

Report No:	REP12-08-06
File No:	C651
Date:	30 July 2012
<b>Information Only – no decision required</b>	

## REPORT SUMMARY

**Report to:** Environment & Planning Committee  
**Meeting Date:** Thursday, 9 August 2012  
**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 2011-2012 financial year. It also summarises current workloads and issues since my mid-year report (February 2012), and the current status of appeals to the Environment Court on decisions made by Hearing Panels.

### RECOMMENDATION/S

That the report REP12-08-06 be received.

### DRAFT RESOLUTION

**THAT the Environment & Planning Committee receives the Resource Consents Manager's Report REP12-08-06.**

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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 2011-12 financial year. It also summarises current workloads and issues since my mid-year report (February 2012), and the current status of appeals to the Environment Court on decisions made by Hearing Panels.

## 2. Summary of Resource Consent Processing for 2011-12 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 2011-12 year, compared with previous years:

**Table 1: Applications Lodged During 2011-12 Year**

Category	2007- 08	2008-09	2009-10	2010-11	2011-12
Certificate of Compliance	9	5	2	10	6
Coastal	18	26	20	21	16
Discharge	175	199	124	202	133
Water	113	58	61	247	134
Land Use District	591	507	431	478	548
Land Use Regional	70	53	141	31*	42*
Designation	40	9	10	4	0
Outline Plan			19	15	14
Subdivision	200	167	188	137	151
Rights of Way	11	7	9	13	8
<b>Totals</b>	<b>1227</b>	<b>1031</b>	<b>1005</b>	<b>1158</b>	<b>1052**</b>

**Notes to Table 1:**

\* Some types of consents were shifted from the Regional land use category, to the District land use category at the start of the 2010-11 year.

\*\* To date 36 of the applications received during the 2011-12 year have been withdrawn or cancelled, some part way through processing; 18 applications (involving 26 consents) were returned because they were incomplete.

While there has been some variation in numbers of applications within the categories, the overall number has remained steady over the past four years.

2.2 Tables 2 and 3 below present summaries of the various types of consent applications for which processing was completed (ie, decisions made) during the 2011-12 year, showing average processing days and degree of compliance with statutory timeframes. The results for the previous year are also shown.

**Table 2: Timeliness of Non-notified Applications**

Non-Notified	1 July 2010 – 30 June 2011				1 July 2011 - 30 June 2012				
	Total	On Time	% On Time	Avg Days*	Total	On Time	% On Time	Avg Days*	Median Days*
District Land Use	396	394	99.5%	14	466	464	99.5%	13	12
Subdivision	105	102	97%	19	109	105	96%	21	20
Coastal	10	9	90%	33	13	13	100%	20	19
Discharge	87	85	98%	19	161	155	96%	22	17
Regional Land	18	18	100%	15	59	56	95%	21**	12
Water Permits	216	216	100%	7**	124	123	99%	15**	8
Desig'n/OP/CofC	15	15	100%	10	18	18	100%	9	10
<b>Summary</b>	<b>847</b>	<b>839</b>	<b>99%</b>	<b>15**</b>	<b>950</b>	<b>934</b>	<b>98%</b>	<b>16.5**</b>	<b>14**</b>

**Notes to Table 2:**

\* Days shown are working days excluding all clock stops when processing is put on hold. 32% of non-notified applications had time extensions applied in the 2011-12 year, compared with 27% in 2010-11. Time extensions are included in the count of working days.

\*\* In both years there were bulk “renewals” of water take permits (and associated land sue consents in 2011-12) for which applications were lodged three months or more prior to expiry of existing permits and processing time extensions were agreed. The average and median times shown in the table **exclude** those applications.

**Table 3: Timeliness of Public and Limited Notified Applications**

Notified	1 July 2010 - 30 June 2011				1 July 2011 - 30 June 2012			
	Total	On Time	% On Time	Avg Days*	Total	On Time*	% On Time	Avg Days**
District Land Use	25	25	100%	79	24	21	87.5%	109
Subdivision	13	13	100%	90	14	11	78.5%	94
Coastal	5	5	100%	99	7	7	100%	102
Discharge	28	28	100%	80	12	12	100%	142
Regional Land	5	5	100%	67	2	2	100%	310
Water Permits	5	5	100%	77	4	4	100%	203
Designations	2	2	100%	56	1	1	100%	38
	<b>83</b>	<b>83</b>	<b>100%</b>	<b>81</b>	<b>64</b>	<b>58</b>	<b>91%</b>	<b>122</b>

**Notes to Table 3:**

\* Days shown are working days excluding all clock stops when processing is on hold. 75% of the notified applications in 2011-12 had time extensions applied, compared with 78% in 2010-11. Time extensions are included in the count of working days.

\*\* The average day figures for 2011-12 are distorted by several applications that took over 300 working days to complete (at the request of those applicants). Otherwise the average time period was 64 working days for limited notified applications.

- 2.3 Applications to change conditions of existing resource consents are included in the above figures (10% of total processed). Forty-four percent of all applications required further information requests, compared to 40% in the previous year.
- 2.4 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. Pre-circulation of evidence was used three times during the year.
- 2.5 Time extensions can be applied for up to a maximum of twice the stated time period when special circumstances apply, including the scale or complexity of applications, or for longer periods if the applicant agrees. In addition to applicant requests, other reasons for time extensions 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, which is too tight a timeframe for complex applications. Often extra time is taken between the close of the submission period and holding a hearing, particularly when attempts are made to resolve issues thereby avoiding a hearing. Twenty-four (37.5%) of the 64 notified consents were completed without need for a hearing.
- 2.6 Thirteen hearings were held during the 2011-12 year. Two others were cancelled. The types of decisions made for all applications completed during 2011-12 are shown in Table 4.

**Table 4: Summary of Decisions**

Type of Decision	Number
Declined by Committee	1
Granted by Committee	9
Declined by Independent Commissioners	4
Granted by Independent Commissioners	23
Granted by Mixed Panel	2
Granted under Delegated Authority	964
Decision of Requiring Authority	5

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

**Table 5: Other Activities**

Category	Number
Certificates of Compliance Granted	4
Certificates of Compliance Declined	2
Section 223 Approvals (Subdivisions)*	75
Section 224 Approvals (Subdivisions)	86
Rights-of-Way Granted	5
Overseas Investment Commission Reports	0
Consent Transfers	70

**Note to Table 5:**

*\*76% of the s223 survey plan approvals were completed within 10 working days.*

### **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 Eight applications involving 16 of the 22 consents completed out of time during 2011-12 (refer Tables 2 and 3 above) attracted a discount. The other applications were lodged prior to the regulations taking effect.
- 3.3 The eight jobs completed out of time required fee discounts of 4%, 6%, 7%, 9%, 10%, 11%, 11% and 24%, totalling **\$5,324.23** excluding GST, compared to \$4,581.15 at mid-year (and a total of \$147.81 for the 2010-11 year). These jobs illustrate the difficulties that can be encountered with the statutory time constraints when dealing with complex and/or technical applications; and with managing staff workloads when responses to further information requests are received at times when staff are committed to scheduled hearings or other work, or on leave. It is not usually time or cost-effective to re-assign jobs part way through the process.
- 3.4 In response to the mid-year result, we took steps to improve monitoring of workloads so that any problems achieving timeliness can be better anticipated, with an improved result over the past six months.

### **4. Cost Estimates and Deposits for Notified Applications**

- 4.1 Over the past two years we have developed a procedure for providing cost estimates to applicants for the hearing and decision-making stages of processing their resource consent applications. This was done because of concerns we had that applicants were not being well advised of the likely Council costs, which in some cases have exceeded \$30,000, before committing themselves to that expenditure. Provision of estimates provides applicants with an opportunity to question the reasonableness of the proposed work that will be done on their behalf before it is done, rather than after.
- 4.2 Providing cost estimates was intended to avoid the need to require additional deposits to be paid before proceeding with the hearing stages of the process which include the officer reports and decision-making time costs. However, there have been a number of bad debtors over the past year, mostly relating to rural subdivision processes (unlike building consents, resource consents cannot be withheld until payment of fees is made). This has prompted me to require additional deposits up front in accordance with the Schedule of Fees and Charges. Local consultants have been advised of this change in procedure.
- 4.3 There may be justification for additional deposits to be charged for the more time consuming non-notified applications as well.

## 5. Current Appeals

5.1 Over the past six months we have been dealing with the active appeals listed in Table 6 below. There are currently **ten** live appeals, three of which are being heard by the Environment Court. Four of the other appeals relate to the Richmond West Development Area, and the remaining three just received are on the recent decision by Commissioners to approve consent for a motorsport park to be established near Tapawera.

**Table 4: 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
Punt	Poutama Drain Notice of Requirement Richmond West Development Area (TDC Engineering Dept)	Agreement in principle, with amendment to designated area. Expected to be resolved by consent order.
Wakatu Inc	Water take for Motueka & Coastal Community Water Supply, Parker Rd, Motueka (TDC Engineering Dept)	Court hearing held on 27 February 2012 together with Appeals on Plan Change. <b>Consent confirmed subject to changes to conditions.</b>
Sustainable Ventures Ltd <b>Other parties:</b> Friends of Golden Bay Gunn Sissons Glover	Coastal development proposal at Pakawau. The appeal is against several of the conditions imposed, notably the coastal protection works.	<b>Court hearing held in August 2011.</b> Subsequently the Court asked for further items of information and expert caucusing. A further hearing may be required.
McShane Holdings Ltd AE Field & Son Ltd	Borck Creek Greenway Notice of Requirement Richmond West Development Area (TDC Engineering Dept)	<b>On hold</b> until completion of Richmond West Plan Change Appeals, negotiations are continuing.
Carter Holt Harvey HBU Limited <b>Other parties:</b> D Mitchell J Mitchell NZHPT Friends of Nelson Haven and Tasman Bay Inc Tiakina Te Taiao	Rural-residential subdivision for eight allotments on Kina Peninsula <b>Declined</b> by Independent Commissioners	<b>Court Mediation held in March 2012.</b> No agreement, proceeding to hearing to commence on 29 October 2012.
Nelson Forests Ltd McQueen & Reitsma Rowe Family Trust (three separate appeals)	Motorsport Park, Tapawera (Adcock & Donaldson Properties Ltd)	Appealed for reasons for opposition raised at hearing. There is a reasonable prospect of resolution. Will proceed to mediation.

## 6. Recent Hearings and Other Notable Applications

6.1 Notable applications that have been heard with over the past six months are:

- **Adcock & Donaldson Properties Ltd:** to establish a motorsport park and associated activities near Tapawera. This application attracted 257 submissions when publicly notified in December 2011. It was heard by independent Commissioners in March 2012. The hearing had been deferred to give the applicant time to address access issues. The main opposition related to fire risk, noise, access problems, water quality and quantity, and bad behaviour of patrons. The Commissioners considered that adverse effects would be minor and that the site was suitable for the proposal due to its remoteness from dwellings etc. They granted consent **in part**, the two aspects that were declined being a watersports lake due to loss of water etc, and aviation activities due to lack of information and certainty of effects.
- **Eastell:** to establish a child care facility in Hope. This application was considered by an independent Commissioner. The effects of traffic at the Ranzau Road and State Highway 6 intersection were the main issues in contention. Submitters considered that extra traffic would make that intersection inefficient and dangerous. Expert evidence was that intersection was suitable to accommodate the extra traffic generated by the proposed day care facility. The Commissioner granted consent subject to conditions.

6.2 An application by Nelson Pine Industries to “renew” their discharge permits for the MDF plant on Lower Queen Street Richmond was publicly notified in November 2011 and attracted 10 submissions. The applicant has been actively addressing issues with submitters, but it is likely that a hearing will be required. That has been deferred for several months until all parties are available.

6.3 As the Manager Environment & Planning reported in June, the “renewal” of water take permits for the Moutere Surface Water Zone, was substantially completed on time. This involved a total of some 70 various consents including for in-stream dams and other associated activities. Only one application remains in process. Applicants took advantage of a water resource statement prepared by Council staff to form the basis of the Assessment of Environmental Effects (AEE) required with their applications. This collective approach enabled the whole process to be completed on a relatively efficient basis.

6.4 An application was lodged in May for the aerial application of 1080 cereal baits over the Aorere/Parapara/Anatoki blocks in Golden Bay comprising Crown administered lands and some privately owned land. Six discharge permits for the same purposes have been granted over the past five years to the Animal Health Board or Department of Conservation for other areas within the Golden Bay Community Board’s area of interest, as follows:

2008 Mt Campbell/Cobb/Waingaro  
2008 Abel Tasman National Park/Caanan Downs  
2009 Aorere/Big River/Kahurangi Point  
2009 Anatoki/Devil Rivers

2011 Burnett/Kaituna Track  
2012 Aorere/Maori Point/Wakamarama Range

This latest application attracted community interest, largely because of the number of potable water supplies on the fringes of the Aorere/Parapara/Anatoki blocks. These concerns regarding potable water supplies are acknowledged and were taken into account during the processing of this application, including the requirements imposed by the Public Health authorities. Consent was granted on a non-notified basis.

- 6.5 An application has been lodged by Concordia Property Ltd to subdivide a 2.5 hectare green-fields block straddling Reservoir Creek above Hill Street in Richmond. This area was recently re-zoned from rural-residential, to residential, as part of the Richmond East Plan Change. The proposal will effectively replace consents for a mixed residential and rural-residential subdivision that were granted in 2005. The increased density of development being proposed has required considerable dialogue with the applicant to ensure that future management of Reservoir Creek is addressed adequately (including the effects of potential flood flows from the upper catchment).

## **7. National Environment Standard for Contaminated Soils**

- 7.1 We have been pro-active with implementing the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011. This National Environmental Standard (NES) came into force at the beginning of 2012. A full briefing was provided to the Committee by Policy Planner, Maxine Day, in March 2012 (refer Report REP12-03-09). As Councillors will therefore be aware the NES imposes tougher rules on certain activities that are proposed to take place on land that has been subject to hazardous activities or industries.
- 7.2 Implementation of the NES is quite complex, hence a considerable amount of time and energy has had to be dedicated to implementing it. This NES has been particularly challenging because it imposes additional rules that relate to resource consent applications, projects that only need building consent and even permitted activities, when the proposed changes in land use are likely to endanger human health.
- 7.3 Processes have been put in place to check all building and resource consent applications as well as some permitted activities to see whether they trigger the NES. We are endeavouring to take a reasonable approach and have generally limited our enquiries to the existing Site Contamination Register, and to the possible presence of historical sheep dip sites. We have not actively “gone looking” for hazardous activities or industries that may have previously occurred, but the application forms now prompt applicants to volunteer such information as it is in their interests to demonstrate compliance with the NES.
- 7.4 In Tasman District we are very fortunate to have a comprehensive Site Contamination Register (SCR) developed and maintained by Jenny Easton. We have been able to rely on the SCR extensively.



- 7.5 With Tasman being a Unitary Council, implementation of this NES has been much more streamlined and has required much less of applicants, builders and developers than has been the case for other less resourced district councils.

## **8. Rural Subdivision Issues**

- 8.1 Some issues with rural subdivision proposals have attracted media attention recently. Most years we receive a few applications which staff cannot support because they seek to subdivide rural properties in ways that either do not comply with the controlled activity rules, or do not fit with the TRMP objectives and policies for the various Rural zones. For example, six applications lodged during 2010 were subsequently withdrawn. During the past year two notified applications reached the stage of staff reports being issued then the applicants have chosen to stop the process; and two others have also been put on hold by the applicants because they were not supported by Council staff.
- 8.2 During 2011-12 nine rural subdivision applications were publicly notified, including three of the four that were withdrawn or put on hold as mentioned above, and two still in process (Charles, and Boomerang Farms Ltd). Two of the three completed applications that required a hearing were granted (Hill and Gessler), and one was declined (Pentewan Farms Ltd). One rural subdivision application was also declined the previous year (Wilks). In all these cases, I believe that the Consents staff made it clear that the proposals could not be granted under delegated authority once sufficient information was made available for them to be fully assessed. When there are competing factors for and against a proposal and the issues are finely balanced, staff have made a neutral report. The other publicly notified application, to expand the Takaka hospital site on Rural 1 land, was granted under delegated authority; as were 90% of the subdivision applications completed in 2011-12.
- 8.3 There has been criticism that Consents staff are not giving prospective applicants clear advice at pre-application stage. I believe that the staff do the best they can with the information that is available to them at the time. Often enough they can and do try to dissuade proponents from pursuing a proposal that has little or no prospect of gaining consent. However, the nature of things is that there are a wide range of possible scenarios and many ways in which proponents (or their advisors) will package proposals in order to gain approval. There is continual pressure for staff to give a “non-notified tick” to proposals at pre-application stage, but it needs to be understood that they cannot pre-determine that decision and in any case it is not always possible for staff to “make a call” until an application can be properly evaluated. In that context it is inevitable that some proposals will involve risk that money will be spent on applications that do not result in a positive outcome for the applicant.
- 8.4 Looking back over the past 3½ years (my time in this job) I am aware of only one genuine situation in 2010 where staff made a preliminary call for non-notification of a proposal that was changed to notification when the application was lodged some months later. However, in that case the consultant surveyor had already incurred over \$5,000 costs on the job before seeking the views of the consent staff. That application was withdrawn.

- 8.5 It is also evident from the further information requests that have to be made, that many of the “non-complying” rural subdivision applications (among others) are being lodged with the minimum of effort expended on addressing the actual effects that are likely to be contentious, such as soil quality and productivity, or landscape values; and with too much reliance on permitted or consented baselines.
- 8.6 Those matters should be apparent to the consultants engaged to prepare the applications. It is notable that for the two applications put on hold after public notification there was no discussion with Council staff as to what might be required between the brief duty planner contact and the application being lodged. In my view, the consultants and advocates need to take more responsibility for the way they perform their roles in the process.

## 9. Urban Design Panel

9.1 Two Tasman projects have gone before the Nelson/Tasman Urban Design Panel in the last six months:

- **Mapua Aquarium Site:** a new commercial building was proposed for the aquarium site, with retail tenancies. The Panel was generally supportive of the design because it attempted to fit into the existing industrial or boat shed character of the area. Recommendations were made with regard to car-parking and improving the pedestrian experience on the site.
- **Queen Street Industries:** This is a major project for the Gibbons land on the north side of Queen Street Richmond opposite the TDC offices. The proposal is for two large retailers with finer-grained retail tenancies facing Queen Street. A large car-park area is to be provided. The panel’s recommendations centred around:
  - Providing a high quality connection onto Queen Street that would work well with Wensley Road;
  - integrating the car-park with the Richmond Mall car-park; providing a logical, attractive, treed and pedestrian friendly car-park layout; and supporting the provision of car-parks needed for the development, rather than the number needed to comply with the TRMP;
  - providing an attractive front façade to the large format retail boxes; providing a generous pedestrian frontage; and supporting the finer-grained development on the Queen Street frontage; and
  - looking for a level of ambition and grandeur through use of, for example, dramatic lighting in the car-park, or glass pavilion type retail environment.

Many of the Panel’s recommendations have been incorporated into the final design. This development proposal is currently in the consenting process with regard to car parking requirements.

9.2 Two proposed building developments in Richmond that the Urban Design Panel considered in the first half of the year are now under construction. They are:

- the new Network Tasman building on Oxford Street, with revised plans including a pocket park, covered bicycle storage and more trees in the car park area; and
- the new two storey building at 203 Queen Street. The building design received favourable comments from the Panel with a number of suggested improvements, particularly for the rear of the building to improve its connection to the Warring car park.

## **10. Current Staffing and Workload**

10.1 There has been one staff change in the Resource Consents Section since my last report in February 2012: Laurie Davidson has retired from his position based at the Takaka office, and Ina Holst-Stoffregen has taken on more hours there. Laurie will continue to assist us when Ina is on leave.

10.2 We have had one full-time staff vacancy since Godwell Mahowa's departure in November 2010. We have continued to gauge our likely forward workload to determine whether the vacancy needs to be filled. The Consent Planners spend a significant portion of their work time fielding public and internal enquiries, advising prospective applicants on resource consent requirements, and assisting with the completion of LIMs. There has been a surge in LIM requests during the second part of the year. Consents staff also handle other matters such as accretion claims, and assisting with compliance actions. As noted in Section 3 of this report, the multiple competing demands on staff time can make it difficult to achieve the resource consent processing time frames.

10.3 Over recent months I have assisted the CDEM recovery team with a focus on flooding issues in the Pohara Village area. Earlier in the year Jeremy Butler assisted with the response to the Rena oil spill at Tauranga.

10.4 Our summer intern, Shannon Coghlan, who is a student at Lincoln University, came back for a month in June/July to assist us complete some short-term projects primarily to update our records including the myriad of consent notices resulting from rural-residential subdivision approvals over the past 20 years.

10.5 I 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 over the past year.

**11. Draft Resolution**

**THAT the Environment & Planning Committee receives the Resource Consent Manager's Report REP12-08-06.**



Phil Doole  
**Resource Consents Manager**