

STAFF REPORT

TO: Environment & Planning Committee

FROM: Phil Doole, Resource Consents Manager

REFERENCE: C651

SUBJECT: **RESOURCE CONSENTS MANAGER'S REPORT - REPORT EP10-02-02** - Report prepared for meeting of 25 February 2010

1. INTRODUCTION

This report covers current workloads of the Resource Consent Section, recent decisions of significance, and appeals which had been lodged with the Environment Court. A summary is presented of the Resource Consent Section's performance with regard to compliance with statutory timeframes for the first six months (July-December) of the 2009-2010 financial year. Comment is also made regarding the Government's consultation process regarding the pending regulations for discounting resource consent processing fees when the statutory timeframes are exceeded.

2. WORKLOAD

Our workload remains steady with around 640 resource consent applications received so far this year (to 12 February) compared to 1031 applications received during for the full 2008/09 year. The number of hearings has also been steady averaging one per fortnight. Appeals continue to add to the workload.

The general drop off in new land development proposals over the past 18 months has seen a change to smaller subdivisions and boundary adjustments, as well as several variations to existing consents as developers adjust to the market demand.

As of 12 February we had 549 applications in process, 220 showing as active and the other 329 on hold for various reasons including further information requests. About 30% of those "on hold" are waiting for the aquaculture reforms.

Staff have been adjusting work practices to take account of the changes introduced from 1 October 2009 by the RMA amendments. The principal change is the new restrictions on extending processing times, which now require special circumstances (see further comment below with regard to the Discount Regulations). While the performance results for the first half of the year are pleasing, I am cognisant of the fact that we are experiencing something of a lull in workload compared to what has been experienced in previous years. We will have challenges if there is a sudden resurgence in complex applications.

The number and extent of enquiries also remains steady. About 40% of the available staff time is utilised on providing advice, checking LIMs and other duties.

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

The following table presents a summary of the resource consent decisions that were completed during the six month reporting period (July-December 2009), showing average and median processing days, and compliance with the statutory processing timeframes. Applications to change conditions of resource consent are included in the figures.

Type of Application	Number Completed	Number Within Time (includes s37)	Percentage Within Time (includes s37)	Average Processing Days*	Median Processing Days*
Non-notified Applications (No Hearing)					
Land Use	217	216	100%	15	15
Subdivisions	85	75	88%	28	25
Coastal	4	4	100%	15	12
Discharge	51	49	96%	23	20
Reg Land	62	57	92%	21	15
Water	19	18	95%	19	16
Others	15	15	100%	9	7
Total:	453	434	96%	19	17
Non-Notified Applications (With Hearing)					
All	2	1	50%	111	
Publicly Notified Applications (No Hearing)					
All	22	22	100%	120	50
Publicly Notified Applications (With Hearing)					
All	33	18	55%	158	135
Total:	55	40	73%		
Limited Notified Applications (No Hearing)					
All	8	4	50%	118	
Limited Notified Applications (With Hearing)					
All	7	6	86%	113	86
Total:	15	10	67%		

* two days added to correct NCS clock settings pre 1 October 2009

Subdivision Section 223 Approvals:	Applications received	77
	Approvals Completed	70
Subdivision Section 224 Completions:	Applications received	67
	Certificates Issued	78

Number needing further information: 220 42%

Number with Section 37 Extensions: 138 26%

Completed Non-notified applications received from 1 October 2009: (ie, for applications lodged after the RMA amendments took effect)			
Number Completed:	132		
Number Section 37:	3	2%	
Number not in time:	5	4%	

4. CURRENT APPEALS

Council staff are dealing with the following resource consent appeals, all of which relate to decisions made by various Hearings Committees or Commissioners:

Appellant	Matter	Status
Richmond West Group	Subdivision at Richmond West	On hold until Variation to TRMP completed
Reilly Transit NZ Rose Earle and others Fleming	Development at Pupu Springs (Reilly)	Likely to be resolved by consent order
St Leger Group Limited	Rural-residential subdivision in Richmond East	Resolved by mediation and negotiations (new applications lodged) Appeal to be withdrawn
Greany, Beatson & Dennett	New house at Stephens Bay (Wratt)	Appeal resolved (NB: Judicial review)
Brown Acre Village Limited	Retirement Village on Parker Street, Motueka	Appeal resolved
Fairfield Orchards Limited Thompson	Packing house and cool store activity at Riwaka	Appeal resolved Awaiting Court Order
Waitapu Fishing Limited Friends of Golden Bay Weatherall Blessing	Marine Farms Wainui Bay	Appeal resolved
Little Sydney Mining Limited	Subdivision in Rural 1 Zone with esplanade reserves condition	Court Hearing required
Gardens of the World Limited	Proposed Crematorium and associated functions venue on Clover Road East. (Declined)	Appeal withdrawn (new application lodged)
Camden Properties Limited	Best Island Resort Development	Mediation scheduled for March 2010
Punt	Poutama Drain Designation for Richmond West Development Area (TDC Engineering Dept)	Mediation scheduled for March 2010
Garden Path Limited	Expansion of café restaurant in Motueka	May be resolved by mediation
Minvest Securities Limited	Proposed Dam, Spring Grove	Likely to be resolved by negotiation
NZ Transport Agency	Mariri causeway widening reclamation – financial contribution to mitigate effects	May be resolved by mediation
White Water NZ Ltd	Matiri River Hydro-electric Power (NZ Energy Limited)	May be resolved by negotiation between appellant and consent holder
Whittaker	Cool Store Extensions Whakarewa Street Motueka (Ngatahi Horticulture)	Awaiting Court decision whether to accept appeal
Ladleys	TDC Water Take for 88 Valley Scheme	Likely to be resolved by negotiation

5. 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 2008, and the matter was heard by the High Court during July last year. We still await the Court's decision.

Low House, Williams Road, Tasman

P and G Russell 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. A Court hearing was held in mid-September with the Judge releasing his decision a week later. The judgement was in Council's favour.

Wratt House, Stephens Bay

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. These proceedings were heard in the High Court on 15 February. We await the Courts decision.

6. SIGNIFICANT HEARINGS AND APPLICATIONS

There were 26 hearings held during the 2009 calendar year. Some of the more significant hearings or decisions released over the past six months have included:

- 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
- Alborn Properties Limited: to operate a commercial base for water taxi and kayaking activities at Marahau
- Gardens of the World Limited: modified application to operate a crematorium and associated activities at the Gardens of the World site (in progress).

Looking forward, the number of scheduled hearings has eased off; although 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 does have an impact on our ability to deal with all applications in a timely manner.

7. COST RECOVERY FOR RESOURCE CONSENT PROCESSING

I have reviewed the calculations for cost recovery fees and charges for resource consent processing for the next Annual Plan round. I am satisfied that the hourly rate formula sets a fair and reasonable charge for recovering the costs incurred by Council for processing resource consent applications. The calculation includes a fair proportion of overhead costs, but excludes the proportion of time that staff utilise on other work such as responding to enquiries. I note that the cost recovery formula makes no allowance for covering the discount regulation, which will be a cost to ratepayers if discounts have to be deducted from charges.

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 efforts are being made to get those rectified so we can improve our own internal efficiencies with invoicing as well as improving our service to applicants.

8. PROPOSED DISCOUNT REGULATION

The Resource Management (Simplifying and Streamlining) Amendment Act 2009 provided for regulations to be made requiring Local Authorities to discount charges for processing resource consent applications when they are responsible for exceeding the statutory time periods.

The Ministry for the Environment (MfE) circulated an issues and options paper in mid-January allowing three weeks for feedback. The staff feedback comments are attached to this report (copies of the MfE Paper are available on request).

The MfE Paper expressed a preferred option for a “sliding scale percentage discount” that would start at **5% for one day over time, rising to 25% for five days over time**, rising to a maximum 80% discount by the twelfth week late. The Paper indicated that the number of applications completed only a few days late is a particular concern, but failed to provide any analysis to support this or quantify the “inconvenience” that short time delays cause for applicants.

Staff have recommended a “no-discount” buffer period for the first week over time, then a sliding scale percentage discount, with longer timeframes to apply for notified applications. Other key points are:

- The Paper failed to differentiate between notified and non-notified processing, the former often being harder to manage in terms of timeframes, and usually involving much higher charges (anywhere between \$6000 - \$30,000, or more, if a hearing is required),
- No recognition of the inequities that would be created with having major discounting for a few days late, or for the higher dollar amounts involved with notified applications
- The proposed high starting discount fails to acknowledge that almost achieving timeframes means that the Consent Authority is trying, so why penalise that severely?

- No recognition of the inherent complexity of many applications for subdivision or regional consents
- The emphasis is on timeliness with no regard for achieving quality results and/or legally robust decision-making
- Input sought by MfE from an advisory panel of Local Government staff appears to have had little influence on a politically driven process

It is worth emphasising that we are being hit with a double blow in that, as I mentioned above, the ability to extend timeframes has been restricted. That change was decided by the Parliamentary Select Committee with negligible opportunity for Local Authorities to comment.

The Paper suggests that Local Authorities can introduce more rigorous pre-application requirements as some City Councils have done (such as compulsory pre-application meetings or checks). However, in my view there is no statutory basis for making these requirements mandatory - and all they really do is shift the time taken to refine an application off the Council's processing clock, rather than shortening the overall time taken to complete the application process. Also, having mandatory pre-application meetings would be another complication on managing staff workloads.

Our current performance indicates that we should be able to avoid discounts for non-notified applications except in a few cases, but the notified ones will be a concern unless there is a major change to the format of the proposed regulation.

Improvements to work management systems have brought better timeliness results, however the biggest influence on results is having sufficient trained and experienced staff to match the workload (or ready access to those skills).

Depending on the final value of the imposed discounts, business choices may have to be made as to whether it is more cost effective to either employ more staff so that timelines can be met most of the time, or to discount the processing charges.

9. STAFFING

Staffing of the Resource Consents Section has been stable since the changes last June/July, except that Gill Atkins has now replaced Carol Davidson in the job-share Administrator position at the Richmond Office.

10. RECOMMENDATION

That this report be received.

Phil Doole
Resource Consents Manager