



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.

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

PO Box 10-241, Wellington

October 1996



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 This requirement, referred to throughout the report as 'compliance monitoring', did not exist under legislation repealed and replaced by the RMA (eg the Town and Country Planning Act 1977 and the Water and Soil Conservation Act 1967).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.

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.

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.

Incentives to comply

Copies of the Commissioner's report summarised in this pamphlet are available from Bennetts Government Bookshops. Copies of this pamphlet are available on request from the Office of the Parliamentary Commissioner for the Environment, PO Box 10-241, Wellington, ph: 04-471 1669, fax: 04-471 0331.

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.

Structure

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:

Information management

- 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.

Councils' responses to pressures