

**RUAPEHU DISTRICT COUNCIL  
AUDIT & RISK COMMITTEE**

**Confidential Reports Released into the Public Business**

FROM THE MEETING OF AUDIT & RISK COMMITTEE  
ON MONDAY 19 SEPTEMBER 2022

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**Item**

**C2 Legislative Compliance Risk**

| <b>General subject of each matter to be considered</b> | <b>Reason for passing this resolution in relation to each matter</b>                          | <b>Ground(s) under section 48(1) for the passing of this resolution</b>                                                                                                                                          |
|--------------------------------------------------------|-----------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Legislative Compliance Risk                            | s7(2)(a) To protect the privacy of natural persons, including that of deceased natural person | s48(1)(a) the public conduct of the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist under section 7 |

Proactive Release of redacted version of the report be released as publicly available information.

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**Report to: Audit & Risk Committee****Meeting Date:** 19 September 2022**Subject:** Legislative Compliance Risk**Purpose of Report**

- 1.1 The purpose of this Report is to brief the Committee on the status of Council's compliance with legislation and the risks associated with non-compliance.

**Significance and Engagement, Social Impact**

- 2.1 **Significance**  
This report does not trigger the Significance and Engagement Policy.
- 2.2 **Social Impact**  
This report does not trigger the Social Policy.

**Background**

- 3.1 In addition to the legal need to comply with the law, Council adopted a Legal Compliance Policy that further requires that Council complies with all legislation imposed on it.
- 3.2 Assessment of Council's performance and compliance with laws, rules, good practice, etc. are conducted by Audit NZ, Land Transport NZ and others. This assessment of Council's legislative compliance is effectively one internal audit measure that fits within a wider audit and compliance framework.
- 3.3 The Quantate Compliance system works by identifying legislation that places obligations on Council, then identifying staff who are primarily responsible for compliance with a given legislative obligation (e.g., section xyz of the Resource Management Act 1991), and then asking that person whether Council has complied. The engagement with this system in 2022 is on the same simple basis as previous years i.e., we rely on staff's 'to the best of my knowledge' recollection.
- 3.4 Legislative obligations have been marked by staff as:
  - (a) No requirement for compliance (i.e., does not apply to Ruapehu District Council).
  - (b) Requirement has not arisen (i.e., the circumstances that place an obligation have not happened).
  - (c) Does not comply (there may be many instances of compliance but in the case of this obligation there are some cases where Council has not complied).
  - (d) Complies.
- 3.5 Legislation can conflict with other legislation e.g., the need for privacy conflicts in places with the legislated requirement to archive records. Management must walk a fine line at times and reported non-compliance may just represent management's view of the right compromise between legislative obligations.

- 3.6 The consequences of failing to comply with some provisions may be that Council's reputation is minimally harmed for a short period while the consequences of other infractions may be life threatening to Council's customers and may result in significant prosecutions against Council.
- 3.7 Council must comply with the law.

## Discussion

- 4.1 During the year Acts were repealed and added with changes to existing law. Legislative obligations were brought up to date for this 2022 review.
- 4.2 After eliminating legislative obligations that do not relate to territorial local authorities and those that didn't apply in 2021/22, the Quantate Compliance database consisted of 99 Acts of Parliament or similar and 807 obligations from these Acts.
- 4.3 Obligations range from simple to understand, through to complex that require some real understanding of the legislative field.
- 4.4 Summary analysis (**Appendix A graphs**) would show that Council appears not to comply with 15 Statutory Obligations, overall is 98.3% compliant within the Quantate system framework, is lower compared to last year's results, and is a break with the overall upwards trend over a number of years. Care is needed when interpreting results as there was no moderation of the verifications, i.e., some Staff may have judged compliance harder than others.
- 4.5 Obligations reported to be breached are:
- (a) Animal Welfare Act 1999
  - (b) Dog Control Act 1996
  - (c) Impounding Act 1955
  - (d) Local Government Official Information and Meetings Act 1987
  - (e) Privacy Act 1993
  - (f) Protected Disclosures Act 2000
  - (g) Public Records Act 2005
  - (h) Local Government Act 1974
  - (i) Privacy Act 2020 Principle 9
- 4.6 Further analysis shows that this list reduces to three key areas of improvement that can be summarised as
- (a) issues related to animal welfare and compliance (6)
  - (b) specific findings around compliance with Protected Disclosures Act 2000 (3)
  - (c) slipups in information management and record keeping during the COVID impacted year (4). The other one is related to Land Transport activity.
- 4.7 A more detailed report on instances of non-compliance is attached (Appendix B).
- 4.8 The technical consequence of these non-compliance is that an auditing authority will review and make recommendations to improve. Appendix B includes short statements on what Council is doing to address non-compliance. Council is taking measures to comply fully.
- 4.9 It must be noted that while compliance results are high from this exercise overall, there has been significant officer turnover in the positions charged to participate in this self-audit process. With the chance that continuity of historical context and experienced observation has been diminished, the results need to be viewed with a greater degree of caution than might otherwise be the case.

- 4.10 Risk Manager is aware of additional breaches that came to light after the Quantate workflow completed. Council received the 2020/21 Annual Compliance Reports for the National Park, Raetihi, and Ohakune Wastewater Treatment Plants late August, and because of these assessments the plants have all been rated as Significantly Non-Compliant. These ratings are primarily based on discharge volume exceedances except for Ohakune plant which was a result of water quality exceedances in relation to suspended solids and ammonia. This is non-compliance under Resource Management Act 1991, but the ongoing resource consent issues (expired) with these sites are not new.

### Financial Implications

|                                                                                 |     |
|---------------------------------------------------------------------------------|-----|
| Is there funding in the current Long-Term Plan / Annual Plan for these actions? | Yes |
|---------------------------------------------------------------------------------|-----|

- 5.1 Some of the remediation works needed to bring Council into compliance are already covered in current budgets. There will be a couple of extra pieces that will need budget to be in the next LTP considerations.

### Suggested Resolution(s)

That the Audit & Risk Committee:

- 1 Receives the Confidential Report **Legislative Compliance Risk**;
- 2 **Does / Does Not** record this resolution in the Public Business Minutes of this meeting; and
- 3 **Does / Does Not** release a redacted report as publicly available information



Aaron Pendergrast  
**EXECUTIVE MANAGER: RISK & PROJECT CONTROLS**

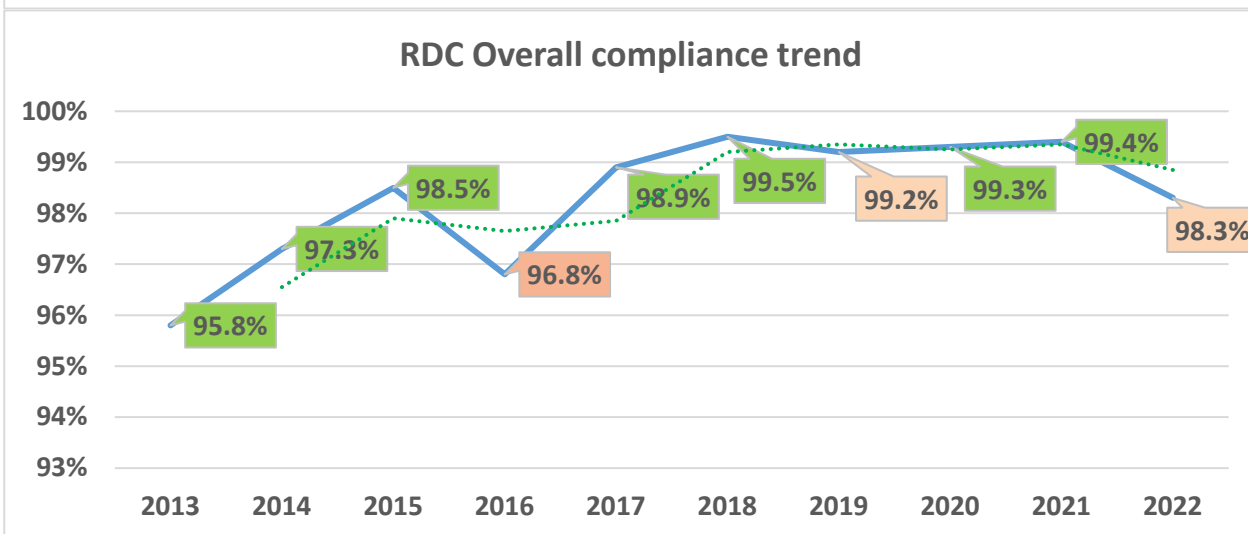
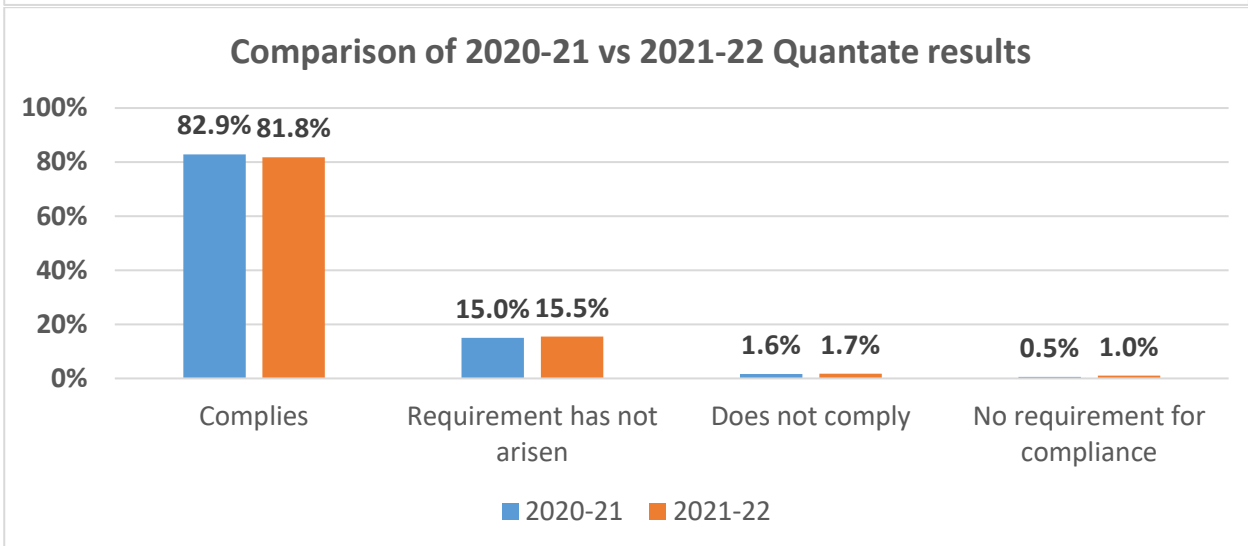
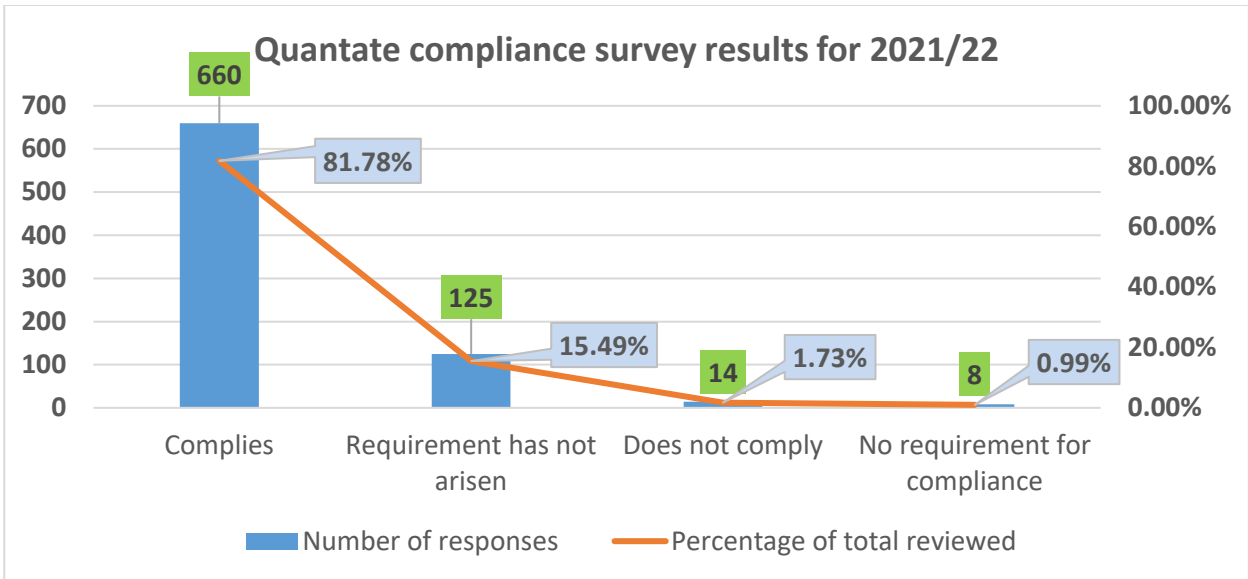
Email address for point of contact: aaronp@ruapehudc.govt.nz

### Attachment(s)

- Appendix: A Analysis graphs  
B Schedule of Breached Obligations

## Appendix A Analysis Graphs

Showing number of responses in the context of whole survey by category.



## Appendix B

### Schedule of Breached Obligations

#### **Privacy Act 2020; Principle 9, Sec. 22**

##### **Verifier:**

##### **Verification Wording:**

- > Personal information is not kept for longer than is required for the purposes for which it may lawfully be used?

##### **Comments on Non-Compliance:**

- > A recent records appraisal revealed that we have HR records that have been kept for longer than required.

Retention and disposal had not been applied to these hard copy records, however this is part of a current work programme to become compliant.

##### **Practical Consequences:**

- Loss of records or breaches of confidentiality/privacy.

##### **What Are We Doing:**

- > Part of a journey to full compliance starting with appraisal and back capture of records required to be Archived. This journey is expected to be continuing over the next few years.

#### **Public Records Act 2005, Sec. 17**

##### **Verifier:**

##### **Verification Wording:**

- > Does the organisation create and maintain, in an accessible form, a full and accurate record of its affairs?

##### **Comments on Non-Compliance:**

- > The rapidly increasing sources of information flow difficult to capture completely or integrate into RDC operating systems.

High staff turnover, remote working, training and support and staff accountability are all factors relating to this noncompliance for this year.

##### **Practical Consequences:**

- Increased risk to RDC that high value information has not been captured or is discoverable to the organisation.
- Loss of records and loss of trust from community and other agencies.

##### **What Are We Doing:**

- > Continued improvement of training and follow up reporting on compliance by all staff.

**Privacy Act 1993, Sec 6****Verifier:****Verification Wording:**

- > Personal information is not kept for longer than is required for the purposes for which it may lawfully be used?

**Comments on Non-Compliance:**

- > A recent records appraisal revealed that we have HR records that have been kept for longer than required.

Retention and disposal had not been applied to these hard copy records, however this is part of a current work programme to become compliant.

**Practical Consequences:**

- Loss of records or breaches of confidentiality/privacy.

**What Are We Doing:**

- > Part of a journey to full compliance starting with appraisal and back capture of records required to be Archived. This journey is expected to be continuing over the next few years.

**Local Government Official Information and Meetings Act 1987 13****Verifier:****Verification Wording:**

- > Decisions are notified within 20 working days?

**Comments on Non-Compliance:**

- > Four requests being responded to outside of legislative timeframe. Lack of resource during COVID environment.

**Practical Consequences:**

- Potential complaints from requestors to the Ombudsman
- Investigation from the Ombudsman.

**What Are We Doing:**

- > Review of current process and increase in resource availability during busier periods.

**Protected Disclosures Act 2000, Sec 11****Verifier:****Verification Wording:**

- > Internal procedures for dealing with information about serious wrongdoing have been established?

**Comments on Non-Compliance:**

- > A Fraud & Protected Disclosures Policy 2017 exists within Council and is overdue for review. This has been highlighted and will be reviewed in 2022/2023.

**Practical Consequences:**

- Audit finding for policy out of date
- Potential challenges to process correctness or completeness if policy is not available

**What Are We Doing:**

- > Policy will be reviewed in 2022/23.

## **Protected Disclosures Act 2000, Sec 11**

### **Verifier:**

### **Verification Wording:**

- > Information about the internal procedures and how to use them has been widely publicised?

### **Comments on Non-Compliance:**

- > A Fraud & Protected Disclosures Policy 2017 exists within Council and is overdue for review. This has been highlighted and will be reviewed in 2022/2023.

### **Practical Consequences:**

- Staff feeling disempowered and vulnerable in challenging environment.

### **What Are We Doing:**

- > A programme of work will be developed to re-socialise the updated policy and resulting internal controls with all RDC staff.

## **Protected Disclosures Act 2000 7, 8, 9, 10**

### **Verifier:**

### **Verification Wording:**

- > Any information of wrongdoing disclosed by an employee during the review period has been made in accordance with the procedure?

### **Comments on Non-Compliance:**

- > A Fraud & Protected Disclosures Policy 2017 exists within Council and is overdue for review. This has been highlighted and will be reviewed in 2022/2023.

RDC has robust HR processes outside of this policy that cover this type of event.

### **Practical Consequences:**

- Potential challenges to process correctness or completeness if policy is not available

### **What Are We Doing:**

- > A programme of work will be developed to re-socialise the updated policy and resulting internal controls with all RDC staff.



## **Local Government Act 1974, 319**

### **Verifier:**

### **Verification Wording:**

- > Before doing anything that will or is likely to interfere with any pipe, line, or other work associated with wastewater or the supply of water, electricity, gas, or telecommunications, the council has given not less than 10 working days' notice in writing of the proposed interference to the owner of the pipe, line, or other work, except in the case of any emergency or danger?

### **Comments on Non-Compliance:**

- > Not aware of specific incidents where this has occurred; however, Council does not track whether notice has been given to utility owners prior to work.

Contractors are expected to carry out checks of utilities on site prior to commencing work as part of their Health and Safety compliance. This includes getting copies of as built plans for utilities and then organising a physical asset location check if needed.

### **Practical Consequences:**

The above system, which is covered under the Utilities Access Act 2010, covers the same outcome as the Local Government Act 1974 section 319 requires.

### **What Are We Doing:**

- > As described.

## **Animal Welfare Act 1999, 10**

### **Verifier:**

### **Verification Wording:**

- > For animals which you own or are in charge of, the animals' physical, health and behavioural needs are met in a manner that is in accordance with good practice and scientific knowledge?

### **Comments on Non-Compliance:**

- > Single example based on actions of a previous employee who did not exercise impounded dogs when required. This has been raised as a training gap for Officers.

### **Practical Consequences:**

- Minor consequence for this single incident which has been addressed.

Investigation by MPI.

### **What Are We Doing:**

- > Current Officers have been reminded of the importance to exercise dogs regularly as required. A Pound book has been implemented to assist with improved record keeping of dogs in the Pound. This will be included when training new Compliance staff.

## **Animal Welfare Act 1999, 12**

### **Verifier:**

### **Verification Wording:**

- > Animals are killed in such a manner that the animal does not suffer unreasonable or unnecessary pain or distress?

### **Comments on Non-Compliance:**

- > One example raised was due to actions of a previous employee in how they handled a dog during euthanising procedures. This identified a training gap in how to handle distressed dogs when euthanising them.

### **Practical Consequences:**

- Minor consequence for this single incident which has been addressed.
- Investigation by MPI.

### **What Are We Doing:**

- > Current staff have improved processes and handling techniques by working closely with Vet Clinics and encouraging the sedation of distressed animals before euthanising.

## **Impounding Act 1955, 11**

### **Verifier:**

### **Verification Wording:**

- > Every appointment, suspension or removal from office of any pound keeper or deputy pound keeper is publicly notified?

### **Comments on Non-Compliance:**

- > The publication of appointing Teresa Ellwood to Pound Keeper in May 2022 was not completed.

### **Practical Consequences:**

Pound Keeper not officially recognised until advertisement is complete.

### **What Are We Doing:**

- > We are arranging the public notification to take place retrospectively.

## **Impounding Act 1955, 46**

### **Verifier:**

### **Verification Wording:**

- > A notice is given to the owner as soon as practicable after impounding? Where the owner cannot be identified a notice is placed in the newspaper?

### **Comments on Non-Compliance:**

- > One example was discussed where an owner was not identified for an impounded sheep and the sheep had not been advertised for some time after impounding.

### **Practical Consequences:**

- Minor consequence for this single incident which has been addressed.
- Animals are held in Council care for longer than required.
- Potential financial implication due to extended sustenance costs.

### **What Are We Doing:**

- > An advertisement was placed for the sheep in question. Staff have been reminded of the process.

**Dog Control Act 1996, 17****Verifier:****Verification Wording:**

- > Powers are exercised in accordance with the provisions of the section?

**Comments on Non-Compliance:**

- > Same example as Section 10, Animal Welfare Act 1999. Impounded dogs were not exercised as required by a previous Employee.

**Practical Consequences:****What Are We Doing:**

- > Current Officers have been reminded of the importance to exercise dogs regularly as required. A Pound book has been implemented to assist with improved record keeping of dogs in the Pound. This will be included when training new Compliance staff.

**Dog Control Act 1996, 67****Verifier:****Verification Wording:**

- > Pound facilities that satisfy the provisions of the section are provided?

**Comments on Non-Compliance:**

- > Pound Audit completed 31 March 2022 identified areas where the Pound facility is non-compliant with elements of Code of Welfare: Dogs and Code of Welfare: Temporary Housing of Companion Animals.

**Practical Consequences:**

- MPI can inspect and close the facilities which will result in a disruption to Council services.

**What Are We Doing:**

- > Some work is planned for 2022/23 which will address the majority of non-compliant elements. Annual and Long Term planning is required to allow further funding to complete the remainder of non-compliant elements. Process improvements have been implemented to compensate and minimise the impact of non-compliant elements.