

7. Complaints Monitoring

Under section 35(5)(i) of the RMA, a local authority is required to gather, and make available:

A summary of all written complaints received by it during the preceding 5 years concerning alleged breaches of the Act or a plan, and information on how it dealt with each such complaint;

Monitoring complaints is, therefore, an explicit requirement of the resource management legislation. A local authority is required to have processes in place to adequately receive complaints from the public, record these complaints, and respond to them effectively. Complaints from the public also provide information on the performance of local authorities in regard to resource management and environmental planning duties.

Thus, it is important to incorporate this function into the monitoring programme to ensure that information from this source is adequately gathered and stored, and timely action is taken to address the cause of the complaint. Complaints monitoring can also provide information useful for evaluating resource consents processing, district plan provisions, and the state of the environment generally.

Complaints are dealt with by a number of divisions within Council depending upon the nature of the complaint. The two divisions that deal with the majority of complaints are Compliance and Policy and Monitoring. It is important to note here that enquiries (not complaints) about proposed activities should be answered by the Duty Planner from the Consents Division.

The Policy and Monitoring Division deals primarily with complaints relating to breaches of the RMA, i.e. complaints specifically concerned with resource management and planning issues. These could be related to breaches of the RMA, rules in the district plan, or matters relating to resource consents (e.g. compliance with consent conditions, etc).

However, if the complaint relates to a breach of the light, noise or vibration rules it should initially go to the Compliance Manager to assess who would be the best party to deal with it. If noise, light or vibration readings are required to be taken it is desirable that the Environmental Health Officers do the measurements/testing, as they are qualified to do so whereas Monitoring Officers are not. A partnership should be established which would see the Monitoring Officer liaising between the parties and the Environmental Health Officer collecting the data.

If the complaint relates to signs, it should be directed to either the Policy and Monitoring Division or to Compliance depending upon the length of time the sign in question has been in place. If the sign is recent (i.e. less than three years) it will go to Compliance to be checked against the bylaws. If the sign has been in place longer than three years it will be directed to the Policy and Monitoring Division. If established before September 1998 the sign may have existing use rights.

Any other complaints relating to Council bylaws or to any other issues should be passed onto the Compliance Division.

Thus, the Policy and Monitoring Division should receive complaints specifically relating to district planning issues, including complaints concerning rules in the district plan and consent conditions. These would include:

- (a) Complaints about the legality of existing activities, i.e. whether the activities have, or should have, resource consents. This could involve residential, commercial, industrial, or rural activities.
- (b) Complaints about the legality of aspects of the operation of existing activities. This would include hours of operation, traffic movements, parking provisions, landscaping matters, and so on.
- (c) Complaints about general amenity values. This would include overgrown sections, derelict buildings, accumulated car bodies, and excessive rubbish on properties.

Complaints serve a two-fold purpose. Firstly, they alert staff to issues that require immediate attention. These may include breaches of the relevant legislation or Council bylaws, transgressions against planning provisions in the district plan, and breaches of resource consent conditions. In this way, the public acts a watchdog, or in a monitoring role, in respect to breaches of legislation and/or Council regulations.

Secondly, over time, information from public complaints will assist Council in evaluating aspects of its performance, its planning documents, and consents processing procedures. Data from complaints should be collected and stored for later retrieval and analysis. Complaints data should be retained for at least five years. There are a number of quantitative and qualitative analytical techniques that can be applied to such data to provide useful information on a range of Council processes.

Complaints can often be resolved without the need for enforcement action. Indeed, the vast majority are dealt with in this way. However, for those that prove intractable there are enforcement procedures available for ensuring a satisfactory resolution to the problem. These include Abatement Notices, Enforcement Orders, and Infringement Notices, as well as prosecution, fines and possible imprisonment. Further information on enforcement action can be obtained from the Local Government Resource Management Enforcement Manual and the Whangarei District Council's Infringement Policy.

It should be emphasised that Council is obliged to enforce the law, its own bylaws, provisions of its district plan, and conditions attached to resource consents. It does not have discretion in this regard. If a complaint is received by Council alleging a breach of the legislation, bylaws, district plan, or consent conditions council staff are obliged to investigate it. If it is found to be a valid complaint Council must initiate action to resolve it. There is a certain amount of discretion as to how Council resolves the issue, but Council is bound to enforce the law and its own regulations.

Not only is it mandatory for Council to enforce the law and its own regulations, it is also good practice. If Council is firm and consistent in enforcing legislation and regulations, it will send such a message to the community and, over time, act as a deterrent to potential transgressors. It will also give the community confidence that Council will uphold the law and its own regulations.

7.1 Issues and Information Needs

This section identifies the issues concerning complaints monitoring for which information is to be collected, stored and reported upon. Potential indicators are also identified.

(i) Satisfaction with Council performance, plans, procedures. This could be indicated by:

- The total number of all complaints received annually by Council. This information will provide a broad measure of public satisfaction/dissatisfaction with Council performance, plans and procedures. Over time, trends will become apparent and comparisons with other territorial authorities will be possible.
- The total number of complaints received annually by the Policy and Monitoring Division. This information will provide a broad measure of public satisfaction/dissatisfaction in regard to resource management and planning issues, including satisfaction with the district plan.
- The different types of complaints received by Council. These could include district plan issues (including amenity values, etc.); resource consent conditions (including landscaping, etc.); building and engineering; noise; parking; dogs; stock; environmental health; hazardous substances; signs, etc. This will indicate to Council issues that are generating frequent complaints, and will enable Council to direct remedial efforts to those issues.

(ii) Effectiveness of Council in dealing with complaints. This could be indicated by:

- The number, and percentage, of total complaints to Council resolved (unresolved). This could be divided into those resolved without enforcement action, and those resolved with enforcement action. This information will provide a broad measure of Council's effectiveness in dealing with complaints. Over time, trends should enable temporal comparisons, and comparisons with other local authorities.
- The number, and percentage, of complaints to the Policy and Monitoring Division resolved (unresolved). This could be divided into those resolved without enforcement action, and those resolved with enforcement action. This information will provide a broad measure of the Policy and Monitoring Division's effectiveness in dealing with complaints. Over time, trends should enable temporal comparisons.
- The number of enforcement actions initiated annually by the Policy and Monitoring Division. This could be broken down into Abatement Notices, Enforcement Orders, Infringement Notices, and other actions. This will indicate which enforcement actions are the most useful in resolving complaints, and will provide a broad measure of the frequency enforcement action is required to resolve complaints. Over time, trends should become apparent that enable temporal comparisons and comparisons with other local authorities.
- The number of enforcement actions initiated annually by the Compliance Division. These could include Animal Infringement Notices, Excessive Noise Directions, Notices to Rectify (building transgressions) and others. This will indicate which enforcement actions are the most useful in resolving complaints and will provide a broad measure of frequency of required enforcement actions. Trends over time will enable temporal comparisons and comparisons with other local authorities.

7.2 Monitoring Indicators

From the issues and information requirements examined in the previous section, a number of indicators have been identified. These are outlined in the following tables. The division within Council responsible for collecting and storing the required data is also identified, along with reporting frequencies.

Complaints Monitoring

MONITORING INDICATORS	DIVISION	FREQUENCY
Total number of all complaints received by Council	Compliance	Annually
Total number of complaints received by Policy and Monitoring Division	Policy/Monitoring	Annually
Different types of complaints received by Council (a) District Plan issues (b) Resource consent conditions (c) Building and engineering (d) Parking (e) Dogs (f) Stock (g) Health (h) Excessive noise (i) Hazardous substances (j) Signs	Compliance and Policy/Monitoring	Annually
Number (and %) of total complaints to Council resolved (unresolved)	Compliance	Annually
Number (and %) of complaints to Policy and Monitoring Division resolved (unresolved)	Policy/Monitoring	Annually
Number of enforcement actions initiated by Policy and Monitoring Division (a) Abatement Notices (b) Enforcement Orders (c) Infringement Notices (d) Prosecutions	Policy/Monitoring	Annually
Number of enforcement actions initiated by Compliance Division (a) Animal Infringement Notices (b) Excessive Noise Directions (c) Notices to Rectify (d) Others	Compliance	Annually

7.3 Data Collection and Management

This section outlines the procedures used for monitoring complaints. It is also concerned with the storage and retrieval of data obtained from complaints monitoring. The procedures are outlined in a flow diagram setting out the various steps in the process from receipt of a complaint to the resolution of the issue, with or without enforcement action.

Accompanying the flow diagram is a text section (see below) providing further detail on some of the actions in the flow chart. This section should be read in conjunction with the Resource Management Enforcement Manual and the Council's Infringement Policy.

An example copy of the Complaints Monitoring File Note Sheet is included for reference purposes. These forms should be attached to the appropriate property file, and information from them inputted to the Complaints Register, which contains details of all complaints received, and enforcement actions initiated, by the Policy and Monitoring Division. A portion of the Complaints Register is included for reference.

This information will be used to compile the annual Resource Consents and Complaints Monitoring Report, and for district plan and state of the environment monitoring.

Complaints Monitoring Procedures (Refer to Flow Chart)

It is important to remember, when dealing with complaints, to keep the details of the complainant confidential. Do not write their name, address, or phone number on any file notes. Either place a copy of the HEAT request on the file or put in a separate piece of paper containing the complainant's details. If the person subject to complaint wants to see the file you need to be able to take out confidential information easily.

Keeping accurate and up to date file notes is also important, particularly if the file is to be handed onto another party, such as legal counsel. Photographic evidence is also important. Photographs should be labeled and dated. A brief description, and the photographer's name should be included. Keep in mind that the contents of the file may be required as evidence in a court of law in the future.

Action 1: Complaints are received by the Policy and Monitoring Division in various ways. These include letters, phone calls, and through the HEAT system operated by the Call Centre. When a complaint comes in, it is important to get all of the facts. If there is some doubt about the information supplied it is always best to go back to the complainant and get as much information as possible. This also shows the complainant that Council is dealing with their problem. The complainant should be contacted within five days of the complaint being received to let them know that their complaint is being dealt with. Information obtained should be entered on the Complaints Register and a file note attached to the property file.

Action 2: Check to see if the problem complies with the district plan, and/or the bylaws if applicable. Existing use rights under Section 10 of the RMA may also need to be considered here. Visit the site if necessary. The important thing is to establish whether or not the complaint does have merit. If it is a bylaw problem, the complaint should be handed over to the Compliance Manager and the complainant should be informed of this. This action should also be entered into the Complaints Register and file notes.

Action 3: If the problem complies with the district plan and the bylaws the complainant should be advised of this. It is important that an explanation is given as to why no action can be taken. The complaint should then be signed off on the Complaints Register, and on the HEAT system if necessary.

Action 4: If the issue subject to complaint does not comply with one or more of the rules in the district plan an initial letter should be sent informing the party of their non-compliance, and requesting them to comply within a specified period. The complaint should be diarised on the computer system. A meeting on site, with the relevant parties present, may be advantageous at this stage. This could clarify issues, and may lead to a voluntary agreement between the parties to find a solution.

Action 5: At the end of the specified period, a site inspection will need to be carried out to see whether or not the party has complied. If they have not complied, another firmer letter needs to be sent out stating that they have twenty working days to comply or else enforcement action may have to be initiated. If the party gets in contact and has a legitimate reason for not meeting the deadline, an extension to the timeframe may be given.

Action 6: At the end of the twenty working days, another site inspection is required to determine compliance. If compliance has not been achieved, a final letter is sent informing the offender that a specific enforcement action will be initiated on a specified date.

Taking enforcement action is a serious step to make, and it is important that this action is discussed thoroughly with the Senior Environmental Planner (Monitoring). Determining precisely what sort of enforcement action is to be carried out is another decision that needs to be made in consultation with the Senior Environmental Planner (Monitoring). The Enforcement Manual and the Infringement Policy can provide guidance in deciding what action is to be taken.

Enforcement action should be seen as a last resort after all other avenues have been explored. There are instances, however, when people will not abide by the rules and enforcement action is the only effective method to get them to comply.

Action 7: At the specified time, the enforcement action is initiated. An Abatement Notice is issued or an Enforcement Order applied for. Possibly for some transgressions an Infringement Notice is more appropriate (refer to Enforcement Manual and Infringement Policy).

When the Monitoring Officer is drawing up an Abatement Notice or Enforcement Order care needs to be taken when describing the offence, the remedy that is sought by Council, and the timeframes required to be met. Once the Monitoring Officer has drawn up the Notice or Order it must be sent to Council's legal advisors who check it for legal correctness. Once it is has been approved by legal counsel the Abatement Notice can be served or Enforcement Order applied for.

The Abatement Notice can be served by registered post or personally in the presence of two warranted officers. It is preferable to serve a Notice in person whenever possible, either by Council staff or by a document delivery service. If there is any possibility of trouble when serving the Notice it is advisable to have a community constable accompany the Monitoring Officer. Two warranted officers (or one with a community constable) should be present at all personal meetings with the offender once the enforcement action has been initiated.

Before deciding whether or not to issue an Infringement Notice the Monitoring Officer needs to consider the desired end result as once an Infringement Notice is served an Abatement Notice or an Enforcement Order cannot be used. However, an Infringement Notice can be a useful method to ensure compliance with an Abatement Notice already issued. To get a better understanding of the options the Enforcement Manual and Infringement Policy should be consulted. Infringement Notices can be served by registered or unregistered post.

Action 8: If an offender does not comply with an Abatement Notice or an Enforcement Order, or refuses to pay an Infringement Notice, a decision to prosecute must be made. Once an issue reaches the prosecution stage, the Manager of Environmental Services should be informed, and Council's legal advisors need to be involved in all subsequent actions.

7.4 Reporting and Review Procedures

At present a monthly report is produced for the Policy and Monitoring Division Manager who forwards the information to the monthly meeting of the Environmental Services Committee. This report contains information on the number of complaints received the previous month by the Policy and Monitoring Division, the number resolved, and the number outstanding. It also includes the number of ongoing complaints from the previous month. Enforcement action is also reported. The number of Abatement Notices, Enforcement Orders, and Infringement Notices initiated that month, together with those already in place are included. The monthly report should be placed in the appropriate folder in the monitoring office.

It is envisaged that a combined Resource Consents and Complaints Monitoring Report will be produced annually. This report will present the information collected over the previous twelve months in regard to consents and complaints monitoring in a concise and meaningful manner. Over time, trends should become apparent that enable spatial and temporal comparisons to be made. The first annual report should be produced in October 2002, reporting on the 2001/2002 financial year.

This information will be aimed primarily at an internal Council audience. It should indicate to Council how the public perceives Council's performance in regard to a range of issues. It should also indicate issues that may require further attention by Council staff. Improvements to district plan provisions or to Council bylaws may be involved. Trends over time should provide a broad measure of Council performance in a number of areas.

In addition, some of the information gathered and presented in the Resource Consents and Complaints Monitoring Report will be collated over a longer time period and will be inputted to both district plan and state of the environment monitoring and reporting. Such information will assist in the evaluation of planning provisions in the district plan and will enable improvements to be made over time. State of the environment monitoring and reporting will likewise benefit from information obtained from resource consents and complaints monitoring.

Information obtained from complaints monitoring should be discussed at the quarterly meeting of monitoring, policy, and consents processing staff. Staff from the Compliance Division may also need to be involved when discussing complaints monitoring. These meetings should begin in the 2001/2002 financial year.

It is also envisaged that the complaints monitoring procedures themselves will be subject to ongoing review, and revision where necessary. This will be a continuous process as new information comes to hand and deficiencies in the programme are identified.