

ADMINISTRATION OF COMPLIANCE WITH RESOURCE CONSENTS

Background Report: Wellington City Council

Office of the
PARLIAMENTARY COMMISSIONER FOR THE ENVIRONMENT
Te Katiaki Taiao a Te Whare Pāremata

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This report is one of three council case studies undertaken as part of an investigation into local authorities' administration of compliance with resource consents. Conclusions from the three case studies are synthesised in a main report available through Bennetts Government Bookshops. A brief summary of findings is available from this Office on request.

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1 INTRODUCTION

This report is one of three local authority case studies undertaken as part of an investigation into local authority administration of compliance with resource consents. The conclusions from the three case studies are combined and reported on in a main report.

The investigation has been conducted under section 16(1)(b) of the Environment Act 1986 in which the Commissioner has authority to examine the effectiveness of environmental planning and management carried out by public authorities, and to advise them on any remedial action the Commissioner considers desirable.

The purpose of this review is to investigate and report on the administration of compliance with resource consents by a territorial authority, a unitary authority (ie a council with combined regional and district functions) and a regional council. It examines the effectiveness of systems, strategies, structures and resources of councils in relation to their obligations under section 35 of the Resource Management Act 1991 (RMA), particularly subsection (2)(d) - monitoring the exercise of resource consents effective in the region or district. The objective is to ascertain how councils ensure that consent holders comply with the conditions of their consents, and to draw attention to areas of good practice.

The range of consents considered in the review were those issued by councils under the RMA, namely land use consents and subdivision consents of territorial authorities, and land use consents, coastal permits, water permits and discharge permits of regional councils. 'Compliance monitoring/enforcement' is a process involving surveillance or checking resource consents to determine whether consent holders are complying with the conditions of their consents. Enforcement action may follow if compliance is not achieved.

This case study examines the compliance monitoring approach taken by the Wellington City Council. It is a review of that council's compliance monitoring system and is intended to provide information and guidance so that the council can enhance good performance and, where necessary, improve its compliance monitoring. The review identifies issues that arise from the council's compliance monitoring system and evaluates it against the criteria listed in the appendix.

2 BACKGROUND

This section provides a brief description of the city, the council's compliance monitoring policy and plan framework, the types of consents processed and the internal structure for administering resource consents in particular.

2.1 The City

The Wellington City Council covers a land area of 28,897 hectares, of which 65 percent is rural land, and serves a population of 152,800. The city has a mixture of newly developed residential areas and long established areas where there is an interest in infill housing. In recent years there has been a trend towards inner city living with many old warehouses and commercial buildings being converted to apartments. In the suburbs closest to the central business district there has also been pressure to develop multi-unit dwellings on existing sections.

2.2 Policies and Plans

Historically, there has been no defined programme for monitoring compliance with conditions of resource consents granted by the council. For example, the 1993/94 Annual Report comments on the speed of consent application processing relative to the performance required by the Act, but there is no assessment of the level of compliance. Similarly, when commenting on the division's administration of the District Plan and the RMA, the former Environment Division's Annual Report for the 1994/95 year concentrates on application processing performance. However, a key task for that year was to establish a programme for monitoring the environment and the effects and costs of the District Plan policies. Staff and organisational changes mean this is still being implemented.

Both draft Annual Plans for 1995/96 and 1996/97 state that environmental control activities will include, among other things, the administration of the District Plan which includes processing of resource consents, compliance monitoring and consultation activities. The specific objective in both plans is to administer the RMA in respect to resource consents. The performance measure associated with this objective in 1995/96 related to processing of resource consents 'in accord with' the RMA; in 1996/97 the performance measure relates specifically to processing consent applications 'within the time limits set by the Act'. With the obligation under s35 of the RMA to monitor the state of the environment and effectiveness of any plans and policies administered under the RMA, monitoring has been recognised by the council as an integral part of the formal policy process. Procedures, priorities and programmes, including responsibilities, are being set up

within an overall monitoring framework and is being given effect in the proposed District Plan.

Proposals for policy development may arise from the Regulatory Committee identifying recurring issues in the consent applications with which it deals. The committee can bring the issue to the attention of the head of the Physical Urban and Natural Commissioning (PUNC) policy unit for consideration, or present it directly to the Works and Environment Committee charged with development of policy. The Regulatory Committee does not have a policy development function but is charged with identifying any needs for policy investigation arising from council's regulatory functions.

The council is operating with a transitional District Plan and has notified its proposed District Plan.

2.2.1 Transitional and Proposed District Plans

Section 3.5 of the proposed District Plan details proposals for carrying out council's monitoring responsibilities under section 35(2) of the RMA. The monitoring programme is to include monitoring the state of Wellington's environment, the suitability and effectiveness of the District Plan, and the exercise of resource consents.

The monitoring programme is intended to examine any effects that occur from the exercise of resource consents, including cumulative effects. It also intends to examine compliance with the conditions of all current resource consents granted in the last two years, including any enforcement action. For earlier consents, priorities to identify those to be followed-up have to be developed and confirmed between PUNC and the compliance monitoring/enforcement group.

Council considers the information gained from such monitoring will enable it to assess progress towards achievement of the environmental objectives of the District Plan. This will assist council to review its environmental management policies, ensure the plan's provisions remain suitable for the city's environment and changing needs, and confirm the administration and regulation of the District Plan.

2.3 Administration of compliance with resource consents

The council estimates in the 1995/96 year it will receive 1090 applications for land use consents and 460 for subdivisions under the RMA. Although there has been growth in land use consents totalling 55 percent over the 1993/94 year's figures, all other consent applications while fluctuating annually have grown only marginally over the same period.

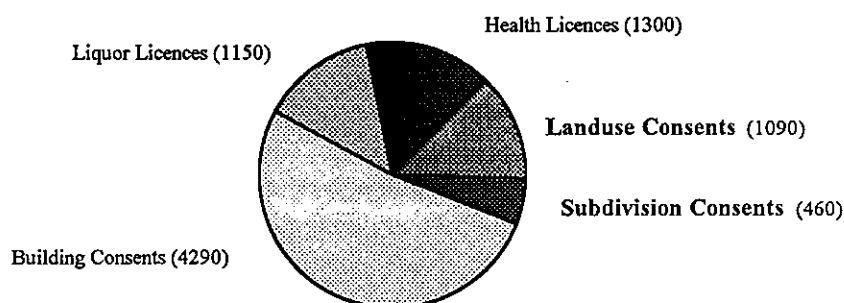
2.3.1 Consents

As a territorial authority the council's RMA functions are defined by section 31 and are related to the control of:

- the effects of the use of land;
- the subdivision of land;
- the emission of noise; and
- the effects of activities in relation to the surface of water in rivers and lakes.

Council is also responsible for consents under the Health, Building, Sale of Liquor and Local Government Acts. The total number of applications for consents and licences expected to be received in the 1995/96 year is shown in figure 1.

Figure 1. Consent applications expected to be processed by the council in 1995/96



2.3.2 Management structure and resources

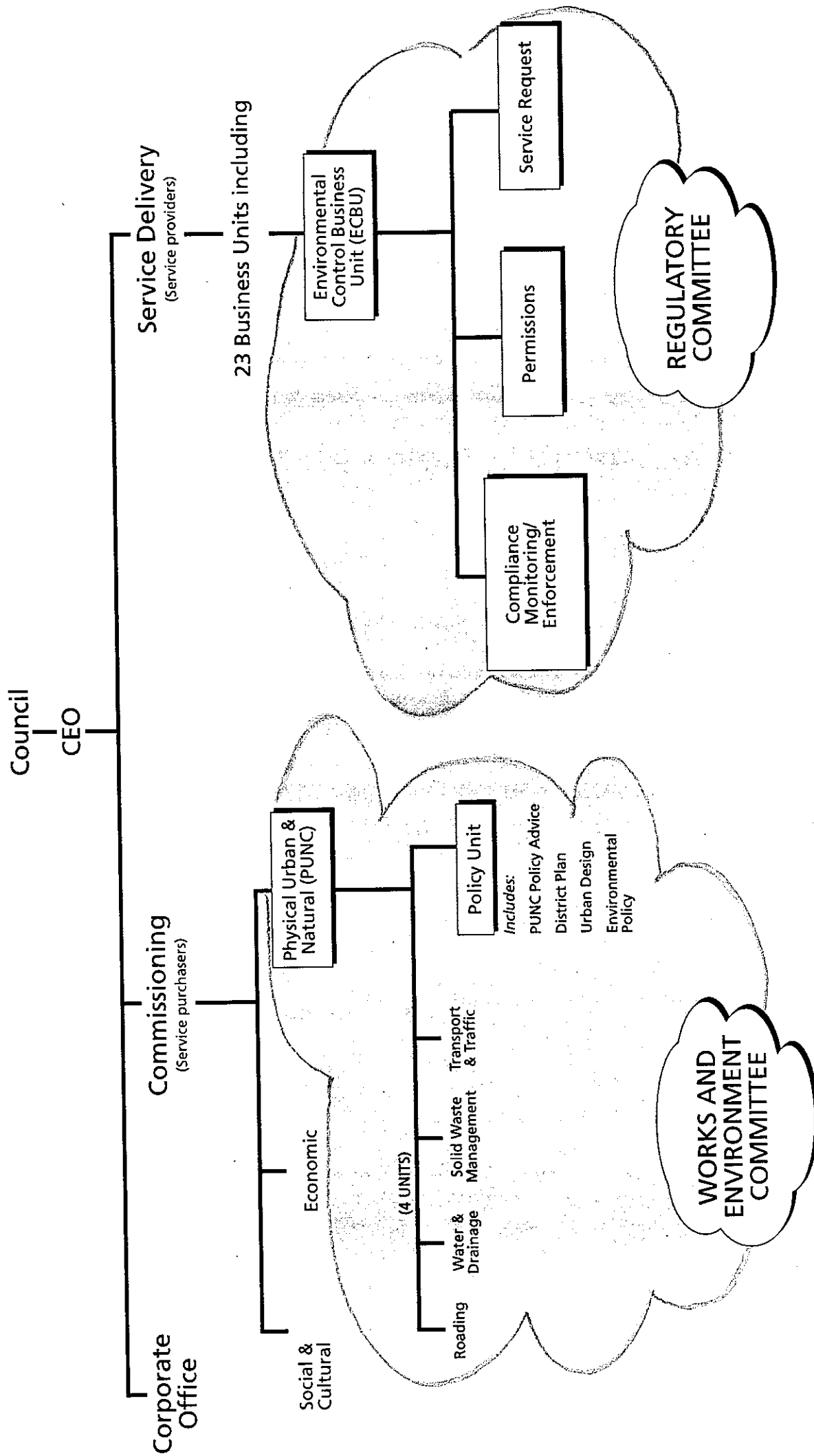
The council is currently part way through a major restructuring of its departments into business units¹ which started in late 1994 and is expected to be completed in 1996. Under the new structure, the jobs of policy development and deciding what services need to be delivered (termed 'commissioning' in the new structure) have been separated

¹ Business Unit: A semi-autonomous group within a council run on broadly commercial lines with the primary objective of recovering costs or making a profit. It is a department within council able to isolate its costs and is contracted to deliver services to customers in other parts of council or external to council. (*Making Wellington the City of Excellence: Improving the Way We Work 1994. p17*)

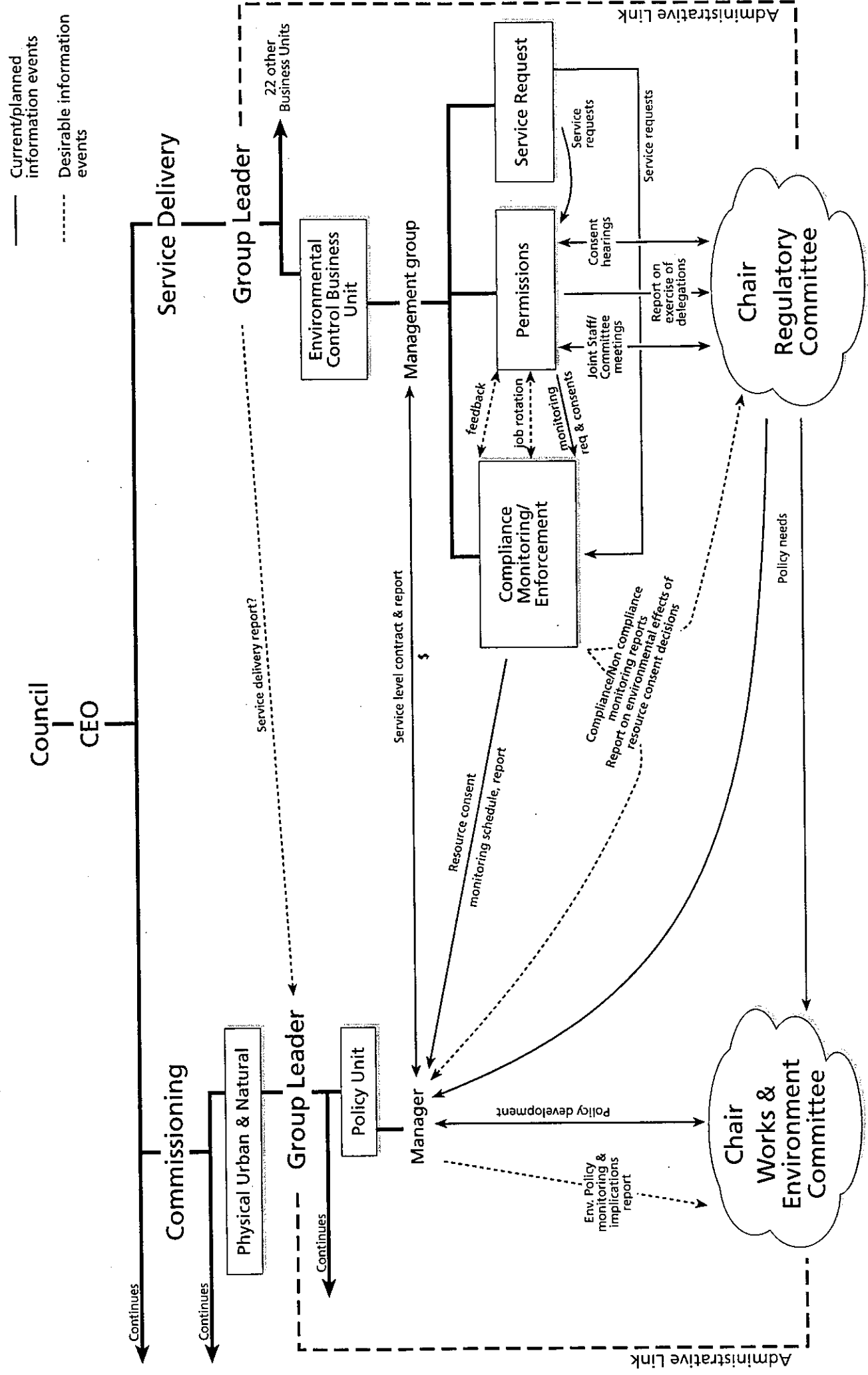
from the actual task of delivering the service. The rationale for this is to improve efficiency and effectiveness in the purchase and delivery of services to the community. In addition, the Local Government Act 1974 s 223C(1)(d) and (h) requires local authorities to ensure that as far as practicable regulatory functions are separated from other functions and that the management structure reflects and reinforces this separation. The commissioning group works with the elected council to decide on the quantity and quality of services to be purchased across all activities in which the council is involved. Service delivery is to be provided by various business units contracted to provide specific services at specified costs. Figures 2 and 3 depict the council structure and communication links.

Before reorganisation, resource consent issues were dealt with by the Environment Division, which consisted of Resource Management and Environmental Health, Survey and Land Information, Buildings Development, Parking and Administration sections. The departments within the former Environment Division each processed their appropriate consents and monitored them for compliance. Consent decisions which did not require a full hearing were decided by the Environment Delegation Committee, comprising two senior officers and a representative of council's solicitors.

Figure 2: Council structure in relation to environmental management



— Hierarchical linkages



The former departmental divisions were based on vocational groups, and problems of coordination and communication occurred. These problems have been reduced with reorganisation. Due to the statutory requirements relating to consent processing deadlines, compliance monitoring had low priority and was mainly driven by complaints.

Responsibility for RMA consent and compliance issues is now with the new Environmental Control Business Unit (ECBU) which consists of three groups²: service request, permissions, and compliance monitoring/enforcement.

The service request group processes requests for service from the public:

- as **customers** (those paying a direct charge for a service, eg a permission);
- as **consumers** (those who pay no direct charge for a service, eg general enquiries and complaints); and,
- as **'owners'** of council's environmental management processes and represented by the elected council. The concept of 'ownership' applied to the ratepayers arises from their provision of capital through rates and their ability to participate in management of the city's development by submissions to the District and Annual Plans. As 'owners' they expect efficient delivery of council's services and commitment to policies, plans and rules.

When a resource consent application is received, the service request group checks it for completeness, enters it into the computer system and then refers the application to the permissions group.

The permissions group deals with applications for land use and subdivision consents, among other council granted permissions. The group:

- assesses the application and information provided;
- determines if the application needs to be notified or not; and,
- identifies any appropriate conditions that should be applied.

Within the constraints of their delegated authorities the permissions staff can decide to approve or decline a non notified application without reference to the Regulatory Committee.

The function of the compliance monitoring/enforcement group is to:

- check whether consent holders are meeting the conditions of their consent,
- take any necessary enforcement action if there is a failure to comply.

² WCC describe their groups as process-focused work groups.

- identify activities operating illegally without consent; and,
- respond to complaints.

As at May 1996, total staff involved in monitoring compliance with all permits and consents was 32, only two of whom focus on resource consent compliance and complaints.

The commissioning group for environmental control is the Physical, Urban and Natural Commissioning unit (PUNC). Council has recognised the lack of formal follow up of the conditions imposed on resource consents and has acted to require, through the PUNC, that a programme of monitoring of consent conditions be initiated by the compliance monitoring group in ECBU. This is still being developed but council has provided the ECBU with additional annual finance (\$100,000) to enable implementation of a regular programme of compliance monitoring of resource consents.

Council's Organisational Development Plan permits the development, as in the ECBU, of self managing groups without a defined hierarchical structure. Staff responsibilities are delegated to the lowest possible level in the organisation, compatible with an officer's competence. Consistency of decision making is maintained by a form of peer review requiring decisions made under delegated authority to be confirmed and countersigned by another officer with the same or higher delegation before the decision is sent out. One officer carries out the site visits and prepares a report, sometimes in discussion with other staff. A desktop review is carried out by a second officer before countersigning the report. If there is disagreement which cannot be resolved a third staff member is called into the peer review. Under the previous organisation unresolved issues would be passed to the section manager but as a self managed group issues are now resolved by peer process. As an aid to consistency of decisions the permissions group is developing administrative procedures which include weekly discussions of applications before the group. Group membership may change as a job rotation procedure is in place which permits movement every 90 days. However only about five percent of a group changes at any one time, although an individual can seek a change in their mix of duties to enhance their total skills and experience base.

Within the ECBU the compliance monitoring and enforcement group's vision statement (1995c) includes:-

'Continually monitoring the city for breaches against environmental control legislation. If a breach is found an emphasis will be placed in education and encouraging voluntary resolution of the situation. In this, compliance team members will need to establish good rapport with "customers" to encourage voluntary

2.3.3 Compliance monitoring vision

compliance and reduce the need for often protracted and expensive enforcement action.

Team members must make their compliance expectations clear but are not expected to become free consultants on how to resolve the problem.

If a voluntary solution does not produce a prompt and satisfactory result, team members will have no hesitation in resorting to stronger measures of enforcement.

Team members will be proactive in identifying non-compliance, rather than relying on complaints being made.'

To implement this vision the following four-step approach to compliance monitoring and enforcement has been developed within the ECBU's overall business plan:

- monitor compliance;
- develop the basis for enforcing compliance;
- take enforcement action; and
- do the paperwork.

Process outlines have been prepared for each step and a flow diagram of the functions within each step and their inter-relationship developed. Each function also has an activity profile flow diagram which identifies activities and decision points to achieve the objective of the function. The profile includes a brief description of the function, how it may be achieved and any particular requirements.

Performance measures for compliance monitoring of council permissions, including resource consents, are covered in the service level agreement between the ECBU and the Commissioner (Physical, Urban and Natural Commissioning). This has three specific outputs:

- the monitoring of compliance with resource consents;
- the monitoring of compliance with District Plan rules; and
- specific monitoring of airport noise.

The performance expectations for this output are part of a performance reporting contract being developed with the Commissioner. The contract requires development and implementation of a planned programme of inspections in each of these areas, especially where consents are outstanding or ongoing conditions apply. Inspections are also to be programmed during construction or implementation of a consent in order to ensure compliance. Complaint recording and response time requirements have also been set.

While council policy is to achieve voluntary compliance by consultation and education this does not imply that prosecution or enforcement is a reluctant option. Senior staff consider council now more determined and able than ever to deal with non-compliance. This has seen a rise in the number of prosecutions over the last few years.

Triggers for compliance monitoring and enforcement may be as a consequence of the permission process when a schedule of inspections is generated. However, customer requests for inspections, and consumer complaints or instances observed by council staff in the course of their duties, may also prompt action.

As part of the new service performance objectives, such requests are to be allocated to a staff member within any hour of being received and recorded. An initial response from council staff is expected within eight hours.

With the development of multi-skilled staff and field access to files, it is intended that members of the compliance monitoring team will be able to monitor all consents applying to a site or project at a single visit. One of the intended outcomes of multi-skilling is to have fewer individual inspectors required to visit a site during its development. Ideally a single person will follow through the whole package of consents and conditions pertaining to a site. If deficiencies in a consent holder's performance are recognised, the inspector will try to persuade them to correct the deficiency. Otherwise enforcement action may be taken.

With the new structure in place, council is reviewing which staff are to be warranted as enforcement officers under section 38 of the RMA. It proposes to warrant virtually all compliance monitoring and permission staff. This is considered necessary to assist staff to take prompt action, if required, when in the field.

Detailed policy and procedures have been developed for taking enforcement action when other efforts to obtain compliance have failed. The decision to take action is made by the individual carrying out the inspection.

Concurrent with restructuring of the ECBU, council is moving towards a 'paperless' office environment with a major upgrade of its computer system and improved access to information by staff involved in compliance monitoring work. The 'mobile office' project is the final stage of a two-year redesign of the computer system. The intention is that inspectors will be able to spend more time on site visits and, when necessary, call up the relevant computer file. This will include scanned images of correspondence and documents to confirm whether consents

2.3.4 Information management

have been granted, what conditions apply, and whether there are any outstanding abatement or other notices. If necessary, any required documentation including abatement notices can be issued on the spot.

Complaints are being recorded electronically. This system identifies the officer responding to the complaint, and the date, time and response. It can also be used to monitor levels of performance.

2.3.5 Information reporting

No regular reporting to council on monitoring activities is currently undertaken, although records of the operation of delegated authorities are reported to the chair of the Regulatory Committee as part of the permissions process. The ECBU reports monthly to the PUNC on monitoring/enforcement activities as required in the 'Service Level Agreement'. The PUNC has reported the results to open meetings of the Environment and Works Committee and plans a quarterly reporting programme including occasional independent peer review.

The proposed District Plan states that information collected in environmental monitoring will be reported to the community by way of an annual State of the City environmental report. The community will be able to make submissions on this document. An Annual Report, drawing together the policy (effectiveness, future development) and regulatory (resource consents, enforcement) monitoring into an overall evaluation of the District Plan's performance will also be provided to council. This will compliment the State of the City environmental report. This second report will also be available to the public along with statements on monitoring resource consents.

2.3.6 Cost recovery

While monitoring on a cost recovery basis could be implemented, currently there is no specific fee for inspections although this is being considered. A proposal to charge for excessive time spent in consultation and advice to consent applicants has been approved through the Annual Plan process.

3 COMPLIANCE MONITORING ISSUES

This section comments on the council's policies, plans, structures and systems for compliance monitoring. It focuses on pressures and constraints faced by the council, and how it is responding to its duty to monitor. Opportunities for improving the administration of compliance with resource consents are identified.

Council has approved a comprehensive framework to monitor the outcome of policies and review their implementation, effectiveness, cost and equity. Monitoring proposals in the proposed District Plan focus mainly on providing input for an assessment of the success of the District Plan in achieving council's environmental objectives. This is a responsibility of the Works and Environment Committee³ to oversee. However, while responsible for the administration of all regulatory matters under the RMA, the Regulatory Committee does not appear to have responsibility to monitor the efficacy of the conditions imposed. In other words whether conditions avoid, remedy or mitigate adverse environmental effects identified either in applicants' assessments of environmental effects (AEE) or during the consent granting process. There appears to be no formal system in place to assess the effectiveness of the conditions on resource consents to achieve this objective.

Defining performance expectations for council's compliance monitoring is a positive proactive approach developed by the Commissioning unit. One measure of performance will be implementing a programme of regular inspections of consents during construction or implementation of a consent. A further measure will be the identification and programmed inspection of sites where outstanding or ongoing conditions apply. Previously there was no established policy to actively monitor conditions on consents. Conditions on land use consents were checked only if complaints were received. The additional funding to the ECBU for resource consent monitoring will provide staff resources enabling identification of resource consents with a monitoring requirement and development and implementation of a monitoring schedule or specification of compliance monitoring targets.

Consent processing has traditionally taken precedence over monitoring, and much of the inspection effort has been put into building consents.

3.1 Policy and Plans

3.2 Structure

³ The terms of reference of this committee include ensuring the continuing assessment of environmental factors affecting the community.

The new structure includes at least two staff responsible for monitoring resource consent compliance. This provides a better focus on compliance monitoring. However, these staff may face a considerable workload. Consent applications in the 1995-96 year are almost twice that of 1992-93⁴, and overall staff numbers in the ECBU are being reduced during 1996.

It is too early to judge whether the new ECBU structure and systems and the additional compliance monitoring funding (with a reduction in staff numbers), will bring about overall improvements in compliance monitoring.

3.2.1 Linkages within ECBU

The service request group plays a crucial role as the first point of contact for the public. The quality of its advice determines the efficiency with which consents are subsequently processed, complaints dealt with and any conditions monitored. For example, it is important that complete information about the effects of an activity accompany an application for resource consent. It is important, therefore, that the service request group is staffed by experienced officers who can provide sound advice.

Functions documented for the ECBU note that the permissions group are to compile inspection schedules for the compliance monitoring group. So far, schedules applying to resource consents have not been prepared pending the development and implementation of appropriate computer systems.

At present there appears to be some deficiencies in the system in that once a consent has been granted, 'ownership' of the issue passes to the compliance monitoring team. A more defined division seems to have arisen between the two sections than was intended. Permissions staff do not get to see the validity and practical implications of the conditions they impose unless they become involved in any subsequent enforcement action. The ECBU business plan statement which deals with the interface between the compliance monitoring and enforcement process and other processes specifically identifies the need for feedback to the permissions group on the quality and practicality of conditions imposed. This is to ensure that conditions are reasonable and enforceable and the wording clear and unambiguous. However, the interface statement for the permissions process, although noting a need for providing clear and enforceable conditions, does not acknowledge that any feedback will be provided from the compliance enforcement process on the quality of the conditions. Concern has been expressed about inconsistencies in interpretation between permissions and compliance monitoring staff, particularly in relation to non-complying

⁴ Council has had to contract out some consent application processing in order to meet RMA deadlines.

activities granted retrospective approval. The management of environmental impacts on visual amenity and streetscape appear to be some of the more contentious issues and require elements of subjective interpretation of District Plans or design guides when assessing environmental effects.

There is a need, therefore, for better integration between these groups. This is expected to be achieved by job rotation and would also be assisted by regular meetings to discuss matters of concern. The quarterly review of each team's performance within the ECBU will also provide a forum for further development. If there is an area of inconsistency and contention in environmental effects management, there is a greater need to try to ensure consistency in the interpretation of rules and guidelines relating to the issues in contention. This may involve staff training and guidance as well as clarification and adjustment of the rules or guides.

The system for granting subdivision consents is an effective and efficient arrangement for ensuring consent holders comply with their conditions. This is because a consent holder must obtain a completion certificate from the council before a survey plan can be deposited under the Land Transfer Act 1952 and the land title released. However, the development project may take years to reach this stage and there may be no on-going monitoring of environmental impacts such as dust and noise during the course of the development. It is often as a result of complaints that vegetation removal, run off and sediment control issues are inspected. Otherwise, it is not normal for the subdivision consents officer to monitor for third party effects that may arise during development of a subdivision. A consent condition requiring the local authority to be advised when earthworks are to start could be used as a trigger for monitoring. Where there may be uncertainty about the possible environmental effects, consents would be strengthened by including a clause permitting review of the conditions, as provided by s 128 of the RMA.

3.3 Monitoring and compliance

When investigating property files for examples of the effectiveness of compliance monitoring, it appeared the complaint issues council staff were responding to were often not simply non-compliance with a consent, but had evolved through non-notification of the consent. In such cases, the complainant had been unable to provide input to the consent process. The effect complained of may or may not have been covered by any conditions or, because alterations to the plan still complied with the consent and/or variations to the conditions were approved, the activity was actually complying with its consent.

Before the current restructuring, where council aimed to exercise some control over the environmental effects of a land use through conditions and short duration consents, it appears no regular schedule of

monitoring was developed. Monitoring only occurred near the time for renewal of the consent. Council was then caught between its requirement for remedial action and the company request to renew the consent, allowing it to continue to generate a cash flow to finance the remedial action. A more proactive monitoring regime with frequent and early checking for compliance may alleviate such problems.

Changes occurring during construction or through complying alterations, variations or non-notified retrospective consents may result in changes to the effects of an activity which were deemed to be minor in the initial design. Consequently, affected parties may not be consulted. However, council does not have a presumption for non-notification if the original consent was not notified. Notification will depend on the scale of changes proposed. The cumulative effect of a succession of apparently minor changes is a cause of concern for some local residents' groups, as covered in an internal council report: 'Delegations to Officers in the ECBU 29/1/1996'. If too many consents which deviate from District Plan rules are granted, it becomes difficult to recognise cumulative impacts, the change of character of an area, and the effects on council's overall environmental objectives for the area or the city as a whole. If the District Plan intends to retain the character of an area and incremental changes occur, the perspective of what constitutes the baseline character becomes lost.

Council needs to monitor the kind and level of changes and variations being granted along with monitoring consents to determine how they are modifying the intent of its own plans, objectives and rules.

3.4 Information management and reporting

3.4.1 Information management

Current files are arranged on a property basis with all information relating to a particular address on the one property file. For a person unfamiliar with them, they are difficult to peruse. Duplicates of papers were found, date sequence was not always followed, and consent documents not easily located. Some of these difficulties could be overcome by colour coding key documents in the files. However, this needs to be considered in the light of proposals to transfer key file information on to the computer system.

The proposal to move to a paperless office, minimising the use of paper files carries risks. Without adequate safeguards and back-up systems, there are risks that information normally placed on file could be lost, misplaced or tampered with. While the information needed by people working in the various processes including compliance monitoring has been identified, the systems to capture and deliver it are still evolving. Staff anticipate a much better audit trail, record keeping and access to information than previously.

Although the new computer system and mobile office concept should enable compliance monitoring staff to spend more time checking

compliance with consent conditions, it is too early to judge how effective or efficient this will be. It will, however, require staff to be diligent in maintaining file records and, together with the system of job rotation between groups in the ECBU, will require adequate time for initial training and familiarity with the new system. The opportunity for field staff to interact with other staff may also be reduced, with possible inconsistencies in approach. This is likely until standards, procedures and guidelines being prepared for the compliance monitoring and enforcement process are available to guide staff.

Non-compliance reports are not prepared for council. Committees have not requested this information. Similarly, because of the restructuring into self-managed process-focused groups, no management structure is in place which might impose a reporting requirement. There are no records of the extent of compliance or non-compliance. Nor are there records of whether the consent conditions are achieving their purpose in avoiding, remedying, or mitigating adverse environmental effects. In its service level agreement with the ECBU, PUNC has the ability to include a requirement for such reports.

The PUNC commissioned an internal report (1996c) to review resource consents where there have been complaints. It covered 27 properties, a group of which were the subject of complaints to Ward Councillors about council management of consents in their area. Because of the time since some of the consents were granted and the recent changes in procedures, little further council action has been taken on the report. The findings relate more to consent application processing decisions than failure to comply with the consents as approved. The internal report on delegations to officers in the ECBU (1996d) which commented on some of the properties above, noted that quality control measures such as peer review and recording and reporting procedures were changed in late 1994. There is now a much improved decision audit trail for the exercise of decisions under delegated authorities.

In a number of press statements, council has publicised its intention with regard to consent enforcement. Advertisements have also been placed in community papers highlighting council's requirements for consents for activities a home-owner could undertake without appreciating the need for council approval.

The quality of consent conditions depends not only on the experience of staff but also on the quality of information the applicant provides. This should include an assessment of environmental effects (AEE). A recent (1996e) audit of council's implementation of a design guide for multi-unit housing noted that poor or partial information supplied by applicants compromises the approval process. This supports concerns

3.4.2 Information reporting

3.5 Other issues

3.5.1 Consent conditions

about the management of the assessment of environmental effects by territorial authorities and the need for councils to be more critical of the information supplied with a consent application (PCE, 1995). The council audit also noted 'an excessive degree of inconsistency in assessment process and decision making in some areas', and proposed corrective measures.

Conditions selected during the permissions process to avoid, remedy, or mitigate adverse environmental effects will eventually be based on those suggested in the standards, procedures and guidelines document currently being prepared by the ECBU. Ensuring that conditions are appropriate, measurable and enforceable will assist officers involved in compliance monitoring. This will help alleviate any concern that the wording of conditions may lead to difficulties for the consent holder to comply and for staff to enforce.

Too often the only condition imposed on a Wellington City Council land use consent is that the project should be built according to a plan of a specified date. This may create problems if:

- the plan submitted to council differs from that on which affected parties gave their written approval; or
- there are subsequent plan changes, especially if council dealt with it as a non-notified application.

A residents group was concerned with the practice of giving written approval to oneself as adjoining landowner. While this is neither unlawful nor contrary to the District Plan it appears open to exploitation unless council is diligent in upholding the community's interest as defined in the District Plan. Taking a broad approach in determining who are the affected parties, and seeking the views of more distant neighbours or even acknowledging a community interest group as an affected party are important here. Appropriately constituted community groups could be recognised as Upper Hutt City Council has done for the local branch of the Royal Forest and Bird Protection Society. There, council has confirmed the branch's request to be recorded as an affected party for resource consents which are pertinent to the society's objectives and interests.

Council could even request the developer to submit a coordinated development plan for both sites which may result in more sympathetic and effective use of the sites. Council has a statutory role defined in Part II of the RMA to ensure that consents granted promote the sustainable management of natural and physical resources. This is achieved in part by having particular regard to (among other things) maintenance and enhancement of community values, the quality of the environment; and recognition and protection of the heritage values of sites, buildings, places and areas. The District Plan is the expression of

these and other community derived values and objectives over which the council acts as watch-dog.

The concept of the District Plan as a 'social contract' between the community and the council on how an area might develop implies a responsibility to uphold the plan on behalf of the community and not permit a diminution of the standards and requirements set. Community expectations, as expressed by a residents group, are that council will act to maintain the standards of the District Plan. Indeed s 84 of the RMA makes this a statutory obligation on council. If change is required this should only occur after consultation, and in accord with the RMA procedures.

Where there may be uncertainty about the possible environmental effects, consents would be strengthened by including a clause permitting review of the conditions as provided by s 128 of the RMA. In regard to subdivision consents, consideration should be given to including a condition which requires the developer to notify the local authority when earthworks, for example, are about to start. This would provide a trigger for monitoring the effects of the site works.

If a consent requires an extensive list of conditions, consideration should be given to whether the consent should be granted at all.

One community group expressed its concern about council making sequential variations and retrospective consents, and the impact of this on particular areas and the city in general. Collectively these may result in major changes to the impact of a project and cause unforeseen effects. While obliged to accept and process retrospective and sequential consent applications, the council creates potential for ill will if there is only minimal consultation between the applicant and potentially affected parties and non-notification of the application. There is a potential for a level of public complaint if perception of compliance differs from what council may have subsequently approved.

Council is able under s 91 to defer dealing with an application for consent where the council believes that other consents will be required. In this way a number of consents can be dealt with together. This however would not cover the situation where a developer seeks sequential changes to an existing consent.

Concern has also been expressed that the quality and/or workload of inspection staff does not permit regular compliance checks beyond the requirements of the Building Act. Consequently staff may fail to recognise variation from approved plans or the significance of such variations in terms of environmental effects.

3.5.2 Variations and retrospective consents

4 FINDINGS

4.1 Policy and Plans

The council has not had a resource management monitoring policy. New policy and programmes to address this are currently being developed by the Commissioning unit. In relation to the monitoring of resource consents, the policy also needs to establish guidelines on the quality of conditions imposed.

The ECBU's draft compliance monitoring service level agreement with PUNC sets out in broad terms the action required (eg regular programme of inspections) and the output performance expected in relation to monitoring compliance with resource consents. At this stage the compliance monitoring performance expectations are general statements identifying components of compliance monitoring activity. More subjective expectations are yet to be developed. Because the contract has helped identify the components required it should ensure adequate resources are allocated to compliance monitoring and improve accountability for the delivery of the service. It remains to be tested once the new policies, systems and structures are well established.

4.2 Structure and Resources

Restructuring of the ECBU has helped create a unit more focused on control of the built, natural and physical environment.

The council has targeted funds for compliance monitoring and has established a compliance monitoring group equipped with new technology to improve the level of compliance monitoring. However, there has been a trade-off in staff reductions. It remains to be seen whether this will improve the ability to effectively undertake consent compliance monitoring.

Job rotation within the ECBU is intended to promote multi-skilling among the staff. Again, there is a potential trade-off between having specialists or multi-skilled personnel but the intention is not to have 'Jacks/Jills of all trades', but the best people for what is required. The merits of this should be reviewed at a later date. Completing the set of standards, procedures and guidelines will help to maintain consistency among staff.

The procedure whereby the compliance monitoring group provides feedback on the quality of consent conditions to the permissions group does not appear to be operating effectively. The permissions group's vision statement does not acknowledge responsibility to consider the advice of the compliance monitoring group. This needs to be addressed.

While some self-managed groups have displayed considerable zeal in changing work practices and recognising the need for change, the self-managed-group concept may inhibit a group's reaction to a need for change or acceptance and taking responsibility for challenges and ideas put to the group from other groups in the ECBU. Apart from quarterly joint group reviews there appears to be no recognised contact point at which differences or inconsistencies can be resolved.

The files studied did not show comprehensive sets of conditions relating to prevention or mitigation of environmental effects. The approach was to confirm compliance with the Transitional and Proposed District Plan and require the project to proceed in accordance with the site plans presented.

4.3 Consents Conditions

Compliance monitoring may be complicated if the quality and wording of conditions is poor, which in turn may stem from an inadequate AEE. Council has the ability under s 92 of the RMA to ensure adequate information is provided.

Obtaining compliance with conditions does not seem to be a problem when there are incentives to do so, as is the case with subdivision consents. Options for applying the same principles to other consents need to be considered. The overall effect of placing the onus on the consent holder to confirm compliance would be to reduce the amount of resources council needs to put into compliance monitoring.

A number of improvements have been initiated. These include:

4.4 Monitoring System

- A detailed flow diagram outlining the functions of the compliance monitoring and enforcement group, including details of procedure and actions required for each step in the flow diagram.
- The introduction of new technology and a computer system upgrade intended to help staff identify conditions requiring monitoring, to record their assessments of compliance, to respond quickly to complaints and, if necessary, to issue abatement notices.

The monitoring system needs to be able to assess the impacts of consents and variations, as well as the District Plan itself, on overall environmental objectives.

The thrust of current monitoring systems and performance requirements is to provide information to confirm council is meeting statutory obligations and that resource consents are being complied with. A check on environmental outcomes to determine if the conditions imposed avoided remedied or mitigated adverse effects of

activities on the environment is not consciously part of existing monitoring programmes. There is a need to monitor the effects of resource consent decisions as well as monitoring for compliance with those decisions.

4.5 Monitoring Programmes

The permissions group has yet to provide a monitoring schedule for the RMA consents it processes. Current RMA consents monitoring is driven by complaints. A regular programme of inspections of consents where outstanding or ongoing conditions apply is to be developed and implemented. This may be assisted if the permissions group were to provide summary reports to which brief the compliance monitoring/enforcement group on critical points of each consent.

4.6 Information management

The filing system was poorly maintained and documents difficult to locate. This could be improved by colour coding critical documents such as consents, monitoring reports and abatement notices. The upgraded computer system, intended to eventually provide an alternative to the paper files, needs to be monitored closely to identify problems that may arise and ensure that they are dealt with promptly. Also council needs to ensure it keeps original documents which may be important as evidence.

Compliance monitoring information should provide feedback for the review of council's environmental policies, the adequacy of the District Plan, and the appropriateness of consent conditions. However it also needs to be supplemented by information from monitoring of the effects of resource management decisions.

4.7 Good practice

The fact that the Wellington City Council has identified and is currently taking action to ensure monitoring and compliance with resource consents is undertaken is acknowledged. The restructuring, the procedures being designed and the systems to be installed are intended to enable staff to be more proactive in monitoring compliance with consent conditions, but it is too early to determine the impact of these changes.

However, in developing the procedures and systems a number of innovations and examples of good practice are worth noting, including:

- the new structure enables resources to be focused on compliance monitoring/enforcement including the exercise of resource consents in particular;
- the identification of compliance monitoring expectations in the levels of service agreement between the Compliance Monitoring group of ECBU and the Commissioning group PUNC;

- the detailed breakdown and identification of tasks contributing to compliance monitoring/enforcement and their synthesis into flow charts for each step of the process;
- the clear delegation of authorities for resource consent decisions including to take enforcement action, and the ability to monitor the exercise of these authorities;
- formalised peer review process for resource consent decisions made under delegated authority;
- the concept of the mobile office with electronic linkage to all council-held property information;
- the complaints response time target of eight hours linked to computer generated alerts if there is no action being taken;
- regular meetings between permissions group and the council's Regulatory Committee;
- the intent for compliance monitoring/enforcement staff to provide feedback on the appropriateness of consent conditions to the permissions group;
- publicity efforts about the need to obtain council permission for certain works, and the intention to 'crack down' on illegal activities under the Resource Management and Building Acts for example.

5 RECOMMENDATIONS

Council is part way through a major reorganisation and computer system upgrade which will see major changes to previous compliance monitoring procedures. It is too early to ascertain the impact of these changes but the following comments and recommendations are provided for consideration during the development and implementation of the new systems and procedures.

Compliance monitoring provides information for assessing the effectiveness of Council's policies, plans and resource consents, and the acceptance and success of Council's environmental management objectives. Therefore it is recommended that:-

5.1 Policy and Plans

- 1 **Council's resource consent monitoring policy should require regular assessment and reporting to the Physical Urban and Natural Commissioning policy unit and to open meetings of the Regulatory Committee on:**

- compliance and non compliance with conditions;
- the effectiveness of the consent conditions imposed, to avoid, remedy or mitigate adverse effects of activities on the environment;
- the type and extent of variations and discretionary and non complying consents granted and an assessment of the cumulative effect of these on the intent of Council's objectives, the District Plan and rules;

To make maximum use of the information obtained from a detailed consent monitoring policy it is recommended that:-

- 2 **Council should ensure that compliance monitoring (and complaints) information is fed back into reviews of council policies, the District Plan, the conditions applied to consents and the standards, procedures and guidelines documentation.**

This information feed back will help council maintain the integrity of its policies and plans as expected by the community as a result of their participation in the planning process. This expectation could be reinforced and it is recommended that council:

- 3 **Consider adopting the concept that the District Plan is a 'social contract' between the council and the community for promoting the sustainable management of the city's natural and physical resources, and consequently recognising that as guardian of the community's welfare,**

council has a responsibility to uphold the 'social contract' by maintaining the integrity of the District Plan.

5.2 Structure

In the ECBU's non-hierarchical environment of self-managed work groups with no individually designated leadership, or clearly defined responsible contact point for a group, there is a potential for ideas and concerns from outside a group to be ignored or lost. It is recommended that council:-

- 4 Consider establishing systems and linkages which ensure that the responsibility and accountability within each self-managed, process-focused work group, for responding to and learning from the ideas, challenges and concerns of other groups, is clear.**
- 5 Amend the permissions group vision statement to provide for the group to recognise and act on feed-back and information from the compliance monitoring/enforcement group relating to the quality, practicality and effectiveness of consent conditions.**

The intention for staff to be field based in mobile offices reduces the opportunity for interaction among staff and increases the potential for inconsistencies in approach and decisions. There is a need, therefore, for better integration between the permissions and compliance monitoring/enforcement groups. It is recommended that council:-

- 6 Establish procedures and work patterns which ensure consistency of decisions and regular sharing of information between groups within the ECBU. For example by:-**
 - **job rotation specifically between staff in the permissions and compliance monitoring/enforcement groups; and,**
 - **ensuring permissions staff prepare a summary briefing report to accompany each consent granted in order to provide compliance monitoring/enforcement staff with information relevant to monitoring the conditions of the consent.**

5.3 Monitoring and compliance

Council's compliance monitoring resources could be used more efficiently and effectively if Council were to require feed-back from the consent holder. It is recommended that council consider:-

- 7 including in subdivision consents a condition requiring that the local authority be notified when earth works are about**

to start as a trigger to initiate monitoring of resource consent conditions;

- 8 identifying economic/commercial incentives which encourage compliance (as is achieved in sub-divisions where certificates of compliance are required before title can be released) and develop policies which enable council to apply such conditions;
- 9 developing policies which place the onus on the consent holder to confirm compliance with resource consents.

The focus of compliance monitoring has been on whether a consent holder is complying with their consent conditions or not. Whether the conditions achieve their purpose of avoiding, remedying or mitigating adverse environmental effects has been overlooked. Some additional training may be required for all ECBU staff to contribute to this widened concept of monitoring. It is recommended that council should:-

- 10 Promote and provide for a change of emphasis by ECBU staff from merely monitoring for compliance with resource consents to also monitoring the effects of resource consent decisions.

The ability to easily access key documents is important and would be assisted if Council were to consider:-

5.4 Information

- 11 Implementing a colour coding system for paper files which identifies and assists the retrieval of key documents such as consent application, staff assessment of AEE and recommendation(s), application decision and conditions, appeal information and compliance and enforcement reports.

With staff working in the field and job rotation occurring there is a potential for a lack of consistent decisions among staff and there will also be a burden on staff to ensure information on a consent is kept up to date. It is recommended council ensures:-

- 12 Urgent completion of the set of standards, procedures and guidelines as an aid to consistency among staff dealing with the processing and monitoring of consents.

Complaints about the exercise of resource consents are a valid source of information on environmental management performance which are often lost within the range of issues the public may complain about. Therefore it is recommended that council should:-

- 13 **Categorise complaints according to issue so that complaints about environmental and resource management issues can be identified and reported on as part of the resource consent compliance monitoring and enforcement process.**

5.5 Other issues - conditions

During the course of this investigation other issues which have an impact on the effectiveness of council's resource consent compliance monitoring and enforcement were identified. These relate principally to the quality of the conditions imposed to manage the effects identified in the assessment of environmental effects (AEE) statement which should accompany every resource consent application under the RMA. The Council's attention is drawn to a previous Parliamentary Commissioner for the Environment report *Assessment of Environmental Effects (AEE): Administration by Three Territorial Authorities (1995)* and associated good practice guide.

It is recommended that Council should ensure that Councillors and staff involved in processing resource consents:-

- 14 **Are aware of (particularly Service Request staff) and apply the suggested good practices provided in the Parliamentary Commissioner for the Environment's report 'Assessment of Environmental Effects (AEE): Administration by Three Territorial Authorities' (1995).**
- 15 **Include a clause permitting review of conditions in any consent where there is uncertainty about the potential environmental effects of an activity.**
- 16 **Develop criteria to assist Councillors and staff in assessing consent conditions effectiveness, practicability and ability to be monitored and enforced.**
- 17 **Take a broader view of who may be affected parties where a consent application involves the applicant giving written approval to themselves as an adjoining landowner.**
- 18 **Are specific in the conditions imposed, defining key parameters rather than only using the phrase "as according to the plan of <x> date".**

REFERENCES

Parliamentary Commissioner for the Environment. (1995). *Assessment of Environmental Effects (AEE): Administration by Three Territorial Authorities*. Wellington: Parliamentary Commissioner for the Environment

The following Wellington City Council documents were a major source of information concerning the policies, restructuring plans and processes of the council:

Prosecution Policy for the Environment Division, 1993.

Annual Report, 1993/94.

Proposed District Plan, 1994.

Draft Annual Plan, 1995/96.

Draft Annual Plan, 1996/97.

Environment Division Annual Report to June 1995a.

Business Planning Process Documentation, 1995b.

Compliance Monitoring and Enforcement Design Documentation, 1995c.

Appendix X, Schedule of Outputs: Draft Appendix to service level agreement between PUNC and ECBU, 1996a.

Membership of Standing Committees/Community Boards and their terms of reference, 1996b.

Internal review of resource consents where there have been complaints, 1996c.

Internal Report: Delegations to officers in the ECBU, 1996d.

Design guide for multi-unit housing: Implementation Audit, 1996e.

APPENDIX:

Criteria for evaluating councils' compliance monitoring systems

Policies / Plans

- Policies, objectives and priorities are stated to guide compliance monitoring systems and procedures.
- A monitoring strategy and priorities are set out in the council's Annual Plan or other publicly available strategic document.

Structure and Resources

- The council has established a management structure and adequate resources to enable it to carry out compliance monitoring duties effectively and efficiently.
- Effective internal communication links are in place between those parts of the council which prepare plan provisions (eg standards, terms and other rules), those which set consent conditions, and those which monitor compliance and/or carry out enforcement.

Consent conditions

- Consent conditions are achievable, measurable, clearly stated, enforceable, and appropriate to the scale and intensity of the activities and their effects.
- Consent conditions are consistent with the council's resource management policies and objectives in the regional/district plan, and with the purpose and principles of the RMA.

Monitoring Systems

- Systems and procedures are in place to monitor compliance with plans and consents in a consistent and effective manner, and to enable the council to comply with its duties under s 35 of the RMA.
- Clear advice is given to both existing consent holders and applicants for consents on general and specific monitoring requirements related to their consents.
- A system exists for recording and following up complaints about non-compliance with consent conditions, and reporting on the outcome of any investigation.

- The council has systems in place that enable identification of activities which require a resource consent, but are operating without one.
- Consents with a good track record are processed and renewed more efficiently.

Monitoring Programmes

- Systematic programmes for monitoring resource consents have been developed by the council.
- Individual monitoring programmes are negotiated between the council and consent holders, with provision for public input where necessary, and the distribution of costs and responsibilities between the consent holder and the council are clearly defined and legally defensible (with reference to s 36(4) and s 108(3) and (4)).

Information Management

- Council is clear about the purpose for collecting compliance monitoring information and the use to which the information will be put.
- Information is stored in an accessible and consistent manner.
- Information is readily retrievable.
- Consent monitoring information is analysed and used:
 - a) to gather information on the environmental effects of an activity covered by a resource consent;
 - b) as a basis for reviewing conditions, and renewing resource consents;
 - c) as a basis for reviewing compliance monitoring policies, programmes and procedures;
 - d) for enforcement purposes.
- Information from compliance monitoring is publicly available, and is able to be linked with information generated by or for other monitoring requirements (eg s 35(2)(a) and 35(2)(b)).

The course is open to students who have completed the prerequisite course with a grade of C or better.

Prerequisite: MATH 101 or equivalent

Students who are new to the program should consult with their advisor.

Students who are returning to the program after a break should consult with their advisor.

Students who are interested in this course should consult with their advisor. The course is designed for students who are interested in the field of study.

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