

GOOD PRACTICE GUIDE

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Environment*

ADMINISTRATION OF COMPLIANCE WITH RESOURCE CONSENTS

Objectives of the investigation:

- **To examine methods ... to ensure compliance with resource consents.**
 - **To assess the effectiveness of compliance monitoring.**
 - **To draw attention to good practice.**
 - **To report to local government on outcome of investigation**
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Context

Resource Management Act 1991

s. 35(2)(d) and (3)

- **Duty to monitor ... the exercise of resource consents ... and take appropriate action ...**
- **Duty to keep reasonably available ... information ... relevant to ... the monitoring of resource consents ...**

Councils' compliance monitoring depends on:

- **functions**
 - **policies**
 - **structure and resources**
 - **range of consents administered & nature of conditions**
 - **methods**
 - **priorities**
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Range of monitoring carried out:

- **complaints-driven, ad hoc, incidental**
- **random checks**
- **self-monitoring by consent holder**
- **technical monitoring by staff**
- **delegation to other agencies**

General problems/constraints

- **lack of CM policy, strategy, protocols and performance targets**
 - **limited resources**
 - **poor recording and reporting on compliance monitoring**
 - **unenforceable conditions**
 - **poor communication links within council**
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Examples of good practice

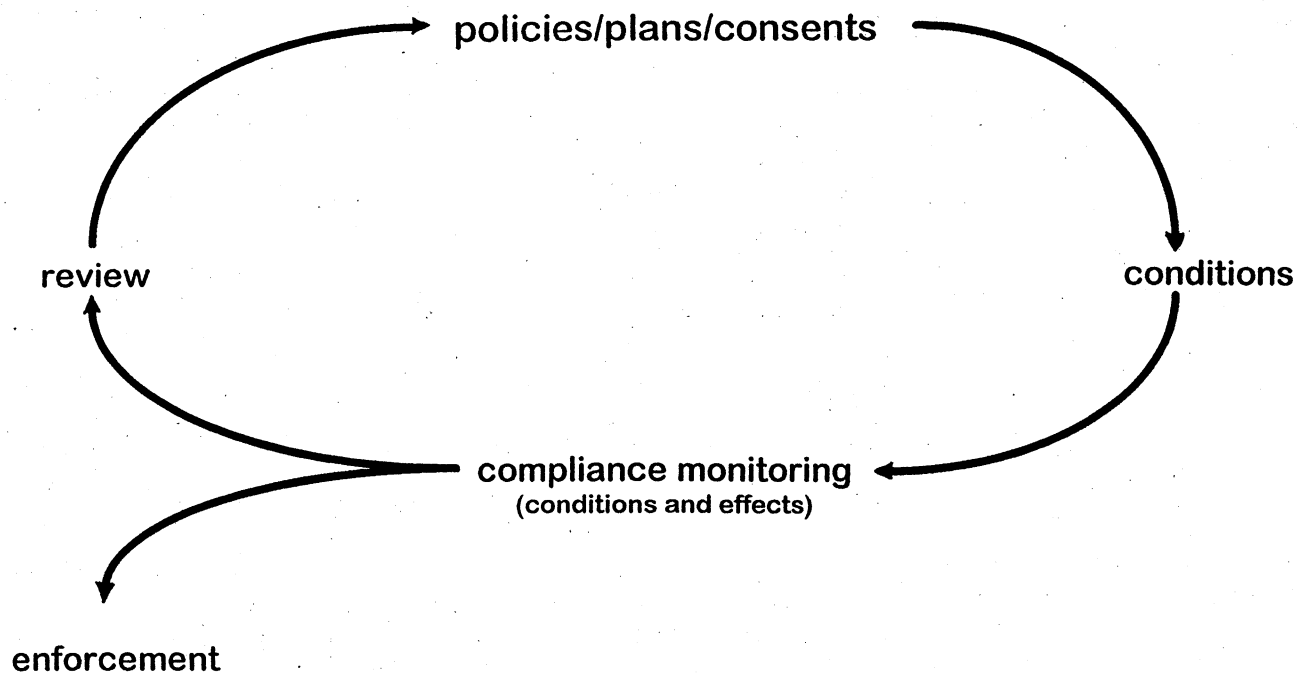
- **Annual Plans and Reports**
- **monitoring programmes - public process**
- **incentives to comply, self-monitoring**
- **protocols, delegations and procedures for staff**
- **consent processing/monitoring links**
- **consent reports**
- **reports on non-compliance**

RECOMMENDATIONS

- **Policies and procedures**
 - **Structure and resources**
 - **Information management**
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COMPLIANCE MONITORING ASSESSMENT CHECKLIST

- **Are there clear CM policies, procedures and accountabilities?**
- **Is there a systematic and consistent approach to CM?**
- **Are CM resources adequate?**
- **Do consent conditions deal with effects?**
- **Are conditions reasonable, achievable, measurable?**
- **Can council's overall CM performance be assessed?**
- **Is CM information used to review policies, etc.?**





ADMINISTRATION OF COMPLIANCE WITH RESOURCE CONSENTS

Report of an investigation of three councils

Through the Resource Management Act 1991, Parliament has given local government the role of being the principal public managers of the New Zealand environment. This responsibility is being investigated in a series of local government quality assurance reviews in which various aspects of environmental management are examined.

This pamphlet summarises the findings of the Parliamentary Commissioner for the Environment from an investigation of three councils' systems for monitoring the exercise of resource consents (compliance monitoring). The three case studies were Manawatu-Wanganui Regional Council, Tasman District Council and Wellington City Council.

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SUMMARY OF FINDINGS

Section 35 of the Resource Management Act 1991 (RMA) sets out the obligations of local authorities in respect of gathering information and monitoring. Unlike most other sections of the RMA which enable local authorities to do certain things, section 35 is a directive to carry out certain types of monitoring. The purpose of monitoring under the RMA is to contribute to the promotion of the sustainable management of natural and physical resources. Monitoring provides feedback on the effectiveness of policies, plans and resource consents to achieve the purpose of the Act. It enables councils to identify and control adverse effects on the environment, to refine their guiding policies and procedures and to review or renew consent conditions.

The purpose of this investigation was to assess how well the three councils monitored the exercise of resource consents in their region or district, as required under section 35(2)(d) of the RMA. This requirement, referred to throughout the report as 'compliance monitoring', did not exist under legislation repealed and replaced by the RMA (eg the Town and Country Planning Act 1977 and the Water and Soil Conservation Act 1967). The councils selected represent regional, unitary and territorial authorities covering a mix of metropolitan, urban and rural areas. In addition, a number of other councils' documents on compliance monitoring policies and procedures were examined. The range of consents considered were district land use and subdivision consents, and regional land use consents, coastal permits, water permits and discharge permits.

The study found that each of the councils has approached their compliance monitoring duty in different ways depending on:

- the council's **functions** (ie whether it is a territorial authority, a regional council or a unitary authority);
- the council's **policies** on monitoring in general and on compliance monitoring and enforcement in particular;
- the **structure** of the council and the **resources** available to carry out compliance monitoring and enforcement;
- the number and **type of consents** and the **nature of the conditions** that need to be monitored;
- compliance monitoring **methods** used by the council (eg monitoring by the council, or monitoring by the consent holder and auditing by the council); and
- the **priority** given to monitoring compliance with resource consents relative to other RMA functions of the council (eg processing consents and preparing policies and plans).

The pressures and constraints on councils

Policy

Councils continue to face pressures to meet statutory deadlines on producing regional policy statements and district plans, and processing resource consent applications. As a result, compliance monitoring has generally been given a low priority. Councils in this position need to consider whether they are properly discharging their duties under section 35(2)(d) of the RMA.

The lack of a monitoring policy or strategy to identify how the council intends to fulfil its monitoring responsibilities has been a constraint.



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The following are examples of good practice identified from both the investigation into compliance monitoring policies, structures and information management systems of the councils studied and a review of systems developed by others:

Policy

- establishing a proactive monitoring policy and system which enables non-compliance to be detected and dealt with at an early stage;
- developing a monitoring strategy which outlines the type and level of monitoring to be carried out and links consent monitoring with state of the environment reporting and policy/plan monitoring. This linkage enables councils to determine whether their environmental objectives are being met, and whether their policies, strategies, procedures and consent conditions need to be reviewed;
- clearly stating compliance monitoring priorities and levels of performance in the council's Annual Plan and reported on in the Annual Report;
- developing compliance monitoring and enforcement procedures for the guidance of staff, for example a resource consents management manual;
- delegating enforcement decisions to compliance monitoring staff to avoid delays in seeking approval to issue abatement notices;
- establishing complaints and pollution incidents response-time targets;
- producing publications which explain the council's compliance monitoring and enforcement policies;
- setting performance measure targets for compliance monitoring;
- instituting a system of fees and charges for monitoring to off set or recover reasonable costs incurred by the council, which may incidentally provide incentives to comply with consent conditions and encourage self-monitoring of consent conditions;
- establishing monitoring programmes through a public process (eg through special orders under s 716B of the Local Government Act 1974), where appropriate;
- consent holders with a good history of compliance benefiting from reduced costs of renewing consents, making their on-going monitoring requirements potentially less onerous;
- making early checks on the activity after it has been granted consent to ensure it is developing according to consent conditions. Any actual or potential compliance problems identified during the development stage can be addressed early and usually remedied at less cost to the consent holder and the council;

- where appropriate, using consent condition templates to ensure consistent conditions for certain consent types, adjusted to be site specific if necessary; and
- using enforcement protocols to guide compliance monitoring staff and ensure a consistent approach to dealing with non-complying consent holders.

Structure

- technical staff provide comment on consent applications before consent conditions and reports are drafted by consent processing staff;
- consent reports are seen by monitoring staff before the consent deliberation and decision, allowing those monitoring the consents to comment on the conditions imposed;
- use is made of other sources of compliance information, including complaints and information gathered by council staff when undertaking other functions;
- the establishment of a structure and management system which coordinates compliance monitoring functions to achieve target levels of performance;
- in larger regions or districts, use is made of staff in outlying service centres to monitor resource consents;
- continuity can be achieved by having consent processing staff make the initial visit to check on compliance with conditions;
- monitoring requires good records to be maintained so that any subsequent visits and any necessary follow up action can be taken by any designated council officer;
- consent holders for major activities (eg involving significant discharges) carry out self-monitoring of their consent conditions, and council staff undertake regular auditing to check the validity and quality of the data produced.

Information management

- including consent conditions on inspection forms so that compliance can readily be checked;
- using an electronic database to include details of the consent and history of compliance by consent holder. This is useful when renewing or reviewing consents;
- recording complaints in a standardised format;
- a systematic complaints response system allowing complaints to be registered, the results of the complaint recorded and, if the complaint relates to an activity for which a consent has been granted, a record kept of the outcome of any investigation;
- categorising the subject of a complaint according to the council's responsibilities;
- using a grading system to help prioritise compliance monitoring schedules (ie to focus resources on monitoring lower grade, non-complying consent holders);
- colour coding key documents in files for ease of access; and
- reporting on consent compliance and non compliance in open council meetings.

These suggested "good practices" were identified by the Parliamentary Commissioner for the Environment in the 1996 report *Administration of Compliance with Resource Consents: Report of an Investigation of Three Councils*.

Councils which grant resource consents to themselves and subsequently carry out their own compliance monitoring are subject to public scrutiny. Unitary authorities, in particular, are more frequently faced with the situation of having to monitor compliance with consents granted by the council to itself. Where this occurs, councils need to have a rigorous compliance policy, protocol and transparent system in place to ensure that monitoring is impartial, effective and any non-compliance is properly and immediately dealt with.

The lack of a strategic approach to compliance monitoring means that it is frequently done in a reactive and ad hoc fashion. A compliance monitoring strategy integrated with other monitoring functions (eg policy statement, plan and state of the environment monitoring) enables councils to regularly review their monitoring systems and procedures to ensure they are effective.

Management structures may affect the ability of councils to monitor compliance effectively. Unenforceable or inappropriate consent conditions may result from structures which separate consent monitoring from consent processing without appropriate communication links between them. In the absence of a clear structure and accountability, compliance monitoring programmes and targets may not be achieved.

Some councils administer large regions or districts making it difficult to monitor all consents.

Managing the amount of information necessary to monitor resource consents (including information recording, storage and retrieval) places a number of pressures and constraints on councils. These include:

- the volume of the task of identifying conditions in consents which require monitoring;
- inadequate or undeveloped filing or computer systems to support compliance monitoring information needs;
- the transition from paper to electronic data in some councils;
- lack of consistency in compliance inspection reports;
- the need to meet requirements of the RMA in terms of information availability (s.35);
- the need to ensure feedback between compliance monitoring and consent processing groups to ensure continuity, effective conditions and consistent decisions; and
- the need for elected representatives to be kept informed of the community's concerns about resource consent compliance and how it is managed.

Policy

Many councils have recognised that effective compliance monitoring begins with a clear policy and a systematic process for monitoring the exercise of resource consents and have developed, or are in the process of doing so, monitoring strategies, programmes and reporting systems.

Structure

Information management

Councils' responses to pressures

Councils' Annual Plans provide an important mechanism for outlining their commitment (eg funding and targets) to compliance monitoring, and their Annual Reports enable councils and the public to assess compliance monitoring performance and effectiveness.

Structure

To improve both the effectiveness and efficiency of compliance monitoring, some councils have recognised that their structure, monitoring strategy and procedures, compliance monitoring targets and resources have to be considered in an integrated manner. In some councils staff have been given the opportunity to be involved in the development of structures, policies and programmes for monitoring consents.

Councils have either combined or separated consent processing and consent monitoring. Both structural arrangements have advantages and disadvantages. A further option adopted by some councils is to have a specific budget for compliance monitoring which enables a required level of compliance monitoring to be 'purchased' from appropriate sources within the council. In this way compliance monitoring outputs are achieved regardless of other pressures and priorities.

Self-monitoring by consent holders of major activities (eg involving significant discharges) is encouraged by most councils, followed up with regular audits by councils' monitoring staff. A certain amount of informal monitoring and observation also takes place when staff visit sites or areas for other purposes.

Information management

Most councils provide regular reports on consent compliance (usually identifying non-complying consents) to a council committee. These reports provide useful information when renewal of consents is being considered and for the review of policies and plans. Only one of the councils studied did not have regular compliance reports to a council committee.

Although public complaints about non-compliance with resource consent conditions are a small percentage of all complaints received by councils, they are a useful supplement to councils' monitoring efforts.

The range of responses to councils' information needs include upgrading computer systems, identifying and developing information and monitoring strategies, and preparing guidelines and protocols on compliance monitoring and enforcement for the benefit of staff involved in this work.

Incentives to comply

No local authority has the level of resources needed to ensure full compliance with all consent conditions and rules all of the time. Councils need to explore alternative ways to encourage compliance. This could include incentives such as reduced monitoring requirements and charges for consent holders who have adopted environmental management systems or similar accreditation. Consent holders with a good history of compliance could have their consents renewed at less cost and in a shorter time.