



## STAFF REPORT

**TO:** Environment & Planning Committee

**FROM:** Phil Doole, Resource Consents Manager

**REFERENCE:** C651

**SUBJECT:** **RESOURCE CONSENTS MANAGER'S REPORT - REPORT REP11-01-09** - Report prepared for meeting of 27 January 2011

---

### 1. INTRODUCTION

This report presents a summary of the Resource Consent Section's performance with regard to compliance with statutory timeframes for the first six months (July-December) of the 2010/2011 Council financial year. It also covers current workloads of the Resource Consent Section, items of significance that have arisen over the past six months, and appeals which have been lodged with the Environment Court.

### 2. WORKLOAD

Our workload remains steady with around 670 resource consent applications received so far this financial year compared with 590 applications received during the same period last year (and 1006 received during the full 2009/2010 year). The frequency of hearings has continued to average one per fortnight. Appeals continue to add to the workload, requiring mediation time and/or preparation of evidence. The number and extent of enquiries also remains steady. About 40% of the available staff time in the Consents Section is utilised on providing advice, checking LIMs and other duties.

A general drop off in new land development proposals over the past two years continues to be reflected in smaller subdivisions and boundary adjustments, as well as variations to existing subdivision consents as developers adjust to the market demand. The total number of applications is buoyed somewhat by the Delta Zone water take "renewal" process that is currently underway, involving 160+ water permits that will expire on 31 May 2011.

As of 14 February we had 597 applications in process, 394 showing as active and the other 203 on hold for various reasons including further information requests. About 30% of those "on hold" are waiting for the aquaculture reforms.

Staff have adjusted work practices to take account of the changes introduced from 1 October 2009 by the RMA amendments. One key change was the restrictions on extending processing times, which now require special circumstances. The Discount

Regulations took effect for resource consent applications lodged from 1 August 2010. So far we have not had to deduct any statutory discounts from our processing charges.

The performance results for the first half of the year are pleasing – particularly the average and median processing times (see Table 1 below). However, we have had a lull in complex applications or consents compared to what has been experienced in past years. The overall number of applications has not declined markedly, and workloads can rise sharply with the addition of one or more complex jobs or Court proceedings. We will have challenges meeting the statutory timeframes if there is a sudden resurgence in complex applications.

### 3. SUMMARY OF DECISIONS MADE BY COMMISSIONERS, HEARING COMMITTEES AND STAFF 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 2010), showing average and median processing days, and compliance with the statutory processing timeframes. Applications to change conditions of existing resource consents and Notices of Requirement are included in these figures.

**Table 1: Timeliness Results (July-December 2010)**

Type of Application	Number Completed	Number Within Time (includes s37)	Percentage Within Time (includes s37)	Average Processing Days	Median Processing Days
<b>Non-notified Applications (No Hearing)</b>					
Land Use	207	206	99.5%	12.5	13
Subdivisions	56	54	96%	15	14
Coastal	3	3	100%	25	33
Discharge	40	40	100%	10	10
Reg Land	5	5	100%	15	13
Water	48	48	100%	7	6
Others	9	9	100%	11	8
<b>Total:</b>	<b>368</b>	<b>365*</b>	<b>99%</b>	<b>12</b>	<b>11</b>
<b>Non-Notified Applications (With Hearing)</b>					
All	1	1	100%	34	
<b>Publicly Notified Applications (No Hearing)</b>					
All	0	0			
<b>Publicly Notified Applications (With Hearing)</b>					
All	20	16	80%	98	104
<b>Limited Notified Applications (No Hearing)</b>					
All	17	17	100%	52	64
<b>Limited Notified Applications (With Hearing)</b>					
All	6	6	100%	68	70
Number needing further information:		195	47%		
Number with Section 37 Extensions:		47	11%		
Subdivision Section 223 Approvals:		Applications received		64	
		Approvals Completed		59	
Subdivision Section 224 Completions:		Applications received		67	
		Certificates Issued		59	
*Note: the applications completed out of time were all lodged prior to the Discount Regulations taking effect from 1 August 2010.					

#### 4. CURRENT APPEALS

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

**Table 2: Current Appeals**

Appellant	Matter	Status
Richmond West Group	Subdivision at Richmond West	On hold until completion of Richmond West Plan Change
Reilly Transit NZ Rose Earle and others Fleming	Development at Pupu Springs (Reilly)	Resolved by Consent Order.
Little Sydney Mining Limited	Subdivision in Rural 1 Zone, appeal regarding esplanade reserves condition.	<b>Court Hearing held. Council Decision Upheld by Court.</b>
Camden Properties Limited <b>Other parties:</b> Greenacres Golf Club Aubrey	Best Island Resort Development, appeal regarding raising of ground levels to reduce risk of inundation by sea level rise; also road width	Agreement reached between all parties except A Aubrey who disagrees with road width accepted by Council and applicant. Evidence has been prepared. Waiting for Court date, although may be resolved without a hearing.
Punt	Poutama Drain Designation for Richmond West Development Area (TDC Engineering Dept).	On hold until completion of Richmond West Plan Change.
Ladleys	Water take for 88 Valley Scheme (TDC Engineering Dept)	Agreement reached. Expecting withdrawal of appeal.
Garden Path Ltd	Expansion of café restaurant in Motueka.	Mediation held. <b>Appeal withdrawn.</b>
Whittaker	Cool Store Extensions Whakarewa Street, Motueka (Ngatahi Horticulture).	Resolved by Consent Order
Living in Hope Inc	Crematorium (Gardens of the World).	Hearing required. Evidence has been exchanged. <b>Court hearing to be held in February 2011.</b>
Tasman District Council Wakatu Inc	Water take for Motueka & Coastal Community Water Supply, Parker Rd, Motueka (TDC Engineering Dept).	Awaiting Court mediation. <b>There are related Appeals on Plan Change.</b>

<b>Appellant</b>	<b>Matter</b>	<b>Status</b>
Picard	Subdivision, Dominion Rd, Mapua (Wilms).	Mediation held, likely to be resolved by Consent Order.
Coba Holdings <b>Other parties:</b> Riley Incredible Adventures Friends of Golden Bay Inc Vaughn	Coastal subdivision, Collingwood Appeal is against some conditions.	Mediation is ongoing. Likely to be resolved without Court hearing.
Sustainable Ventures Ltd <b>Other parties:</b> Friends of Golden Bay Inc Gunn Sissons Glover	Appeal is against several of the conditions imposed on coastal development proposal at Pakawau.	Awaiting Court assisted mediation.
Pakawau Community Care Group	Sustainable Ventures Ltd (as above).	<b>Struck out by Court.</b> (this group did not have Appeal rights)
Purse	Retrospective consent for building in yard set-backs in rural residential zone Faraday Rise (Evans, Irvine & Smith).	Evidence circulated. <b>Court hearing scheduled for March 2011.</b>
Guthrie <b>Other parties:</b> Greer	Subdivision in Pleasant Valley. Appeal against condition to upgrade access.	Awaiting Court assisted mediation.
McShane Holdings Ltd AE Field & Son Ltd	Borck Creek Greenway Notice of Requirement (Tasman District Council).	Awaiting Court assisted mediation.

## 5. SIGNIFICANT HEARINGS AND APPLICATIONS

The more significant hearings and decisions made over the past six months have been:

- Evans, Irving and Smith applied for residential building alterations (retrospective consent) and to site a garage and construct a stairwell on the western side of the dwelling within 5 metres of the property boundaries, at Faraday Rise, Richmond. This application was **limited notified** to the immediate neighbour. Because this application resulted from a plan checking error that allowed the house extensions to be built within the yard set-backs that apply in a rural-residential zone, it was heard and considered by an Independent Commissioner.

- Nelson Regional Sewerage Business Unit made a joint application to Nelson City Council to construct a new sewer pipeline under the bed of the Waimea Inlet between Monaco and Bells Island, to maintain the existing pipeline under the Inlet and for earthworks on Saxton Island.
- Tasman District Council heard and confirmed Notices of Requirement to designate land along Borck Creek and subsidiary waterways in Richmond South and Richmond West for public drainage works and greenways.
- Sprig & Fern Tavern, Richmond, applied to operate with a shortfall of car-parks, only one disabled car-park, and with the car-parks surfaced in unsealed compacted aggregate. This application did not concern the issue of noise at the tavern site on Queen Street - the applicant stated that they will meet the noise limits and therefore no consent was necessary. The Hearing Committee considered that the car parking situation is acceptable and granted consent.
- P Wilks applied to subdivide a 53.3 hectare title to create two new titles on Malling Road, Redwood Valley. This application was **declined** by a Commissioner panel on the basis of fragmentation of Rural 2 land, the effect that the proposal would have on the integrity of the District Plan and the Rural 2 zone by creating a precedent. This Decision “draws a line” with regard to fragmentation of Rural 2 land parcels.
- Egden and Laughnan applied to construct an over-height accessory building for residential purposes in conjunction with an existing dwelling at Torrent Bay. This application was subject to a High Court review of a Council staff decision in 2006 to process it on the non-notified pathway. The High Court judgement instructed Council to notify the neighbour who had taken the proceedings against the original decisions. A Commissioner panel has granted consent.
- J Kemp applied to for a second dwelling and a sleep-out on a property on Rocklands Road, Golden Bay. This application was **limited notified** to the neighbours on Rocklands Road.
- B and T Dunn applied to delete a consent condition which requires the removal of an original dwelling (when the replacement dwelling was built) and for a retrospective consent for the extension of an existing cottage, within a coastal environment area. The proposal would establish a fourth dwelling on a Rural 3 site and retain cottages near the shoreline of Waimea Inlet that would hinder future prospects for public access around the coastal margin. Council staff had indicated a willingness to negotiate acquisition of an esplanade reserve or strip and alternative solutions for the Dunn’s housing proposals. This application was heard by independent Commissioners at the request of the applicants. The Commissioners **declined** consent, except that a short term consent has been granted requiring the extensions to a small cottage to be removed or else the cottage relocated. The appeal period has not yet expired.
- Carter Holt Harvey HBU Ltd has applied to subdivide a property at Kina Peninsula into 8 residential lots and to vest part of “Baigents Reserve” with Council. This application is being heard and considered by independent Commissioners at the request of the applicant; although it is likely that a Commissioner panel would have been appointed in any case because of

Council's potential interest in the reserve matter. The hearing is currently adjourned pending the receipt of further information regarding archaeological and cultural sites.

There have also been two hearings of objections relating to reserve financial contributions imposed on subdivision consents.

Looking forward, there are currently 14 applications on the publicly notified or limited-notified tracks which may require hearings. They include the proposed alteration to the designated site for the Takaka Wastewater Treatment Plant (WWTP) upgrade, the "Old MacDonalds Farm" campground at Marahau, the Tapawera Motorsports Park proposal, and two rural-residential subdivisions. It is expected that some of these applications will require Commission hearings because of Council's interests in the proposals. It is also possible that applicants or submitters will request independent Commissioners.

## 6. NOTIFICATION PROCEDURES

Amendments made to the Resource Management Act 1991 (RMA) in October 2009 changed the notification provisions for resource consent applications in two key ways:

- the "bar was lifted" with regard to determining who is deemed to be an affected person, from someone who "may be affected", to whether the effects on the person will be minor or more than minor (but not less than minor); and
- there is now a clearer decision-making pathway with regard to limited notification (as distinct from public notification), particularly in terms of effects on neighbours and other adjacent landowners or occupiers. Only those persons who have been identified as affected persons may make submissions on a limited notification.

Fifteen months on we are seeing the consequences of these changes, which have generated some community reactions in some instances. Examples are the new real estate office on Toru Street, Mapua, that was granted consent to operate in a residential zone without notification; and the proposed alteration to the designated site for the Takaka WWTP, which was **limited** notified. Contrary to the impression given by a recent Nelson Mail article and at other public forums, an application for new discharge permits, including odour discharge, for the WWTP upgrade was **publicly** notified in March 2009. A copy of my briefing paper for the Golden Bay Community Board on the latter example is attached with this report.

Another consent that attracted neighbours concerns regarding non-notification was for a gravel extraction operation on Peach Island, Motueka valley. That application preceded the RMA amendments. Whereas an initial assessment of the proposal had indicated that notification would be required, that decision was revised to non-notification after the application was amended.

## **7. STAFFING**

Staffing of the Resource Consents Section has been stable since my last report in August 2010, except that consents planner Godwell Mahowa resigned in early November to take up a position with Hutt City where his family resides. We appreciated Godwell's contribution to our work over the past two years, and we will miss his international perspective.

We are gauging our likely workload over the next 6-12 months before deciding whether to fill the vacancy. We are aware of one major air discharge permit "renewal" that is due now, but we have no control over what other applications will be lodged and when. A large complex application could tie up one FTE for a month or more. It is also worth emphasising that the volume of hearings, appeals and other Court actions does have an impact on our ability to deal with resource consent applications in a timely manner.

One potential side effect of the legislative changes in timeframes and discounting for consents processing (in the context of having to deal with a wide range of applications), is the impact on the viability and practicalities of employing part time staff and helping to train new graduate planners in processing applications.

## **8. RECOMMENDATION**

That this report be received.

Phil Doole  
**Resource Consents Manager**

## Memorandum

**TO:** Lloyd Kennedy, Community Services Manager  
**FROM:** Phil Doole, Resource Consents Manager  
**DATE:** 23 December 2010  
**FILE NO:** RM080146, RM100333  
**RE:** **RMA Notification Process: Takaka Waste Water Treatment Plant Upgrade**

You have asked for clarification of the notification process that has occurred for the resource consent applications associated with the proposed upgrade of the Takaka Waste Water Treatment Plant (WWTP). Your request follows comments made by Ms Hayley Gale during the public forum at the Golden Bay Community Board meeting held on 14 December.

### 1. Background

The WWTP was established west of the Takaka township during the 1980s. The site has been "designated" in the Tasman Resource Management Plan (TRMP) for sewage treatment purposes, which means that the land use component of the WWTP has an existing use right of unlimited duration. Operation of the WWTP also requires discharge permits for the disposal of the treated wastewater to land, and for any odour discharges that might occur. Discharge permits can be granted for a maximum of 35 years.

The most recent effluent discharge permit (RM960204) was granted in 1999 for a term that expired on 31 August 2008. It would be fair to say that the nine year term reflected concerns at the time regarding the previous operation of the WWTP, with an expectation that the strict set of conditions imposed on the permit would be met by improved management and monitoring.

An application for a new effluent discharge permit, and an odour discharge permit for the WWTP was lodged in February 2008, six months prior to when RM960204 expired which allows the WWTP to continue operating until the application process is completed. The application is based on a proposed upgrade of the WWTP at the current site so that it will have sufficient treatment capacity for forecast population growth out to the year 2050, although the term applied for is 25 years - to 2033. The application includes layout options for the proposed expansion of the site eastwards, towards the residential area. It also proposes a three-year transition period to allow for construction the WWTP upgrade.

The discharges application **was publicly notified on 7 March 2009**, after further information had been supplied. Following the public submission period and a pre-hearing meeting held with submitters on 1 October 2009, further processing was largely put on hold while Council's Engineering Department negotiated acquisition of the additional land required for the upgrade. A notice of requirement to alter the WWTP designation to include the additional area was subsequently issued in May 2010. That was **limited notified on 25 June 2010**.

## 2. Notification Processes

The Resource Management Act 1991 (RMA) provides for three processing pathways: public notification, limited notification, and non-notified. Those provisions of the RMA were changed by the law amendments that took effect from 1 October 2009, as I will explain further below.

### 2.1 Discharges Application

With regard to the discharges application, the presumption in the RMA at the time (February 2009) was that an application must be notified unless the consent authority is satisfied that the adverse effects of the proposed activity on the environment will be minor.

Consultation by the applicant had resulted in written approvals being obtained from Manawhenua ki Mohua, the Department of Conservation and the Nelson/ Marlborough Fish & Game Council. Those parties' interests were largely focused on the discharge of treated effluent to ground and groundwater with the potential for contaminants to reach the surface flows in the Takaka River. Groundwater in the vicinity of the WWTP site flows in a northwest direction towards the river.

A decision was made to publicly notify the application because the projected increase in total volumes of treated effluent to be discharged over the 25 year period applied for was considered to be a more than a minor change to the discharge previously authorised by permit RM960204. There was also some uncertainty regarding the potential for odour discharge, particularly during the transition period until the plant upgrade would be completed.

Public notification occurred in the Nelson Mail on Saturday 7 March 2009. Resource management regulations also required notice to be served on persons who **may be** adversely affected by the proposal. Notice was served on 51 sets of owners and occupiers of properties adjoining or adjacent to the WWTP site, mostly along Waitapu Road, Feary Crescent and the west end of Edinburgh Street. **Ms Hayley Gale residing at 7 Feary Crescent was included on the mail out list, as was the occupier at 5 Feary Crescent.**

The application file does not record specific reasons why it was considered that the 51 sets of owners and occupiers might be adversely affected. It would be fair to assume from the practice at the time that it was considered appropriate to notify the adjoining property owners, particularly with regard to the potential odour discharges. As noted above, the groundwater flows toward the river, away from the township, so there were no concerns regarding contamination of groundwater that may be used for potable domestic water supplies.

Seven submissions were received as a result of the public notification process – one from B & J Reilly (the adjoining landowners), and five of the others from property owners along Waitapu Road. Concerns about odour were mentioned by most of the submitters.

As Council is the applicant as well as being the consent authority, it is standard practice for an independent audit of the application to be made and independent Commissioners appointed (if necessary) to hear and decide the outcome. In this case, an independent audit was carried out by CPG New Zealand Ltd. Odour complaints relating to the existing WWTP made in March 2009 were investigated by MWH New Zealand Ltd, and a pre-hearing meeting was held with some of the seven submitters on 1 October 2009. The application was then put "on hold" to wait for the land negotiations to be resolved.

### 2.2 Alteration of Designation

The notice to alter the designation to include the expanded site boundary was issued on 31 May 2010. It was therefore subject to the new RMA provisions for notification that took effect from 1 October 2009, as well as Section 181 of the RMA that provides for alterations of existing designations. Section 181(3) provides that a designation may be altered without any notification if:

- (a) *The alteration –*
- (i) *Involves no more than a minor change to the effects on the environment associated with the use or proposed use of land or any water concerned; or*
  - (ii) *Involves only minor changes or adjustments to the boundaries of the designation or requirement; and*
- (b) *Written notice of the proposed alteration has been given to every owner or occupier of the land directly affected and those owners or occupiers agree with the alteration;...*

The proposed additional site area does not contain any surface water bodies which would be subject to the designation process. Potential effects of the WWTP on other water bodies are being dealt with through the discharges application, as discussed above. The assessment of effects addresses a range of matters including flood hazard and amenity effects, and concludes that any changes to the land use effects of the WWTP would be minor. Also, the RMA does not require consideration of alternative sites if the Council has an interest in the land sufficient for undertaking the work (it does), and the works will not have any significant effects on the environment. However, the proposed expansion of 1.8 hectares additional to the existing 7.9677 hectare site was considered to be more than just a minor adjustment, so it was decided, on balance, to apply the new notification tests to the proposed alteration, rather than use the Section 181 pathway.

The new notification provisions in the RMA (Sections 95-95E) require that any effects on adjoining and adjacent landowners be excluded when considering whether adverse effects on the environment will be, or are likely to be more than minor to justify public notification. In this case it was determined that there will not be more than minor adverse land use effects resulting from the proposed change to the designated area, therefore public notification was not required.

There is also a general discretion to publicly notify a proposal if there are other reasons for doing so, such as public interest. That option was considered for this case, but was not applied because:

- Public notification of the discharges application, including plans of the expanded WWTP site layout, had attracted little public reaction; and
- Continued operation and upgrade of the WWTP at its current site had been signalled in several other previous community consultation processes pertaining to development of the Pohara/Tata Beach sewerage network and the Long Term Council Community Plans.

The next step in the RMA procedure was to consider whether there were any affected persons, the new test being that the effects must be minor or more than minor (but not less than minor). The decision was that the expansion of the WWTP site eastwards towards the residential area would be likely to have minor effects on the amenity of those property owners and occupiers on Waitapu Road, Feary Crescent and Edinburgh Street who have an outlook across the Reilly land towards the subject area - whether directly, or across the public reserve areas along Te Kakau stream. On that basis, 36 sets of property owners and occupiers, **including Ms Gale but not the resident at 5 Feary Crescent**, were served notice on or about 26 June 2010.

Six submissions were received as a result of this limited notification process – all are additional to the seven received previously on the discharge applications. Five would-be submissions were rejected because they submitted by people who were not deemed to be affected persons.

Since that submission period closed in July 2010, the two processes (the discharges application; and the proposed alteration to the WWTP site designation) have effectively merged. They have been on hold pending a review of the design of the WWTP upgrade by the Engineering Department to take account of projected waste volumes including trade wastes and further assessment of potential flooding effects. From the Consents processing perspective those are prudent steps to take given the time that has elapsed since the discharges application was first lodged and the investigations that are currently being done on flood hazards around the Takaka township. However, as it is also now over two years since discharge permit RM960204 expired, we do expect these proposals to be progressed in the not too distant future.  
(ends)