitted throughout the period and asked if there were sufficient staff to timely respond. Mr Saunders identified occasions where compliance staff had to be called in to assist with incident investigations and that his teams were working to address any potential shortfalls due to the volume of complaints.

After questions on the report concluded, Cr Noone moved:

Resolution

That the Council:

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

Moved: Cr Noone
Seconded: Cr Hope
CARRIED

8.2. Report on Dairy Inspections 2019/20

Richard Saunders (GM Regulatory) took questions on the Dairy Inspection report. He noted that due to Plan Change 8 being notified and upcoming changes to the NES, farm monitoring will look different in the future. He also noted high levels of compliance and good engagement between staff and the industry during the inspections.

After a general discussion of the report, Chairperson Noone asked for a motion.

Resolution

That the Committee:

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

Moved: Cr Wilson
Seconded: Cr Forbes
CARRIED

9. RESOLUTION TO EXCLUDE THE PUBLIC

That the public be excluded from discussions on the following item:

General subject of each matter to be considered	Reason for passing this resolution in relation to each matter	Ground(s) under section 48(1) for the passing of this resolution
1.1 Clutha District Council WWTP Investigation Update	Section 6(a) of LGOIMA – the information would be likely to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial.	Section 48(1)(a)

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

Moved: Cr Wilson
 Seconded: Cr Kelliher
 CARRIED

10. CLOSURE

There was no further business and the public meeting was declared closed at 02:06 pm.

 Chairperson

 Date

Regulatory Committee Agenda - 15 October 2020 - ACTIONS (STATUS OF COMMITTEE RESOLUTIONS)

Meeting Date	Document	Item No.	Item	Status	Action Required	Assignee/s	Action Taken	Due Date	Completed (Overdue)
11/03/2020	Regulatory Committee 2020.03.11	8.3	GOV1911 Strategic Compliance Framework	In Progress	Present a compliance monitoring plan consistent with the principles of the Strategic Compliance Framework 2019-2024 to the Regulatory Committee at the September 2020 meeting.	Richard Saunders	4/08/2020 Liz Spector UPDATE (Richard Saunders): This report is being prepared for the October Regulatory Committee meeting.	01/09/2020	Overdue by: 29 days
09/07/2020	Regulatory Committee 2020.07.09	8.1	GOV1928 Regulatory Group - Quarterly Activity Report	Assigned	Provide monthly updates on metrics for deemed permits to Councillors to keep them informed.	Richard Saunders	Ongoing	31/08/2020	Overdue by: 30 days

8.1. Compliance Plan

Prepared for:	Regulatory Committee
Report No.	EMO1882
Activity:	Regulatory - Resource Consent Compliance and Bylaw Monitoring
Author:	Tami Sargeant, Manager Compliance
Endorsed by:	Richard Saunders, General Manager Regulatory
Date:	7 October 2020

PURPOSE

- [1] This report provides the Council with an Otago Regional Council Compliance Plan 2020-22 (Compliance Plan) and outlines the next steps for delivering an effective and efficient compliance programme across the Otago region.

EXECUTIVE SUMMARY

- [2] A Compliance Plan has been developed 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 as well as reactive response to environmental incidents.
- [3] The Compliance Plan is consistent with the principles of the Regional Sector Strategic Compliance Framework 2019-24 and the Ministry for Environment Best Practice Guidelines on Compliance Monitoring and Enforcement and responds to the changes in the regulatory environment brought about through Central Government priorities such as Essential Freshwater and ORC plan changes.

RECOMMENDATION

That the Council:

- 1) **Receives** the report.
- 2) **Endorses** the Otago Regional Council Compliance Plan 2020-22.
- 3) **Notes** that the Otago Regional Council Compliance Plan 2020-22 is consistent with the principles of the Regional Sector Strategic Compliance Framework 2019-24 and the Ministry for Environment Best Practice Guidelines for Compliance Monitoring and Enforcement.
- 4) **Notes** that a Compliance Policy will be prepared for Council approval in 2021, and that the Otago Regional Council Compliance Plan 2020-22 will be updated to reflect the Council direction.
- 5) **Notes** that an annual compliance report will be prepared to show delivery on the Otago Regional Council Compliance Plan 2020-22.

BACKGROUND

Strategic compliance framework

- [4] 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 (CME) is a significant tool in achieving the overarching sustainable management purpose of the Resource Management Act 1991 (RMA). Carried out poorly, it can erode the potential of the regulatory regime to achieve its statutory goals. Carried out in a robust manner, it can assist in driving positive environmental outcomes and mitigate failures elsewhere in the policy process.
- [5] While councils have a responsibility to implement the RMA, the Act does not prescribe how councils should carry out CME activities, and councils have considerable discretion in how they fulfil their statutory functions. The RMA allows each council to tailor its CME approach to suit local circumstances and resources.
- [6] In 2018, the Ministry for the Environment (MfE) released Best Practice Guidelines for Compliance Monitoring and Enforcement (Best Practice Guidelines) to support councils with their CME responsibilities under the RMA. The Best Practice Guidelines cover all CME activities including how to strategically approach compliance, carry out monitoring and investigations, and take enforcement actions.
- [7] The Regional Sector Compliance and Enforcement Special Interest Group (CESIG) is tasked with promoting continuous improvement towards best practice in CME across the regional sector. CESIG developed the Regional Sector Strategic Compliance Framework 2019-2024 (Strategic Compliance Framework) to provide the Regional Sector with an overarching framework to carry out CME functions under the RMA, achieving consistency across the Regional Sector, while safeguarding the ability for each region to tailor its CME functions to the particular needs of its region.
- [8] The Regulatory Committee considered the Strategic Compliance Framework at its meeting on 11 March 2020 and noted that an ORC Compliance Monitoring Plan consistent with the principles of the Strategic Compliance Framework would be presented to the Regulatory Committee.

Regulation changes

- [9] The Compliance Team has a direct role to play in the implementation of new national legislation and new plan changes from the Council. On 6 July 2020 the Environmental Protection Authority notified Council's Plan Change 8 to the Water Plan. New requirements relate to earthworks, effluent ponds, used oil and dairy shed effluent.
- [10] The Government recently released the Action for Healthy Waterways package of regulatory changes relating to freshwater management. This package includes measures such as the new National Environment Standard for Freshwater (NES-FW) that sets out requirements for carrying out certain activities and anyone carrying out these activities will need to comply with these standards. Changes to the RMA, the National Policy Statement for Freshwater Management, a new National Environmental Standard for Freshwater (NES-FW), a new regulation for stock exclusion, and changes to the existing Water Measuring Regulations were also included in the regulatory reform. These

changes represent a considerable shift in how ORC manages freshwater in Otago, and how the compliance teams undertake CME activities.

DISCUSSION

Compliance Plan

[11] To ensure ORC achieves best practice in the compliance and enforcement field, the ORC Compliance Plan 2020-22 (Compliance Plan) has been developed to provide high-level direction for the Compliance Monitoring, Investigations and Regulatory Data and Systems Teams. The Compliance Plan sets out priorities for CME activities for ORC that are consistent with the Strategic Compliance Framework and Best Practice Guidelines, and integrates the new compliance requirements from the NES-FW and Plan changes.

[12] The following diagram shows the relationship between the national direction, ORC direction and operational delivery of CME activities in Otago.



[13] The objectives of the Compliance Plan are to:

- Improve environmental outcomes associated with the activities ORC regulates, including discharges to land, water and air, the take and use of water, and activities which impact on our rivers, lakes, wetlands and coastal environment;
- Identify and prioritise the activities that the Compliance Team will focus resources on over the next 18 months; and
- Inform communities and consent holders in Otago about the CME activities the ORC undertakes to protect our environment, encourage compliance and good practice, and improve environmental performance and raise environmental awareness.

Compliance approach

[14] The proactive, responsive and risk-based approach to ORC CME activities is consistent with the Strategic Compliance Framework principles of transparency, collaboration, responsiveness, evidence-based, consistency, lawful and accountable, targeted and fair and reasonable.

- [15] The ORC Compliance Plan responds to the needs of the Otago region by taking a risk-based approach to the allocation of resources, for proactive monitoring as well as reactive response to reports of environmental incidents.
- [16] Taking a risk-based approach ensures that ORC will have resources targeted to areas that pose the greatest risk. Additionally, it enables early identification of opportunities to engage with consent holders and the wider community in a proactive manner to encourage greater compliance. The Compliance Plan includes an environmental risk matrix, based on the Best Practice Guidelines and Strategic Compliance Framework.
- [17] The environmental risk matrix provides the framework for responding to reports of environmental non-compliance and pollution incidents. Whilst this activity is relatively reactive, the risk framework provides for the triaging incidents according to the level of risk and the immediacy of effects on the environment.
- [18] Other factors considered when determining compliance priorities and auditing frequency include history of non-compliance, the significance of potential effects, previous monitoring records, the sensitivity of the receiving environment and any data available from state of environment reporting.

Compliance monitoring priorities

- [19] The Compliance Plan identifies six priorities for compliance monitoring activities focussed on issues with the highest environmental impacts. The priorities are:
- Reduce non-compliant discharges for improved freshwater quality
 - Proactive and integrated approach to monitoring large-scale activities
 - Monitor water takes and use to protect water quantity
 - Reduce non-compliant air discharges to improve air quality
 - Monitor structures and works in an adjacent to freshwater
 - Monitor coastal structures and oil spill preparedness
- [20] It is important to recognise that the Compliance Plan is not an exhaustive list of the CME activities undertaken by the Regulatory Group. The Compliance Teams need to reactively respond to new issues as they arise and be agile to respond to national changes which introduce new rules and regulations.

OPTIONS

- [21] As this is a report for noting, there are no options to consider.

CONSIDERATIONS

Policy Considerations

- [22] A Compliance Policy will be prepared for Council approval in early 2021.

Financial Considerations

- [23] There are no financial considerations.

Significance and Engagement

[24] There are no implications for significance and engagement.

Legislative Considerations

[25] CME activities are a mandatory function under the RMA.

Risk Considerations

[26] There are environmental, legal, social and reputational considerations associated with CME activities and these have been considered in the development of the Compliance Plan.

NEXT STEPS

[27] The Compliance Plan will be edited and designed, for publication on the ORC website.

[28] An operational compliance programme will be developed that sets out the operational detail for how the Compliance Teams will undertake CME activities in accordance with the priorities set out in the Compliance Plan. This will be the 'road map' for the ORC CME activities and will be utilised to set out and prioritise work programmes at a team, project, and individual level.

[29] A Compliance Policy will be prepared for Council consideration and approval in early 2021. If required, the Compliance Plan and operational compliance programme will be updated to reflect the Council direction of CME activities.

[30] An annual compliance report will be prepared to show delivery on the Compliance Plan and provide greater transparency and accountability in the ORC's CME activities.

ATTACHMENTS

1. ORC Compliance Plan FINAL DRAFT 29 9 20 [8.1.1 - 18 pages]
2. Regional Sector Strategic Compliance Framework 1 [8.1.2 - 25 pages]



Otago Regional Council Compliance Plan 2020 - 2022

Regulatory Committee 2020.10.15

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COMPLIANCE PLAN 2020-2022

Otago Regional Council (**ORC**) is responsible for regulating activities affecting water, air, land and the coast to promote the sustainable management of our environment. The ORC Compliance Teams help our community meet our rules and regulations through compliance monitoring, education, advice, investigations and enforcement.

The Compliance Plan is ORC's roadmap of compliance priorities for the next 18 months. The Compliance Plan informs ORC's work in accordance with our obligations under the Resource Management Act 1991, and the national compliance direction set for all regional councils under the Regional Sector Strategic Compliance Framework.

The Compliance Plan will be used to inform our work programme. By monitoring progress against our priorities, ORC is agile in responding to those issues which are the most important for Otago's environment.



COMPLIANCE PLAN OBJECTIVES

The Compliance Plan sets out ORC's compliance priorities to 30 June 2022. The key objectives of the Compliance Plan are:

- To improve environmental outcomes associated with the activities ORC regulates – such as discharges to land, water and air, the take and use of water, and activities which impact on our rivers, lakes, wetlands and coastal environment.
- To identify and prioritise the activities that we will focus our resources on over the next 18 months.
- To inform communities and consent holders in Otago about the compliance activities ORC undertakes to protect our environment, encourage compliance and good practice, and improve environmental performance and raise environmental awareness.

The Compliance Plan informs the direction of the ORC compliance teams and how the teams will work together to deliver good compliance and environmental outcomes. The Compliance Plan does not provide an exhaustive list of all compliance activities that will be undertaken during this period. ORC has ongoing proactive compliance programmes in place to monitor all activities we regulate. We must also reactively respond to new issues as they arise and be agile to respond to national changes which introduce new rules and regulations.



WHAT OUR COMPLIANCE TEAMS DO

Monitoring consented and permitted activities

ORC is responsible for monitoring compliance with resource consent conditions and permitted activities like dairy and forestry with our plans and national regulations. Our Compliance Monitoring and Regulatory Data and Systems teams receive and analyse monitoring data, conduct aerial monitoring, and undertake site visits.

Of the 2,069 consents monitored in 2019-20, most consents were compliant or had only minor or technical non-compliance recorded. Of these consents monitored, 19% required compliance team follow up to improve compliance performance. For permitted activities, 87% were compliant with the rules and 13% required compliance follow up.



5,577 consents in our system



498 activities & structures in/over waterbodies



1,727 water takes & deemed permits



251 air discharge consents



679 consents for structures in the coast



968 discharges to land, water, & coast



611 consents monitored on-site & 1,782 desktop audits



268 dairy farms monitored

Investigating incidents which impact our environment

Our Investigations Team has a key role in responding to incidents where unlawful activities impact our environment. We responded to 1,184 incidents in 2019-20 and took appropriate action where it was needed.

COMPLIANCE APPROACH

ORC applies a proactive, responsive and risk-based approach to our regulatory functions. Our philosophy is **Education First**, and we will work proactively with groups, resource users and consent holders on good environmental practice. We are guided by the Regional Sector Strategic Compliance Framework 2019-24 operating principles:

Transparency

Providing clear information about compliance requirements, providing good information on environmental performance, and our actions to address non-compliance.

Responsive

We will respond in an effective and timely manner in accordance with legislative and organisational obligations.

Consistency

Actions are consistent with legislation and within our powers. We will strive for consistency of compliance and enforcement outcomes.

Targeted

Focusing on the most important issues to achieve the best outcomes, targeting regulatory intervention at activities that pose the greatest risk to the environment.

Collaborative

ORC collaborates and shares information with other regulators and stakeholders. We will engage with consent holders and communities to achieve good environmental outcomes.

Evidence-based

ORC's decisions will be informed by a range of sources, including science, other regulators, the community, industry and interest groups.

Lawful, accountable

Conducting ourselves lawfully and impartially in accordance with relevant policies and guidance. We will measure and report on our performance.

Fair and reasonable

Our decisions are appropriate to the circumstances and our actions will be proportionate to the risks to the environment, people, and the seriousness of the incident.



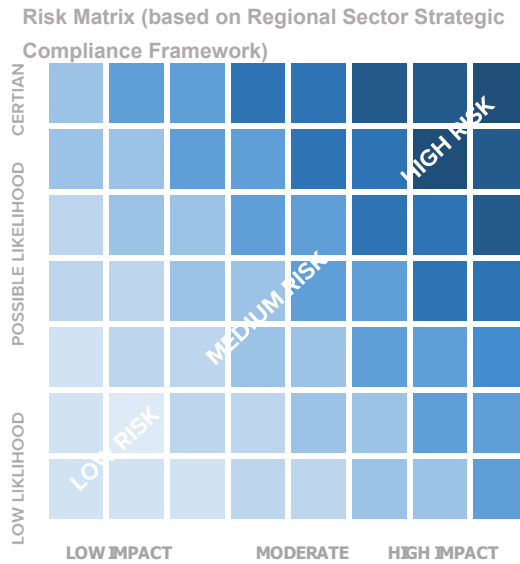
How we prioritise our compliance activities

The Compliance Plan has been prepared using a risk-based approach in accordance with the Regional Sector Strategic Compliance Framework to determine our priorities for 2020-22.

When assessing risk, the level of impact to people and the environment (environmental, social, economic and cultural effects) and the relative likelihood of the impact is considered. This informs how to prioritise compliance monitoring activities generally as well as how we respond to incidents where non-compliance is identified.

Monitoring frequency

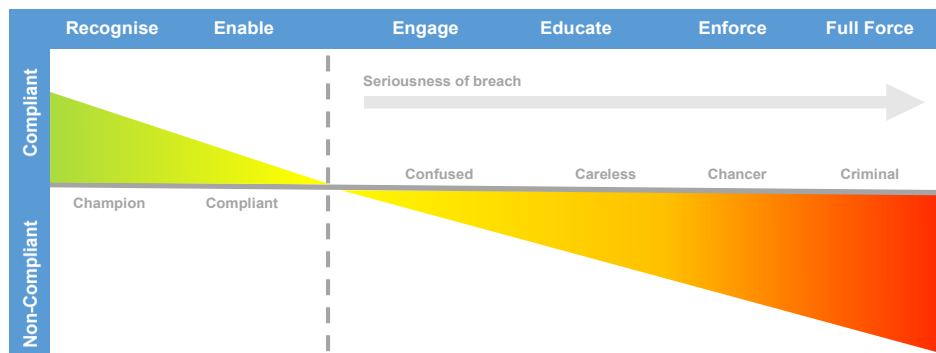
An assessment of perceived and actual risk is used to determine the auditing frequency of resource consents and permitted activities. The history of non-compliance, the significance of potential effects, previous monitoring records, the sensitivity of the receiving environment is considered when we determine how frequently we monitor. We also consider data available from state of environment reporting to inform our compliance monitoring programme. This means we can adapt our monitoring frequency over time, as risks to the environment change, and focus our resource to achieve the best environmental outcomes.



How we respond to non-compliance

There is no 'one size fits all' approach to addressing non-compliance. ORC's approach and use of regulatory tools depends on the issue, context and seriousness of the breach as illustrated below:

Influencing behaviour change (based on Regional Sector Strategic Compliance Framework)



Incident response

Our Investigations Team respond to reports of environmental non-compliance and pollution incidents that are received through our 24-hour pollution hotline, website and email messages, or from field reports from staff.

Environmental incidents are triaged according to the level of risk and immediacy of effects. For incidents that are a high priority due to significant potential effects on the environment or people, our team responds immediately where possible, and always within 24 hours of the incident being reported. For incidents that are a lower priority, the timing of the response is dependent on the level of risk. All incidents are responded to and reported.



High priority incidents response within 24 hours



All incidents are responded to and are reported on

Compliance tools

We use a range of compliance and enforcement tools to respond to non-compliant resource consents and incidents which breach our plans or national regulations:

Letters	Used where a minor breach has been reported and/or to educate on the relevant consent conditions, rules and regulations that apply.
Formal Warnings	Used when the risk to the environment or people from a breach is low and to work proactively to improve compliance to avoid repeat incidents.
Infringement Notice	Used when non-compliance with a consent condition or with rules requires a more formal approach and where a fine is required to be paid.
Abatement Notices	Used when non-compliance with a consent condition or rules requires works to cease and/or where remediation is required.
Enforcement Orders	Used for higher level offending, made by the Environment Court, and requires activities to cease, actions to be taken and/or costs to be paid.
Prosecution	For higher level offending, establishes the guilt or innocence of an accused party, and can include fines and/or imprisonment.

PROGRAMMES TO SUPPORT COMPLIANCE

To support our compliance priorities, we work proactively with landowners and consent holders to **Engage** with them on compliance matters, support them to **Enable** compliance wherever possible, and **Educate** on good practices. We will do this by:

ORC website

Keeping our website up to date with best practice information, including good farming and land use practice, and good practice for water takes, water use and recording of data. We will work towards changes to our website to make it easier for communities and consent holders to report data to us in the future.

Proactive compliance

Monitoring of permitted activities to ensure compliance and working closely with consent holder to address compliance issues before they arise (such as dairy farm monitoring, working with the forestry industry on harvesting plans, and the low flow task force).

On-site advice

Providing advice when on-farm or on-site about good practice to achieve compliance with the ORC's regional plans and national regulations.

Partnerships

Continuing to form strong partnerships with industry groups such as Dairy NZ, Sheep and Beef NZ, Horticulture NZ, Federated Farmers, the Forestry Association, the Deer Association and others.

Fact sheets

Printable fact sheets on good practice supports ORC's online content and are taken on-site when monitoring is undertaken. These will provide advice about what is required in plans, and new national regulations to apply these practically for rural communities and understand consenting obligations.

Compliance correspondence

Keeping consent holders up-to-date following monitoring of their consents, keeping dairy farm and forestry operations up to date on permitted monitoring, and providing tips on good practice to improve compliance.

Farm days

Partnering with other ORC teams to host farm days for farmers to educate and discuss environmental management and explore different methods to achieve compliance.

Workshops with industry

Partnering with other ORC teams to workshop with industry groups on good practice principles and as a forum to discuss how to interpret and apply plan rules and regulations.

COMPLIANCE MONITORING PRIORITIES IN OTAGO

Identifying the priorities for compliance monitoring enables ORC to focus on those issues with the highest environmental impacts. For 2020-22, the compliance teams will focus on:

Priority 1: Reduce non-compliant discharges to improve freshwater quality

Poorly managed discharges affect the quality of water in our lakes, rivers and the coastal environment. Additionally, the 2020 NPS and NES for freshwater and Stock Exclusion Regulations have recently introduced new rules and regulations, which require a proactive and education-based approach to supporting consent holders with compliance.

Priority 2: Proactive and integrated approach to monitoring large-scale activities

For larger-scale activities, monitoring reports provided by consent holders are reviewed. In circumstances where consent conditions are not met, the compliance team takes proactive approach to working with consent holders to achieve compliance.

Priority 3: Monitor water takes and use to protect water quantity

Maintaining river flows and lake and aquifer levels in Otago's waterbodies is critical for freshwater health and working proactively with consent holders to maintain flows protects freshwater values.

Priority 4: Monitor structures and works in and adjacent to freshwater

Monitoring Otago's wetlands is an important regional priority. Poorly designed structures and works in and near freshwater can affect the habitats of freshwater species and hydrological function. Additionally, the 2020 NPS and NES for freshwater have introduced new monitoring requirements and new rules.

Priority 5: Reduce non-compliant air discharges to improve air quality

Non-compliant domestic discharges from inefficient domestic burning during winter months can affect health. Non-compliant industrial and rural air discharges which do not have a consent or do not meet consent conditions can have localised impacts on air quality.

Priority 6: Monitor coastal structures and oil spill preparedness

Monitoring activities and structures in the coastal marine area and ensuring we can respond to incidents affecting the coast.

Priority 1: Reduce non-compliant discharges to improve freshwater quality

Action	Compliance team outputs	Outcome
Sedimentation of freshwater from earthworks and in-river works Issue: Poorly managed earthworks, and in-river works can discharge sediment and affect water quality.		
Educate and advocate good sediment practices and monitor sediment discharges.	<ul style="list-style-type: none"> • Work closely with district councils and industry to promote effective sediment controls. • Educate and promote good practice for in-river works. • Monitor resource consents for earthworks and in-river works. • Appropriate action where breaches of consent conditions, NES or plan rules are identified. 	<ul style="list-style-type: none"> • Compliance with new earthworks rules. • Sedimentation of freshwater is reduced.
Plantation forestry Issue: Poorly managed forestry activities discharge sediment, disturb river habitats and affect water quality.		
Educate and advocate good forestry practices to reduce sediment discharges and monitor forestry activities.	<ul style="list-style-type: none"> • Educate and promote good practice for afforestation, harvesting and earthworks. • Monitor consents and permitted activity plantation forestry. • For higher risk activities, undertake pre-harvest inspections, monitoring during harvesting and post-harvest inspections where appropriate. • Appropriate action where breaches of consent conditions or NES are identified. 	<ul style="list-style-type: none"> • Compliance with NES rules. • Impacts of plantation forestry activities on freshwater are reduced.
Stock exclusion Issue: Stock access to freshwater degrades water quality of rivers, lakes and wetlands.		
Educate farmers on stock exclusion requirements, and monitor stock access.	<ul style="list-style-type: none"> • Apply a proactive education first approach to enabling compliance with regional and national rules and regulations for stock access before the new rules apply. • Monitor where stock access rules apply now for new pastoral and intensive farming systems. • Appropriate action where breaches of consent conditions, NES or plan rules are identified. 	<ul style="list-style-type: none"> • Farmers understand current and upcoming requirements. • Where required, stock is excluded from freshwater bodies. • Impacts on water quality are reduced.

Farm effluent management

Issue: The effects of non-compliant farm effluent discharges is a contributor to water quality degradation.

Monitor farm effluent discharges utilising a proactive education first approach.

- Apply a proactive education first approach to enabling compliance with regional rules for farm effluent discharges.
- On-site monitoring of dairy farm discharges and infrastructure based on risk with high risk farms inspected annually.
- Appropriate action where breaches of consent conditions, NES or plan rules are identified.
- Farmers understand current and upcoming requirements.
- Improved compliance with rules and consents conditions.
- Impacts on water quality are reduced.

Intensive farming

Issue: Poorly managed intensive farming can cause water quality degradation, and new rules and regulations now apply.

Monitor intensive farming practices and educate farmers on the new requirements.

- Apply a proactive education first approach to enabling compliance with regional and national rules and regulations for intensive farming – dairy farms, intensive grazing, feedlots and stockholding, agricultural intensification, synthetic nitrogen use.
- Undertake desktop, and aerial monitoring annually of known at risk catchments.
- Site inspections where risks have been observed during flyovers.
- Appropriate action where breaches of consent conditions, NES or plan rules are identified.
- Farmers understand current and upcoming requirements.
- Farmers comply with the new rules or have obtained consent. Impacts on water quality are reduced.



Priority 2: Proactive and integrated approach to monitoring large-scale activities

Action	Compliance team outputs	Outcome
District council consents		
Issue: District councils hold several large-scale wastewater water supply and stormwater consents and compliance with these consents is not always achieved, which can impact the receiving environment.		
Monitor all large-scale district council consents and work with councils to improve compliance.	<ul style="list-style-type: none"> Work proactively with district councils to reduce incidents of non-compliance. Monitor large-scale consents at least annually and based on environmental and health risk and previous records of non-compliance. Appropriate action where breaches of consent conditions, NES or plan rules are identified. 	<ul style="list-style-type: none"> Improved compliance with consent conditions. Improved collaboration with district councils.
Landfills		
Issue: Monitoring of active and closed landfills is needed to address risk associated with leachate and odour.		
Monitor all landfills in Otago.	<ul style="list-style-type: none"> Monitor active landfills at least annually. Monitor closed landfills at least every 3 years, and prioritise monitoring based on level of risk to water, the coastal marine area, land, and community concern. Appropriate action where breaches of consent conditions or plan rules are identified. 	<ul style="list-style-type: none"> Active landfills are compliant with conditions. Impacts from closed landfills are identified and effects are addressed.
Other large-scale activities		
Issue: The scale and nature of larger-scale activities in Otago requires the compliance team to take an integrated approach to monitoring consent conditions.		
Monitor large-scale activities in Otago.	<ul style="list-style-type: none"> Monitor compliance with conditions based on the history of compliance, environmental risk and performance monitoring data for consents for large-scale activities, including mining and quarrying activities, larger private wastewater schemes, large-scale industrial and processing activities, meat works and rendering plants, and large power generation schemes. Where non-compliance with consent conditions is identified, work proactively with consent holders to improve compliance and performance over time. 	<ul style="list-style-type: none"> Consent holders are compliant with conditions. Risks to the receiving environment from non-compliance are reduced.

Priority 3: Monitor water takes and use to protect water quantity

Action	Compliance team outputs	Outcome
Water takes Issue: Taking more water than is consented is unlawful and can adversely affect mauri, freshwater habitats and other water users.		
Monitor water takes in Otago.	<ul style="list-style-type: none"> Undertake desktop, aerial or on-site monitoring of water permits based on catchment risk, and policy development requirements under the NPSFM. Focus on Upper Taieri, Manuherikia, Cardrona, Pisa, Gibbston and Central Otago catchments. Work proactively with water users to reduce incidents of non-compliance. Appropriate action where breaches of consent conditions, plan rules or water measuring regulations are identified. 	<ul style="list-style-type: none"> Improved compliance with rules and consents conditions. Impacts on freshwater and habitats are reduced. Improve the reliability of data records provided by consent holders.
Deemed permits As deemed permits expire in 2021, the compliance team have a key role to support the replacement process.		
Monitor deemed permits and work proactively with permit holders to replace deemed permits.	<ul style="list-style-type: none"> Undertake desktop, aerial or on-site monitoring of deemed permits where monitoring data is required to support the assessment of renewal applications. Work proactively alongside the irrigation companies to support with the transfer of deemed permits to resource consents. Focus on Upper Taieri, Manuherikia, Cardrona, Pisa, Gibbston and Central Otago catchments. 	<ul style="list-style-type: none"> Deemed permits are replaced by resource consents. Impacts on freshwater and habitats from non-compliance are reduced. Improve the reliability of data records provided by consent holders.
Water flows and levels during dry periods Issue: During dry weather, water takes during low flows have greater impacts on freshwater.		
Ensure minimum flows are maintained during dry weather periods.	<ul style="list-style-type: none"> Establish dry weather task force prior to dry weather conditions affecting flows. Monitor low flow conditions and work proactively with permit holders to ensure minimum flows are maintained during low flow periods. Issue water shortage directions where required. Monitor residual flows on permits and prioritise this based on the level of risk. Appropriate action where breaches of consent conditions or plan rules are identified. 	<ul style="list-style-type: none"> Compliance with minimum and residual flows is improved. During low flows impacts from water takes on freshwater and habitats are reduced.

Priority 4: Monitor structures and works in and adjacent to freshwater

Action	Compliance team outputs	Outcome
<p>Fish passage Issue: Structures in rivers can obstruct fish passage and impact habitat, particularly for migratory species.</p>		
Educate and advocate for structures which provide fish passage, and monitor permitted, and consented structures.	<ul style="list-style-type: none"> Educate and promote good practice for fish passage for structures in rivers. Establish a new monitoring programme for permitted and consented structures. Appropriate action where breaches of consent conditions, plan rules or NES are identified. 	<ul style="list-style-type: none"> People understand current and upcoming requirements. People comply with the new regulations. Fish passage in Otago is improved.
<p>Impacts on wetlands Issue: Non-compliant land use, discharges and water takes can impact on the hydrology, functioning and ecological values of Otago's natural wetlands.</p>		
Educate landowners on new wetland regulations, monitor permitted, and consented activities and Regionally Significant Wetlands	<ul style="list-style-type: none"> Educate landowners on new regulations for activities in and near natural wetlands. Establish a new monitoring programme for permitted and consented activities. Monitor Regionally Significant Wetlands every 3 years by an aerial flyover and subsequent site inspections where wetland risks are identified. Appropriate action where breaches of consent conditions, plan rules or the NES are identified. 	<ul style="list-style-type: none"> People comply with the new regulations. Regionally significant wetlands retain the characteristics and qualities that have determined their significance. Impacts on natural wetlands and their values are reduced.
<p>Dams and other structures Issue: Monitoring of dams and structures is needed to reduce the impacts of non-compliance on freshwater and habitats</p>		
Monitor dams and other structures in Otago.	<ul style="list-style-type: none"> Prioritise the frequency and extent of monitoring of dams and structures in accordance with new NES information requirements. Appropriate action where breaches of consent conditions, NES or plan rules are identified. 	<ul style="list-style-type: none"> Compliance with rules and NES. Dam failure risk is reduced and dam impacts on freshwater are reduced.

Priority 5: Reduce non-compliant air discharges to improve air quality

Action	Compliance team outputs	Outcome
Domestic burning		
Issue: Discharges from inefficient domestic burning during the winter months can impact health.		
Educate on efficient domestic burning and monitor domestic air discharges.	<ul style="list-style-type: none"> Apply a proactive education first approach regarding correct burning practices – particularly in Air Zone 1 Airsheds. Appropriate action where breaches of plan rules and NES are identified. Letters are sent, and inspections are undertaken for any on-going non-compliance. 	<ul style="list-style-type: none"> Improved compliance with rules and good burning practice. Particulate matter levels in airsheds are reduced.
Industrial air discharges		
Issue: Localised effects from non-compliant industrial discharges can impact on health and amenity.		
Monitor industrial air discharge consents in Otago.	<ul style="list-style-type: none"> Undertake monitoring of higher risk air discharges at least annually, and lower risk discharges less frequently. Work proactively with consent holders to improve discharge quality over time. Appropriate action where breaches of consent conditions, NES or plan rules are identified. 	<ul style="list-style-type: none"> Improved compliance with conditions and rules. Reduced localised impacts from non-compliant discharges.
Rural air discharges		
Issue: Discharges from rural activities such as outdoor burning can impact on health and amenity.		
Educate on appropriate outdoor burning.	<ul style="list-style-type: none"> Prepare educational material regarding rural discharges and work proactively with farmers to improve outdoor burning practice. Appropriate action where breaches of consent conditions, NES or plan rules are identified. 	<ul style="list-style-type: none"> Improve compliance with rules. Reduce localised impacts from discharges.

Priority 6: Monitor coastal structures and oil spill preparedness

Action	Compliance team outputs	Outcome
Coastal activities and structures		
Issue: Non-compliant structures and activities in the coastal environment can affect habitats and coastal amenity.		
Undertake monitoring of consented coastal structures.	<ul style="list-style-type: none"> • Monitor according to the level of risk and at least every 5 years. • Appropriate action where breaches of consent conditions or plan rules are identified. 	<ul style="list-style-type: none"> • Impacts on the coastal environment are reduced.
Oil spill response		
Issue: ORC must be prepared to respond in the event of oils spills under the Maritime Transport Act.		
Appropriately trained and resourced oil spill response.	<ul style="list-style-type: none"> • Undertake oil spill response training and exercises twice a year. • Always maintain spill response gear. 	<ul style="list-style-type: none"> • Effects from oil spills are reduced as a result of effective oil spill response.





Regional Sector

Strategic Compliance Framework

Pou Tarāwaho Tūtohu
a Te Rāngaia-Rohe





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Hawkes Bay Regional Council

Greater Wellington Regional Council

Nelson City Council

Marlborough District Council

Tasman District Council

West Coast Regional Council

Canterbury Regional Council

Otago Regional Council

Southland Regional Council

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Regional Sector Strategic Compliance Framework

Foreword

This is a dynamic and challenging time to be involved in environmental regulation.

More and more we are being regarded collectively as a sector rather than individual regional and unitary authorities. The Regional Sector¹ is driving a cycle of continuous improvement at a time when the capability and competency of local government, in respect of compliance, monitoring and enforcement (CME) with the Resource Management Act (RMA), is also the subject of significant external scrutiny. This scrutiny has arisen from central government as well as through various reports, from non-government organisations such as Forest and Bird² and the Environmental Defence Society³.

Both the sector and the scrutineers have identified positive aspects of local government's CME work. However, it is also fair to say that as a collective we can, and should, do better. For example, there are clearly opportunities to strengthen the presence of mātauranga Māori within CME work, and address the inconsistencies and limitations of CME databases that cause frustration for many.

Signed

Patrick Lynch

(Lead, SCF working group, CESIG)

The initial Regional Sector Strategic Compliance Framework 2016-2018 (the Framework) has been a helpful aide in working towards a more consistent approach to best practice across the Sector. Other support 'tools' have followed. For example, the Regional Sector advised Ministry for the Environment in their development of the CME Best Practice Guidelines⁴. The sector, through its Compliance and Enforcement Special Interest Group (CESIG) has continued its series of peer reviews of CME function. Even more recently CESIG has driven the first annual independent analysis of Regional Sector CME metrics⁵. We continue to learn.

This refreshed framework document reflects the learning of the Regional Sector and its commitment to continuous improvement is designed to provide further guidance for the Sector over the next several years. Concerted effort by all will ensure the Sector continues to improve the effectiveness of its CME function and, importantly, can clearly demonstrate that effectiveness to the community.

¹ Regional Sector includes regional councils and unitary authorities in New Zealand

² Cleaning Up – Fixing compliance, monitoring and enforcement in the dairy sector – Forest & Bird August 2018

³ Last Line of Defence – Compliance, monitoring and enforcement of New Zealand's environmental law – Marie A Brown

⁴ <http://www.mfe.govt.nz/publications/rma/best-practice-guidelines-compliance-monitoring-and-enforcement-under-resource>

⁵ Independent Analysis of 2017/2018 Compliance monitoring and Enforcement Metrics for the regional Sector – Dr Marie Brown

Introduction

Local government in New Zealand is responsible for implementing, and ensuring compliance with, a variety of laws and regulations that are aimed at achieving positive community and environmental outcomes. The Regional Sector has very clear obligations specifically in respect of the RMA.

A key role in ensuring compliance is carrying out monitoring and responding to notifications of potential breaches or incidents. This role triggers a range of associated interventions including enforcement to ensure that individuals and organisations adhere to these environmental rules and regulations for the 'public good'.

The overarching purpose of the Act is to promote sustainable management of our natural and physical resources. This purpose guides so much of what the Regional Sector does day-to-day. However, though the RMA has been in place for nearly three decades, it is fair to say that expectations around compliance, monitoring and

enforcement to achieve that purpose are more intense than ever.

CESIG is tasked with driving continuous improvement in the CME field with the support of the Resource Managers Group and Regional Chief Executives. As part of CESIG's ongoing work programme, it is timely to refresh the Strategic Compliance Framework for the next five years taking into account the current context.

CESIG continues to acknowledge and respect that each council has the autonomy to develop its own approach to achieving or ensuring compliance. It is appropriate that individual councils tailor their strategies to meet their own needs and resources. However, CESIG also strongly advocates that individual compliance strategies of councils should not only be consistent with, and linked to, this framework, but also be mindful of growing expectations of achieving the purpose of the Act.



A discharge of detergent product to an open water course

Purpose and overview

It is important to remember that the purpose⁶ of the Resource Management Act (RMA) is to 'promote the sustainable management of natural and physical resources'. To assist in meeting that purpose the RMA places restrictions on the use of natural and physical resources:

- Section 9: Restrictions on use of land
- Section 12: Restrictions on use of the coastal marine area
- Section 13: Restrictions on certain uses of beds of lakes and rivers
- Section 14: Restrictions relating to water
- Section 15: Restrictions relating to discharges of contaminants into the environment

The RMA imposes a duty on regional and unitary authorities, the Regional Sector, to achieve positive environmental outcomes. The Sector manages resource use in its region, primarily through regional plans, resource consents and a range of other national regulatory instruments.

Core functions for the Sector include monitoring, assessing compliance with the standards that have been set and subsequently responding to the levels of compliance that have been identified.

The purpose of this document is to provide the Regional Sector with an overarching framework within which to carry out its respective compliance, monitoring and enforcement functions under the RMA.

The CESIG promotes a Strategic Compliance Framework – the SCF – as a means to achieving consistency across the Regional Sector, while safeguarding the ability for each region to tailor its CME functions to the particular needs of its region.

There are four major components to the SCF:

1. Monitoring – this includes developing risk based monitoring programmes and responding to notifications of environmental incidents and breaches.
2. Encouraging compliance – ensuring that a full spectrum approach is being taken to achieve the highest possible levels of compliance.
3. Non-compliance – the appropriate use of enforcement tools to deal with non-compliance.
4. Reporting and review – this includes regular self review, establishing a feedback loop to the policy writers as well as meaningful and transparent reporting to the public.

Sustainable management

“Sustainable management means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while –

- a. sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
- b. safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
- c. avoiding, remedying, or mitigating any adverse effects of activities on the environment.”

⁶ RMA Section 5 - Resource Management Act 1991

Why do we need a strategic approach to compliance, monitoring and enforcement?

All regions face significant challenges from increases in, and intensification of, industry, farming, horticulture, infrastructure and population. Specific examples of challenges facing councils include: co- management, implementation of new national rules; land use change and development; national policy on freshwater and water management; contaminated land activities and emerging contaminants.

There is no doubt there is more scrutiny on the Regional Sector and heightened expectations in respect of our ability to be effective environmental regulators.

There is also a 'natural inflation' for the Regional Sector in that every year the growing number of consented activities requires more monitoring, simply to maintain the same level of service as prior years.

These challenges, accompanied with the expectation that local government operates in a fiscally prudent manner, set the scene for the Sector to insist on itself becoming smarter and more effective with its CME activities.

It is obvious that the Regional Sector must:

- increasingly focus on 'what's important' in its compliance related activities, particularly through the use of compliance strategies
- align with council priorities and be cognisant of iwi and community needs, environmental issues and economic growth
- effectively manage council resources across a growing body of consented and

permitted activities

- look for every opportunity to work with others to increase our effectiveness, including the use of emerging technology and innovations
- utilise the full range of interventions available to ensure the highest possible levels of compliance and corresponding positive environmental outcomes
- ensure that CME functions are appropriately resourced both in respect of capacity and capability incorporating specialist staff and ongoing training.

"The regulator's resources are inevitably scarce, so effectively implementing a regulatory regime will require the regulator to prioritise its effort. How the regulator prioritises its effort will also be crucial to the success of the regime in meeting its intended outcomes."

New Zealand Productivity Commission – Regulatory institutions and practices – June 2014 page 55.

Principles to guide compliance operations

The implementation of any aspect of the Strategic Compliance Framework should adopt the following operating principles. These principles should guide how the Regional Sector develops strategic compliance programmes.

Transparent

Providing clear information and explanation to the regulated community about the standards and requirements for compliance. We will ensure the community has access to information about industry environmental performance, as well as actions taken by us to address environmental issues and non-compliance.

Consistency of process

Actions are consistent with the legislation and within our powers. As a Sector, and as individual authorities, we will strive for consistency of compliance and enforcement outcomes for similar circumstances. We will ensure our team members 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

Applying regulatory interventions and actions appropriate for the situation. We will use our discretion justifiably, ensure our decisions are appropriate to the circumstances and that our interventions and actions will be proportionate to the risks posed to people and the environment and the seriousness of the non-compliance.

Evidence-based, informed

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

Collaborative

Working with and, where possible, sharing information with other regulators and stakeholders to ensure the best compliance outcomes for our regions. We will engage with the community and consider public interest, those we regulate, and government to explain and promote environmental requirements, and achieve better community and environmental outcomes.

Lawful, ethical and accountable

Conducting 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

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

Responsive and effective

Considering allegations of non-compliance 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.

Developing a strategic compliance monitoring programme

Every local government authority, like every regulatory agency, must prioritise resources. This section of the SCF focuses on appropriate resourcing and prioritisation as it relates to the compliance monitoring component of the Sector's work. Monitoring in this context relates to not only the proactive monitoring of environmental regulation, such as permitted activity or consent conditions, but also the reactive response to notifications of environmental breaches and incidents.

Each authority within the Regional Sector is encouraged to develop and maintain a strategic compliance monitoring programme or regime. The purpose of such a programme is to ensure that appropriate resources are allocated and deployed to activities that matter most.

It is entirely appropriate that the monitoring programme reflects the particular, and often changing, needs of its region. Factors that should be considered when developing a programme include:

- the actual or potential risk to the environment from that activity
- likelihood and consequences of non-compliance occurring
- community and tangata whenua expectations
- council priority areas
- sensitive or endangered environments
- compliance history of industry type or individual.

Information that supports, or provides feedback on, these factors then needs to be crafted

into an actual plan that drives the compliance monitoring work. The plan within a strategic compliance monitoring programme should detail the following:

- ranking sites dependent on risk or activity groupings (e.g. dairy, water takes, etc.)
- determining the type or level of intervention according to risk profile
- determining resourcing to match combination of interventions that apply
- determining monitoring frequencies
- developing procedures, charging regime, database recording system.



It may be appropriate to establish an overarching compliance monitoring programme for your council and then to develop individual compliance strategies for specific industries or activities.

These sorts of strategies should be dynamic, regularly reviewed and adapted to changing circumstances.

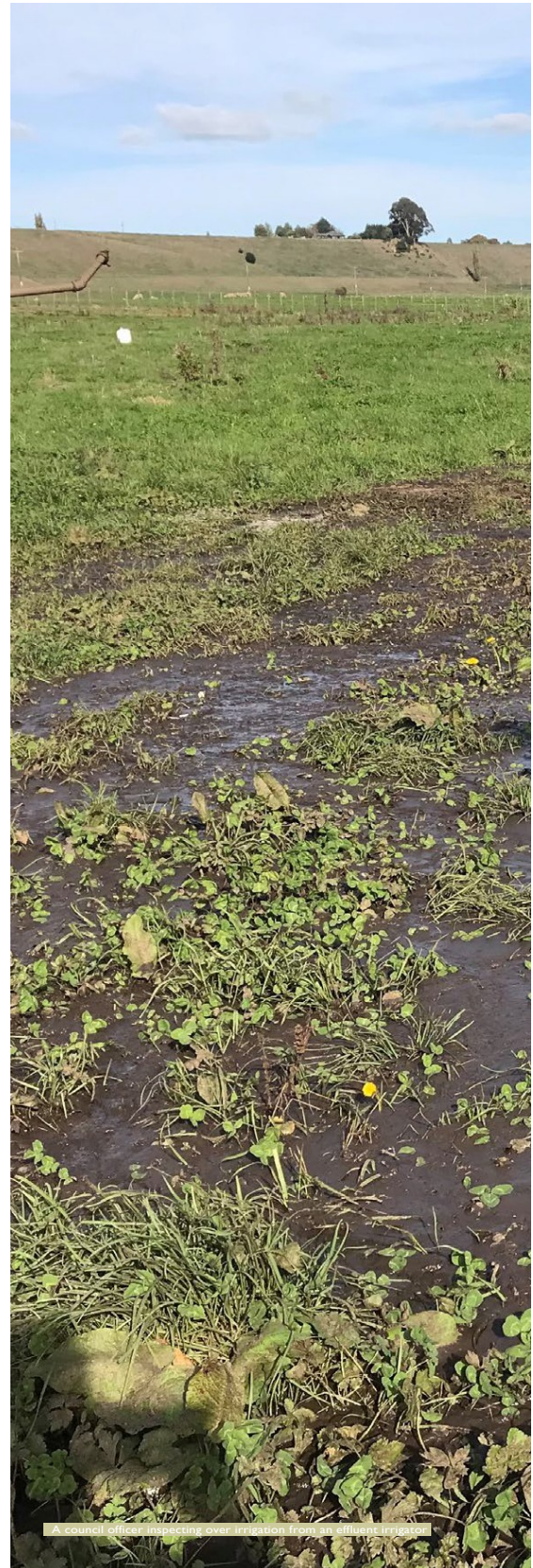
The recently completed Regional Sector Independent Analysis of the 2017/18 Compliance Monitoring and Enforcement Metrics report⁷ identifies that, by a raw measurement of comparison with general population, there is a wide variation in the full-time equivalent resources working in the CME space for each council. It is appropriate for each council to determine the resourcing that is right for them, balanced with a desire to strive for consistency across the Sector.

'For a compliance agency, a systematic, risk-based programme of activities for assessing compliance is a means of:

- **monitoring compliance in a cost-effective manner**
- **targeting its resources at the highest priority risks**
- **responding proactively to changing and emerging risks**
- **promoting sound practices and positive attitudes towards compliance among the regulated sector**
- **strengthening its relationships with the regulated sector.'**

CCCP – Achieving Compliance: A Guide for Compliance Agencies in New Zealand June 2011; page 158

⁷ **Independent Analysis of 2017/2018 Compliance monitoring and Enforcement Metrics for the regional Sector – Dr Marie Brown**



A council officer inspecting over irrigation from an effluent irrigator



Compliance monitoring methods

Compliance monitoring can be carried out in proactive ways, including:

- **Site visits – to assess compliance at a moment in time against consent conditions and rules.**
- **Desktop audit – based on data provided by the consent holder.**
- **Pro-active campaigns – targets particular activity types e.g. water takes during low flow conditions.**

Reactive – incident response

Importantly, councils also need to have the ability to respond effectively and efficiently to information received from the community about environmental incidents or breaches.



Burning tyres – a breach of a National Environmental Standard

Prioritising monitoring resources

A widely accepted approach to setting up a compliance monitoring programme is to use a risk assessment method to determine priority areas. The Government expects that “departments...will maintain a transparent, risk-based compliance and enforcement strategy”⁸.

In the context of compliance monitoring, risk is traditionally calculated using the likelihood of a non-compliance occurring and the consequent magnitude of harm to human health and the environment (including cultural, social and economic effects). The ranking/level of risk calculated informs development of an appropriate compliance monitoring response that considers the appropriate frequency, type

and scale of monitoring.

Applying a risk based approach enables monitoring efforts to be focused on the most significant risks to the environment and target areas where businesses and people are less likely to comply. This model can be adapted for specific use. It is important to remember that a risk matrix should be used for focusing monitoring efforts and is not an enforcement decision making tool.

Within a basic risk assessment framework, individual councils can ‘weight’ certain aspects to align with the priorities of their council. For example, RMA plan priorities, science programmes, long term plan priorities.

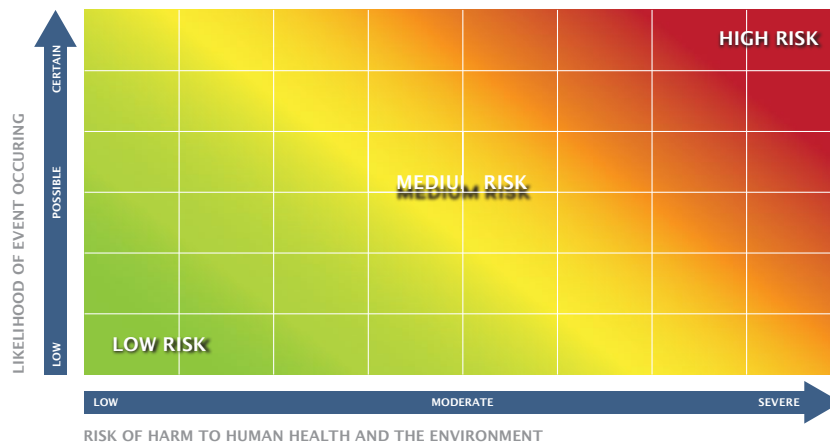


Figure 2: Generic Environmental Risk Matrix

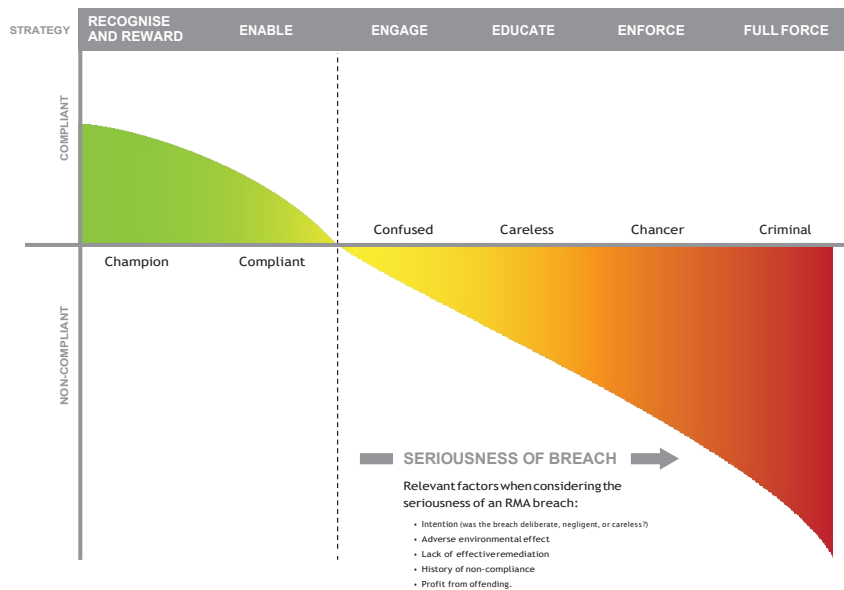
⁸ New Zealand Productivity Commission. Regulatory institutions and practices 2014

Influencing behaviour change

Environmental regulations and policies are designed to achieve positive environmental outcomes. However, that premise is based on an assumption that people will comply. To achieve the highest possible levels of compliance it is recommended that the Regional Sector takes

a comprehensive and strategic 'spectrum' or system-wide approach. This approach is designed to influence resource users by encouraging positive behaviour, while also providing graduated deterrence tools to those who choose not to comply.

The Mark II Model – Strategic compliance with the RMA.



The Mark II model has been developed within the Sector, specifically for the Sector, to demonstrate our system-wide approach to achieving positive behaviour change. This model goes further than the well-known '4Es' (enable, engage, educate and enforce). Importantly, the

model reflects the appropriateness of tailoring responses relative to the seriousness of the breach while ensuring that true champions, who are above and beyond mere compliance, are appropriately recognised and rewarded.

It is important for the Regional Sector to recognise that different components of this model may be carried out by different parts of an organisation, or may be carried out completely externally. For example, industry led awards for exemplar environmental work reflects the 'recognising champions' end of the spectrum. The awards do not necessarily have to be owned or even coordinated by local government. What is vital is that local government supports the awards and knows that that component of the model is in place in a meaningful way.

Regardless of who has responsibility for implementing each component of the model, it is vital that they are coordinated and a high level of communication is maintained between all stakeholders to ensure the full effect is being achieved.

The resource and emphasis put into any one component of this model will be determined by an individual council or part of the council responsible for ensuring compliance with a particular activity. It may be that councils put more emphasis on different components over time and the use of the model is dynamic and changes, but in a coordinated and planned fashion. Each of the 'E' components of the model are explained in more detail:

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.

Engage – consult with regulated parties, stakeholders and community on matters that may affect them. This will require maintaining relationships 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 (i.e. with them!). Education should also be utilised to inform community and stakeholders about what regulations are in place around them, so they will better understand what is compliant and what is not.

Enforce – See 'dealing with non-compliance section'.



Council officers sampling a watercourse for contamination

Dealing with non-compliance

Non-compliant activities, or regulatory breaches, will be identified by the proactive and reactive monitoring carried out by the council. When non-compliant activities have been identified there needs to be an explicit response that is proportionate to the overall circumstances of the breach(es). The response should be clear and be able to be understood by the regulated party as well as the community. A significant challenge for the Regional Sector is striving to ensure that responses are not inconsistently applied.

“Enforcement of the rule of law will always be essential to encourage broader compliance. This is true in criminal, transport, taxation or environmental law. Without robust compliance, monitoring and enforcement (CME) practice, RMA plan rules and consent conditions are too often ignored. Voluntary compliance by the majority can be undermined by the minority who do not comply.”

‘Message from the Minister’

Hon David Parker – Minister for the Environment

Best Practice Guidelines for Compliance, Monitoring and Enforcement under the Resource Management Act 1991. Page 7.

In the Regional Sector context, and with our obligations to sustainable management, it is important to consider the use of formal enforcement action to remediate adverse environmental effects or limit environmental harm. It may be also appropriate to hold parties accountable for wrongdoing.

Taking any kind of enforcement action can have a profound impact on the subject of the action and cannot be taken lightly. Decisions on enforcement action must be based on reliable and correctly obtained information⁹ so an informed decision can be made. This information will not only determine whether a breach has occurred, but also how serious the breach is.



A council officer measuring a contamination scene

⁹ It is expected the regional sector will gather information in keeping with best practice detailed in *Basic Investigative Skills for Local Government* ISBN 978-0-9876661-9-2 and reiterated in the Ministry for the Environment CME best practice guidelines located at <http://www.mfe.govt.nz/publications/rma/best-practice-guidelines-compliance-monitoring-and-enforcement-under-resource>

Enforcement options

The Resource Management Act provides the formal enforcement tools that are available to the sector¹⁰. It may be that individual agencies also develop informal tools which can be effective when used appropriately. It will be important to ensure these informal tools are consistent with the principles and purpose of the Strategic Compliance Framework.

Enforcement tools can be categorised into two main functions. Directive actions are about looking forward and righting the wrong. Punitive actions are about looking back and holding people accountable for what they have done. These actions are described in more detail in Appendix 1.

“... where a regulated entity deliberately or persistently fails to comply, it is vital that the agency take swift and firm enforcement action. Failing to do this will:

- Unfairly advantage those who are non-compliant, as against those who comply voluntarily
- Undermine incentives for voluntary compliance
- Damage the agency’s credibility with the regulatory sector and the wider public, who will perceive that the agency allows deliberate offenders to ‘get away with it’
- Undermine the agency’s own internal morale”

CCCP – Achieving Compliance; A Guide for Compliance Agencies in New Zealand June 2011; page 181



A council officer providing scale for a photograph of unlawful earthworks

¹⁰ With the exception of formal warnings that were recognised through *WRC v Wallace Corp*, HC AK CRI 2006-4004-26

Decision making – factors to consider

The Resource Management Act has been described as a 'blunt' piece of legislation. Being strict liability legislation it is relatively easy to breach with widespread non-compliance occurring on a daily basis. At the same time it offers a range of enforcement tools for the regulator to use, including very significant maximum penalties for those who breach, both as an individual and as a corporate entity. What is absent from the legislation is any practical guidance to the regulator or the judiciary to determine what is a serious breach of the RMA.

The courts have established their own precedent¹¹ as to what factors it is appropriate for them to consider in RMA cases when determining the seriousness of a breach. These factors have now been widely adopted by the regional sector to guide its own enforcement decision making:

- 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 receiving environment of particular significance to iwi?
- 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?
- How does the unlawful activity align with the purposes and principles of the RMA? If prosecution is being considered then additional factors should be taken into account:
 - What degree of specific deterrence is required in relation to the culpable party?
 - What degree of general deterrence is required for the wider industry or community?
 - How does the intended prosecution align with the Solicitor General's prosecution guidelines?
 - Does the council have evidential sufficiency to pursue the matter to prosecution?
 - Is it in the public interest to take a prosecution in this case?

Not every factor will be relevant every time. On occasion one single factor may be so overwhelmingly aggravating, or mitigating, that it may influence the ultimate decision. It is good practice to seek independent and experienced RMA prosecution legal advice when considering prosecution.

Though it is generally accepted that it is inappropriate to take a matrix or numerical approach to weighing and balancing the factors detailed above, some councils are using a matrix approach as an early 'filtering' system to gauge what breaches they will pursue. It is vital to remember that each case is unique and the individual circumstances need to be considered to achieve a fair and reasonable outcome.

An appropriate policy covering CME is an expectation of any contemporary regulator. All councils in the Sector should have such a policy.

¹¹ *Machinery Movers Limited -v- Auckland* [1994] 1 NZLR 492 & *Selwyn Mews Ltd -v- Auckland City Council* HC Auckland CRI -2003-404-159 and reiterated in the Ministry for the Environment CME best practice guidelines located at <http://www.mfe.govt.nz/publications/rma/best-practice-guidelines-compliance-monitoring-and-enforcement-under-resource>

Reporting and reviewing

Reporting, and particularly reviewing, have been a significant part of the CESIG's programme of work since 2016. Reviews have taken place in the form of a round of peer reviews of each council's compliance monitoring and enforcement practices and also the development and implementation of an inaugural CME annual metrics report.

Despite this focus, CESIG recommends that more should be done in this area to assist in informing a continuous cycle of improvement. One of the underpinning requirements of a comprehensive reporting and reviewing regime is a database that enables the required information to be collated in a robust and reliable manner.

An interesting, but unsurprising, finding of the initial CME report is that the regional sector is not well supported by its databases for this purpose. The intelligence that is taken from reliable data sets should inform the previously referred to compliance programmes and strategies. Any efforts made by the regional sector to standardise and strengthen CME databases will be appreciated by all.

Another of the metrics explored in the recent CME metrics report is what form of public, political and iwi facing reporting is carried out by each council as it relates to CME work. This was a particular area of variation identified by the metrics report. Some councils have very comprehensive annual publications, while others favour more graphically focused eye-catching short reports. Councils that have a formal legislative relationship with iwi are required by law to report CME functions. Some councils report publicly on the outcomes of prosecutions and some do not. This is clearly an area for the regional sector to work on to achieve a higher

level of consistency and CESIG recommends that the outcome of all successful RMA prosecutions are reported to general media. This will strengthen the communities confidence in what the Regional Sector is doing while encouraging general deterrence to those who may offend.

There should be a robust form of data collection on compliance monitoring and action for reporting purposes. It is important to be able to report to council, communities and those who are regulated on the level of compliance within our regions and what interventions have been used in the moderate and significant cases. An example of this may be regular reporting to council on response to complaints from the public and what enforcement action has been taken over a certain period. Reporting should be made publicly available and easily accessible in a variety of formats, so it is open to public scrutiny.

It is equally important that such reporting confirms that the council's compliance framework provides for transparency, clearly outlines a consistent, integrated and coordinated compliance monitoring programme and enables all resource users to have a clear understanding of what to expect in the event of contraventions of the RMA and applied enforcement action.

Another evolving area of reporting is somewhat more inwardly focused. Those responsible for setting policy and regulation, both at a regional and national level, are turning more to compliance and enforcement practitioners to help inform better regulation. This should be strongly encouraged and every opportunity taken for CME experts to work with our policy colleagues.

Systems should be developed to capture sufficient data to enable comprehensive analysis on a number of levels and inform and feed into the other functions of council, for example consenting, policy and science.

Analysis of this data and reporting on it will assist in:

- **identifying trends in non-compliance**
- **using available resources more effectively**
- **targeting high risk activities**
- **establishing the frequency of compliance visits based on performance**
- **assessing performance/success of the compliance programme**
- **reviewing and refining the compliance programme**
- **informing policies, plan development and programmes**
- **responding to media enquiries**
- **preparing an annual compliance report**
- **completing central government environment reports.**

Measuring

“Best practice: A robust compliance framework should include a reporting system that allows the organisation’s compliance state to be measured against explicit objectives, and trends to be tracked.”

Improving

“Best practice: An organisation should have a compliance culture of continuous systems improvement. The compliance systems within the organisation need to be reviewed periodically in the light of compliance performance information to drive ongoing change and improvement. There should be a compliance team work programme that sets out improvement projects as well as day-to-day business.”

Rebecca Kitteridge, March 2013; Review of Compliance at the Government Communications Security Bureau



A sediment laden tributary entering a river

Appendix 1

ENFORCEMENT TOOLS

Directive actions

Action	Description of action	Potential impacts on the liable party	When might this action be appropriate?
Letter of direction	To prevent further breaches, or to remedy or mitigate the effects of non-compliance, council can give a written direction for a party to take or cease a particular action.	Such a direction is not legally enforceable.	Letter of directions should be reserved for dealing with co-operative 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.
Abatement notice	An abatement notice is a formal, written directive. It is 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 of an abatement notice are prescribed in statute.	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.	An abatement notice may be appropriate any time that there is a risk of further breaches of environmental regulation or remediation or mitigation is required as a result of non-compliance.
Enforcement order	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 or during the course of a RMA prosecution.	A direction given through an enforcement order is legally enforceable. To breach an enforcement order is to commit an offence against the RMA and make liable parties open to punitive actions.	An application for an enforcement order may be appropriate any time there is a risk of further breaches of environmental regulation, or remediation or mitigation is required as a result of non-compliance.

Punitive actions

Action	Description of action	Potential impacts on the liable party	When might this action be appropriate?
Formal warning	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.	No further action will be taken in respect of that breach. However, the warning forms part of a history of non-compliance and will be considered if there are future incidents of non-compliance.	A formal warning may be given when: <ul style="list-style-type: none"> • an administrative, minor or technical breach has occurred; 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; or • a written warning would be appropriate in the circumstances.
Infringement notice	An infringement notice is a written notice which requires the payment of a fine. The amount of the fine is set in law. Depending on the breach the fine will be between \$300 and \$1000.	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.	An infringement notice may be issued when: <ul style="list-style-type: none"> • 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.
Prosecution	A prosecution is a process taken through the criminal courts to establish guilt or innocence and, if appropriate, the court will impose sanctions. RMA matters are heard by a District Court Judge who is also an Environment Judge. All criminal evidential rules and standards must be met in a RMA prosecution. Most RMA offences carry a penalty of up to two years imprisonment, or \$300,000 fine for a 'natural person' or fine up to \$600,000 for other than a 'natural person' such as a company.	A successful prosecution will generally result in a conviction and a penalty imposed. A prosecution forms part of the history of non-compliance and will be considered if there are future incidents of non-compliance.	A prosecution may be considered appropriate when the factors listed in this policy indicate that the matter is sufficiently serious to warrant the intervention of the criminal law.



9.1. Regulatory Group - Quarterly Activity Report

Prepared for: Regulatory Committee
Report No. GOV1945
Activity: Regulatory: Consents and Compliance
Author: Richard Saunders, General Manager Regulatory
Endorsed by: Richard Saunders, General Manager Regulatory
Date: 30 September 2020

PURPOSE

- [1] To update the Committee on activities of the Regulatory Group during the 2020/21 year to 30 September 2020.

EXECUTIVE SUMMARY

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

RECOMMENDATION

That the Council:

- 1) **Receives** this report.
- 2) **Notes** the update report from the Regulatory Group for the period 1 July 2020 to 30 September 2020.

DISCUSSION

- [3] The following report provides a summary of the activity of each team within the Regulatory Group.
- [4] Attachment 1 contains statistics on Regulatory Group activity for the period 1 July 2020 to 30 September 2020.

HARBOURMASTER

- [5] Maritime delegation reversal for Lake Dunstan has been completed and now comes under the ORC. The navigational bylaws have also been merged and approved. All navigational safety marks for Lake Dunstan have been transferred to the ORC Harbourmaster department and are undergoing inspection and upgrading in readiness for the boating season.
- [6] There have been three maritime incidents to report in this period.
- The Trans Spring (190m Bulk Carrier) contact with beacon No60 in the Victoria Channel. Currently under investigation by MNZ, no injuries to personnel.

- Two small recreational vessels capsized at the Taieri Mouth Bar within a week of each other in September. All persons were recovered safely to the shore with minor injuries incurred.
- [7] Senior Regional Responder and Regional on-scene commander courses for Oil Spill have been delayed and are now scheduled for Oct and November respectively. Both Harbourmaster and Deputy Harbourmaster are booked in.
- [8] General boating safety signage and specific location signage continue to be renewed and refreshed throughout Otago.
- [9] ORC have provided support nationally with the Harbourmaster leading the Port and Harbour Marine Safety Code review panel for Marlborough Port.
- [10] ORC Vessel Kaitiaki was chartered for the first time by Dive Pro. This job proved to be very successful and the vessel was well utilised. Further consideration is being given to other opportunities to use this resource for on water activities
- [11] Kaitiaki has also been used to support internal operations with the compliance team this period and we have other internal support work planned for the near future.

CONSENTS

Consent Processing

- [12] No applications were publicly notified in the reporting period.
- [13] Consent hearings for three applications were held during the reporting period. One of which was for the publicly notified consent application associated with Oceana Gold's Deepdell North Pit Stage Three work at Macraes Flat. The consents have subsequently been granted. The other two hearings relate to limited notified applications for water permits to replace deemed permits. One decision has been released and the other has been adjourned. The next hearing scheduled is for the 28th of October.
- [14] Three applications were limited notified during this period. Some of these applications may need to go to a hearing, but if matters raised in submissions can be resolved or there are no submissions then these can be signed off under existing staff delegations. The type of applications limited notified included water permits to take surface water, land use consents and discharge to land permits.
- [15] In the reporting period decisions were made on 86 applications. All decisions in this reporting period were made within Resource Management Act timeframes. Timeframe extensions were used in this period in most cases to enable the applicant to review the proposed conditions.
- [16] COVID-19 did not negatively impact the overall performance of the Consents Team during the reporting period.
- [17] At the end of the reporting period there were 270 applications in the system, which is consistent across the reporting period. With this number of consents in the system staff

workloads remain high, but statutory timeframes are being met. Workload will increase for the team over the next reporting period as applications relating to deemed permits will continue to be lodged, as will consents under the NES and PC8 to the Water Plan.

- [18] The number of applications lodged during this reporting period was 126. The highest number of applications lodged in the reporting period was 49 in the month of September, up from 34 in August.
- [19] A summary of consents statistics for the period are included in Figures 1 to 6 of Attachment 1.

Deemed Permit Replacements

- [20] Statistics on the number of deemed permits and their location are shown in Attachment 2. These figures include deemed permits that are not likely to be replaced such as those associated with the operation of a power company (about 90 permits), or that holders no longer want to use. If the deemed permit is not replaced, it will only remain current until 1 October 2021. Council is currently processing 46 applications relating to the replacement of 80 deemed permits.
- [21] Applications have been lodged during the reporting period for water permits under Plan Change 7 specifically seeking a consent term of 6 years. Whilst Plan Change 7 applies to these applications, when assessing these we still need to consider the rules and policies in the operative plan. Once a decision has been made on Plan Change 7 in the Environment Court, this requirement to consider both plans drops away. The balance to be struck is to ensure that we give effect to the notified and operative plans, are making robust decisions and are providing for the intent of PC7 which is for an efficient and cost-effective consent process. Water permit applications already in the system at the date of notification of PC7 are also covered by the notified and operative plans.
- [22] One appeal to a decision relating to a deemed permit has been received. This was lodged with the Environment Court on the 25th of September. The appeal relates to a new water permit being granted by the Hearing Commissioner for a period of 6 years. Beyond the notice of appeal being lodged the matter will not progress any further until there are directions from the Court.

Public Enquiries

- [23] Responding to public enquiries is a significant part of the workload of the Consents Team. 528 enquiries were received during this reporting period. Pre-application advice has been provided about consents being required under Plan Change 8 to the Water Plan and the legislation relating to the Action Plan for Healthy Waterways.
- [24] In order to provide an improved level of service and deliver process efficiencies a second 'Consents Officer – Public Enquiries' role has been created and is currently being recruited for. This position was funded through the additional resourcing approved by Council. This will provide improved consistency of service for customers and increased efficiencies for other processing staff.

Building Consent Authority (BCA) Administration

- [25] In the 19/20 year to date very little activity has occurred in the building consent area.
- [26] The Building Consent Authority was audited by IANZ in early April. As a result of this audit 17 General Non-Compliances were identified, but no Significant Non-Compliances were found. All General Non-Compliances have now been cleared and the BCA is fully compliant. Preparations are under way for the annual internal audit. This needs to be completed even with the progression of the work to transfer the BCA function to Environment Canterbury.
- [27] Work continues to transfer the BCA function to Environment Canterbury. This transfer has been agreed to by Council, has been out for consultation under the Local Government Act with no submissions received and a hearing has been held. The draft deed and contract is currently being reviewed.

Flood Protection Management Bylaw 2012

- [28] The Consents Team is responsible for co-ordinating the approval of applications under the Flood Protection Management Bylaw 2012. The technical work on these applications is undertaken by the Engineering and Hazards Teams. Due to high workloads in these teams some of the peer reviews of the technical information is undertaken by consultants. During the reporting period 3 decisions on Bylaws were issued.

COMPLIANCE

Performance Monitoring

- [29] In the 3 months to 30 September 2020 the Regulatory Data and Systems and Compliance teams have graded 1,735 Performance Monitoring returns. This is up from 1,308 Performance Monitoring returns graded in the first quarter last year. The focus for the teams has been on processing manual water returns and returns from large scale discharges.
- [30] A summary of performance monitoring data is set out in Figures 7 and 8 of Attachment 1.
- [31] A major focus of the Regulatory Data and Systems Team is the replacement of Hilltop, the Council's current timeseries database. This project is a joint effort with the Environmental Monitoring and Science teams. The new system, Aquarius, will hold all the Council's time series and sampling data. The structure of Aquarius will significantly improve the ability of the Council to share data with the public, as well as simplifying the process for data analysis.

RMA consent audits

- [32] In this reporting period 180 consent audits have been completed.
- [33] Overall compliance can be considered high with most consent conditions being considered either fully compliant or low risk non-compliance. All moderate or significant non-compliances have been followed up by staff and either appropriate action has been taken, or investigations are continuing.

- [34] A summary of consent audit data is set out in Figures 9, 10 and 11 of Attachment 1.
- [35] The 87 Significant non-compliances are spread across 43 consents held by 25 different consent holders. Of the 87 Significant non-compliances 12 relate to on site audits conducted by Compliance staff. The rest are as a result of performance monitoring. A Significant non-compliance for performance monitoring is issued either when monitoring sent in significantly exceeds the limits on a consent, or when a consent holder repeatedly fails to send in the required monitoring.

Permitted activity audits

- [36] In this reporting period 12 forestry site inspections were completed. Generally, forestry activities have been conducted to a high standard. Ten sites were considered fully compliant, one site was considered moderate non-compliance and one site was considered low risk non-compliance. The non-compliances were due to a non-compliant temporary crossing and slash near waterway. Both matters are currently being followed up by staff.
- [37] No dairy inspections were undertaken in this reporting period. Dairy inspections are due to start again in October and will include education activities related to the new National Environmental Standards – Fresh Water (NES-FW) and Plan Change 8 changes.

Investigations

- [38] 429 service requests were received on the pollution response line in this reporting period. The most common reasons for requests were outdoor burning (143), water pollution (78), domestic chimney (46) and odour (35).
- [39] Further details on service requests can be found in Figures 12 and 13 of Attachment 1.
- [40] An additional resource for pollution response in Dunedin has been recruited. This role was transferred from the compliance team. Dedicating this role to pollution response will ensure that less compliance staff time is spent responding to incidents which will improve efficiencies for this team.
- [41] Consideration is being given to the increased level of resource required to adequately monitoring activity under the NES-FW. This will be presented for consideration during the LTP discussions.

Enforcement action

- [42] In this reporting period, ORC issued four infringement notices and four abatement notices. Further details on enforcement action can be found in Figures 14 and 15 of Attachment 1.
- [43] Staff have initiated one prosecution in this reporting period. This related to a rendering plant in Mosgiel operated by the Wallace Group Limited Partnership. In addition, the Clutha District Council and City Care Limited prosecution relating to waste water treatment plants is still before the court.

[44] In addition to the enforcement action, compliance staff have been working with the parties to address the immediate impacts of the non-compliances identified. As these cases are currently before the court no further details will be made public at this time. Further updates will occur at the appropriate time.

Contaminated sites

[45] In this reporting period, five contaminated site visits were undertaken, and compliance monitoring of landfill consent conditions is ongoing. ORC administers the Ministry for Environment Contaminated Sites Remediation Fund for the remediation of contaminated sites and staff are currently working with two applicants on remediation projects.

OPTIONS

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

CONSIDERATIONS

Policy Considerations

[47] There are no policy considerations.

Financial Considerations

[48] There are no financial considerations.

Significance and Engagement

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

Legislative Considerations

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

Risk Considerations

[51] There are no risk considerations.

NEXT STEPS

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

ATTACHMENTS

1. Regulatory Data Appendix 2020 21 July to September 2020 final [9.1.1 - 8 pages]
2. Deemed Permit Report 06.10.20 [9.1.2 - 3 pages]

APPENDIX 1: REGULATORY REPORTING FOR THE PERIOD 1 JULY 2020 TO 30 September 2020

Consents

Figure 1: Resource Consent Applications Received

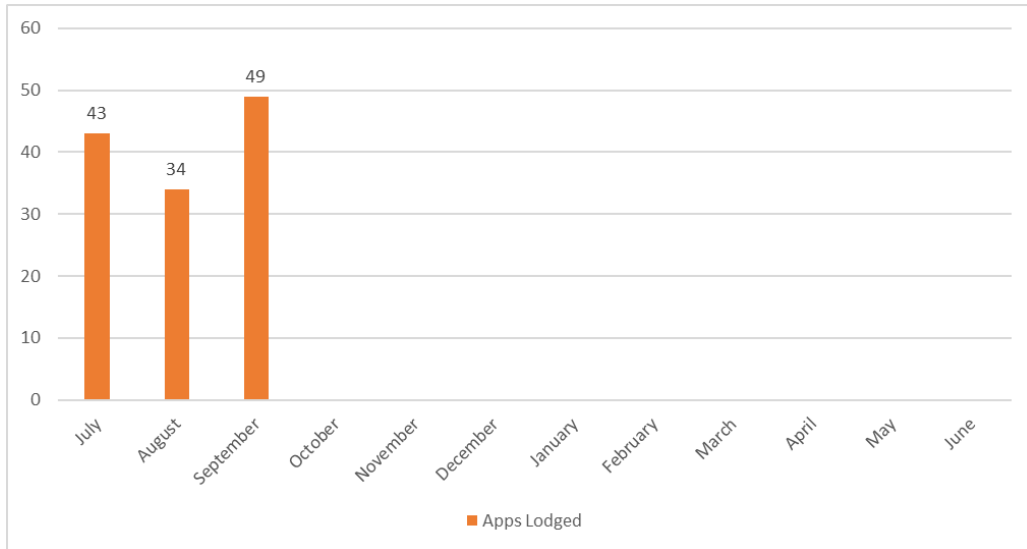


Figure 2: Notified Applications

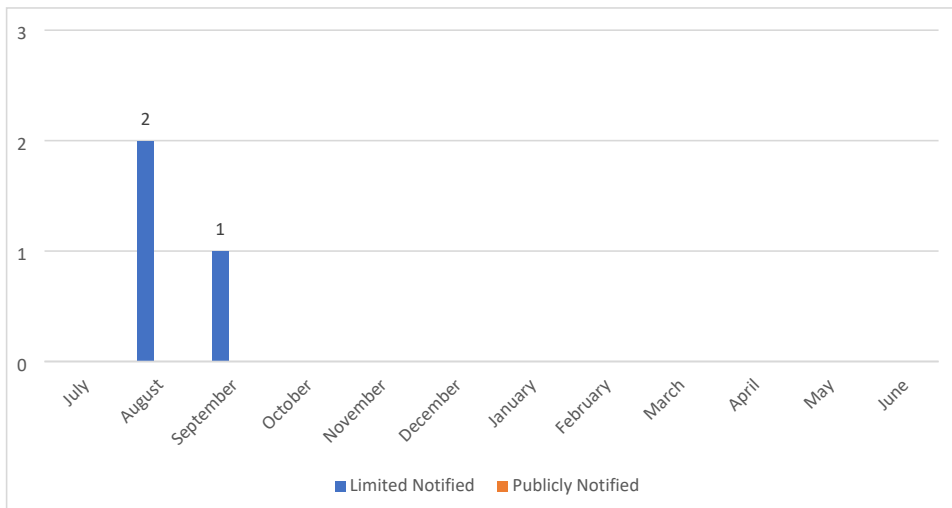


Figure 3: Resource Consents Issued

Activity	July	August	September	Total
Bore	4	5	7	16
CMA Use	2	3		5
Compliance Certificate		1		1
Dam		2		2
Discharge to Air	1		1	2
Discharge to Land	6	6	2	14
Discharge to Water	2	1	2	5
Divert		1		1
General	5	4	4	13
Gravel	1	1		2
Groundwater Take	1	4	3	8
Surface Take	12	2	2	16
Vegetation Clearance			1	1
Total	34	30	22	86

Figure 4: Other Applications Received

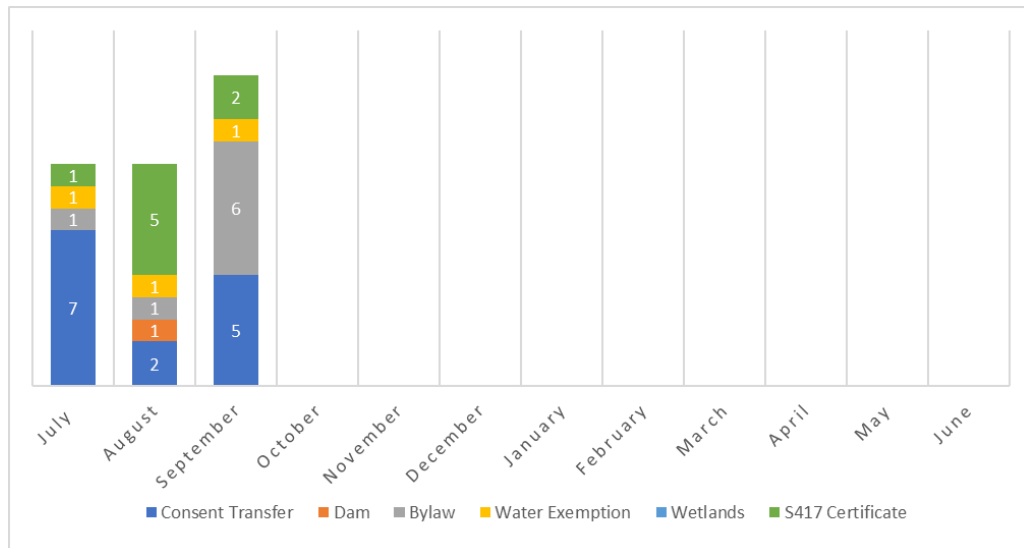


Figure 5: Other Applications Processed

Activity	July	August	September	Total
Transfer	4	3	3	10
Dam			2	2
Bylaw	1	1	1	3
S417 Certificate		7	1	8
Water Exemption			4	4
Total	5	11	11	27

Figure 6: Consent Public Enquiries

Total 528

Type of Enquiry	No.	% of Total
Current Consents	156	30
Other	71	13
Permitted Activity	162	31
Pre-application	97	18
Property Enquiries	28	5
Mining Privileges	9	2
Transfers	5	1

Method of Enquiry	No.	% of Total
Counter	10	2
E-mail	353	67
Internet	13	3
Telephone	152	29

Enquiry Location	No.	% of Total
Central Otago DC	134	25
Clutha DC	28	5
Dunedin CC	105	20
Queenstown Lakes DC	105	20
Throughout Otago	37	7
Unspecified	86	16
Waitaki DC	31	6
Outside Otago	2	1

Compliance

Figure 7: Performance Monitoring Returns

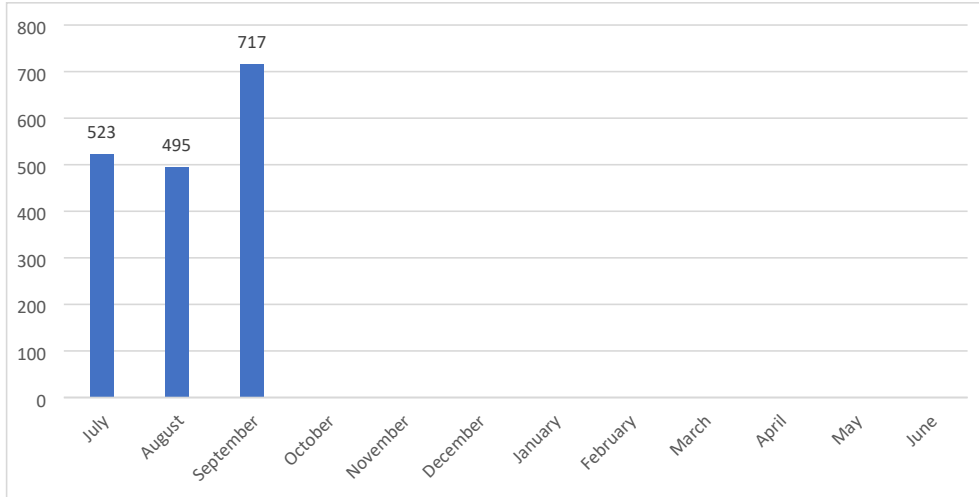


Figure 8: Performance Monitoring Grades Year to Date

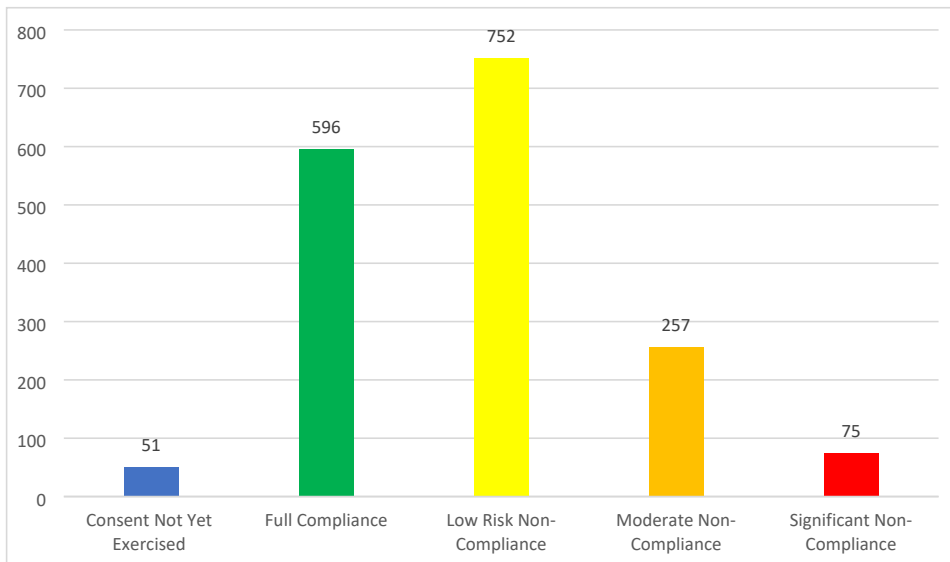


Figure 9: RMA Consent Audits Completed

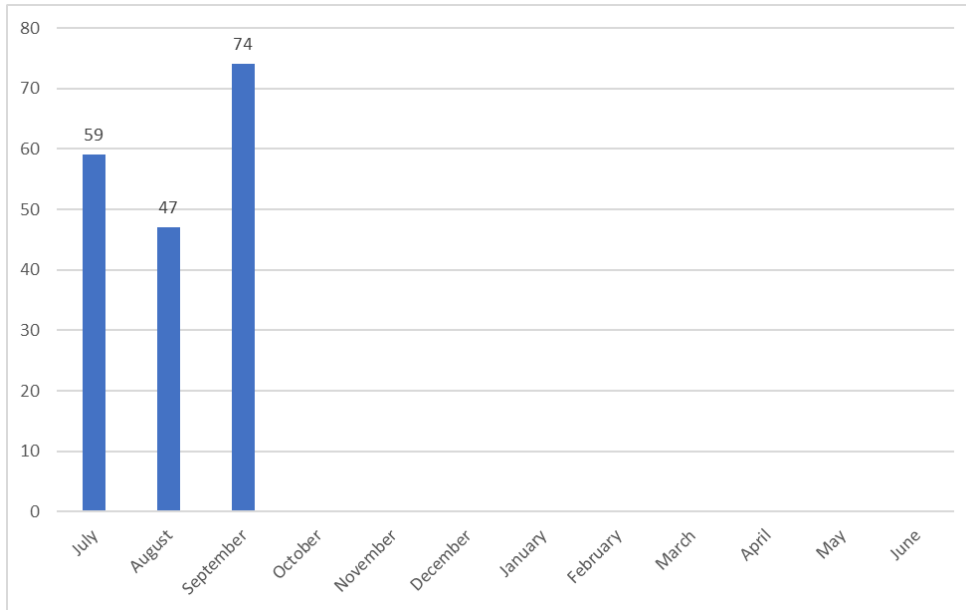


Figure 10: Audit Grades Year to Date

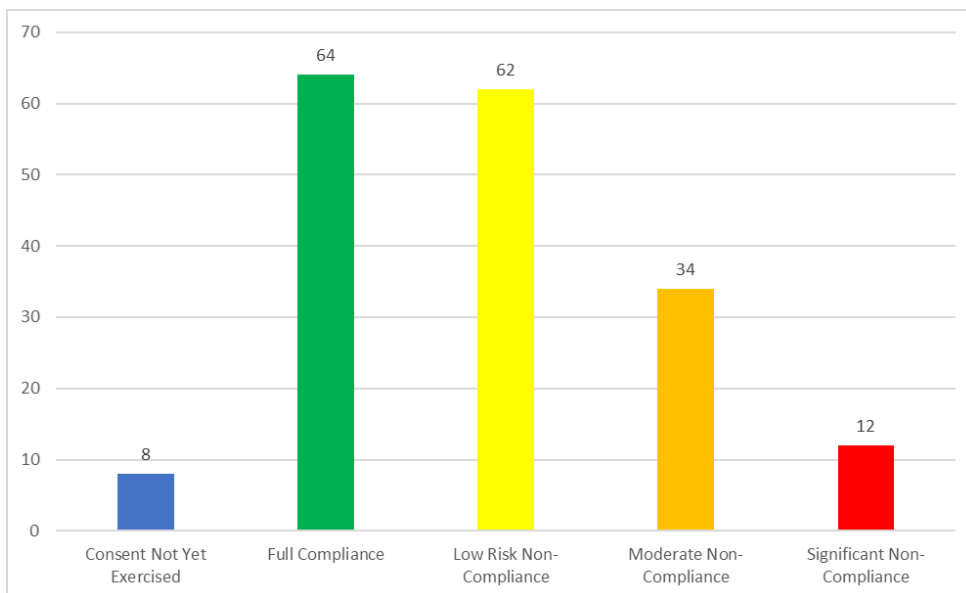


Figure 11: Types of Significant Non-Compliance

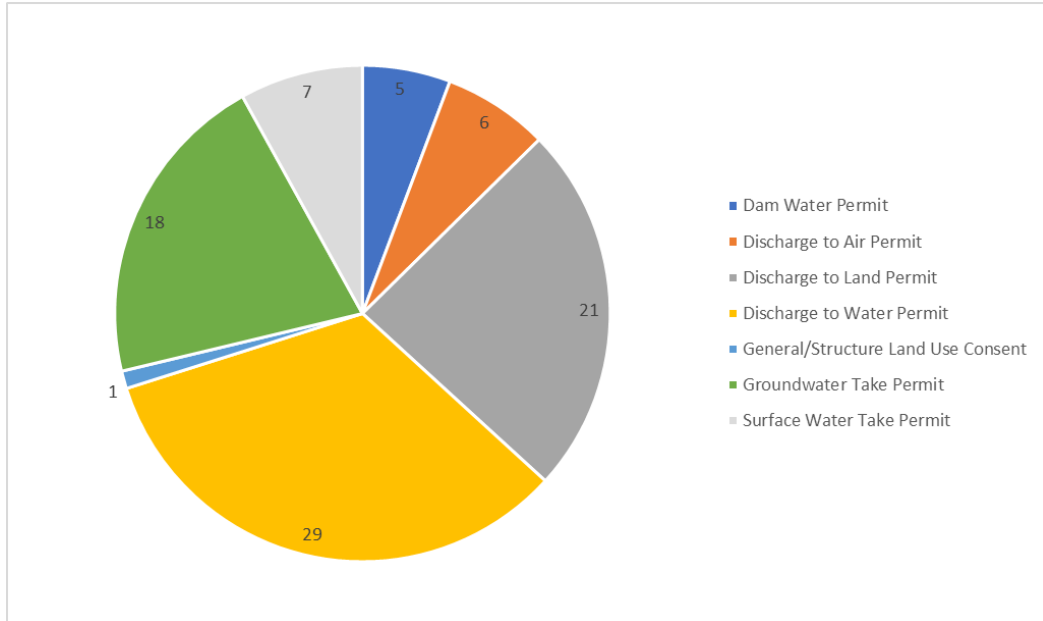


Figure 12: Service Requests

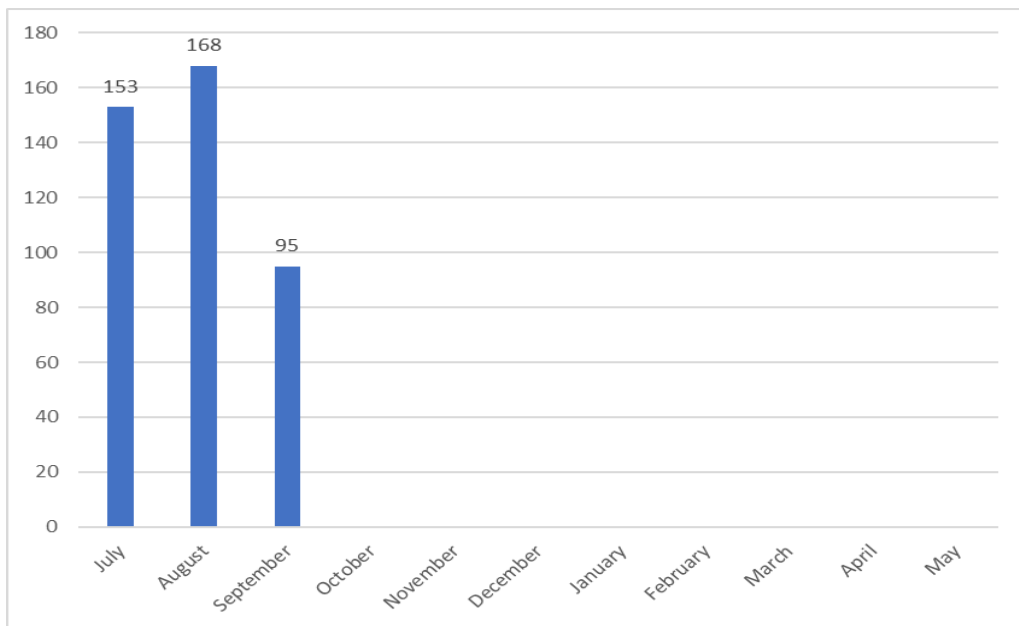


Figure 13: Service Requests by Type

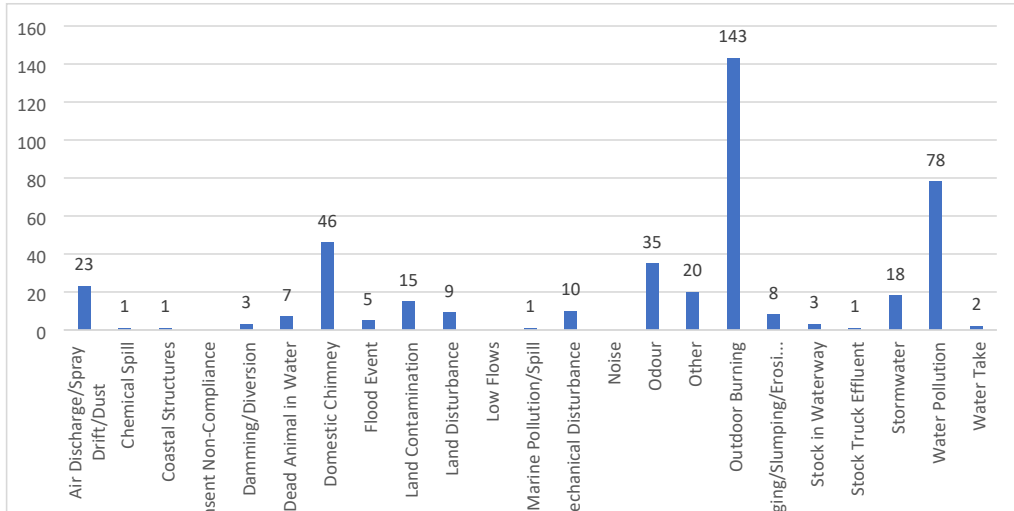


Figure 14: Enforcement Action

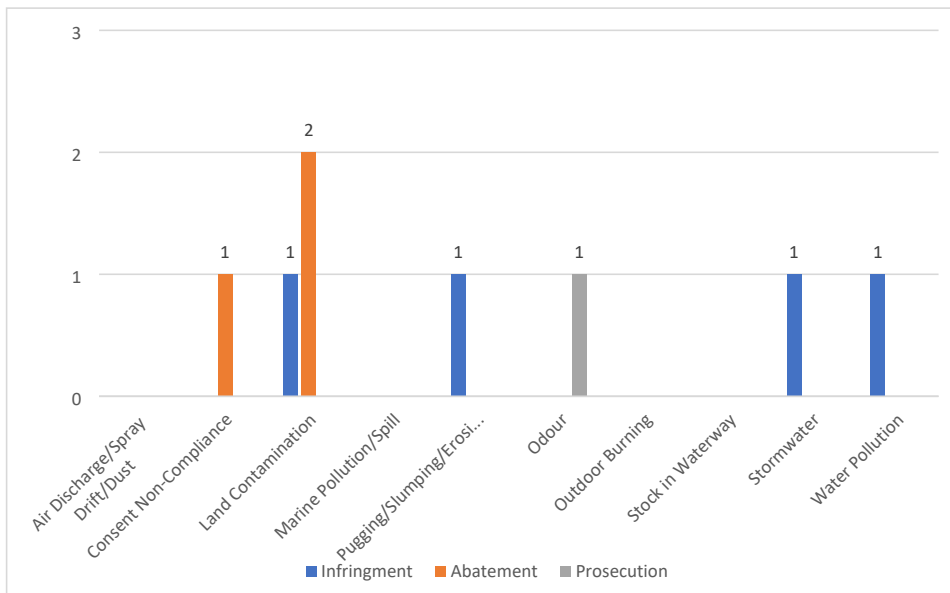
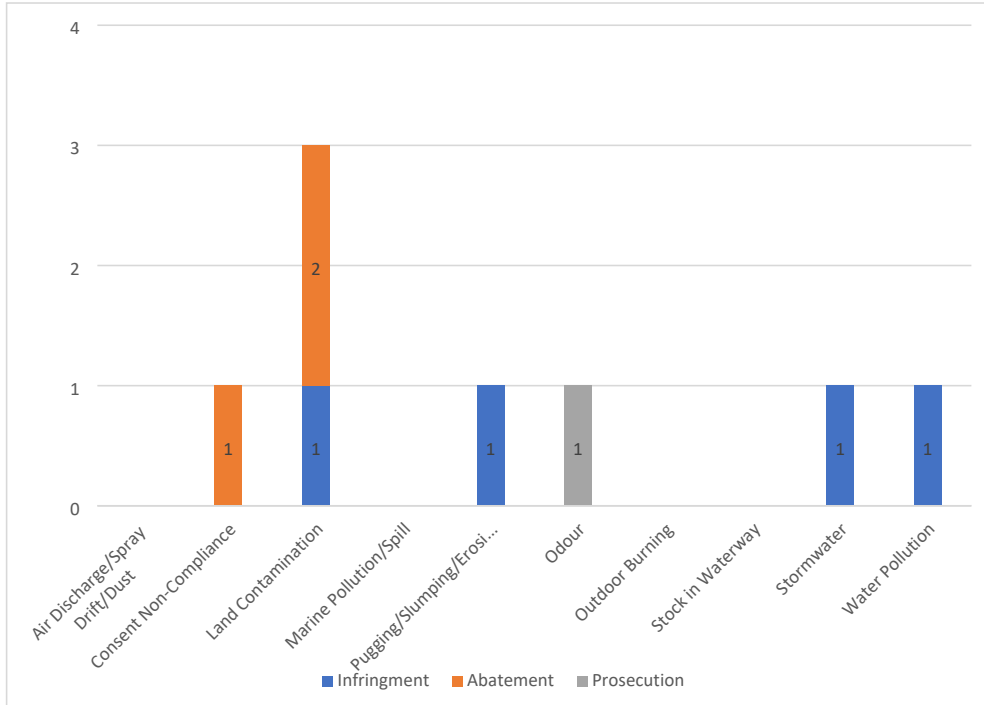


Figure 15: Enforcement Causes



Deemed Permit Status

The Otago Regional Council's consent database currently contains data for 585 Deemed Permits. Their current status is:

- Cancelled: 23
- Current: 337
- Expired: 45
- Surrendered: 180
- Total: 585

Note: Of the 337 Current Deemed Permits 33 have been replaced by 17 Resource Consents but have not yet been surrendered. Therefore they maintain a status of current.

Since 1 January 2016 the Otago Regional Council has granted 28 Resource Consents consents to replace 72 Deemed Permit. 36 of these Deemed Permits have been surrendered. The terms for the Resource Consents replacing these Deemed Permits are:

- 1 have been granted for a term of six years or less.
- 1 have been granted for a term of more than six years, and up to fifteen years
- 26 have been granted for a term of more than fifteen years.

A further 83 Deemed Permits currently have applications underway to replace them with 48 Resource Consents. The applicants have applied for:

- 1 consents with a term of six years or less.
- 0 consents with a term of more than six years, and up to fifteen years
- 42 consents with a term of more than fifteen years.
- 5 consents with no expiry date currently recorded in the Otago Regional Council's consent database

There are currently 221 Deemed Permits for which no application has been lodged. Those deemed permits include 0 Permits to take and use Groundwater, 17 Permits to Dam Water, and 0 Permits to discharge to water. In addition to these Deemed Permits a further 103 Resource Consents are due to expire between 27 September 2021 and 8 October 2021.

Please note that these numbers present a snapshot of the Otago Regional Council's Resource Consent database on the day that this report was produced. As such, any of these numbers may vary up or down as new applications are received or granted, Deemed Permits are cancelled or surrendered, or applicants are able to prove they can meet the provisions of section 413 of the Resource Management Act (1991).

A summary of deemed permit replacement process in each catchment with current deemed permits is presented below:

Catchment	Deemed Permits Awaiting Application	Deemed Permit Applications in Progress
Albert Burn (1)	4	1
Amisfield Burn	5	2
Arrow River	12	4
Bannock Burn	9	0
Basin Burn	4	0
Beaumont River	1	0
Bendigo Creek	2	1
Benger Burn	0	0
Black Jacks Creek	1	0
Burn Cottage Creek	5	0
Butchers Creek (1)	2	0
Cambells Creek	1	0
Camp Creek (1)	2	0
Cardrona River	14	1
Chapmans Gully	1	0
Coal Creek	7	0
Crook Burn (2)	2	1
Donaldsons Creek	0	0
Elbow Creek	0	0
Five Mile Creek (1)	1	0
Franks Creek	2	0
Fraser River	7	1
Kidd Creek	1	0
Lindis River	19	9
Long Gully (1)	1	0
Long Gully (2)	0	0
Lowburn Creek	13	1
Luggate Catchment	12	3
Manuherikia Catchment	72	4
Nevis River	2	0
No Catchment Recorded	20	1
Park Burn	3	2

Pipeclay Gully	1	0
Poison Creek	1	1
Pomahaka River	3	0
Quartz Creek	1	0
Quartz Reef Creek	1	0
Queensberry Hills	0	0
Rees River	1	1
Ripponvale Road	2	1
Roaring Meg	4	0
Schoolhouse Creek	1	1
Shingle Creek	10	0
Shotover River	1	0
Taiari Catchment	54	12
Teviot River	2	1
Tinwald Burn	3	0
Toms Creek	2	0
Unnamed Trib's of Clutha River above Lake Dunstan	3	1
Unnamed Trib's of Clutha River above Lake Roxburgh	1	0
Unnamed Trib's of Clutha River above Tuapeka Mouth	8	0
Unnamed Trib's of Kawarau River	2	0
Unnamed Trib's of Lake Hawea	2	0
Waikerikeri Creek	3	1
Waitahuna Catchment	1	0
Wanaka Township	2	0
Washpool Creek (1)	3	0

9.2. Update on Implementation of NES FW and PC8

Prepared for:	Regulatory Committee
Report No.	EMO1881
Activity:	Regulatory: Consents and Compliance
Author:	Joanna Gilroy, Manager Consents
Endorsed by:	Richard Saunders, General Manager Regulatory
Date:	29 September 2020

PURPOSE

- [1] To provide an overview of the actions taken by the Regulatory Group to implement the 'Action Plan for Healthy Waterways' and Council's Plan Changes.

EXECUTIVE SUMMARY

- [2] The Council, including the Regulatory Group has been working to implement Council's Plan Change 8 to the Water Plan, Plan Change 1 to the Waste Plan and the Government's Action Plan for Healthy Waterways. This work includes ensuring that staff are trained and supported, that resources are available for the community and that connections are made with industry groups and stakeholders.
- [3] Implementation work is ongoing and involves a number of teams across the organisation. The focus of this report is on the key actions undertaken by the Regulatory Group over the past two months.

RECOMMENDATION

That the Council:

- 1) **Receives** this report.
- 2) **Notes** that the Regulatory Group has been working to implement the Action Plan for Healthy Water and Plan Change 8 to the Water Plan.

BACKGROUND

- [4] The Otago Regional Council has a statutory requirement to implement new national legislation and new plan changes from the Council. A significant part of this implementation is undertaken by the Regulatory Group. This is either through consent requirements, compliance activities (including education and enforcement) and data and consent monitoring returns. With the notification of two new packages of legislation this has led to the Regulatory Group undertaking a range of implementation activities and non-BAU work. This work relates to the Plan Changes notified by the EPA and the Government's new Action Plan for Healthy Water.
- [5] On 6 July 2020 the Environmental Protection Authority notified Council's Plan Change 8 to the Water Plan and Plan Change 1 to the Waste Plan. These changes introduced new consent requirements and permitted activity criteria. Because these rules relate to
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water, they have immediate legal effect. If people do not have existing use rights then they will need consent sooner rather than later. New requirements in the notified plan relate to earthworks, effluent ponds, used oil and dairy shed effluent.

- [6] As at 5 August a new regulatory reform package with national direction on freshwater management was gazetted. This package includes the new National Environmental Standards – Freshwater (NES-FW) which introduces new consent requirements. ORC is responsible for the implementation and enforcement of these requirements within the Otago region.
- [7] 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. Anyone carrying out these activities will need to comply with these standards.
- [8] The implementation of the Plan Changes and the Action Plan for Healthy Water is a cross Council effort and the Regulatory Group has been working closely with other teams. This report only discusses the work that the Regulatory Group has undertaken.

DISCUSSION

Action Plan for Healthy Water

- [9] Following the announcement of the final freshwater package in early August the Regulatory Group has been working to implement the NES-FW and the other legislation introduced as part of the Action Plan for Healthy Water. Due to the immediate effect of the National Policy Statement (NPS), NES-FW and regulations for water measuring and reporting the immediate effort has been focused on these documents.
- [10] Due to the high public interest in these new rules staff worked to have initial information available to the community by the 3rd of September. During this one-month period there was a focus on the following areas:
 - a. systems and information,
 - b. staff training,
 - c. community outreach, and
 - d. collateral and communication material.
- [11] Following this initial phase of work the focus has shifted to more detailed implementation work focussing on interpretation of key issues, working with key industry groups and stakeholders and developing the consent processes to give effect to the new rules.

Systems and Information

- [12] Council database systems have been updated to accommodate new types of consents required under the Action Plan for Healthy Waterways and PC8. Further work around requirements for reporting new permitted activities is ongoing.

Staff training, support and resourcing

- [13] There has been a focus on ensuring staff have the right knowledge and support to confidently advise stakeholders and respond to the changes. A comprehensive training program has been developed with a range of training activities including on-site farm visits, technical guides and fact sheets. The initial five modules focus on intensive farming, wetlands, river definition and fish passage, stock exclusion and farm plans.
- [14] A cross-Council working group that meets weekly to run through interpretation issues, communication needs and to ensure the teams are working together has been set up by the Regulatory Group. This is to ensure that staff talk about interpretation issues and to come up with resources and positions on specific topics. The aim is to reduce the risk of team's providing inconsistent advice or duplicating effort.
- [15] Recruitment has started to fill the additional positions that were approved by Council. This recruitment process is ongoing. The aim is to have staff on board and trained in advance of peak workloads, expected to be 1 May 2021.
- [16] Preparations have been made to ensure that the Compliance Monitoring, Investigations and Regulatory Data and Systems Teams are prepared to handle an increased workload with the need to monitor more permitted activities and to provide onsite compliance education.
- [17] As part of developing the ORC Compliance Plan, the work programmes associated with the NES and Plan Change 8 have been integrated into the plan. This includes an implementation plan specific to PC8 and the NES-FW. This supports staff to focus effort and ensures resourcing is managed effectively and efficiently.

Collateral

- [18] An initial focus has been on ensuring the Group has the materials and tools needed to respond to enquiries about consent and compliance activities, process consent applications and to undertake existing compliance audit activities.
- [19] In the Consents area, application forms have been developed for the activities requiring consent under Plan Changes 8 and 1 and the NES-FW. All but the winter grazing form are currently available on our website. The winter grazing one is yet to be uploaded as time is being taken to get feedback from key groups to ensure that the form is fit for purpose and includes all necessary information. Staff are also waiting on further clarification from MFE on some points.
- [20] Consent conditions and template reports have also been developed for all new activities that require consent under the NES. As the NPS and the NES-FW apply to applications that are already in the system this means that existing reports and conditions have needed to be updated.
- [21] Factsheets are in the process of being developed where staff feel that further information or context is needed beyond what is in the MFE factsheets. The preference is that we use the MFE factsheets where possible, but there can be a need to make things Otago specific and to provide more practical information.

Communication and engagement

- [22] The initial focus of our communication activities has been to take an education-first approach to our engagement with the community on the new rules. Regulatory staff have attended over 10 community events to inform people of the new rules.
- [23] Council's Communications Team has been involved in supporting the implementation work of the Regulatory Group. A communications plan was developed and has been used to guide the work completed to date. Work completed for the Regulatory Group and to support the wider implementation work includes:
- Media releases explaining that the new regulations are in force sent out to media outlets, added to website and Facebook page.
 - Webpage developed (www.orc.govt.nz/NewWaterRules) as a hub of information for both new national and regional water rules, including a downloadable timeline chart and factsheets.
 - Printed adverts in ODT and community newspapers to alert people to the rules that came in on 3 Sept and directing them to the webpage for further information.
 - Online advertising in the Rural Life section of ODT online to alert people to the rules that came in on 3 Sept and directing them to the webpage for further information.
 - Articles in August and September editions of On-Stream
 - Linking all of the MFE factsheets to our web page.
 - Emails and letters directly to people with a Regionally Significant Wetland on their land, explaining the new requirements for the protection of all natural wetlands.
 - Emails to dairy farmers to explain the new water rules.
- [24] Other planned work includes:
- Continued attendance at community workshops and on farm education sessions
 - An article in Spring edition of Waterlines
 - Advert in Focus on Farming supplement
 - Development of FAQs for NES-FW to be added to webpage.
 - Emails and letters directly to people who do not have telemetry in place, explaining the new requirements for measuring water take.
- [25] All regulatory teams have handled a number of public enquiries relating to the NES and Plan Change 8. Between 5 August 2020 and 30 September 2020 the Consents Team has handled 102 enquiries specific to the new water rules.

Work with industry groups and stakeholders

- [26] The Group has been engaging with industry groups, which is in recognition of the need to work more closely with these groups on a range of topics. 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 such as 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 interpretation issues, attendance at meetings and opportunities for input into application forms and consent conditions.

- [27] Meetings have been held and will continue to be held with key stakeholder groups iwi 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. The focus of the initial meetings has been on the intensive winter grazing rules and understanding where their areas of concern are as it relates to their statutory responsibilities. As part of this work the partners/stakeholders have been given the opportunity to review the consent application form and the consent conditions with a view to ensuring a streamlines consent application process. It is intended that these meetings will continue topic by topic as it relates to the NES-FW.
- [28] To date there has been no clear vehicle for communication with resource management consultants and technical experts that are involved in the activities of the Regulatory Group. Whilst not yet implemented, the group is working on ways to better engage with this key group of professionals.

Meetings and webinars

- [29] Since the 5th of August staff have spoken at over 10 events, including community events in Balclutha, Clinton, Waikouaiti, Weston and Owaka. These have been set up at the request of catchment or industry groups. Staff have attended two DairyNZ webinars to speak to the intensive winter grazing provisions and will be involved in future webinars. There are sessions coming up in Ranfurly and another three on-farm days planned in North Otago that staff will be attending. Councillors have also attended these sessions. The meetings and webinars have been of great value with establishing connections with communities and to organise follow up events or farm visits.

National and regional involvement

- [30] Staff within the Regulatory Group are involved in national level discussions about the implementation of the Action Plan. This includes the General Manager Regulatory being on the Freshwater Implementation Directors Group, the Consent's Manager being the Council's contact person for the Freshwater Implementation Group and the Compliance Manager being involved in the national discussion about the content of, and approach to Farm Environment Plans under Section 360 of the Resource Management Act.
- [31] The Managers in the Group are members of National Manager's Special Interest Groups and have been working with the Managers from other Councils, in particular Environment Southland and Environment Canterbury. This is to work towards being consistent across the lower South Island region with the implementation and interpretation of the new legislation and to work towards options for sharing the implementation workload.

Plan Change 8 and Plan Change 1

- [32] As well as the new requirements introduced by the Action Plan, the Regulatory Group has also been implementing Plan Change 8 to the Water Plan. Work completed to date on this plan change includes:
- The establishment of a cross-Council working group that meets every week to run through interpretation issues, communication needs and to ensure the teams are working together.
 - Development of a dedicated webpage that has information on the plan changes.

- Development of factsheets for each activity that requires consent.
- Attendance at community meetings to present on what the plan changes mean for people.
- Holding of webinars to explain the provisions. These were well attended with about 20 people on each session.
- New consent application forms, reports and conditions developed.
- System changes to the database to ensure that the database could record the new consent types.
- Communication with existing consent holders, or known permitted activity operators about the new consent requirements.
- Staff training on the provisions and work undertaken by the respective Principal Consents and Compliance Officers.

[33] As with the implementation of the Action Plan for Healthy Water, the implementation for the plan changes is ongoing. Work will be planned for the next three to six months and other tasks added as identified. It is important to note that the rules and policies could change as part of the hearing process, so further implementation work and updates to all of the key documents will be needed as a result of this process.

CONSIDERATIONS

Policy Considerations

[34] Implementing the Action Plan for Healthy Water is a legislative requirement for ORC.

Financial Considerations

[35] The implementation work for the Action Plan that is being undertaken is all unbudgeted work. However, the work needs to be undertaken to ensure a high level of service is provided to our community and to meet our legislative requirements. The cost of the implementation work in the Regulatory Group is being spread across the three teams.

Significance and Engagement

[36] This paper does not trigger this policy.

Legislative Considerations

[37] Implementing the Action Plan for Healthy Water is a legislative requirement for ORC.

Risk Considerations

[38] There is a risk to ORC's reputation if the community and stakeholders do not feel supported through this process. There is also a legal risk if Council does not implement or give effect to the Action Plan.

NEXT STEPS

[39] The next steps are:

- a. To carry on with the existing implementation actions as outlined above.
- b. Continue to identify opportunities to work with and collaborate with industry groups and key stakeholders.

- c. Provide opportunities for staff to engage with the community to support the transition to the new rules-based approach.
- d. Develop and maintain an implementation plan to ensure ORC is able to meet its statutory obligations.

ATTACHMENTS

Nil