

PART III:

ADMINISTRATION SYSTEMS AND PROCESSES



12 STRATEGY POWERS

12.1. Summary of Strategy Powers

To achieve the purpose of the Strategy and to give effect to its objectives and principal measures of achievement, the ARC will use the statutory powers presented in Table 14.1a below. Many of these powers will be exercised by authorised persons on behalf of the ARC. The Chief Executive of the ARC will appoint authorised persons and may delegate to any authorised

person(s) powers, subject to sections 103 and 105 of the Biosecurity Act 1993.

Authorised persons shall be limited to using the powers specified in their instrument of appointment, which will vary according to degree of authorised responsibility. Authorised persons will also have the power to request information from landowners/occupiers under section 43 of the Biosecurity Act 1993.

Table 14.1a Powers Under the Act

Powers	Biosecurity Act 1993 Reference	Level of Delegation
The appointment of authorised & accredited persons Delegation to authorised persons	Section 103 Section 105	Chief Executive of the Auckland Regional Council
Undertake small-scale management of unwanted organisms Power to act on default Liens Declaration of controlled area Duration of place and area declarations Options for cost recovery Failure to pay Offences	Section 100 Section 128 Section 129 Section 131 Section 133 Section 135 Section 136 Section 154	Management Agency (ARC)
Duty to provide information Power to require assistance Powers of inspection Power to record information General powers Application of articles or substances from aircraft Use of dogs and devices Power to seize evidence Power to seize abandoned goods Power to intercept baggage, etc. Power to examine organisms Power to give directions Power to vaccinate, etc. Declaration of restricted place	Section 43 Section 106 Sections 109, 110, 111, 112 Section 113 Section 114 Section 114A Section 115 Section 118 Section 119 Section 120 Section 121 Section 122 Section 123 Section 130	Authorised person(s)

12.2. Section 100 Powers

There are many harmful or invasive species that are not directly addressed within this Strategy. In many cases, these species may not be present in the region, but may be in other parts of the country, or they are species that have been identified as potentially serious pests by outside agencies. It is also conceivable that unforeseen pests may enter the region during the life of the Strategy. Examples of this in the past include devil's tail (*Persicaria perfoliata* syn. *Polygonum perfoliatum*) and scrambling lily (*Geitonoplesium cymosum*).

In any instance where a new species incursion occurs within the region, the Council will adopt powers under section 100 of the Biosecurity Act (as outlined in Section 4.1.2) and other necessary measures, under its Rapid Response Plan (under development). This plan will be consistent with the Council's Civil Defence Emergency Management Framework. It will outline the decision making process for committing resources and expenditure, tiers and timelines for responses, quarantine provisions, traceback and traceforward measures, and other necessary procedures.

13 FUNDING OF THE STRATEGY

The main funding principle from the Biosecurity Act 1993 is that those who benefit from control, or those who exacerbate a pest problem, should be required to pay. Generally, where pests are of low incidence, regional benefits accrue following control as the pests have been prevented from occupying all of their potential habitat. The immediate beneficiary of control of most widespread pests is the individual who undertakes control. Therefore regional intervention cannot be justified under the Biosecurity Act 1993 for most widespread pests, except for boundary control (e.g. gorse), or unless control costs are low and important regional or national values are at risk (e.g. possum control in conservation areas).

Funding of the Strategy is determined through two Acts:

- Biosecurity Act 1993 – sections 77 and 97 – based on cost/benefit and exacerbator/beneficiary principles; and
- Local Government (Rating) Act 2002 – which provides local authorities with flexible powers to set, assess, and collect rates to fund local government activities and sets out a process to ensure that rates are set in accordance with decisions that are made in a transparent and consultative manner.

Landowners/occupiers (urban and rural ratepayers and the Crown) are both beneficiaries and exacerbators, to varying degrees. Other specific groups may also be able to be identified as exacerbators or beneficiaries for some pest problems. Consequently, landowners/occupiers (including the Crown) will, in the main, fund the direct cost of pest management on their properties. The exceptions to landowners/occupiers being directly responsible for the control of pests will be pest plants classified as 'Total Control', or where land is subject to Council or Animal Health Board funded animal pest control (e.g. in areas of High Conservation Value and buffers around them).

13.1. Strategy Costs

The costs of administering and implementing the Strategy are incurred through the following activities:

- monitoring and surveillance – collection and analysis of information about pests and their effects in the region
- information and advice – to raise awareness of pest identification, control and effects, and encourage individual and community initiatives
- direct control
- community initiatives – advice and assistance to facilitate self-help schemes
- contributions to other organisations that undertake pest management in the region
- regulatory – enforcement of Strategy Rules
- research – into biological control, impacts of species to be researched, etc.
- monitoring of Strategy performance
- policy development and review

These activities are designed to provide benefits to the public of the region as a whole or will be available to any person in the region on an as-needed basis.

Section 76(1)(l) requires that the benefits and costs of the Strategy have been analysed and must show why having a strategy is more appropriate than relying on the voluntary actions of others to manage each pest candidate. These requirements have been addressed

in a cost benefit analysis study, which is available as a supporting document³³ for the Strategy.

Section 76(1)(m) requires that the anticipated costs of implementing the Strategy are identified. It must show how the costs are to be funded and provide information specified in section 77. This includes showing, in relation to each pest candidate, who will benefit from the Strategy, i.e. beneficiaries, and who will contribute

to the need for a Strategy, i.e. exacerbators. It must show how and why the proposed Strategy costs will be allocated between beneficiaries and exacerbators and must note any unusual administrative problems or costs relating to funding.

The beneficiaries and exacerbators are identified in relation to the main classes of pest candidates in Table 13.1a.

Table 13.1a Beneficiaries and Exacerbators of Pests in the Auckland Region

Category	Species	Beneficiaries	Exacerbators
Total Control Pest Plants	African feather grass; Asiatic knotweed; asparagus species; balloon vine & small balloon vine; broomsedge; cathedral bells; Chilean needle grass; climbing spindle berry; devil's fig; devil's tail; egeria; great reedmace; green cestrum; houttuynia; kudzu vine; lantana; Madeira vine, Manchurian wild rice; marshwort; Mexican feather grass; nassella tussock; needle grass; old man's beard; purple loosestrife; royal fern; <i>Sagittaria</i> species; scrambling lily; Senegal tea; spartina; water poppy; white-edged nightshade; wild broom	Regional community, Crown	Landowners / occupiers
Total Control/ Containment Pest Plants	rhamnus	Regional community, Crown	Landowners / occupiers
Containment Pest Plants	Australian sedge, Bathurst bur; bushy asparagus; gorse; nodding thistle; ragwort; smilax; variegated thistle; wild ginger; wild kiwifruit; woolly nightshade	Regional community, Primary producers	Landowners / occupiers
	moth plant	Regional community, Crown	Landowners / occupiers

³³ *Cost Benefit Analysis and Assumptions, Animal and Plant Species Considered for Inclusion in the Proposed Auckland Regional Pest Management Strategy 2007-2012, a supporting document to satisfy the requirements of section 72 of the Biosecurity Act 1993.* Auckland Regional Council, October 2006.

Category	Species	Beneficiaries	Exacerbators
Surveillance Pest Plants	Refer to Tables 8.2a and 8.3a of this Strategy for list of Surveillance Pest Plants.	Regional community	Distributors
Pest Animals	Argentine ant; exotic freshwater fauna (gambusia, gudgeon, koi carp, perch, rudd, orfe, brown bullhead catfish, tench); feral deer (<i>Cervus</i> , <i>Axis</i> , <i>Dama</i> , <i>Odocoileus</i> or <i>Elaphurus</i> species and any hybrids); feral pig; mouse	Regional community, Crown	Distributors
	brushtail possum	Regional community, Crown Primary producers	Landowners / occupiers
	exotic reptile species (blue-tongued skink, bearded dragon, eastern water dragon, red-eared slider turtle, shingleback lizard)	Regional community, Crown	Regional community, Distributors
	feral cat	Regional community, Crown	Regional community
	feral goat	Regional community, Crown	Distributors, Primary producers
	hedgehog; rabbit; rook	Regional community, Crown	Landowners / occupiers
	magpie; myna; wasp species (common, German, Australian paper, Asian paper)	Regional community	Landowners / occupiers
	ferret; weasel; stoat; rat species (ship, Norway, Kiore); sulphur-crested cockatoo	Regional community, Crown	Landowners / occupiers, Distributors
Wallaby (<i>Macropus</i> , <i>Petrogale</i> and <i>Wallabia</i> species)	Regional community, Crown	Landowners / occupiers on Kawau Island	

13.2. Funding Sources

The Biosecurity Act 1993 requires a pest management strategy to provide information on the allocation of costs of the strategy. It may be funded by direct charges against land occupiers and/or by rates. To the extent that the strategy provides that it is to be funded wholly or partially from rates, section 97 of the Biosecurity Act 1993 allows the funding to be by general rate made under section 13 of the Local Government (Rating) Act 2002 or under section 16 as a targeted rate, or partly from both.

In making this decision, the ARC must have regard to:

- the extent to which the funding relates to the interests of land occupiers;
- the extent to which the benefits will accrue to land occupiers;
- the collective benefits to land occupiers in relation to their collective costs from rates; and
- the extent to which the characteristics and uses of the rated land contribute to the presence or prevalence of the pests.

The ARC has determined that achieving the purpose and objectives of this strategy benefits landowners/occupiers collectively and is 'public good' (that is, the regional community generally benefits from the implementation of the Strategy). The Strategy involves a number of activities such as pest control in regional parks and High Conservation Value areas, distributing information and advice, increasing knowledge of pests' effects, research into pest control methods, biological control, etc. A large number of people can use these services at little or no extra cost and the beneficiaries are very difficult to identify and charge as users. The dominant, public good aspects of the Strategy benefits favour use of a targeted rate to charge for these services.

The Strategy will be funded through the use of a targeted Biosecurity rate levied on every rateable property in the Auckland region pursuant to section 97 of the Biosecurity Act and section 16 of the Local Government (Rating) Act 2002. It is considered that a targeted rate based on land value (rather than capital value) is the most appropriate method of charging ratepayers for services provided by the proposed Regional Pest Management Strategy.

The rating years in which the rate is to be made are:

2007/2008	–	1 July 2007 to 30 June 2008
2008/2009	–	1 July 2008 to 30 June 2009
2009/2010	–	1 July 2009 to 30 June 2010
2010/2011	–	1 July 2010 to 30 June 2011
2011/2012	–	1 July 2011 to 30 June 2012

In addition to the above, the ARC will, as appropriate, recover direct costs from beneficiaries and/or exacerbators for a particular function or service pursuant to section 135 of the Biosecurity Act 1993.

Crown land accounts for approximately 60 000ha or 11.8% of the region. Central government agencies occupying the Crown estate have been identified as being significant beneficiaries and/or exacerbators to pest management in the region. They are identified as follows:

(i) Department of Conservation (DoC)

DoC can be an exacerbator when various pests on its estate are a source of infestation for adjacent landowners/occupiers. Similarly it can be a beneficiary in that some pests that occur on neighbouring properties pose a significant threat to the conservation values of the DoC estate. In the Auckland region, DoC administers

approximately 36,000 hectares of Crown land, most of which is in reserves or stewardship areas³⁴.

Pursuant to section 87(2) of the Biosecurity Act 1993, agreement will be sought with DoC to be bound to the Auckland RPMS for the term of the Strategy, and for DoC to make an annual contribution to the administration of the Strategy.

(ii) Land Information New Zealand

Land Information New Zealand (LINZ) administers 17,510 hectares of land in the Auckland region³⁵, some of which is non-rateable. Much of this land is likely to contain pests; therefore LINZ is both an exacerbator and a beneficiary of this Strategy. It is proposed that ARC seeks an agreement from LINZ to make an annual contribution to the Strategy to cover activities related to the non-rateable land.

(iii) ONTRACK

ONTRACK (New Zealand Railways Corporation) is the owner of rail corridors and adjacent reserves. There is approximately 200 kilometres of railway line in the Auckland region accounting for approximately 540 hectares of non-rateable land³⁶. ONTRACK is required to undertake a pest management programme on property it administers (refer section 18). It is therefore considered unnecessary to require a contribution from ONTRACK to this Strategy.

(iv) Transit New Zealand

Transit New Zealand is the occupier of land on which the State highways and motorways lie, plus the verge or road reserve extending to adjacent property boundaries. The State highway network in the Auckland region is approximately 326 kilometres in length³⁷. Transit is required to undertake a pest management programme on property it administers (refer section 18). It is therefore considered unnecessary to require a contribution from Transit to this Strategy.

³⁴ <http://www.doc.govt.nz/Regional-Info/002--Auckland/001--About/index.asp> (accessed 14-09-06)

³⁵ Email communication with Ross Marbeck, Crown Property Manager, Land Information New Zealand (14-09-06).

³⁶ Email communication with Aaron Hudson, RMA Advisor, ONTRACK (15-09-06)

³⁷ http://www.transit.govt.nz/content_files/news/AR-2005.pdf (accessed 14-09-06)

(v) Territorial Local Authorities

Territorial Local Authorities are the owners of land on which local roads lie, plus the verge or road reserve extending to adjacent property boundaries. Territorial local authorities may also own parks, reserves, water catchments, industrial and other land. These authorities are required to undertake a pest management programme on road reserve they administer (refer section 18 below). It is therefore considered unnecessary to require a contribution from these authorities to this Strategy.

.....
13.3. Cost Recovery

Section 135 provides regional councils with options to recover the costs of administering the Act and performing the functions, powers and duties under a pest management strategy. The mechanisms include user charges and cost recovery in the event of non-compliance with a legal Direction (refer section 16 of this document).

There are no unusual administrative problems or costs expected in recovering costs from any of the persons who are required to pay. It is recognised that there may be a need to recover enforcement costs for some exacerbators through the courts. In some cases, for example where not all exacerbators can be identified, full cost recovery will not be realised and a rating contribution will be required.

.....
13.4. Other Funding Provisions

Additional funding may be required to manage potential pests not included in the Strategy (under section 13 Biosecurity Act 1993) where there is a clear public need for information and assistance. This can be provided from the ARC General Rate through the Annual Plan process.

.....
13.5. Compensation and Disposal of Proceeds of Receipts

The Strategy does not provide for compensation under section 86 of the Act to be paid to any persons as a result of obligations imposed by the Strategy.

Whilst the Strategy provides for the destruction of pests and other organisms to be controlled, it does not provide for the seizure and subsequent disposal of any goods. Information concerning the disposal of the proceeds of any receipts arising in the course of implementing the Strategy is therefore not needed.

14 REGULATORY PROCEDURES

In the event that an occupier fails to meet the obligations and standards prescribed in this Strategy, an authorised person of the Council may:

- a) advise the occupier/s of their non-compliance and request that they take remedial action; and
- b) follow up the initial inspection to confirm what remedial action has been taken and identify any outstanding requirements; and initiate regulatory procedures, as described below.

It is noted that authorised persons of the Council may use their discretion when advising of non-compliances and initiating regulatory procedures.

14.1. Issue of Direction

In circumstances of continued non-compliance, an authorised person may issue a Notice of Direction under section 122 of the Biosecurity Act 1993.

Where a Notice of Direction has been given to an occupier under section 122 of the Act and when the occupier has not complied with the requirements of the Direction within the time specified, the Council may enter onto the land specified in the Direction, and carry out or cause to be carried out, the works or measures specified in the Direction or such other works or

measures (including prosecution action) as is reasonably necessary or appropriate for the purpose of giving effect to the requirements of the Direction.

14.2. Offences

Any person who, without reasonable excuse, fails to comply with a reasonable Direction given to that person, or a reasonable requirement made of that person in accordance with and for the purposes of the Biosecurity Act 1993 and this Strategy, by an authorised person or the assistant of an authorised person, commits an offence against section 154 of the Act. The Council will, in appropriate cases, bring prosecutions against persons who do not act on the Directions or requirements issued by the authorised person who will give effect to the Strategy.

14.3. Recovery of Costs Incurred

Under section 128(3) of the Biosecurity Act 1993, the ARC can recover the costs and expenses reasonably incurred by it carrying out such works or taking action (such as the enforcement process, follow up and works) as a debt due from the occupier to whom the Direction was given.

14.4. Extension or Variation of Direction

Where, on the representation of an occupier issued with a direction under section 122 of the Act, an authorised person is satisfied that:

- a) steps have been taken to comply with the direction; and/or
- b) the occupier has been prevented by reasonable cause from completing the necessary work;

the authorised person may extend the time specified for a further period, or vary the requirements of the Direction as appropriate.

14.5. Cancellation of Directions

Where an authorised person is satisfied that:

- a) works and measures have been undertaken to meet the occupier's obligations; or
- b) for some other reason it is no longer appropriate to enforce the direction;

the authorised person may cancel that Direction.

15 MONITORING AND REVIEW

15.1. Monitoring of Strategy Objectives

The ARC shall monitor the extent to which the objectives set out in the Strategy are being achieved by:

- a) Annually surveying, mapping and recording site condition for all Total Control pests;
- b) Recording the number of public complaints pertaining to individual pest plants and animals and instances of non-compliance with Strategy Rules;
- c) Recording the number of public enquiries in relation to individual pest plants and animals, in regard to requests for information;
- d) Annually monitoring all pest animal control operations to determine performance results;
- e) Undertaking periodic monitoring of native habitat areas to ascertain habitat condition;
- f) Annually surveying a proportion of the region to locate infestations of low incidence pests and check key incursion points;
- g) Recording the number of groups/individuals who participate in Community Initiative Programmes and other community pest control programmes; the total area of land under community control; and monitoring the effectiveness of the control work carried out; and
- h) Recording the presence/absence of Surveillance Pest Plants at sale, propagation and distribution outlets.

The Council will report on the achievements of the Strategy objectives in the Council’s Long-Term Council Community Plan Report and in an Operational Plan Report produced annually for the Strategy.

15.2. Strategy Review

Once this Strategy is made operative, it will have effect for the period of five years. Prior to the expiry of five years from the operative date, a full review will take place, in accordance with section 88 of the Biosecurity Act 1993. The Council may also initiate a review within the five year period if the Council has reason to believe that the Strategy is failing to meet its objectives, or that circumstances have changed significantly (section 88(3) of the Act). A review may result in the replacement of the Strategy or an extension of its duration in its existing or amended form. Any review of an RPMS is commenced by a proposal notified in accordance with section 78 of the Act, and is required to undergo a public notification, submissions and hearing process.

15.3. Minor Amendments to the Strategy

Section 88A of the Biosecurity Act allows for a regional pest management strategy to be amended by a regional council resolution without a review of the Strategy (as described in section 15.2 above), only if the regional council is satisfied that the amendment will not have any significant effect on the rights and obligations (including obligations to contribute to the costs of the strategy) of any person.

16 EXEMPTION PROVISIONS

Under section 80D of the Biosecurity Act, the Council may, upon written request, exempt any person from any requirement in any Rule included in this Strategy.

Before granting an exemption under section 80D of the Act, the Council shall be satisfied that:

- The Rule has been substantially complied with and further compliance is unnecessary; or
- The action taken or provision made in respect of the matter to which the requirement relates is as effective or more effective than the actual compliance with the Rule; or
- The prescribed Rule is clearly unreasonable in the particular case; or
- Events have occurred that make the prescribed Rule unnecessary or inappropriate in the particular case; and
- The granting of the exemption will not significantly prejudice the attainment of the objectives of the Strategy.

When granting an exemption, the ARC may place certain conditions on it. Applications for exemptions should be directed to the Manager, Biosecurity Team, Auckland Regional Council.