

Report No:	REP11-08-12
File No:	C651
Date:	15 August 2011
<b>Information Only – no decision required</b>	

## REPORT SUMMARY

**Report to:** Environment & Planning Committee  
**Meeting Date:** 25 August 2011  
**Report Author:** Phil Doole, Resource Consents Manager  
**Subject:** **Resource Consents Manager's Report**

### REPORT SUMMARY

This report presents a summary of the performance of the Resource Consent Section regarding compliance with statutory timeframes for the 2010-2011 financial year. It also summarises current workloads and issues, and the status of appeals to the Environment Court on decisions made by Hearing Panels

### RECOMMENDATION/S

**That the report be received.**

### DRAFT RESOLUTION

**THAT the Environment & Planning Committee receives the Resource Consents Manager's Report REP11-08-12.**

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## 1. INTRODUCTION

- 1.1 This report presents a summary of the performance of the Resource Consent Section regarding compliance with statutory timeframes for the 2010-2011 financial year. It also summarises current workloads and issues, and the status of appeals to the Environment Court on decisions made by Hearing Panels.

## 2. SUMMARY OF RESOURCE CONSENT PROCESSING FOR 2010-11 YEAR

- 2.1 The following table presents a summary of the various types of resource consent applications, and other applications that were lodged during the 2010/11 year, compared with previous years:

**Table 1: Applications Lodged**

Category	2007- 2008	2008 -2009	2009-2010	2010-11
Certificate of Compliance	9	5	2	10
Coastal	18	26	20	21
Discharge	175	199	124	202
Water	113	58	61	247
Land Use District	591	507	431	478
Land Use Regional	70	53	141	31
Designation	40	9	10	4
Outline Plan			19	15
Subdivision	200	167	188	137
Rights of Way	11	7	9	13
<b>Totals</b>	<b>1227</b>	<b>1031</b>	<b>1005</b>	<b>1158*</b>

**Note to Table 1:**

*\*To date 60 of the applications received during the 2010-11 year have been withdrawn or cancelled, several of those part way through processing; 37 applications were returned because they were incomplete.*

Tables 2 and 3 following present summaries of the various types of consent applications for which processing was completed (ie, decisions made) during the 2010/2011 year, showing average processing days, and degree of compliance with statutory timeframes. The results for the previous 2009/2010 year are also shown.

**Table 2: Completed Non-notified Applications**

Non-Notified	1 July - 30 June 2009 - 2010				1 July - 30 June 2010 - 2011			
	Total	On Time	% On Time	Avg Time	Total	On Time	% On Time	Avg Time
District Land Use	393	392	99.75%	13	396	394	99.5%	14
Subdivision	162	149	92%	24	105	102	97%	19
Coastal	9	7	78%	22	10	9	90%	33
Discharge	106	101	95%	35	87	85	98%	19
Regional Land *	123	114	93%	19	18	18	100%	15
Water Permits	49	48	98%	11	216	216	100%	53**
Designation/OP	24	24	100%	7	15	15	100%	10
	<b>866</b>	<b>835</b>	<b>96.5%</b>	<b>18</b>	<b>847</b>	<b>839</b>	<b>99%</b>	<b>25**</b>

**Notes to Table 2:**

\*A large portion of the consent types that were previously categorised as “Regional Land” have been shifted to the “District Land Use” category.

\*\*27% of non-notified applications in 2010/2011 had time extensions applied, including 131 water takes for the Delta/Hope Zones that were lodged three months or more prior to expiry of existing permits. Excluding those water applications, the average time for processing the other 720 applications was 15 days.

**Table 3: Completed Public and Limited Notified Applications**

Notified	1 July - 30 June 2009 - 2010				1 July - 30 June 2010 - 2011			
	Total	On Time	% On Time	Avg Time	Total	On Time*	% On Time	Avg Time
District Land Use	17	14	82%	91	25	25	100%	79
Subdivision	8	7	88%	78	13	13	100%	90
Coastal	7	5	71%	135	5	5	100%	99
Discharge	27	22	81%	100	28	28	100%	80
Regional Land	17	13	65%	93	5	5	100%	67
Water Permits	9	5	56%	178	5	5	100%	77
Designations	9	9	100%	218	2	2	100%	56
	<b>94</b>	<b>75</b>	<b>80%</b>	<b>117</b>	<b>83</b>	<b>83</b>	<b>100%</b>	<b>81</b>

**Notes to Table 3:**

\*78% of the notified applications in the 2010/11 year had time extensions applied. Reasons include that the RMA allows only 10 days to decide that notification is required and to then organise the public notice to run in the newspaper. Often the extra time taken occurs between close of the submission period 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 - which extends to 40 days (and 85 days total) if officer reports and evidence are circulated prior to a hearing. Forty-seven (87%) of the 54 limited notifieds were completed without need for a hearing; however most of those required a time extension to enable matters to be resolved with submitters.

Applications to change conditions of existing resource consents are included in the above figures (11% of total processed). Forty percent of all applications required further information requests.

**Table 4: Summary of Decisions**

Type of Decision	Number
Declined by Independent Commissioner	2
Granted by Independent Commissioner	8
Declined by Mixed Panel	1
Granted by Mixed Panel	10
Granted by Committee	16
Granted under Delegated Authority	886
Requiring Authority Decision	7

The Section’s processing workload includes title plan approvals for subdivision and other activities as shown in Table 5 below:

**Table 5: Other Activities**

Category	Number
Certificates of Compliance/Existing Use Rights	5
Section 223 Approvals (Subdivisions)*	111
Section 224 Approvals (Subdivisions)	103
Rights-of-Way	10
Overseas Investment Commission Reports	1
Consent Transfers	65

**Note to Table 5:**

*\*71% of the s223 survey plan approvals were completed within 10 working days*

The Consent Planners also spend a significant portion of their work time fielding public enquiries and advising prospective applicants on resource consent requirements.

**3. DISCOUNT REGULATIONS**

- 3.1 The discount regulations that now apply to Council’s charges for processing resource consent applications took effect for all applications lodged from 1 August 2010. The discount is a “sliding scale percentage discount” of 1% for each day over time, rising to a maximum 50% discount at 50 days over time.
- 3.2 Three of the eight non-notified jobs completed out of time in the 2010/2011 year (see Table 2 above) attracted a discount. The other five applications were lodged before the regulations applied. For the three that a discount applied, the average time exceedence was six days resulting in discounts averaging 6% and totalling **\$147.81**.

## 4. CURRENT APPEALS

4.1 Over the past six months we have been dealing with the appeals listed in Table 6 below, regarding decisions on resource consent applications made by Hearing Subcommittees or Commissioners. There are currently **seven** live appeals, two of which have been scheduled for hearing by the Environment Cour. Three of the others relate to the Richmond West Development Area.

**Table 6: Current Appeals**

<b>Appellant</b>	<b>Matter</b>	<b>Status</b>
Richmond West Group	Subdivision at Richmond West	<b>On hold</b> until completion of Richmond West Plan Change
Camden Properties Limited	Best Island Resort Development, appeal regarding raising of ground levels to reduce risk of inundation by sea level rise, and road width	Resolved by Consent Order
Punt	Poutama Drain Designation for Richmond West Development Area (TDC Engineering Dept)	<b>On hold</b> until completion of Richmond West Plan Change
Living in Hope Inc	Crematorium, Gardens of the World	<b>Court hearing held Council decision to grant upheld by Court</b>
Tasman District Council Wakatu Inc	Water take for Motueka & Coastal Community Water Supply, Parker Rd, Motueka	<b>Court hearing expected later in 2011.</b> Related Appeals on Plan Change
Picard	Subdivision, Dominion Rd, Mapua (Wilms).	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.	Resolved by Consent Order
Sustainable Ventures Ltd <b>Other parties:</b> Friends of Golden Bay Inc Gunn Sissons Glover	Coastal development proposal at Pakawau. The appeal is against several of the conditions imposed, notably the coastal protection works.	<b>Set down for Court hearing in August 2011</b>
Purse	Retrospective consent for building in yard set-backs in rural-residential zone Faraday Rise (Evans, Irvine & Smith).	Court hearing held. <b>Commissioner decision upheld by Court and costs against appellant</b>
Guthrie <b>Other parties:</b> Greer	Subdivision in Pleasant Valley. Appeal against condition to upgrade access.	Resolved by Consent Order

Appellant	Matter	Status
McShane Holdings Ltd AE Field & Son Ltd	Borck Creek Greenway Notice of Requirement (NOR) (Tasman District Council).	Negotiations continuing
B & T Dunn	Additional dwellings within Coastal Environment Area, Waimea Inlet	Hearing required Appeal Withdrawn
Cresswell Farms Ltd	Subdivision in Rural 1 Zone, Moutere. Issues with condition requiring fencing of stream bank.	To be resolved by Consent Order
Carter Holt Harvey HBU Limited	Rural-residential subdivision on Kina Peninsula <b>declined</b> by Independent Commissioners	Period for joining appeal not yet closed

4.2 Generally the outcomes of the appeals that have been resolved by agreement (consent order) have retained the essence of the Council decision while allowing changes to the details of conditions. An exception was the Picard appeal on the Wilms subdivision off Dominion Road - in that case the applicants agreed to reduce the scale of the subdivision by deleting one proposed allotment despite the thorough assessment made by the Hearing panel and lack of evidence regarding effects from the appellants.

4.3 Regarding the Living in Hope Inc appeal that was heard by the Environment Court, the Court upheld the Council decision to grant consent to Gardens of the World Ltd for the crematorium and associated memorial gardens, but deleted any requirement to modify or restrict activities being carried out under the 1991 consent (which authorises other activities and events on the site).

## 5. RECENT HEARINGS AND OTHER NOTABLE APPLICATIONS

5.1 Notable applications that have been processed over the past six months are:

- **Carter Holt Harvey HBU Ltd:** to subdivide a property at Kina Peninsula into eight residential lots and to vest part of "Baigents Reserve". The hearing of this application commenced in December 2010 and was finally closed on 2 June 2011 after a cultural impact report and right-of-reply were received. The Independent Commissioners declined this application primarily on the bases of coastal erosion threats, adverse effects on landscape values, inconsistency with the NZ Coastal Policy Statement 2010 and the TRMP, and inconsistency with Section 6 RMA matters of national importance. The decision has been appealed by the applicant.
- **Marahau Estates Ltd:** to retrospectively authorise expanded campground activities on Old MacDonalds Farm at Marahau, and to upgrade the wastewater system to accommodate increased camper numbers, install stopbanks to improve flood protection for the camp and subdivide rural land. The Councillor Subcommittee granted consent in part. An increase the numbers of campers was authorised with the exception of one area which was considered too flood prone (and could not be appropriately mitigated).

Consent for stopbanks was granted in one case and declined in one case because of potential effects on downstream homeowners.

As well as obtaining resource consent, Old MacDonalds Farm requires Certificates of Acceptance for past building work, and must also address Environmental Health standards. Council's Regulatory and Compliance staff are currently working with the owners/operators to try to get the camp fully compliant before the approaching summer season.

- **Shortley and Brown:** to subdivide rural land at Ngatimoti to create four rural-residential lots and vest an addition to the existing public reserve. This application was heard by an Independent Commissioner because of Council's interest in the reserve. Consent was granted, the subdivision of Rural 1 land deemed to be acceptable in this case because of the low-lying stream margins through the site and the awkward shape of the title.
- **Cresswell Farms Ltd:** to subdivide off an old second dwelling from the remainder of a productive lot, also the streambed (to revert to Crown land) and a small area of significant lowland kanuka forest for a QEII covenant. The Council Subcommittee granted consent on the basis that it would not create a precedent regarding of subdivision of Rural 1 land because there were significant positive effects from vesting of the streambed and protection of high quality rare forest. The decision was appealed with regard to matters relating to conditions which have been resolved.
- **Richmond South Halls Trust:** to authorise construction of a new Brethren Hall on Wensley Road near the Bateup/Hall Roads roundabout, to replace the hall at 8 Wensley Road. This application was limited notified to neighbours, attracting one submitter who wished to be heard.
- **Wakatu Incorporation:** to subdivide Rural 1 Zone land to create an allotment of 1.5 hectares at the coolstore complex on Whakarewa Street, Motueka. The Councillor Subcommittee did not accept the proposal as applied for, but granted consent for a smaller new allotment comprising the coolstore area and access ways only.
- **Wyllie, Wyllie and Beatson:** to subdivide coastal land to create three rural residential "bush blocks" at Whanganui (Westhaven) inlet. The application includes amalgamation of other lots so to achieve no overall change in the number of separate titles. There are significant coastal landscape considerations. The application was heard by a mixed hearing panel. Decision pending.
- **Atamai Trust:** to create two additional lots in the Rural-Residential zone at Pangatotara, and also to shift the access for six other previously authorised allotments from the Motueka Valley Highway to the Mytton Heights private way.

This application was limited notified to other owners/users of the private way, attracting three submissions. An Independent Commissioner was appointed to hear and determine this application because of a potential conflict with regard to Council's involvement with the future of the private way possibly being vested as road. Decision pending.

- **Minister of Education:** to establish a Te Kura Kaupapa school on designated land in Richmond with temporary (5 year) access from the Croucher Street/D'Arcy Street corner. This application was limited notified to close neighbours resulting in three submissions being made. A pre-hearing meeting succeeded in resolving all issues.
- **Settlers Crossing Vineyard Ltd:** to subdivide off an older dwelling from the remainder of a productive horticultural block in the Rural 1 Zone near Brightwater. This application was publicly notified, but has avoided the need for a hearing as the applicants accepted that "no further subdivision and "no dwelling" covenants be imposed (by consent notice) on the balance land, thereby addressing the main issues relating to potential loss of land productivity. Consent has been granted under delegated authority.
- **Mapua Holdings Ltd:** to subdivide a 70 hectare block on Old Coach Road into 19 allotments varying in size from 1.4 to 14 hectares. This land has the first of the Rural 3 Zone development consents, granted in 2005, for 53 allotments and house sites. The original proposal included stopping of the upper portion of Trafalgar Road (unformed) but that was subsequently declined by the Environment Court. That original proposal was publicly notified. The new proposal will reduce the density of rural-residential development on the block, and the application was thoroughly assessed to determine that it could meet the non-notification tests.
- **Delta/Hope Zone Water Permits:** with the cooperation of applicants, 133 applications for new water permits for a reduced term of six years (rather than 15 years) were processed on the non-notified track. The new permits were issued during May prior to the expiry of the previous permits.

## 6. WALL OFFSET RULE IN RESIDENTIAL ZONES

6.1 Prompted by two recent High Court decisions that found against Council's handling of resource consent applications, we reviewed how we have been interpreting the Tasman Resource Management Plan rules relating to residential buildings. We found that the interpretation of Rule 17.1.3.1(L) for permitted activity buildings in the residential zones was wrong and needed to change. The rule states: *"An offset of at least 2.5 metres is required at intervals no greater than 15 metres along any wall"*. The dictionary definition of "offset" is "a short distance measured **perpendicularly** from the main line" or the "distance by which something is out of line". Therefore, for a residential zone building to comply as a permitted activity it requires a 2.5 metres perpendicular step in any exterior wall that exceeds 15 metres in length.



- 6.2 Offsets of 0.5 metres or similar size along the wall do not comply. Resource consent is required for an offset of less than 2.5 metre on walls that exceed 15 metres in length. Given the uncertainties that this can present for new house building projects, we have streamlined the process for applications that are for wall offset waivers for new single-storey houses only, if these are lodged with the relevant neighbours approvals (when required).
- 6.3 The wall offset rule is being reviewed by Council's Policy Section (refer Report REP11-08-09)

## **7. NOTIFICATION AND OTHER ISSUES**

- 7.1 As noted in the Committee Chairman's report for the July meeting, there have been several instances over the past year when concerns have been expressed by various parties regarding some decisions made to notify, or to not notify resource consent applications. All notification decisions are made by the Resource Consents Manager acting under delegated authority, after considering the recommendations of the Consent Planners. This arrangement is one method used to ensure consistency in decision-making. If there is any major difference of opinion regarding the appropriate pathway for an application, the relevant factors are considered by a staff caucus and/or the Manager of Environment & Planning. It is noted that often the concerns expressed regarding public notification are really to do with the costs of a subsequent hearing; however a hearing may be required for an application on the non-notified track.
- 7.2 During the past year, several Council applications have been notified because they involve common marine and coastal areas. Proposed subdivisions that will create new non-complying allotments in Rural 1 zones are also notified because of cumulative effects relating to fragmentation of productive rural land.
- 7.3 Joint training workshops on notification assessments have been held with consent planning teams at Nelson City and Marlborough District. Case studies involving real applications were used from each of the three Council areas. A high level of consistency was found among the workshop assessments.
- 7.4 Challenges have also been made with regard to the name of the applicant being corrected during processing, and extensions of time being given to submitters to serve their submissions. Whereas the aggrieved parties claim that significant transgressions have occurred (with grave consequences), these matters have been dealt with in accordance with RMA requirements and Court decisions on similar matters which provide guidance for RMA administration.

## **8. REMUNERATION OF COUNCILLORS ON HEARING PANELS**

- 8.1 The Local Government Elected Members (2011/12) Determination came into force from 1 July 2011. The remuneration for Councillors serving on resource consent hearing panels has increased to \$80.00/hour, and \$100.00/hour for panel chairpersons.

- 8.2 Of concern is that the determination expressly excludes Councillors from being paid for hearing preparation time, whereas the Making Good Decisions course puts due emphasis on that stage of the decision-making process. In contrast, it appears to be common practice to pay Independent Commissioners for their preparation time. This creates an inequity. At least one District Council is challenging this aspect of the determination.

## 9. CURRENT WORKLOAD AND STAFFING

- 9.1 Our overall workload continues to be similar to the past two-three years (as indicated in Table 1 above). The drop-off from previous years has helped us achieve the good timeliness results shown in Tables 2 and 3, as well as allowing us to deal with appeals and to address the backlog. At 15 August 2011 we had 520 resource consent applications on the job list, of which 300 were “on hold” for various reasons, including 90 that are waiting for the Aquaculture Law reforms.
- 9.2 Staffing of the Resource Consents Section has been stable since my last report in January 2011. We have one vacancy since Godwell Mahowa’s departure last November, and we have been gauging our likely forward workload to determine whether the vacancy needs to be filled.
- 9.3 I would like to thank the staff in the Resource Consents Section and all those in other Council Sections who assist us with enquiries and processing work, for their contribution to achieving the good timeliness results for the 2010-11 year.

## 10. DRAFT RESOLUTION

**THAT the Environment & Planning Committee receives the Resource Consent Manager’s Report REP11-08-12.**

A handwritten signature in black ink, appearing to read 'Phil Doole', written in a cursive style.

Phil Doole  
**Resource Consents Manager**