



Meeting of the Environment and Services Committee

Date: Wednesday 19 June 2019
Time: 11.00am
Venue: Council Chamber
Hawke's Bay Regional Council
159 Dalton Street
NAPIER

Attachments Excluded From Agenda

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9.	National Compliance Monitoring and Enforcement Report	
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planning and environment

INDEPENDENT
ANALYSIS OF THE
2017/2018
COMPLIANCE
MONITORING AND
ENFORCEMENT
METRICS FOR THE
REGIONAL SECTOR

DECEMBER 2018 - FINAL REPORT
CONCISE SUMMARY ONLY

Item 9

Attachment 1

USE OF THIS REPORT

This report has been prepared by The Catalyst Group at the request of our client for the purposes for which they intended. Where we have relied on information from external sources, we have referenced these sources as appropriate and assumed them to be accurate. If you are unsure about interpretation of the content of this report, or its use beyond that for which the client intended, please get in touch with us at enquiries@thecatalystgroup.co.nz

This report was developed by Dr Marie A. Brown of The Catalyst Group for the Waikato Regional Council (on behalf of the Compliance and Enforcement Special Interest Group).

p. +64 6 358 6300

e. enquiries@thecatalystgroup.co.nz

a. Level 3, 31 George Street,
PO Box 362, Palmerston North
www.thecatalystgroup.co.nz



THECATALYSTGROUP
planning and environment

PREPARED BY:

Dr Marie Brown

CONTRACT REPORT NO:

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PREPARED FOR:

Waikato Regional Council on behalf of the Compliance and Enforcement Special Interest Group.

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EXECUTIVE SUMMARY

The RMA is New Zealand's flagship environmental legislation and its implementation is highly devolved. Achieving the purpose of the Act – the sustainable management of natural and physical resources – is dependent on the quality of that implementation. Monitoring and reporting on the activities and performance of agencies charged with applying the Act is pivotal to understanding our nation's stewardship of the environment and to reviewing and validating the institutional arrangements in place to carry out that important role.

Compliance monitoring and enforcement (CME) is a significant tool in achieving the overarching purpose of the RMA. Carried out poorly it can result in slippage that erodes the potential of the regulatory regime to achieve its statutory goals. Carried out in a robust manner, it can assist in driving positive environmental outcomes and mitigating failures elsewhere in the policy process. However, data on performance of the agencies charged with the CME role has always been patchy, and councils have historically been provided little overarching guidance and support.

This independent report represents a sector-led effort, under the leadership of the Compliance and Enforcement Special Interest Group (CESIG), to improve the availability of data on CME functions. This inaugural survey saw all 16 of New Zealand's regional councils and unitary authorities (collectively referred to as the 'regional sector') participate. The dataset - while patchy due to various factors - provides a very interesting insight into the conduct of CME agencies under the RMA, and its value will only increase in subsequent iterations.

Four hundred and thirty-six FTEs are employed in regional CME roles under the RMA. Collectively the regional sector receives nearly 30,000 complaints annually, 87% of which are responded to. Regional councils and unitary authorities monitor 92% of consents requiring monitoring and encounter highly variable levels of compliance region to region. In response to non-compliance, the sector issued (in the 2017/2018 year) 905 formal warnings, 1844 abatement notices, 1289 infringement fines and applied for 21 enforcement orders (a total of more than four thousand formal actions).

Overall, the sector also secured 114 convictions against 49 individuals, and 102 convictions against 60 corporate defendants (216 convictions of 109 defendants in total), with the dominant offence being the discharge of contaminants. Collectively, the prosecutions netted more than two million dollars in fines in addition to other sanctions (e.g. restorative justice and costs awards).

The data contained within this survey is the most comprehensive made available on the CME activities of councils under the RMA in the Act's 27-year history. It also exceeds the publicly available detail available on the activities of any other environmental regulatory regime in the country. Councils have made the data available in a way that leaves them subject to criticism and analysis that many agencies are unlikely to receive, which is brave and should be commended. Throughout the analysis of the survey, several key

issues surfaced, and these perhaps represent something of a 'blueprint' for improvement, identifying the key sector-level priorities to enhance operations in the coming years.

Key recommendations for improvements arising from the findings within this report are as follows:

- While variation is to be expected given the diffuse nature of the regime and lack of oversight in the past, there is ample opportunity for councils to now work to standardise approaches to fundamental CME tasks, which would enable national scale data to have much stronger value due to increased comparability
- Resourcing for CME is varied, but overall appears to be relatively low in several councils, possibly too low to carry out the minimum requirements set down within the newly promulgated Best Practice Guidelines. The variation is not generally explained by relative wealth, land area or population - but appears often driven by other matters.
- Many councils were unable to provide some relatively basic Information for these survey questions. While information management is doubtless an area in which the sector has improved greatly in recent years, further development is required to maintain reasonable levels of transparency.
- The internal policy framework for CME in many agencies is incomplete or has aspects that open councils and individuals within those councils up to reputational risk from an inability to demonstrate fair and clear decision-making processes. The sector must carefully consider performance in this space as independence, transparency and consistency are fundamental components of being a credible regulator.
- Some councils perform consistently well across all or most measures in this survey while the reporting of others demonstrates some significant shortcomings that should be addressed. Continuing to administer a robust and regular reporting framework, including review and improvement of the current suite of metrics, will help to drive performance improvement year on year.
- Unitary authorities do not sufficiently demarcate their regional vs district CME activities in their information management systems, meaning that the level of transparency on regional-level operations they can provide is lower than their regional council counterparts. This erodes both the comparability of the collective dataset and has reputational implications for the unitary councils.

Monitoring reports such as this one help to discern areas of strong performance and areas where improvement is needed. They also help to give insight into the appropriateness of institutional arrangements and crucially provide public transparency. They are of greatest value when conducted regularly and consistently over time, with agencies gradually orienting their information management system such that they can fulfil the data requirements comprehensively.

CONCISE SUMMARY AND ANALYSIS

Monitoring reports such as this one help to discern areas of strong performance and areas where improvement is needed. They also help to give insight into the appropriateness of institutional arrangements and crucially provide public transparency. They are of greatest value when conducted regularly and consistently over time, with agencies gradually orienting their information management system such that they can fulfil the data requirements comprehensively.

Key findings from each section

This section summarises the key findings from each section of the survey for quick reference. It is focused on the main findings and does not set out the full range of detail, thus is not exhaustive. However, it provides the important background to the analysis that follows.

Section	Questions	Key findings
Regional context	3-7, 10-12	<ul style="list-style-type: none"> Councils carry out the CME role in very different contexts, with wide variation in land area, population and industry types, and these distinctions must be kept in mind in managing the sector at a national scale Councils generally have limited but evolving relationships with iwi and hapū in respect of CME matters and this area is likely to increase in importance over time
CME operations	16-17, 20-21, 28-40	<ul style="list-style-type: none"> Councils have relatively systematic approaches to determining priorities for incident response and consent monitoring, with less codification for permitted activity monitoring Overall, the CME functions of regional councils and unitary authorities comprises 436 FTE, comprising 209.43 monitoring FTEs, 87.83 environmental incident and pollution response FTEs, 65.84 investigations positions, all supported by at least 68.7 support staff including non-regulatory education-based FTEs and administrative support. Resourcing is highly variable, and that variation is not easily explained - councils require adequate resourcing to be credible regulators and shortfalls in capacity must be addressed. It is, however, difficult to determine what constitutes 'adequate' in each context, but the minimum resource requirements in the MfE Guidelines are referred to as a basic indicator. Most councils have well developed internal policy frameworks, however where they are lacking, they make the council and staff vulnerable to criticism - deficiencies must be addressed. The sector expends often significant resources in engaging with regulated communities on CME.

Managing the workload	13-15, 18	<ul style="list-style-type: none"> * Councils collectively receive 29143 complaints, of which 25,314 (87%) are responded to, (33% in person, the rest via other means). * Councils report relatively low rates of complaint verification (as low as 17%) which may be driven by a range of reasons * Councils administered a total of more than 200,000 active resource consents for the reporting year, of which nearly a quarter (49,491) were deemed to require monitoring (at least), Of these, more than 91% (45,070) were monitored at a sector level. Councils have varying approaches to classifying levels of compliance, making comparisons across sector impossible. * Councils detect varying levels of compliance in their regulated communities, ranging from only 22.1% considered to be in full compliance (Auckland) through to 96.3% (West Coast)
Acting on non-compliance	41-50	<ul style="list-style-type: none"> * Across the entire sector, councils issued (in the 2017/2018 year) 905 formal warnings, 1844 abatement notices, 1289 infringement fines and applied for 21 enforcement orders (more than four thousand formal actions). * Overall, the sector secured 114 convictions against 49 individuals, and 102 convictions against 60 corporate defendants. * The dominant type of offence is the discharge of contaminants
Sanctions and outcomes	51-54	<ul style="list-style-type: none"> * The total fines issued for regional sector convictions was more than two million dollars (\$2,044,028) * Outside of fines, there are relatively few examples of restorative justice across the sector (10 total)
CME Reporting	11-12, 55	<ul style="list-style-type: none"> * All councils undertake some form of external reporting on CME functions via the National Monitoring System, but reporting besides that is highly variable * SOE reporting is typically only weakly linked to CME activities, and highlighting the important connections between these two forms of assessment could strengthen the internal priority for CME

Table 1: Key section findings for quick reference

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Attachment 1

Analysis

Regional context

The scene-setting questions answered by the participating councils helped give consumers of the data a sense of the context in which the different councils operate, and the implications the differences between those contexts might have for the CME function. The data demonstrated the significant variation in population, area, regional economic profile and rural to urban population ratio – all of which have a material impact on the scale and nature of the CME role. No specific analysis is offered in respect of these figures, other than to acknowledge that they must be kept in mind in undertaking any comparative evaluation of CME regime effectiveness.

CME Operations

Making decisions on priorities

Making the right choices about where to expend usually limited CME resources is critical to ensuring the greatest risks to the environment are managed first and most intensively. Councils must develop coherent and systematic approaches to making decisions on relative priority. The questions in this section requested councils provide an outline of how they make those choices and on what basis. Naturally, it is difficult to know the extent to which the theory is reflected in practice.

The three main sources of CME workload represent competing demands on the resources available. Current best practice denotes that a **risk-based approach** is desirable, noting that resources in environmental management generally and CME specifically resources are generally expected to always be in short supply. A robust risk-based approach has several specific requirements as outlined in the Best Practice Guidelines (see pages 43-45). The survey does not provide scope to assess the integrity of the different approaches being described as 'risk-based'. It is important that purportedly taking a risk-based approach is not used as a political shield against providing appropriate resourcing for the CME role wherever possible.

Analyses to date have demonstrated that the first and second categories usually dominate the workload, with issues of risk, priority and weak cost recovery mechanisms impacting the level of permitted activity monitoring undertaken. This trend is reflected in the present survey. Council approaches to allocating resources to permitted activities appears overall less systematic, and more dependent upon residual resources leftover from addressing the other two main sources of work. The extent to which this more *ad hoc* approach carries environmental risk is largely dependent upon the permissiveness of the regulatory regime. Where significant reliance is placed upon permitted activities being managed by way of standards, a systematic means of monitoring compliance should not be negotiable.

In this section we learned that the regional and unitary authorities are applying increasingly systematic approaches to determining the relative priority of incoming workstreams, most particularly in respect of consent monitoring and incident response. It would seem that a sector-wide adoption of a risk-based approach has occurred, doubtless informed by the recent development of both the Regional Sector Strategic Compliance Framework and the even more recent Best Practice Guidelines. Ensuring these approaches are followed and enshrined in practice is likely to better utilise what resources are available in any given agency and to ensure the most serious issues are quickly and efficiently addressed.

It is acknowledged that the cost recovery mechanisms for both incident response and permitted activity monitoring are opaque and not fit for purpose. Providing councils with a more clear-cut statutory context for cost recovery would assist in addressing this matter. In addition, if significant non-compliance events are

occurring from permitted activity standards, then it may – in the long term- be desirable for that council to reconsider its non-regulatory approach to that activity.

Staffing levels

Overall, the CME functions of regional councils and unitary authorities comprises 435.8 FTE, comprising 209.43 monitoring FTEs, 87.83 environmental incident and pollution response FTEs, 65.84 investigations positions, all supported by at least 68.7 support staff including non-regulatory education-based FTEs and administrative support.

Councils are differently resourced for the CME function, with wide variation in resourcing not necessarily explained by differences in population, area and regional GDP. For instance, more than half of these (236.2 or 54%) are employed by just 3 of 16 councils – Auckland, Waikato, and Canterbury. Other variables are likely material to determining the resourcing, and councils with limited resourcing are more likely to struggle to meet the minimum resource requirements referred to at the beginning of this section. Comparisons with other variables (i.e. number of active consents, complaints etc) is confounded by differences in priority frameworks. The lack of clarity is not helped by a lack of clear demarcation of information on the respective functions of unitary authorities. It may take time to establish a true notion of resourcing adequacy.

CME policies and procedures

Providing a coherent policy framework for CME is particularly important, as decisions made in this space can have wide-ranging implications for the public's perception of the agency's effectiveness. The majority of councils have a relatively robust policy framework, including 14 of 16 with enforcement policies. However, that means two do not have what is a relatively fundamental instrument in the CME toolbox – a credible and consistent means of guiding decision-making on enforcement matters. This does of course not automatically mean that all decisions that might arise from an ad hoc context are questionable but means there is no ability for the regulator to demonstrate the veracity of decisions that have been made. It is strongly recommended that this gap is addressed without delay, such that all councils have robust and publicly available enforcement policies aligned with the Best Practice Guidelines.

Engagement and education

Councils appear to undertake a broad range of both engagement and educational programmes but provided varying levels of detail. Some councils have an extensive variety of approaches in this space. While there is no 'correct' number or range of ways to engage and educate the regulated community¹, investing in the information-based end of the spectrum gives important balance to a regime.

Managing the workload

Dealing with complaints

Collectively the regional sector physically attends nearly 9000 complaints a year from a total pool of nearly 30,000 (a further 16,000 are addressed via other means). Key findings included that councils tended to receive volumes of complaints broadly commensurate with their populations, but that the way they responded to them varied considerably (no doubt influenced by prioritisation approaches and resourcing constraints). The responses to these questions provide a useful continuous dataset, in contrast to most CME reporting to date.

Unfortunately, many councils were unable to provide the full suite of data, and some were unable to provide an accurate number of the complaints that had been received. Councils are required, like all public agencies,

¹ The 'regulated community' is broadly defined as the community to which any regulation applies or could apply

to accurately record complaints and guidance on doing so has been available for many years from the Office of the Ombudsman. It is reasonable to expect that councils would hold accurate records of incoming complaints and strive to maintain that accuracy through to the resolution of those complaints.² This requirement is also reflected in the RMA.

A further interesting outcome from this section of the survey was the relatively low proportion of complaints that were reported to be verified – including a rate that was as low as 17% verification in Wellington.³ Many of these figures seemed extremely low. Potential drivers could include low public knowledge of the role of agencies, poor internal management of complaints leading to frequent misdirection to incorrect departments, difficulty in verifying particular complaints or inaccurate systems for recording legitimacy. Further information would be required to understand this trend better.

Monitoring consent activity

A failure to monitor a consented activity at an appropriate frequency removes the ability for the regulator (absent a complaint) to detect non-compliance and therefore address environmental harm. Councils routinely set goals for proportions of consents to monitor and appear to meet these goals most of the time. Current best practice suggests that consents should be monitored in a way that reflects the level of risk the subject activity (risk-based approach) may pose to the environment and/or the wider community and given the relatively robust basis for cost recovery of consent monitoring, there is no good reason why councils should fall significantly short of fulfilling this expectation. For some, resourcing may simply be inadequate for the task, which places undue stress on staff and management and should be addressed at a council level.

Classifying compliance levels

All councils had a system for classifying compliance status of an activity, ranging from a binary approach (Nelson with 'satisfactory' or 'unsatisfactory') through to more detailed taxonomies, including some targeted at certain sectors (usually dairy). Councils vary in the extent to which these categories are integrated into their overall information management system.

Having different categories (and presumably different thresholds within categories) makes the councils very difficult to compare. A possible future area of improvement would be the nationwide standardisation of such thresholds. A standard taxonomy is proposed within the Best Practice Guidelines released in 2018 (Table 4 of guidelines). A nationally consistent taxonomy would enable councils to more easily demonstrate that the allocation of resources sensibly follows environmental risk.

Compliance of consented activities

A key goal of any CME regime should be to secure behaviours that are desirable within the given statutory framework. Therefore, the compliance levels being achieved by the regulated community are a critical reflection of the effectiveness of the regime. Consistently poor levels of compliance usually denote a regime ineffective in marshalling appropriate behaviours and/or short on resourcing and signal that approaches to CME must be reviewed.

Notwithstanding that, a degree of non-compliance is typical and 'perfect' regimes are rare. In a typical regime it would be expected that there is a spread of compliance status along a spectrum, each part demanding a

² It is important to note that some councils may keep good records of complaints, but not necessarily in a way that makes it easy to report at a meta scale (i.e. individual complaint detail may be significant, but the overall picture is more difficult to extract). This type of reporting relies on the metadata.

³ Notwithstanding that, even in the absence of a breach responding to a complaint may provide an opportunity to educate a member of the regulated community or avert a future compliance matter.

different approach from the regulator. In the table on compliance levels, this expectation would translate into much of the regulated community occupying the left-hand columns with a gradual attrition in proportions as one moves to the right, which is exactly what is present.

Monitoring permitted activities

Permitted activity monitoring programmes are relatively rare outside of forestry and dairy. The need for them of course depends on the regulatory regime. The robustness of the CME regime is underpinned by whether it is appropriate in the first place for the activity in question to be approached in a non-regulatory way. If activities that potentially constitute significant environmental risk are permitted, then they may cause an unreasonable burden on the CME unit, particularly considering opaque cost recovery mechanisms.

Acting on non-compliance

Formal enforcement actions

Across the entire sector, councils issued (in the 2017/2018 year) 905 formal warnings, 1827 abatement notices, 1289 infringement fines and applied for 21 enforcement orders (total 4042 formal actions). Some councils are demonstrably less active in enforcement than others. These differences are not explained by population etc but appear to be related to more opaque variables such as the council's individual approach to the CME function. A balanced approach across the spectrum of education and engagement through to taking formal and punitive actions when necessary is a vital component of being a credible regulator. A more long-term dataset will enable the trends in the activity levels of council to transcend year-on-year variability and should be carefully monitored.

Discharges of contaminants was the driver behind more than half of all notices (other than prosecutorial action) under the Act and sends a clear message that more work is needed. It is also possible that discharges are more readily recognised by the public than other actions and therefore have a greater chance of being notified to council or being detected in routine monitoring. Whatever the reason, work is required in this space by both regulators and the regulated community to better stay within the boundaries of the law.

Prosecutorial actions – total convictions and types of offences

The sector secured 114 convictions against 49 individuals and 102 convictions against 60 corporate defendants. These data clearly demonstrate that prosecution is both (a) relatively rarely used compared with other tools under the Act and (b) its use is predominantly clustered in a small number of agencies for the reporting year. It is possible that these trends in activity levels could vary significantly year on year as prosecutions and the investigations leading up to them can take many years. Notwithstanding that, 216 successful convictions against both corporate and individual efforts is a significant effort and likely has critical deterrent value within the RMA regime, particularly where outcomes are publicised in national media.

Certain activities appear to lend themselves to higher visibility in enforcement statistics and without a doubt, the discharge of contaminants is one. It consistently tops the list of offences and managing these infractions evidently occupies a significant proportion of the regional sector's resourcing and energy. This may also reflect that the regulated communities may not be getting the message that unlawful discharges are unacceptable or that compliance regimes in respect of this matter are being less effective than they need to be in driving behaviour change.

Sanctions and outcomes

The sector secured more than \$2 million dollars in fines against both corporate and individual offenders. What can be demonstrated from these data is that the total quantum of fines is approximately 2% of the total possible fines for the entire suite of convictions (\$90 million). It is possible that the proportion of fines issued compared with those possible to have been issued would seem low to some commentators; although this could also be seen as a crude analysis.

At issue is whether such a small proportion of the total potential quantum being issued reflects any view of the judiciary that potential penalties are not justified, and what variables affect that assessment. The quantum of a fine reflects not only the seriousness of the incident/s that led to the prosecution, but also the quality of the information put before the Courts, precedence and judicial discretion. The degree of sanction is also an important element for whether it constitutes a sufficient deterrent to would-be offenders.

CME Reporting

Overall, there is a significant amount of variation in the scale and nature of reporting on the CME function between councils. Some operate with limited genuine public visibility while others appear to allocate significant resources to documenting their activities for the consumption of observers (e.g. Canterbury). This is in addition of course to participation in National Monitoring System surveys, this survey and other more ad hoc reporting efforts (e.g. Brown, 2017).

What is striking is that none of the SOE reports detail to any degree the importance or impact of the council's approach to CME as being material to environmental outcomes. While some reference the CME function in relation to specific matters (see for example Northland's SOE report in relation to wetland damage for swamp kauri extraction and associated compliance issues), there is a lack of comprehensive discussion of the linkage between CME operations and environmental outcomes.

This is an area that councils may wish to consider expanding on in the future. CME is a significant tool in achieving the overarching purpose of the RMA - done poorly it can result in slippage that erodes the potential of any regulatory regime to achieve statutory goals. Carried out in a robust manner, it can assist in driving positive environmental outcomes and mitigating failures elsewhere in the policy process. Connecting CME more robustly with state of the environment reporting may assist in providing a more robust basis for CME resourcing and delivery focus.

Summary of overall key recommendations

Key recommendations and observations arising from the findings within this report are as follows:

- While variation is to be expected given the diffuse nature of the regime and lack of oversight in the past, there is ample opportunity for councils to now work to **standardise approaches** to fundamental CME tasks, which would enable national scale data to have much stronger value due to increased comparability
- **Resourcing** for CME is varied, but is relatively low in several councils, possibly too low to carry out the minimum requirements set down within the newly promulgated Best Practice Guidelines. The variation is not generally explained by relative wealth, land area or population - but appears often driven by other matters.

- Many councils were unable to provide some relatively basic information for these survey questions. While **information management** is doubtless an area in which the sector has improved greatly in recent years, further development is required to maintain reasonable levels of transparency.
- The **internal policy framework** for CME in many agencies is incomplete or has aspects that open councils and individuals within those councils up to reputational risk from an inability to demonstrate fair and clear decision-making processes. The sector must carefully consider performance in this space as independence, transparency and consistency are fundamental components of being a credible regulator.
- Some councils perform consistently well across all or most measures in this survey while the reporting of others demonstrates some significant shortcomings that should be addressed. Continuing to administer a **robust and regular reporting** framework, including review and improvement of the current suite of metrics, will help to drive performance improvement year on year.
- Unitary authorities do not sufficiently demarcate their regional vs district CME activities in their information management systems, meaning that the level of **transparency** about regional-level operations they can provide is lower than their regional council counterparts. This erodes both the comparability of the collective dataset and has potential reputational implications for the unitary councils.

Monitoring reports such as this one help to discern areas of strong performance and areas where improvement is needed. They also help to give insight into the appropriateness of institutional arrangements and crucially provide public transparency. They are of greatest value when conducted regularly and consistently over time, with agencies gradually orienting their Information management system such that they can fulfil the data requirements comprehensively.

Regional snapshots

The following section sets out the most striking aspects of the survey at a regional level, highlighting areas in which each council performed very well or indeed their responses reflected clear room for improvement. Councils can note their performance relative to the rest of the sector in each part of the report, but a short overview of key take home messages for each region is included here for quick reference. It is not exhaustive and should not be relied upon to give the full picture of the council in question. Activity levels and other variables are also very likely to vary considerably year on year, and the following snapshots are solely based on the data within this survey.

Northland

The Northland region is vast and approximately half the population are located rurally, one of the largest proportionally rural populations in the country. Northland Regional Council has a relatively systematic approach to determining priorities and a well-regarded monitoring programme for Farm Dairy Effluent (FDE) compliance. A robust policy framework guides CME decision-making and the council administers a range of education and engagement programmes. Northland has average levels of resourcing on a population basis, is relatively active in the use of lower level enforcement tools and reports regularly on CME activities in a variety of ways.

Auckland

The scale of the CME operation of Auckland Council dwarfs all other councils in numerical terms, but resourcing for CME on a population basis is below average. Internal prioritisation approaches appear sound although, like all unitary authorities, there is no way to understand (from the survey questions) how the competing demands of regional and territorial local authority functions are juggled. Information management appears to be an area where improvement is needed, although it is recognised that the efforts to integrate the legacy approaches of the amalgamated councils are ongoing.

Waikato

Waikato Regional Council operates a comprehensive CME regime, with a well-developed policy framework, prioritisation protocols and relatively good information management. Bespoke approaches to managing compliance approaches sometimes constrain the council from being able to contribute to nationally comparative datasets, however. Resourcing is slightly below average, but the regime overall appears generally balanced and well-documented. Education and engagement programmes and formal relationships with iwi and hapū on CME matters all appear comprehensively managed. Waikato appears to utilise the full range of tools in the CME toolbox. It does not (at least for the reporting year) carry out high numbers of prosecutions but did secure significant fines for convictions that were secured.

Bay of Plenty

Bay of Plenty Regional Councils approach to CME appears comprehensive with respect to the data gathered, although resourcing is below average. The policy framework and internal prioritisation approaches appear sound, although the monitoring of permitted activities could benefit from greater codification. Information management is an area for improvement given the gaps in data provision. A balanced approach to CME appears to exist with the council appearing to use a wide range of tools, and reporting is comprehensive.

Hawkes Bay

The Hawkes Bay Regional Council has some of the lowest levels of resourcing across the sector on a population basis. Like Taranaki, express provision for the CEO to participate in decision-making on prosecutions is an area of potential reputational risk. Information management, particularly regarding the outcomes of incident response demonstrates room for improvement.

Taranaki

The CME approach of Taranaki Regional Council appears both well codified and well captured in their information management system. The council has the greatest number of FTEs of all councils relative to population and has a well-developed policy framework. The monitoring of permitted activities is generally reactive however and would benefit from greater codification. Taranaki administers a relatively balanced enforcement regime, although the express delegation to the Chief Executive on prosecutorial matters is of concern.

Gisborne

Gisborne has a developing approach to CME, with internal policies and procedures having been subject to significant review in recent times, a process that is still ongoing. Resourcing levels are typical of the smaller unitary authorities (noting existing vacancies). Information management is an area of improvement, as the council was not able to provide some important data for the reporting year. However, Gisborne was the only unitary authority able to provide its consent monitoring data for regional consents only, enabling comparison with sector colleagues.

Manawatu-Wanganui (Horizons)

Manawatu-Wanganui Regional Council has a well-developed policy framework (noting that there is limited codification for prioritising permitted activity monitoring) but has some of the lowest resourcing in the sector. Information management is an area for improvement, as some datapoints were not able to be provided via council's systems. Manawatu-Wanganui used relatively few formal tools overall and recorded no prosecutions for the reporting year.

Wellington

Wellington Regional Council appears to have a comprehensive CME policy approach internally, with all expected policies and prioritisation procedures intact. Despite this, resourcing is the lowest of the entire sector, and the relatively scant use of formal tools (except non-statutory warnings) potentially reflects this. The council administers no permitted activity monitoring programmes.

Reporting appears comprehensive. Information management appears relatively sound. The relative sophistication of the internal framework for CME contrasts with the relatively low activity levels in the CME space, suggesting that the council has perhaps pulled back from this role for the at least the reporting year.

Tasman

Tasman District Council administers a large area and when combined with Nelson has slightly above average resourcing levels. However, less than half of consents that required monitoring were monitored in the reporting year and information management – like many councils – would benefit from some improvements.

Tasman has a relatively well-developed internal policy context for CME and is making progress in developing a prioritisation approach for permitted activity monitoring. The council appears to use the full range of tools

in the RMA enforcement toolbox and netted some significant fines from the few prosecutions they did undertake.

Nelson

Nelson City is the smallest jurisdiction of the sector and operates a slightly different CME model to most councils, relying on external contractors for much of the monitoring work. The resourcing appears reasonably adequate and the basic policy requirements are in place. For the reporting year, formal enforcement tool use favoured the softer end of the spectrum.

Marlborough

Marlborough District Council has a well-developed internal policy framework for CME and has above average resourcing for the CME function. Information management appears sound, with few gaps in the information provided, indicating that the council keeps good records of CME activities relative to the rest of the sector. Reporting seems comprehensive across a range of fronts.

Canterbury

Canterbury is New Zealand's largest region with the second largest population after Auckland, with significant resource management issues and a high level of public interest in council's approach to CME. Canterbury provided a significant level of detail on its CME activities in all instances and is evidently highly concerned with considering the CME function within its wider operations. The orientation of the council appears strongly focused on relationships with the regulated community and while this has many positive benefits, it can be a brake on punitive enforcement action where it is necessary. Canterbury relies heavily on non-statutory warnings notices and for the reporting year undertook relatively few prosecutions.

West Coast

The remote West Coast covers a large area, although much of it is public conservation land. CME resourcing for the West Coast Regional Council appears sound, although there are significant improvements likely required to the internal policy framework and information management – both appear lacking. The Council is relatively active at the lower end of the enforcement spectrum, mainly issuing non-statutory warnings, but carried out limited prosecutions.

Otago

Otago's narrative responses to questions were very brief, so it was difficult to discern how comprehensive their approach to some aspects of the role was. The categorical responses however generally showed that although there is room for improvement in information management, reporting is relatively comprehensive. Resourcing is below average, and council does appear to have struggled to meet its monitoring goals. The internal policy framework appears weak; it is one of the few councils to report that it does not have an enforcement policy for example. Notwithstanding the opaque internal context, Otago is one of the most active councils in high level enforcement proceedings.

Southland

Southland has a well-codified approach to CME. The internal policy framework appears relatively sound, although like some other councils, provision for CE involvement in day to day enforcement decision-making is an area of reputational risk. Notwithstanding that however, Southland was the strongest performer in prosecutions of offenders, securing nearly a quarter of the fines for the entire sector over the greatest number of prosecutions of individuals and corporates. Information management and reporting appear generally sound.

APPENDIX 1

1. Which council are you completing this survey on behalf of?
2. What is your name and contact details?
3. What is the population of your region?
4. What is the geographic size of your region?
5. What is the percentage split of urban and rural population in your region?
6. What is your regional GDP percentage of national GDP?
7. What is the regional % of GDP for each of the following industries? e.g. forestry 25%
8. Describe your regional key commitments to work with iwi/Maori on CME (e.g. commitments in Joint Management Agreements or other co-management agreements)
9. Upload copies of any agreements related to this work with iwi/Maori.
10. Are you a Unitary or Regional Authority?
11. Provide link to your council's latest state of the environment report.
12. Alternatively, upload the report (if less than 16MB)
13. How many notifications (complaints) were received from members of the public (or other sources, but excluding information from council monitoring activity) relating to environmental incidents or potential breaches of environmental regulation?
This might include information from, for example, emergency services attending an incident or perhaps a council staff member observing something while on other duties, but excludes information from council monitoring activity
14. How many of these notifications were responded to by council?
This response may be in any form – e.g. phone call, site visit, desktop audit
Total number responded to
Percentage of the number received
15. How many of these notifications were physically attended by council staff?
Total number
Percentage of the number received
16. What basis is used for determining what notifications are physically attended and with what urgency or priority?
17. If your council uses a prioritisation model or compliance strategy, please upload file.
18. How many of these notifications were confirmed as breaches of the RMA or subsidiary instruments?
19. How many active resource consents exist in your region?
In totals exclude Land use consents where the activity is completed. E.g. Land use-Subdivisions where the subdivision is complete and certificates issued or Land Use-Building where the building has been constructed
20. Describe how you determine which consents are monitored and how frequently?
If there is a prioritisation model or compliance strategy, add link

21. Upload file, if link not provided
22. How many consents required monitoring during this period, in accordance with your monitoring prioritization model/strategy?
23. How many of those consents have been monitored (including by desktop audit) in this period?
- Number monitored
- Percentage monitored of the number requiring monitoring this period

24. What grades do you apply to non-compliance? (e.g. technical non-compliance, significant non-compliance)
- Fully Compliant; Technical/Low Non-Compliance; Moderate Non-Compliance; Significant Non-Compliance; Other (please specify)

25. What were the levels of compliance with consents according to the grades you use?
- Note 1: Numbers provided under each grade is per monitoring event not per consent. E.g. a consent may be monitored 4 times in the year on one occasion it may be Technically Non-Compliance and on three occasions it may be Fully Compliant, this would add 3 to the total of Fully Compliant and one to the total for Technical Non-compliance.*

Note 2: The compliance grade is based on the condition with the worst compliance grade. (e.g. a consent with five conditions Fully Compliant and one condition Moderate Non-Compliance has an overall compliance grade of Minor Non-Compliance)

Note 3: Daily telemetry water readings where compliance with water take limits is continuously monitored are to be excluded from compliance grade totals.

Full Compliance; Low Risk/Technical Non-Compliance; Moderate Non-Compliance; Significant Non-Compliance; Other

26. Are there any significant industries or activities in your region that are permitted activities rather than consented activities (or both)? If so, what are they?

Activity	Permitted	Consented	Activity	Permitted	Consented
Agriculture (excl dairy)			Mining		
Aquaculture			Oil and gas		
Construction			Tourism		
Dairy			Viticulture		
Forestry			Other		
Horticulture					

27. Which permitted activities do you have a monitoring programme for?
- Agriculture (excl Dairy), Aquaculture, Construction, Dairy, Forestry, Horticulture, Mining, Oil and gas, Tourism, Viticulture, Other*
28. Describe what basis was used for determining how these permitted activities are monitored.
- If there is a prioritisation model or compliance strategy, add link*
29. Upload file, if link not provided above

Note: FTEs should only be counted once under each of these categories. However, if a team member has more than one role then calculate what portion of their time generally is spent in each role. An example of an answer to each of the questions in this section might look like '24 FTE spread across 40 individuals'. Exclude any in-house or contract lawyers

30. How many FTEs does your council have who carry out monitoring roles?
Include contractors.
31. How many FTEs does your council have who carry out environmental incident or pollution response roles?
32. How many FTEs does your council have who carry out investigation or enforcement roles?
33. How many FTEs does your council have in CME support roles (e.g. administrative roles)?
34. Does your council have an Enforcement Policy?
35. What is your process for making decisions on prosecutions?
36. Does your council have a Conflict of Interest Policy?
37. Does your council have any other CME policies?
38. If yes, please upload copies
39. Education
Does your council have, or support, any education or enabling projects relating to compliance with the RMA or any of its derivative regulation? For example, an annual workshop for earthworks contractors around erosion and sediment controls.
40. Engagement
Does your council have, or support, any engagement projects relating to compliance with the RMA or any of its derivative regulation? For example, wetland stakeholder group meetings to highlight emerging issues with the wetland.

Please populate the table with the number of actions taken during the period.
41. Formal warnings issued
Section 9: Use of land
Section 12: Coastal marine area
Section 13 : Beds of lakes and rivers
Section 14 : Water
Section 15 : Discharges of contaminants
Section 17: Duty to avoid, remedy & mitigate
Other breach: e.g. Section 22
42. Abatement notices issued
43. Infringement notices issued
44. Enforcement orders applied for
45. What is the total number of individual (person) defendants convicted as a result of RMA prosecutions concluded in this period?
46. For all of these (person) defendants what is the total number of convictions entered against them?
For example, there may be a total of 27 separate convictions entered against a total of nine 'individual' defendants.

47. What is the total number of corporate (e.g. Crown, company, body corporate etc.) defendants convicted as a result of RMA prosecutions concluded in this period?
48. For all of these (corporate) defendants what is the total number of convictions entered against them?
For example, there may be a total of 30 separate convictions entered against a total of 12 corporate defendants.
49. Total number of convictions against an individual
Total fine potential
(Total x \$300,000)
50. Total number of convictions against a corporate entity
Total fine potential
(Total x 600,000)
51. What is the total amount of fines imposed by the courts as a result of RMA prosecutions concluded in this period?
Individual fines/Corporate fines
52. What other sanctions, if any, have been imposed by the courts as a result of RMA prosecutions concluded in this period?
Prison sentence/Enforcement order/Reparation/Community Service/Other
53. How many prosecutions involved restorative justice, diversion or other alternative justice process?
Restorative justice/Diversion/Alternative justice
54. Describe any outcomes relating to these processes.
55. What mechanisms do your council use to report CME data to the public? (e.g. annual reports, reports to Councillors) Annual Report/Report to Councillors/snapshot/report to council committee meetings (open to public)/Other (please specify)

Item 9

Attachment 1





THECATALYSTGROUP
planning and environment

p. +64 6 358 6300
e. enquiries@thecatalystgroup.co.nz
a Level 3, 31 George Street,
PO Box 362, Palmerston North
www.thecatalystgroup.co.nz