

Resource Management Act 1991

COMPLIANCE MONITORING POLICY 2019-2022



horizons
REGIONAL COUNCIL

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FRONT COVER PHOTO:

Effluent pond with pump

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Purpose

This policy sets out Horizons Regional Council's (Horizons) approach to monitoring compliance of activities that occur under the Resource Management Act 1991 (RMA) and how it will monitor compliance to achieve environmental outcomes that are consistent with the purpose of the RMA¹. To this end regard has also been given to the Ministry for the Environment Best Practice Guidelines for Compliance Monitoring and Enforcement².

PURPOSE OF THE RMA

(1) The purpose of this Act is to promote the sustainable management of natural and physical resources.

(2) In this Act, sustainable management means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while—

(a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and

(b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and

(c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.

As an effective regulator Horizons' role and responsibility is to monitor activities occurring within the region that are regulated under its regional plan, national environmental standards, resource consents and regulations, to ensure activities are being undertaken in manner that is compliant with these documents and thereby achieving the environmental outcomes expected by the regional community.

¹ This policy should also be read in conjunction with the document titled Horizons Enforcement Guidelines, dated November 2014.

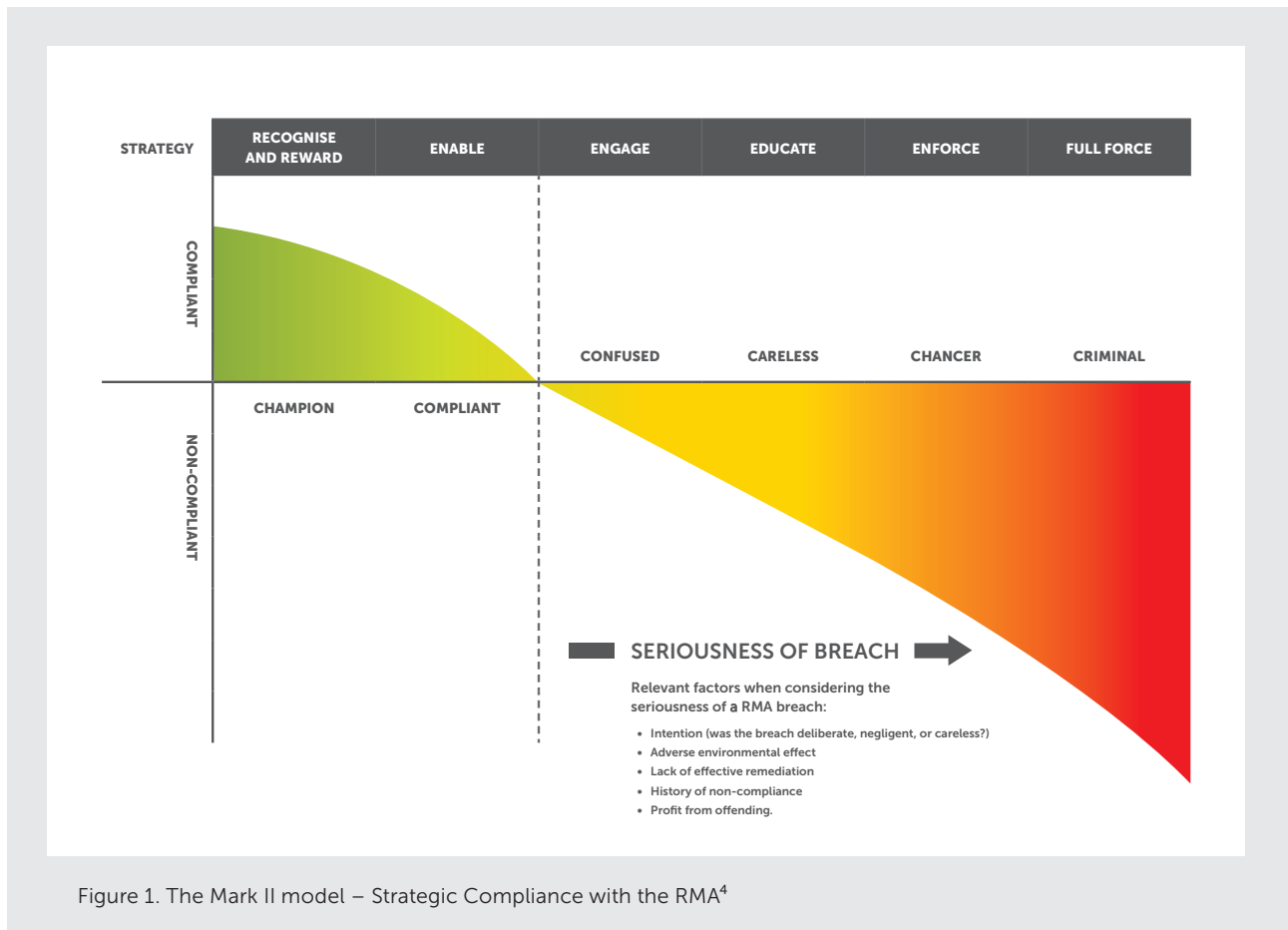
² Ministry for the Environment 2018, Best Practice Guidelines for Compliance Monitoring and Enforcement under the Resource Management Act 1991.



Principles of compliance monitoring

Horizons has a statutory duty to monitor compliance with the documents mentioned above and to ensure the provisions of both the RMA and its plans are enforced.³ Monitoring and taking appropriate enforcement action ensures the RMA's underlying purpose of sustainable management is achieved.

Horizons will take a graduated approach to compliance which ensures that responsible and compliant resource users are acknowledged while those who are not are in the first instance made aware of their obligations or, where necessary, held accountable for their breach. Figure 1 illustrates this approach.



To this end when meeting its statutory obligations of compliance monitoring, Horizons will adhere to the following principles⁵:

- 1. Transparent:** Being clear to the regulated community about the standards and requirements for compliance to be achieved. To this end, information will be made available to the general public about industry environmental performance and actions taken by Horizons to address non-compliance.
- 2. Consistent:** What we do and how we do it will be consistent with the relevant legislation and within Horizons legislative authority. To ensure public confidence in its compliance programmes it is important our approach to compliance and decisions are made consistently regardless of the person, organisation or activity under consideration.

³ Sections 35 and 84 of the RMA.

⁴ Compliance and Enforcement Special Interest Group, Regional Strategic Compliance Framework 2019-2024.

⁵ These principles are based on those detailed in document titled Regional Sector Strategic Compliance Framework 2019-2024 and the document titled Horizons Regional Council, Enforcement Guideline, dated November 2014.

- 3. Fair, reasonable and proportionate:** Regulatory intervention is a natural outcome of undertaking compliance monitoring. Equality before the law and the regulated community is fundamental to the credibility of any compliance monitoring system. To this end all persons will be impartially and fairly treated by Horizons using the same process, regardless of the type and nature of resource use.
- 4. Evidence based and informed decision making:** Evidence and fact will be used to inform Horizons compliance programme and associated compliance decisions.
- 5. Collaborative:** Where appropriate, Horizons will work with other regulators, stake holders and industry groups to ensure the best compliance outcomes are achieved for the region.
- 6. Lawful, ethical and accountable:** In fulfilling its functions, Horizons will act lawfully and impartially, and will document and take responsibility for the regulatory decisions and actions taken.
- 7. Targeted:** Horizons will focus on the most important issues and activities taking into account our finite resources and key risk factors. Focus, will also be on those poor performers and non-compliant activities that pose the greatest risk to the environment.
- 8. Responsive and effective:** Where non-compliance is identified Horizons will respond in an effective and timely manner to ensure impacts to the environment are appropriately remedied or mitigated.

2.1 RISK BASED MONITORING

“The regulator resources are inevitably scarce, so effectively implementing a regulatory regime will require the regulator to prioritise its effort. How the regulator prioritises its effort will also be crucial to the success of the regime of meeting its intended outcomes”⁶

Horizons, like other regional councils, face challenges associated with increases in land intensification, the implementation of new and/or improved infrastructure (road construction, storm water management and wastewater treatment), and the implementation of new rules, regulations and national environmental standards.

As Horizons has a finite resource in relation to compliance monitoring, there is a need to utilise this resource in a strategic and risk based manner to ensure we can achieve the best possible outcomes for our community.

⁶ New Zealand Productivity Commission
– Regulatory institutions and practices, June 2014, pg 5.



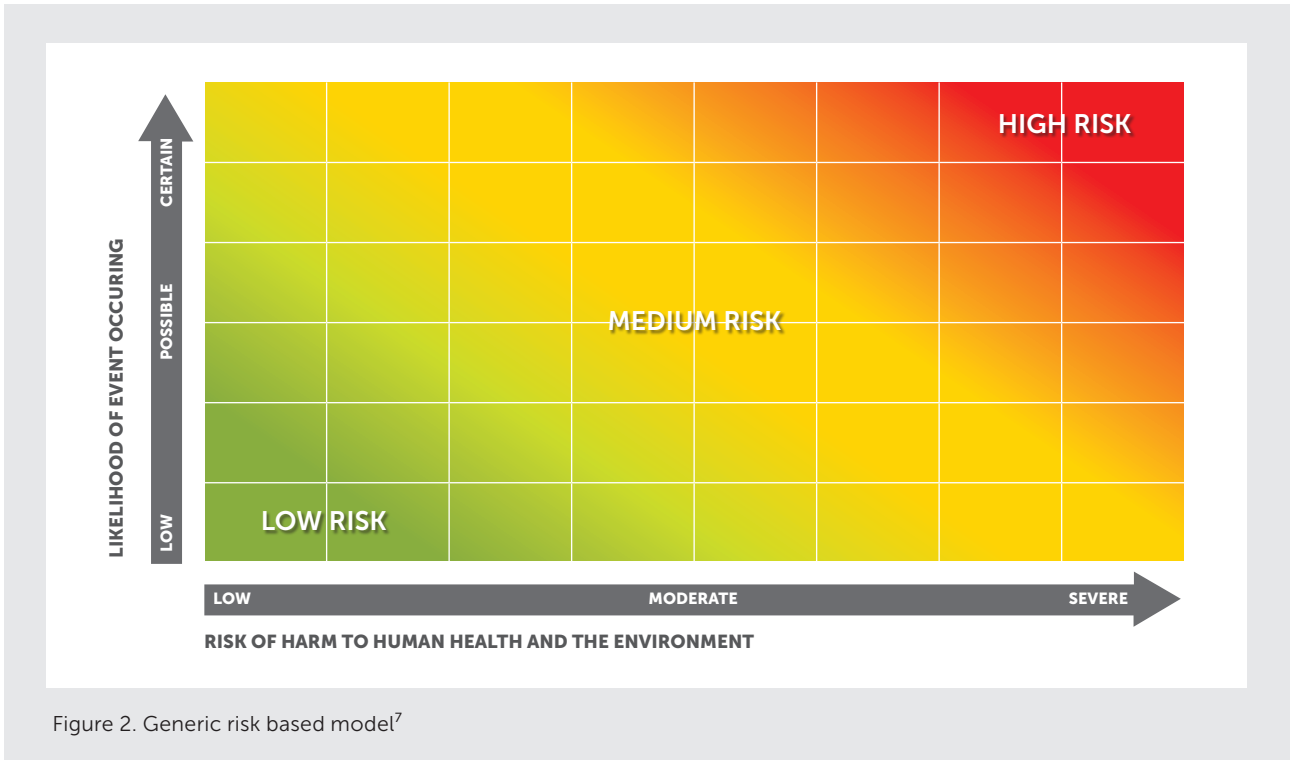


Figure 2. Generic risk based model⁷

In determining risk associated with monitoring consented activities Horizons takes into consideration the following factors:

- Actual and potential effects⁸;
- Nature and scale;
- Compliance history;
- Public profile or interest, including tangata whenua expectations; and
- Complexity of resource consent(s).

Consideration of these factors will determine whether the activity is high, medium or low risk, which in turn will determine the frequency by which an activity is monitored, with higher risk activities being subjected to more intensive monitoring than lower risk activities. This ensures Horizons finite resources are directed to those activities that pose a greater risk to the environment.

2.2 IWI IN COMPLIANCE

Horizons has a number of legislative and other obligations to Māori under the RMA and various Treaty Settlements with iwi in its region.

Horizons approach to compliance monitoring and enforcement recognises the unique relationship that Māori have with the environment and the specific functions that iwi have under the RMA in relation to the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga⁹, kaitiakitanga¹⁰ and the ethic of stewardship¹¹.

In this regard, when designing compliance programmes, the importance of particular activities to iwi are considered. For instance, where activities have been

subject to a resource consent process that has had a high level of iwi interest this will be a factor considered in determining the overall risk profile of the activity.

In addition to this, where serious issues of non-compliance occur within a particular rohe, iwi will be informed of the non-compliance, and without compromising the integrity of any investigation, Horizons will endeavour to keep iwi informed of progress in the investigation. Horizons will also seek to obtain Cultural Impact Statements (CIA) from iwi regarding non-compliances subject to comprehensive investigations.

⁷ Compliance and Enforcement Special Interest Group, Regional Strategic Compliance Framework 2019-2024.

⁸ This includes assessing the toxicity of any discharge, value of the receiving environment and any actual or potential adverse effects.

⁹ Section 6(e), RMA 1991.

¹⁰ Section 7(a), RMA 1991.

¹¹ Section (7)(aa), RMA 1991.

Compliance monitoring of activities

The following details the main activities that make up compliance monitoring under the RMA. These include, undertaking proactive site inspections of consented activities, reviewing information such as annual reports, management plans and environmental data supplied by a consent holder, responding to environmental complaints from members of the public and dealing with non-compliances identified.

3.1 SITE VISITS

Site visits are effectively visiting regulated activities on a proactive basis to assess compliance with conditions of a resource consent, rules in a plan, national environmental standards or regulations. Typically, the site visit will focus on the conditions that can be assessed during the site visit. These can include conditions that control matters such as ponding of effluent on the land surface, irrigation of wastewater within allowed buffer distances, odour beyond the property boundary, installation and operation of environmental controls and visually assessing in river conditions where appropriate. Effectively the site visit provides a 'snap shot' in time of how an operation is complying with any of these documents.

3.2 REVIEWING INFORMATION FROM CONSENT HOLDERS

It is now common that consent holders are required to provide information as part of their resource consents. Depending on the size and scale of the operation and the complexity of the resource consent the amount of information that is to be provided can vary greatly. For example a small stock water take in an under allocated catchment may be required to provide annual records of the volume of water taken, whilst a large industrial operation may require the provision and assessment of numerous site management plans (e.g. Odour Management Plans, Discharge to Land Management Plans, Erosion and Sediment Control Plans) and also the provision of information either on an automatic basis (such as discharge volumes) and either quarterly and/or annual monitoring reports. All this information has to be assessed to determine whether the consent holder is complying with its resource consent.



3.3 PROACTIVE MEASURES

Where appropriate Horizons will work with industry to assist in improving both capability and capacity to improve compliance. This may include facilitation of workshops, such as those focused on erosion and sediment control. However, it is important to note these endeavours in no way compromises Horizons role as a regulator and ultimately it is the resource users responsibility to ensure they have the requisite capability and capacity to comply.

3.4 COMPLAINTS

Complaints are received from the general public in relation to environmental matters. These complaints are important as Horizons cannot be in all places at once, and complainants often act as another source of information.

Complaints are categorised based on risk and in determining its response Horizons takes into consideration the factors noted in section 2.2 above.

3.5 INVESTIGATIONS AND DEALING WITH NON-COMPLIANCE

Where non-compliance is identified, Horizons will respond in a manner that is proportionate to the overall circumstances of the non-compliance.

Where a failure to comply has occurred, Horizons will investigate. The aims of any investigation include:

- Determining whether there has been a failure to comply with a resource consent, rule in the regional plan, national environmental standard or regulation;
- Determining the nature and scale of any effect the failure to comply has had on the environment;
- Collecting admissible evidence that, if required, can be used in criminal prosecutions;
- Promoting both specific and general deterrence;
- Achieving an appropriate outcome within a reasonable timeframe; and
- Giving the public confidence in the integrity of the compliance monitoring and regulatory system.

In the event non-compliance is identified, Horizons will either commence a minor or comprehensive investigation. The former generally relates to low level non-compliances, whilst the latter is where the non-compliance is serious and evidence is collected that is likely to end up before the courts. In addition to the factors detailed above, Horizons will, in determining whether the investigation is minor or comprehensive, consider the culpability of the person(s) involved, the duration of the non-compliance and any financial benefit obtained through delaying or avoiding non-compliance. These and other matters are detailed in the Horizons Enforcement Guidelines.



4 Cost recovery

Horizons will seek to recover the costs associated with its compliance monitoring obligations. This is provided for under section 36(1) (c) and (cc) of the RMA.

How Horizons recovers its costs are detailed in its Annual Plan each year. In setting its cost recovery model Horizons is conscious that costs associated with monitoring should fall onto those resource users who are subject to monitoring, as opposed to the general ratepayer.

In the event that non-compliance is identified, Horizons will seek to recover all its actual and reasonable costs. This approach is consistent with the polluter pays principle.





5

Who within Horizons will make decisions on compliance monitoring

In order to have a compliance monitoring programme, which ensures impartiality, fairness and consistency it is essential that decisions relating to compliance are made objectively and are free from political or public pressure¹². In order to ensure the independence and integrity of its compliance monitoring programme and decision making process, Horizons has delegated decisions to specific positions, with the delegation for prosecution lying with the Chief Executive or Group Manager Strategy and Regulation.

Publicly elected representatives are not involved in such decisions and acknowledge the importance that they are not perceived to be involved in influencing Horizons' compliance programme and associated decision making functions.

For this reason members of the community who are subject to compliance monitoring and/or investigation should direct any queries they have to Horizons officers, who will then respond. Publicly elected representatives will direct any enquiries made to them by constituents in relation to specific compliance matters to Horizons officers for a response.

6

Review

Compliance Monitoring and Enforcement (CME) is a dynamic and challenging environment. To this end, this policy will be reviewed, as a minimum, once every 3 years to take into account any changes associated with CME best practice development.

¹² This approach is consistent with the principles relating to enforcement decision making that are detailed in the Solicitor General Prosecution Guidelines, dated 2013, which states "... the independence of the prosecutor refers to the freedom from undue or improper pressure from any source, political or otherwise...."



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