

STAFF REPORT

TO: Environment & Planning Committee

FROM: Phil Doole, Resource Consents Manager

REFERENCE: C651

SUBJECT: **RESOURCE CONSENTS MANAGERS REPORT - REPORT EP09/08/10** – Report prepared for meeting of 27 August 2009

1. INTRODUCTION

This report presents a status report on current workloads of the Resource Consent Section, recent decisions of significance, and appeals which had been lodged with the Environment Court on decisions issued by the Hearings Committee or Commissioners.

This report also presents a summary of the Resource Consent's performance in respect of compliance with statutory timeframes for the 2008-2009 financial year.

2. SUMMARY OF DECISIONS MADE BY THE COUNCIL THROUGH HEARINGS COMMITTEES AND UNDER DELEGATED AUTHORITY

The following table presents a summary of the various types of resource consent applications that were lodged during the 2008/2009 year, compared with the previous year:

Table 1: Applications Received

Category	2007- 2008	2008 -2009
Certificate of Compliance	9	5
Coastal	18	26
Discharge	175	199
Land Use District	591	507
Regional	70	53
Designation	40	9
Subdivision	200	167
Rights of Way	11	7
Water	113	58
Totals	1227	1031

The following tables present summaries of the various types of consent applications for which processing was completed (ie, decisions made) during the 2008/2009 year, showing average processing days, and compliance with statutory timeframes:

Table 2: Decisions on Non-notified Applications

Non-Notified	1 July - 30 June 2007 - 2008				1 July - 30 June 2008 - 2009			
Consent Type	Total	On Time	% On Time	Avg Time	Total	On Time	% On Time	Avg Time
Land Use	421	413	98%	14	377	368	98%	15
Subdivision	172	141	82%	33	165	149	90%	24
Coastal	6	5	83%	45	18	16	89%	16
Discharge	101	95	94%	31	136	98	72%	30
Regional Land	142	129	91%	36	120	108	90%	22
Water Permits	80	77	96%	19	46	37	80%	44
Other	37	37	100%	11	26	25	96%	16
	959	897	94%	27	888	801	90%	24

Table 3: Decisions on Notified Applications (Public and Limited Notification)

Notified	1 July - 30 June 2007 - 2008				1 July - 30 June 2008 - 2009			
Consent Type	Total	On Time	% On Time	Avg Time	Total	On Time	% On Time	Avg Time
Land Use	23	13	57%	103	29	7	24%	84
Subdivision	19	6	32%	111	16	2	13%	99
Coastal	4	3	75%	309	5	0	0%	176
Discharge	140	131	94%	108	28	5	18%	89
Regional Land	13	6	46%	298	12	0	0%	93
Water Permits	14	7	50%	775	4	0	0%	82
Other	2	2	100%	141	2	1	50%	107
	215	168	78%	264	96	15	16%	104

Note to Table 3: the low percentage of notified applications achieved on time for the 2008/2009 is largely due to the extra time taken between close of submission periods and holding a hearing. The RMA allows 70 days for the entire notified process, including 25 days for the period from the close of submissions to the hearing. That step of the process usually takes longer to organise and complete which is reflected in the average times exceeding 70 days. The RMA allows for time extensions to be applied, but that has not been done over the past year giving a lower "on time" result.

Applications to change conditions of resource consent are included in the above figures. The Section workload also includes plan approvals for subdivision.

Recently I have carried out a review of the conditions on one consent relating to re-alignment of water channels; and for two other consents I have decided that there were insufficient grounds to review them in accordance with Section 128 of the RMA.

3. CURRENT APPEALS

Council staff dealt with the following appeals on resource consent decisions during the 2008/2009 year, all of which relate to decisions made by various Hearings Committees or Commissioners:

Appellant	Matter	Status
Baigent	Mt Heslington water sharing.	Resolved.
Seifried	Mt Heslington water sharing.	Resolved.
Richmond West Group	Subdivision at Richmond West.	On hold until Variation to TRMP to be completed.
Tidswell	Subdivision at Mapua.	Appeal resolved.
Reilly	Development at Pupu Springs (Reilly).	Likely to be resolved by consent order.
Transit NZ		
Rose		
Earle and others		
Fleming		
Tiakina te Taiao	Subdivision at Marahau (Newhaven Syndicate).	Appeal resolved
Friends Of Mapua Wetland	Subdivision at Aranui Road (Aranui Road Trust)	Appeal resolved.
Sebastien Vineyards Ltd	Subdivision at Tasman	Appeal resolved.
Seifried	Excavation of ponds and increase water take (A Baigent)	Appeal resolved.
Bouterey Clark Education and Training	Childcare centre in Richmond (Ireland Developments Limited)	Appeal resolved.
Haines	Subdivision on Best Island – Declined by Hearings Committee	Appeal declined by Environment Court.
Carr and Emerson	New dwelling at Totara Ave - Declined by Hearings Committee	Appeal Withdrawn. (new application lodged)
Drake	Relocated dwelling at Ruby Bay (D'Urville Vineyards Limited)	Appeal Resolved.
J D Adventures	Developments associated with Anatoki Salmon Farm	Appeal Withdrawn.
St Leger Group Limited	Rural-residential subdivision in Richmond East	Mediation and negotiations on-going.
Greany, Beatson & Dennett	New house at Stephens Bay (Wratt)	Mediation on-going. (Note: Judicial review)
Brown Acre Village Limited	Retirement Village on Parker Street, Motueka	Likely to be resolved by mediation.
Fairfield Orchards Limited	Packing house and cool store activity at Riwaka	Likely to be resolved by mediation.
Thompson		
Waitapu Fishing Limited	Marine Farms Wainui Bay	Likely to be resolved by mediation.
Friends of Golden Bay		
Weatherall		
Blessing		
Little Sydney Mining Limited	Subdivision in Rural 1 Zone with esplanade reserves	Mediation on-going.
Gardens of the World Limited	Proposed Crematorium and associated functions venue on Clover Road East. (Declined)	Appeal in preliminary stage of process.

4. JUDICIAL REVIEWS AND OTHER COURT ACTIONS

Torrent Bay

Stuart Allen Investments Limited has sought a Judicial Review in the High Court on two decisions made under delegated authority to allow a land use consent and a discharge permit to be granted on a non-notified basis and without its written approval. The land use consent (issued to P G Egden and J B Loughnan C/- T Douglas-Clifford) is to construct a second dwelling on a property at Torrent Bay located within the Coastal Environment Area. The discharge permit is for the discharge of treated domestic wastewater. These resource consents were granted in 2006 and 2007 respectively. Council staff prepared affidavits during September last year, and the matter was heard by the High Court during July. We await the Court's decision.

Lowe House, Williams Road, Tasman

P and G Russell have sought a Judicial Review in the High Court on decisions made under delegated authority to allow a land use consent to be granted on a non-notified basis and without their written approval. The consent granted in March 2009 (to R and J Lowe) was to construct a dwelling in the Rural 3 Zone with a set back of 5 metres from the common boundary adjacent to grape vines on the Russells' land. At the time of writing this report, Council staff are preparing affidavits. A Court hearing has been scheduled for early September.

Wratt House, Stephens Bay

Notice has just been received that J and S Palmer and others have sought a Judicial Review in the High Court on decisions made under delegated authority to allow land use and land disturbance consents to be processed on a limited-notified basis and without their written approval. The consents granted in January 2009 (to M and B Wratt) are for construction of a replacement dwelling in the Coastal Environment Area at Stephens Bay.

House, Wharf Road, Riwaka

A response was made to an application to the Environment Court for enforcement orders regarding a new house being built that breached the relevant daylight angle rule in the Tasman Resource Management Plan. The Court action was withdrawn when the matter became the subject of a resource consent application.

5. SIGNIFICANT HEARINGS AND APPLICATIONS

Since the last report, there have been 38 hearings scheduled for resource consent applications, Notices of Requirement (designations) and two objections to decisions made by Council staff. Nine hearing dates were cancelled for a variety of reasons: for some the issues were able to be resolved without need for a hearing; other applications were withdrawn in reaction to submitters' concerns or staff reports (including the proposed redevelopment of the Pakawau camping ground site); and some applications have been put on hold for further consideration by the applicants.

Some of the more significant hearings have included:

- J D Adventures Limited: to operate a café and regularise the water take for the Anatoki salmon farm.

- St Leger Group Limited: for a rural residential subdivision in Richmond East involving a proposed road with a 1:6 gradient, geotechnical issues and connectivity to adjoining land.
- Brown Acre Village: to develop a retirement village in Motueka.
- Waitapu Fishing: to continue to operate two spat catching farms in Wainui Bay.
- NZ Energy Limited: to construct and operate a small hydro-electric power station at Lake Matiri. This proposal required seven days of hearing and over 1000 hours of Council staff time to assess and report on the applications. (Decision pending)
- Atamai Village Council: for rural-residential subdivision with associated access from the Motueka Valley highway.
- Little Sydney Mining Limited: for subdivision involving major boundary relocation in Rural 1 Zone and esplanade reserves.
- Nelson Drag Racing Association: to continue to operate drag races at Motueka aerodrome.
- Gardens of the World Limited: to operate a crematorium, memorial garden, function centre and café at the Gardens of the World site. (Declined)
- Camden Properties: for a unit title subdivision and to establish a resort on Best Island. (Decision pending)

Looking forward, the number of scheduled hearings has eased off; although we are expecting several of the deferred applications to be activated again soon, and there are several applications on the publicly notified, or limited-notified tracks which may result in hearings.

The volume of hearings, appeals and other Court actions have had an impact on our ability to deal with all applications in a timely manner.

6. COST RECOVERY FOR RESOURCE CONSENT PROCESSING

Significant increases were made to the fees and charges for resource consent processing at the start of the 2008/2009 year. This has caused reaction from some applicants when the total costs have become apparent after completion of the process. A notified application (or suite of applications) requiring a hearing can cost anywhere between \$5,000 - \$50,000; and considerably more for the NZEL applications.

The resource consent section is the only Council function that relies completely on time-costing for cost recovery. Some deficiencies in the time-costing system have been identified and I am trying to get those rectified so we can improve our own internal efficiencies with invoicing as well as improving our service to applicants.

7. PROPOSED CHANGES TO RESOURCE MANAGEMENT ACT 1991

The Resource Management (Simplifying and Streamlining) Amendment Bill is expected to be reported back to Parliament by the Select Committee next week.

The most important of the proposed changes in the Bill for our day-to-day work in processing applications for resource consent, relate to:

- Council's ability to make more than one request for further information;
- Cost recovery penalties if Council is tardy with processing timelines; and
- Notification decisions, for which the proposed changes will "raise the bar" for minor effects and determining affected persons (eg, the change from "may be" affected, to "will be" affected).

The applications for Judicial Review listed above are challenging how we have applied the current tests for notification in practice.

Indications to date are that the Government intends that the RMA Amendments will become operative from 1 October, so we have scheduled staff training on the changes for late September.

8. STAFFING

The Resource Consents section is now fully staffed after the recent appointments of Mike Mackiggan and Daryl Henehan to the Natural Resources Consents team at the Richmond office. They have replaced Mike Durand and Megan Kennedy. Late last year, Godwell Mahowa replaced Mandy Bishop in the Land Use Consents team. Ina Holst-Stoffregen has joined Laurie Davidson at the Takaka office in a job share arrangement.

9. RECOMMENDATION

That this report be received.

Phil Doole
Resource Consents Manager