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## Wordfind

You heard it here first folks – you too can have fun with the RMA!

O K P H T R A E W H W A E W M  
 Q K X L U A U J Q B E H L M Z  
 D R M P A K U U Z S S Z B C M  
 D A A X S N C T C C T E A Z A  
 V P D V T V N W V T N U N E V  
 N E W S U N H E N V E V I A W  
 K D O H E Y E E R G S S A L S  
 T I M R E P M M L A N A T A L  
 N X W Y I E C Y N W O H S N K  
 Y A I T G P E W A O C R U D X  
 I Q V A Y X A Y Z N R M S O D  
 L L N A O T E A R O A I R P N  
 S A Q E E U A D P J H O V P A  
 M U I R D I Z U N U T B M N L  
 J S G J E C R U O S E R O L E

AOTEAROA – EARTH – ENVIRONMENT  
 CONSENT – LAND – MANAGEMENT  
 MOANA – NEW – PERMIT – PLANNER  
 RESOURCE – SEA – SUSTAINABLE  
 WATER – ZEALAND

## Welcome to Summer



## Council Christmas Break

Council offices will be closed from noon on 24 December and will reopen on 6 January 2020 at 8:00 am.

The statutory timeframes under the Resource Management Act 1991 will suspend from 20 December 2019 until 10 January 2020.



## Planning for a Public Event

### Sale of food and/or alcohol

Public events are often accompanied by the sale of food and/or alcohol. When food is being sold for profit or gain (i.e. not for fundraising purposes), it is likely that a registration under the Food Act 2014 is required. This registration will ensure that the activity will be checked to ensure that best practice for food safety techniques are being followed.

When alcohol is being sold, a licence under the Sale and Supply of Alcohol Act 2012 is required. These licences are site specific so will be issued for the event itself. A licence is required whether the alcohol is being sold for consumption on site or if it is being sold to take away and consumed.

Please note that when patrons buy a ticket to an event that is inclusive of food and/or alcohol, this is still regarded as sale and the above requirements apply. The Environmental Health Team is happy to help with any enquiries on the provision of food or alcohol at events.

### Building consents and permits for temporary structures

When planning an event consideration needs to be given to possible consenting requirements for the use of temporary structures. Temporary structures such as marquees, tents, stages, scaffolding structures (lighting towers, speaker stands) and grandstands may require a building consent.

Amusement devices such as bumper cars, ferris wheels, horizontal bungee jumps require a permit to operate.

A building consent needs to be applied for and issued before the temporary structure is constructed. Building consents do take some time to process and issue, so allow 20 working days for your consent. Normally an inspection will be required by Council to ensure that the temporary structure is constructed as per the building consent. Details of the inspection required will be provided when your building consent is issued. Please give Council five days' notice when booking your inspection to ensure it can be undertaken in time for the event.

If you do have any questions about applying for a building consent, Council provides a duty builder service who can answer queries. An appointment can be [booked](#) with the duty builder to assist you with your questions.

Building consents can be applied for [online](#) via the Council website or via a [paper application](#).

There are fees associated with a building consent and the fees will depend on the location and the value of work. See the Council website for associated [building consent fees](#).

### Marquees/tents

If a marquee or tent for either public assembly (e.g. at a school gala) or private use (e.g. for a wedding reception) exceeds 100 square metres a building consent is required. When applying for a building consent for a marquee/tent, hygiene facilities need to be calculated to ensure appropriate amenities are provided. Hygiene facilities required are calculated by the number of occupants and the use of the building. Other matters that need to be considered when applying for a building consent for a marquee/tent are escape route lengths, widths and positions, fire alarms, emergency lighting and an evacuation scheme that will satisfy Fire and Emergency New Zealand requirements.

A building consent is **not** required if the marquee/tent, or similar lightweight structure (for example, a stall, booth, or compartment used at fairs, exhibitions, or markets):

- Does not exceed 100 square metres in floor area; and
- Is to be, or has been, used for a period of not more than 1 month.

Examples where this exemption could apply:

- A property owner erects a tent with a floor area of 90 square metres for a birthday function in the back yard. It will only be there for a few days.
- A tent with a floor area of 50 square metres is erected in a yard to store catering supplies and equipment and to house the bar service area during a function. The tent is dismantled the next day.
- A 75 square metre stall is put up at a trade show for a week.
- The owner of a weekend market stall increases the stall size from 50 square metres to 70 square metres.

## Planning for a Public Event

continued ...

- The operator of a fun fair erects a number of booths for 4 weeks. The booths are not physically connected to each other and none of them have a floor area of more than 100 square metres.
- Following a recent increase in the number of carpark users at an exhibition centre, an additional ticket booth is installed in the carpark for a week until a more permanent solution can be found. The floor area of the booth is 6 square metres.

Examples where a building consent is required:

- A marquee with a floor area greater than the maximum allowable floor area of 100 square metres is erected for a function. Although the function is only for a night, the area exceedance will require building consent.
- A vineyard owner erects a marquee with a floor area of 75 square metres for wine tasting. He plans to keep the marquee up for the entire summer (i.e. 3 months) so a building consent is required.
- A circus company intends to erect a tent with a floor area of 300 square metres for its show. The maximum allowable floor area exceedance will require building consent.
- Two 75 square metre marquees are erected and then joined together by an enclosed awning. This causes the size of the joined marquees to go beyond the 100 square metre limitation so a building consent is required.
- A café owner proposes to erect a permanent 90 square metre marquee for patrons to use. As she intends this marquee to remain in place for longer than a month, a building consent is required.
- Organisers of a wine and food festival put up several 125 square metre stalls. As the area of each stall is greater than 100 square metres, a building consent is required.

If you have any other questions in relation to building consents please [book](#) an appointment with the duty builder.

## Temporary buildings (stages, scaffolding structures and grandstands)

Some temporary buildings require building consent these structure include:

- Stages over 1.5 metre high
- Scaffolding structures such as lighting towers and grandstands
- Grandstands over 1.5 metre high

## Permit to operate amusement devices

If you are intending to operate an amusement device, a permit is required. [Application forms](#) for a permit can be found on the Council website. The application needs to be completed and submitted before the amusement device becomes operational. The application will need to include the certificate of registration which is issued by Worksafe New Zealand.

The charge for an amusement device permit is \$11.50 and then \$2.30 for each additional amusement device, including GST.

Before an amusement device can be used, Council will need to inspect the device at the site it is intended to be operational. Please allow up to 5 days for an inspection. When the inspection is passed the permit will be issued.

If you have any other questions in relation to permits to operate amusement devices please [book](#) an appointment with the duty builder.

## 'Tiny Houses' and Relocatable Accommodation

You may have seen in the media lately cases popping up throughout the country as to whether 'Tiny Houses' or relocatable accommodation requires building consent under the Building Act 2004. These types of holiday or residential accommodation are becoming increasingly popular for many different reasons, such as price, availability, housing shortages, downsizing and minimalist lifestyles. They have been popularized by television and social media as great alternatives to more typical housing arrangements.

As a result of the increase in popularity there are many more suppliers for these buildings and many more in our community looking to invest in them.

## 'Tiny Houses' and Relocatable Accommodation *continued ...*

The difficulty and risk then falls on the purchaser to make sure that what they buy it is compliant with the Building Act 2004.

The two main points of tension for these accommodation are, firstly, whether they are buildings at all and, secondly, whether they can be located to site without attracting the Building Code. In answer to the second question, Council currently has an appeal before the District Court seeking clarification as to whether they do attract the Building Code requirements. With respect to the first question, there has been a lot of case law around how to determine whether an accommodation is a building or not. If it is a building it will require a building consent and if one has not been obtained a Notice to Fix may be issued.

In very general terms most accommodation is a building, except where they are vehicles. This sounds like an easy statement but it becomes more complicated from there. Purchased caravans are usually vehicles; they are designed and constructed for towing and are usually registered. On the other hand accommodation that has been constructed on a trailer or had trailer-like features may still be a building if it was not designed and constructed to comply with the transportation rules.

A vehicle accommodation might also change and become fixed to the land if the plumbing, decking, foundations or other work cause it to be attached and not quickly and easily disconnected. If in doubt it is useful to consider arrangements for water and electricity in camping grounds for caravans and campervans. Speaking of camping grounds, they do have special rules that apply so here we are really looking at accommodation on private property or outside of camping grounds.

Council is aware this is a confusing situation for purchasers who simply want to secure the home of their choosing. To help out an information sheet has been prepared and will be available on the Council website soon.

If you or your client are looking to purchase one of these accommodation, take a look at the information sheet, meet with the Building and Planning Groups and ask the supplier for a copy of the building consent or copy of the trailer requirements and trailer testing records before committing.

## Water Permits, Lapse and Property Sales

Marlborough welcomes summer and already the 'for sale' signs on properties have started sprouting. As the warm weather increases the pressure on our water supplies will also increase.

A matter which regularly comes to the attention of Council is the issue of lapse of water permits to take and/or use water. Council has worked hard over the years to develop a robust water permit system and it continues to make improvements to how it monitors and manages the use of water within our region. Lapse dates are important to this management. They establish a point in time when the permit holder must have completed all the preliminary steps and, on most occasions, starting taking or using water in order for the consent to remain alive.

It is worth noting that there is no requirement on Council to take any action to identify lapse or to follow any particular process to determine lapse, other than generally under its function of sustainable management of our regional resources. In addition, Council has on its books tens of thousands of resource consents/permits. This sizeable volume of consents/permits highlights why the onus lies with the consent holder to avoid lapse and with the purchaser to check carefully the state of a permit.

The current case law on lapse confirms that the preliminary steps, described as establishment conditions, must be implemented, except for technical breaches, before the lapse date alongside actually taking and using water. If these steps have not been fulfilled or water has not been taken or used, then the consent will lapse. There is no discretion for Council to ignore lapse or for a permit to be brought back to life so it is important to confirm the state of the consent before relying on it. If the consent holder and Council do not agree about the state of lapse then the consent holder can apply to the Environment Court to declare the state of the consent.

One further point of tension that arises often in the context of property sales is the transfer of water permits. Water permits remain with the consent holder even after a property is sold. It is important that purchasers are aware of this and ensure that arrangements are made to transfer all or a portion of the water permit at the time of sale.

## Visitor Accommodation, Homestay and Airbnb

The Marlborough region will also see a rise in tourism during our warm summer months. With the wonderful range of tourist attractions in our region it is natural to see so many visitors keen to attend our region. In recent years home and holiday home owners in Marlborough have sought to provide accommodation for these visitors by offering a room or their home for rent. These arrangements are commonly advertised on Book-a-Batch, Airbnb or similar websites, or simply become known by word of mouth.

These arrangements are not explicitly provided for in our plans, however there is provision for either homestay or visitor accommodation. Council considers these arrangements usually fall within the definition of 'homestay'.

Homestays are usually permitted activities so long as the definition and standards described in the plan for that zone are complied with. If the arrangement cannot comply with these or is in a zone where homestays are not permitted, it is likely resource consent will be required to operate.

Before a home owner offers a room or their home for accommodation, they should check the rules and standards for their zone. Often the standards will have the following requirements:

- The accommodation is within a room of your home, a sleepout that is part of your home or for your entire home where you live or holiday when in Marlborough.

- The home owner may be home or may be away during the visit.
- The guest accommodation is for short term visits (less than 1 month).
- The guests are paying guests.
- The guest will be paying for the accommodation.

If Council receives a complaint about an arrangement (for example from a neighbour) they will investigate to see if the definition, rule and standards that apply are met. They will also consider if there are any adverse environmental effects that go beyond that which would usually arise if the house or home was being used by a family as a residence. It is only if the arrangement falls outside of these requirements or expectations that Council will look to take further action.

One final point to consider is that the above relates to homestays under the Resource Management Act 1991 and our operative plans. It is important that before commencing an arrangement to provide accommodation that the home owner consider whether their property is subject to any other requirements (for example private contractual arrangements with their neighbours or consent notices on their certificate of title), whether the building they will be providing accommodation within has a building consent and is fit for that use and whether there may be other RMA matters that need to be looked into (for example any limitations on water use or discharge of waste) for their property.

## Be SunSmart Out There!!

Hooray its summer, get out and enjoy the outdoors, but don't forget to protect yourself from the sun.



## Attorney General v The Trustees of Motiti Rohe Trust & Others CA408/2017 [2019] NZCA 532

The Motiti Court of Appeal decision was released on 4 November 2019 and has been the subject of several recent media releases. Council was involved in this appeal following one of the parties using a rule from our proposed Marlborough Environment Plan as an example of the tension between the Resource Management Act 1991 and Fisheries Act 1996. The proposed rule restricts the use of dredging in identified sensitive seabed areas and has been subject to extensive consultation and scientific research. The appeal itself arose out of a rule in the proposed Bay of Plenty plan to protect the coastal environment around Motiti Island.

The Attorney General, on behalf of the Ministry of Fisheries, with the support of commercial fishing interests, submitted regional councils could not include controls within regional plans that would control the use of fishing resources. The respondents submitted councils could, so long as those controls were primarily for an RMA purpose other than managing the sustainable use of fisheries resource, for example protecting indigenous biodiversity.

The Court found that regional councils had been given broad functions under the RMA and, further, that Parliament had not intended to limit these simply when there was a cross over of function. The decision confirms our process of developing the proposed rule was correct and looking forward establishes a clear means of managing the tension between these two important pieces of legislation.

An interesting article that provides more descriptive background may be found at [www.stuff.co.nz](http://www.stuff.co.nz).

## New Staff

### Tracey Hewitt

Originally from Christchurch, Tracey moved to Blenheim in 2014 with her family and now are all true blue Marlbarians. What Tracey loves about Blenheim (aside from the fact that it is not Christchurch) is the great climate, the Taylor River reserve and the wonderful place it is for raising a young child. Who knew New Zealand still has schools with school pools?!

Tracey is part of the Resource Consents Team. Within that team, she is under the expert tutelage of Ian Sutherland processing subdivision consents.



Tracey



Sharan

### Sharan Mavi

Sharan joined the Advocacy and Practice Integration (API) Team as Regulatory Advisor in September 2019.

She has legal experience from working alongside a Barrister in Auckland and administrative experience from working at the University of Auckland for 3 years. Sharan and her husband moved from Auckland to Marlborough to be closer to family and for better job prospects.

Sharan holds a Bachelor of Science double-major in Psychology and Environmental Science from the University of Auckland and has just finished her Bachelors of Law degree from Auckland University of Technology. She has started her Professional Legal Studies Course from the College of Law and aims to have it completed by April next year.

## Next Issue out 1 March 2020