

2013

Monitoring Steps

Consents, Compliance and Complaints
Monitoring



Consents, Compliance and Complaints Monitoring

The Resource Management Act 1991 (RMA) requires councils to monitor resource consents, compliance, and complaints. Monitoring consents, compliance and complaints:

- indicates performance in relation to a range of issues
- highlights areas that require further action
- provides feedback that may lead to changes to policies and plans
- contributes to assessing long-term trends over time
- helps councils make informed decisions.

There are close links between this type of monitoring and those for policy and plan effectiveness and state of the environment monitoring. Integrated monitoring informs decision-making by helping determine the need for further action, and by indicating where policies and actions can be improved.

This guidance note does not deal with chain of evidence and enforcement matters. This is addressed in the [RMA Enforcement Manual](#)

To access the guidance note scroll down or download the entire guidance note here ...

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Have an integrated approach

- Integration is the key to successful monitoring.
- Dedicate staff resources for monitoring within the consents team or integrate across the council.
- Be pragmatic and use available skills and knowledge of staff to best effect.
- Link consents and compliance monitoring and reporting with state of the environment and policy/plan effectiveness monitoring and reporting.
- Specify linkages through a monitoring strategy.
- Establish effective feedback loops so consents, compliance and complaints monitoring can provide useful information for other monitoring activities (such as for RMA plan effectiveness and Local Government Act 2002).
- Consider linking RMA consents and compliance monitoring with other council functions that also require monitoring for example, under the Building Act 2004.
- Document systems and procedures (such as who does what, when, how and why) because of staff turnover.
- Link to Ministry for the Environment two-yearly reporting requirements (RMA Survey).

Have a Clear Purpose

Be clear about the purpose of resource consent, compliance, and complaint monitoring and reporting. For instance, it could be to:

- check that consent holders are meeting the conditions of consent? (administrative/process monitoring)
- check on predicted environmental, economic, social or cultural effects of consented activities, including links to results expected in policy statements and plans? (environmental performance/outcomes monitoring)
- provide information for state of the environment monitoring and reporting?
- assist in assessing the effectiveness of policy and plan provisions?
- assist in meeting reporting requirements for the Ministry for the Environment's two-yearly RMA Survey and the ss35 and 35A information required to be provided to the Minister for the Environment under regulation?

A combination of all these purposes is the most desirable approach in a monitoring strategy.

Monitoring of resource consents involves checking compliance with consent decisions; the effectiveness of consent conditions; and monitoring the impact of activities on the environment. Complaints can also provide useful information on compliance or areas where policies and plans are not meeting the desired and anticipated environmental outcomes. For example, complaints about activities that are identified as permitted activities in the plan. State of the environment and complaints monitoring can provide useful information for monitoring the effects of permitted activities.

Writing consent conditions

- Think in advance about how consent conditions will be monitored and enforced when they are being drafted. Ensure conditions relate to actual or potential adverse effects on the environment.
- Check that conditions are written in clear and simple language that is easy to understand and monitor. Consider asking a non-planner to see if they can understand the condition.
- Ensure that conditions are certain and unambiguous. Will others be able to interpret them in years to come? Would they stand up in the Environment Court if enforcement action were ever necessary?
- Discuss possible conditions and monitoring requirements with the applicant (and submitters) as the consent is being processed.
- Don't reinvent the wheel. If effective consent conditions have already been developed by other councils, consider adapting them for your use while ensuring they are tailored to the specific application.
- Read the guidance material on [Resource Consent Conditions](#).

Who will carry out the monitoring?

- Consider who has the appropriate skills to carry out monitoring of different consents. Are dedicated or specialist staff required (eg, for noise, odour, light and glare)?
- If there are a large number of consents to monitor, a dedicated compliance monitoring officer or team might be appropriate.
- Will other sections of the council be involved? Do you need to employ external expertise?
- In some situations self-monitoring may occur but proceed with caution. This is where the consent holder conducts monitoring. It can save councils valuable resources but requires checks and audits and should not be viewed as a soft option.
- Consider joint monitoring between consent holders, with other councils or agencies on certain types of activities.
- For some simple types of consent monitoring it may be cost effective to employ students to check compliance.

Paying for monitoring

- Think about whether the cost of monitoring the condition is reasonable given the anticipated level of adverse effects.
- Specify who will pay for the monitoring. Will it be the total responsibility of the consent holder or will the council share the costs?
- Have a council charging policy and ensure any monitoring charges are in line with it. Refer to the [setting charges for processing and monitoring consents](#) under the RMA guidance note.
- Charge consent holders for compliance monitoring as appropriate.
- Consider if consent holders could be eligible for reduced costs or monitoring frequency if they consistently comply with consent conditions.
- Consider using a bond as a way of paying for monitoring one-off consent conditions (eg, the completion of landscaping or site remediation). When the consent holder provides evidence that conditions have been met the bond can then be released.

Type and frequency of monitoring

Decide on the type and frequency of monitoring in relation to the potential environmental effects and the scale of the activity. The level of monitoring needed will depend upon effects and scale.

One-off monitoring might be all that is required for activities with minor effects or effects that are limited to the time of construction.

Regular inspections might be appropriate for conditions of an ongoing nature, for example the disposal of dairy effluent.

Consider tailor-made, site-specific monitoring programmes for large activities or those with the potential to generate significant adverse effects (eg, site visits, audits or checks of company complaints registers). This type of monitoring should be discussed with the applicant and submitters as an integral part of the consent decision-making process.

Consider performance-based monitoring to ensure environmental standards are met. This may be able to be undertaken by the applicant and, if compliance and environmental results are consistently good, then less frequent monitoring/site visits may be appropriate.

Consents database and GIS systems can help to plan and implement consent monitoring at the most appropriate time.

Good internal systems

Recording, reporting and review

- Report the results of compliance monitoring. What information will be made available and to whom? Will an annual compliance monitoring report be published?
- Consider how compliance monitoring and reporting will feed into other monitoring and reporting, particularly state of the environment and policy and plan effectiveness.
- Decide on systems and protocols for dealing with non-compliance.
- Provide formal and informal feedback to planners on how effective the policies, plan and consent conditions are.
- Refer back to your purpose for compliance monitoring and how it integrates with other aspects of monitoring. Make sure good feedback procedures are in place and use them.

Work with others

- Establish links with compliance monitoring people in adjoining councils, your regional council (for territorial local authorities), your territorial local authorities (for regional councils), and councils working on similar issues (eg, other metropolitan centres).
- Join, establish and/or maintain an active monitoring forum in your area.
- If something works well for another council consider adapting it for your use (ie, use consent conditions of other councils if appropriate for your situation).

Compliance monitoring

- Compliance monitoring includes checking:
- the uptake of resource consents and identifying those that have lapsed
- compliance with consent conditions, such as in relation to water quality, changes in land use, subdivisions and so on
- permitted activities.
- Compliance monitoring involves evaluating process performance, compliance with consent condition or plan provisions, and environmental performance assessment.
- It enables early detection of any adverse effects.
- Compliance monitoring ensures any non-compliance with consent conditions is detected and any appropriate action taken.

Links with enforcement

- Link compliance monitoring with your Council's enforcement approach.
- Establish a progressive enforcement policy, bearing in mind that the majority of cases may be resolved with a light-handed, informal approach but also be prepared for a more heavy-handed and legal approach if necessary.
- See the Enforcement Manual for more guidance on enforcement matters.

Monitoring of complaints

- Complaints relate to events and environmental problems or perceived problems and can be useful for management purposes. Monitoring complaints can also provide useful information at the corporate level - for functions right across council.
- Complaints may relate to activities that have resource consent but they may also relate to permitted activities and may indicate situations where consents may be required in future to better address adverse effects created by permitted activities.
- The majority of councils in New Zealand keep a register of complaints (as reported in the [RMA Survey of Local Authorities](#), by the Ministry for the Environment).
- Complaints monitoring can help fill gaps in knowledge and information about the quality of the environment and community attitudes.
- Over time it may be possible to use complaints monitoring to help develop trend data and add value to state of the environment reporting. This relies on having an integrated approach to monitoring and reporting within councils and with other agencies.

Feedback and review cycles

- Because consents are site specific they can provide useful information about the success of policies and plans.
- To be most effective resource consent and compliance monitoring needs to close the policy loop and provide a feedback mechanism to planners on the effectiveness of policies and plan provisions. It should also feed information to those involved in state of the environment monitoring and reporting about the key emerging pressures on the environment and any possible cumulative effects.
- The results of compliance monitoring should also be reported back to consent holders as a mechanism for influencing future behaviour. Compliance reports can be used by consent holders to measure their own performance against internal quality management systems; and results can even be reported to shareholders.

RMA provisions

Section 35(2)(d) requires every council to monitor resource consents that have effect in its region or district, as the case may be, and take appropriate action (having regard to the methods available to it under this RMA) where this is shown to be necessary.

Under section 35(2A) councils are required to prepare a report at least every five years on the results of their monitoring of the efficiency and effectiveness of their policies and plans (as required under s35(2)(b)).

Section 35(3) requires every council to keep reasonably available at its principal office, information which is relevant to the administration of policy statements and plans, the monitoring of resource consents, and current issues relating to the environment in the area, to enable the public:

- to be better informed of the duties, functions, and powers of the council and
- to participate more effectively under the RMA.

Section 35(5)(g) requires a number of records to be taken by councils in relation to resource consents:

- (g) records of all applications for resource consents received by it;
- (ga) records of all decisions under any of ss37A, 87E, 95 to 95G, 198C and 198H;
- (gb) records of all resource consents granted within the local authority's region or district; and
- (gc) records of the transfer of any resource consent.

Section 35(5)(i) requires councils to keep a summary of all written complaints received by it during the preceding five years concerning alleged breaches of the RMA or a plan, and information on how it dealt with each such complaint.

Section 35(5)(j)(a) requires territorial authorities to keep information available on the location and area of all esplanade reserves, esplanade strips, and access strips in the district.

Section 35(5)(j)(b) requires regional councils to keep records of every protected customary rights order or agreement relating to part of the common marine and coastal area relating to its region.

Sections 223 and 224 relate to the approval and deposit of survey plans for subdivision and ensuring that resource consent conditions have been met (which requires monitoring). This relates to administrative processes under the RMA. To assess any environmental outcomes and effects, the link with state of the environment and policy and plan effectiveness monitoring is important.



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