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Committee Finance, Evaluation & Risk
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Management

Compliance with the Resource Management Act

1. Purpose

To inform the Committee about compliance requirements for councils under the Resource Management Act 1991 (RMA), and costs associated with ensuring compliance.

2. Significance of the decision

The matters for decision in this report do not trigger the significance policy of the Council or otherwise trigger section 76(3)(b) of the Local Government Act 2002.

3. Background

Since the inception of the RMA, councils have worked to ensure that they comply with the various requirements of the RMA. Regional councils are statutorily obligated to undertake a number functions, and there are clearly costs associated in complying with these functions. Key requirements that fall to regional councils under the RMA broadly relate to the development of policy, the duty to gather information, monitor and keep records, and to process and monitor resource consents.

4. Comment

Determining the 'cost of compliance' with the RMA is a difficult task. What is strict compliance, as compared to effective implementation of policy, is not clearly defined. However, the RMA makes clear what the core functions of regional councils are, and therefore what councils must comply with. In terms of statutory functions, the RMA requires that regional councils must:

- Prepare a Regional Policy Statement.
- Prepare a Regional Coastal Plan.

- Review any regional plan not later than 10 years after they become operative.
- Gather information, monitor and keep records.
- Process and monitor resource consents.

The RMA is prescriptive around:

- The matters must be considered in the Regional Policy Statement and plans (Sections 59 to 70).
- The way in which we must prepare and consult on the development of the Regional Policy Statement and regional plans (Schedule 1 of the RMA).
- Processes to do with consents (Part 6 of the RMA).

While the preparation of regional plans, other than the coastal plan, is not mandatory, in reality they are necessary to ensure the effective management of the natural environment. If councils do prepare regional plans, they must be developed in accordance with Schedule 1 of the RMA.

4.1 The costs of complying

The requirements outlined above reflect the core work of Greater Wellington (GW) in complying with the RMA. These functions are undertaken in the Environmental Policy, Environmental Monitoring and Investigations and Environmental Regulation Department. Examples of costs relevant to the issue of RMA compliance include:

- The review of the Regional Policy Statement has cost around \$370,000 to date.
- The budget for plan reviews and Regional Policy Statement development in the 2007/08 year was slightly over \$400,000.
- Around \$1.5 million was spent on our state of the environment monitoring programme in the last year.
- Targeted investigations into specific environmental threats, such as a groundwater nitrate contamination study, were carried out with a cost of approximately \$140,000.
- We spent \$2.7 million processing and monitoring resource consents. About \$1 million was recovered by user charges.

4.2 The relevance and impact of national policy direction

The requirement to 'give effect' to National Policy Statements (NPS), and National Environmental Standards (NES), also effects our compliance costs. There is only one operative NPS at the moment, and that is the New Zealand Coastal Policy Statement (this has been reviewed in the last 12 months). The NES for Air Quality, and the NES for human drinking water standards, are the only two operative national standards.

However, there is a raft of proposed NPS and NES documents currently either out for consultation, or proposed. These include:

- NPS for freshwater management
- NPS for electricity transmission
- NES for measurement of water takes
- NES for ecological flows and water levels
- NES for onsite wastewater systems
- NES for electricity transmission.

In general, the costs associated with implementing NPS requirements relate to the need for associated policy development, including costs for gathering and analysing information. For instance, giving effect to the New Zealand Coastal Policy Statement will require GW to address the issue of vehicle access in the coastal marine area which may cost in the vicinity of \$15,000 to complete. More significantly, the identification of hazard risks in the coastal environment could cost anything up to \$300,000.

Any new NPS is likely to require formal changes to our Regional Policy Statement, and any relevant regional plan. This would require a full round of consultation on those parts of the Regional Policy Statement and/or plans affected by the change. Costs relating to the associated consultation can be significant. While it is impossible to accurately estimate what a formal plan change to the Regional Policy Statement and/or any relevant plan would cost, as this would depend on the complexity and interest surrounding the issue, it is more than likely to be over \$100,000.

By contrast, a NES is more prescriptive than a NPS and is given effect directly through the resource consenting process. This affects our budgets and work programmes. The costs of implementing the requirements of an NES can, in some cases, be passed onto consent holders. In others it is absorbed by GW. For instance, compliance with the NES for air costs in the order of \$120,000 per year for the actual monitoring of an individual airshed. Maintaining equipment is in addition to this. Undertaking specific investigations, such as airshed source apportionment work, can cost in the vicinity of \$30-50,000 per airshed. While we would have been undertaking some of this work regardless of the NES, it is quite clear that overall costs are significantly impacted by the need to comply with the NES.

The implementation of the proposed NES on water metering will also result in a considerable cost, if all consent holders are required to meter their water take. We currently estimate that it will cost around \$60,000 to ensure that we simply have the ability to effectively gather and store information that will be required to be sent to GW from water meters. Actual costs to ensure compliance with the NES would be considerably more than this.

With both NPS and NES development, there is the associated cost of staff spending time reading and understanding the policy, preparing council submissions and following the progress of the legislation. Staff are often involved in Ministry for the Environment or regional council led working groups to assist in the development of policy. While this is a positive thing, it does involve an investment of time and resource.

Without doubt, compliance costs associated with implementing national policy will increase into the future, and will form a larger proportionate component of our costs. This is simply due to the fact that there has been very little by way of national policy guidance in the past 10 years, but a significant amount is planned in the near future.

4.3 Compliance and Enforcement

There are also costs incurred by councils as a result of monitoring and enforcing compliance with the RMA. Monitoring compliance is a requirement of the Act, and a community expectation. Enforcement action can be by way of abatement or infringement notices, or action through the courts by way of prosecution of enforcement orders. Depending on the type of offence, these costs can vary markedly. Some costs can be recovered by way of costs awarded as a result of successful court action, and though the payment of infringement fines. Enforcement action is a key part of any council's response to managing the impacts of activities on environment, and is certainly an issue which will be dealt with more fully as a part of the current development of GW's work programme for the 2009-19 LTCCP.

4.4 Risks of non-compliance

Costs associated with fulfilling our obligations under the RMA are largely 'non-negotiable'. It is not possible to say that we simply won't fulfil these functions. Policy documents, such as the Regional Policy Statement, are critical pieces of policy in ensuring that the natural resources of the entire region are managed in a sustainable and integrated manner. Territorial authorities are required to give effect to the Regional Policy Statement, and as such, are key partners who have high expectations of the Regional Council producing high quality statutory policy.

Likewise, the requirement for councils to give effect to national policy means that there is little choice about doing so. While there are sometimes reasonable questions around timing of achieving compliance, not complying leaves GW open to challenge and can affect the credibility of the organisation. As well as being requirements of the RMA, there are also general expectations within the regional community that GW will collect information on the state of our environment, and make this information readily available, and to monitor resource consents. Environmental stewardship is, quite rightly, seen by the community as one of the core functions of regional councils.

The collection of robust information on the state of our environment is essential for developing good policy, and ensuring robust resource consent decision making. The synergies between the collection and analysis of information, the development of policy and the associated need to make good consenting decisions

are the very reasons why these functions are made mandatory in the RMA. As with other areas of GW's business, actual decisions as to what level we invest in these areas are made through the Long Term Council Community Plan (LTCCP) and Annual Plan processes.

4.5 Evaluation of compliance

There are a number of ways in which we can evaluate our work in relation to our compliance functions. Our statutory policy development functions go through rigorous public consultation processes, in compliance with the RMA. While no formal 'test' of compliance exists, due in large part to the nature of policy development, ultimately we are tested by the level of dialogue we are able to engage in with key stakeholders, and the level of formal challenge we may come under in relation to proposed policy documents. With regard to our statutory policy functions, the RMA also requires the following evaluation processes:

- Progress with meeting the objectives of our regional plans must be evaluated by way of efficiency and effectiveness reporting every 5 years.
- We produce a formal regional state of the environment report, as required by the RMA, every 6 years. This formally tracks progress in achieving the objectives of the Regional Policy Statement.
- We produce annual state of the environment report cards which provide an annual snapshot of the state of our environment.

With regard to our consenting functions, we undergo evaluation in a number of ways. Due to the prescriptive and process orientated nature of consenting, there are a number of the formal ways in which performance can be evaluated, and clearly benchmarked. These include:

- Being reviewed every two years, along with other councils throughout the country, by the Ministry for the Environment. This evaluation covers aspects of best practice, as well as compliance with statutory timeframes around consent processing.
- Participating in the two yearly Regional Council best practice audit. This is a self evaluation exercise that all regional councils participate in where each council is audited by its peers in relation to identified best practice measures for consent processing and compliance practices.
- Our consent, compliance and enforcement procedures are subject to rigorous process manuals and a formalised peer review process.
- Our consent and compliance processes are ISO accredited.
- Our enforcement work has a very strong history of success in the face of formal challenge.

- Conducting a four yearly customer satisfaction survey in relation to our customer service, consent processing and compliance activities.

5. Conclusion

The cost of complying with the RMA forms a core part of any regional council's budget. The functions that regional councils are required to undertake in terms of the RMA implementation are a key part of the overall management of our natural environment.

Actual costs associated with complying with the RMA will vary from council to council depending on their resource base, complexity of issues facing the region, and the approach they choose to take to the development and implementation of policy. The level of information they choose to gather on the state of the environment is also a key determining factor to overall compliance costs. The increasing development of national policy will mean that the ongoing delivery of statutory RMA functions will become more complex, and in all likelihood, costly.

6. Communication

No communication is necessary.

7. Recommendations

That the Committee:

1. *Receives the report; and*
2. *Notes the contents.*

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