MARLBOROUGH DISTRICT COUNCIL

Resource Consents Team Newsletter

December 2022

Welcome to Our Summer Edition Newsletter

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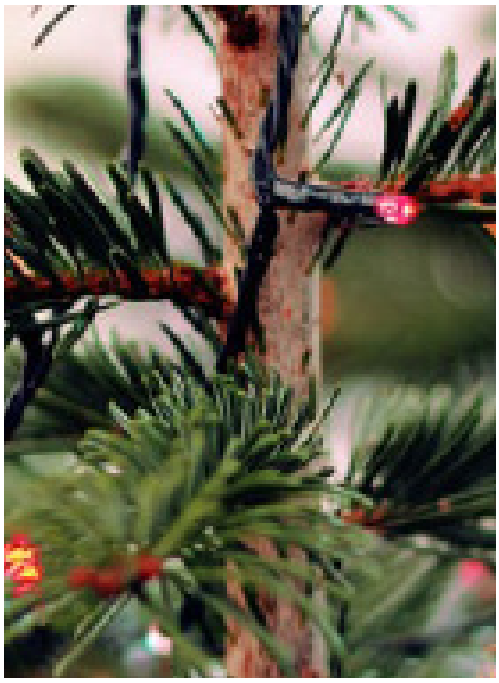
This Resource Consent Team Newsletter provides information to assist those in the industry and their clients with respect to resource consent matters. It is not an exhaustive explanation of the matters that may be covered but a starting point for better understanding. If you seek specific information or advice you should consult a professional for bespoke guidance for your situation, or feel free to contact Council via the Duty Planning service on Council's website.

Planning Ahead for the Christmas/New Year break

If you are planning to lodge applications over the next couple months, please factor in the following dates when estimating processing timeframes: Council offices will be closed on Friday 23 December 2022 at Noon. Council offices will re-open on Wednesday 4 January 2023 at 8.00 am. Resource Management Act 1991 (RMA) non-working days are from 20 December 2022 until 10 January 2023 which means that from end of day Monday 19 December 2022 until the end of the day on Tuesday 10 January 2023 the RMA clock will be stopped. RMA timeframes are excluded during this period. It will be business as usual from Wednesday 11 January 2023 at 8.00 am. Council officers will however continue processing applications during this period, if available.



Merry Christmas to you all

National Policy Statement for Highly Productive Land 2022

As you may be aware from Government and media releases, the National Policy Statement for Highly Productive Land 2022 is now in effect (as at 17 October 2022) and has been developed by the Government to enhance protection for New Zealand's most productive land from inappropriate subdivision, use, and development. https://environment.govt.nz/publications/national-policy-statement-for-highly-productive-land/.

Regional councils such as MDC will have up to three years to identify and map highly productive land in their region, in consultation with their communities and tangata whenua.

However, in the meantime clause 3.5(7) of the NPS requires MDC to still consider the relevant policies at the time of decision making for subdivision applications of land that is zoned rural and also has a Land Use Classification of LUC 1, 2 or 3.To assist with the definition of the land referred to in Clause 3.5(7) Council has prepared a useful smart map called 'NPS – Highly Productive Land' which shows the areas of LUC 1, 2 & 3 land in the Rural Environment zone in the PMEP https://smartmaps.marlborough.govt.nz/smaps/.

The key policies in the NPS in relation to subdivision are Policies 7 and 9. Policy 9 relates to managing reverse sensitivity effects so as not to constrain land-based primary production activities. While Policy 7 seeks that subdivision of highly productive land be avoided, except as provided for in the National Policy Statement. The use of the term avoid indicates a very strong requirement for compliance. The only exemptions to this avoidance seems to be provided in clauses 3.8 and 3.10 in which it allows for subdivision if Council is satisfied that:.

3.8 - Avoiding subdivision of highly productive land

(1) Territorial authorities must avoid the subdivision of highly productive land unless one of the following applies to the subdivision, and the measures in subclause (2) are applied:

- *(a) the applicant demonstrates that the proposed lots will retain the overall productive capacity of the subject land over the long term:*
- *(b) the subdivision is on specified Maori land:*
- *(c) the subdivision is for specified infrastructure, or for defence facilities operated by the New Zealand Defence Force to meet its obligations under the Defence Act 1990, and there is a functional or operational need for the subdivision.*

3.10 Exemption for highly productive land subject to permanent or long-term constraints

(1) Territorial authorities may only allow highly productive land to be subdivided, used, or developed for activities not otherwise enabled under clauses 3.7, 3.8, or 3.9 if satisfied that:

- *(a) there are permanent or long-term constraints on the land that mean the use of the highly productive land for land-based primary production is not able to be economically viable for at least 30 years; and*
- *(b) the subdivision, use, or development:*
    - *(i) avoids any significant loss (either individually or cumulatively) of productive capacity of highly productive land in the district; and*
    - *(ii) avoids the fragmentation of large and geographically cohesive areas of highly productive land; and*
    - *(iii) avoids if possible, or otherwise mitigates, any potential reverse sensitivity effects on surrounding land-based primary production from the subdivision, use, or development; and*
- *(c) the environmental, social, cultural and economic benefits of the subdivision, use, or development outweigh the long-term environmental, social, cultural and economic costs associated with the loss of highly productive land for land-based primary production, taking into account both tangible and intangible values.*

If you are considering lodging a subdivision application (either an allotment creation or a boundary adjustment) where the allotments are less than the controlled activity size, we recommend that your check to ensure that you are able to provide sufficient information to satisfy Council that this exemptions under 3.8 and 3.10 can be applied.

Please note that Policy 8 also protects Highly Productive Land from inappropriate use and development too, not just subdivision.

We are seeking to obtain further guidelines from MfE on the exemptions to ensure we achieve the outcomes anticipated by the National Policy Statement and will pass that information on once received. In the meantime, please let us know if you have questions.

Reminder to consultants who prepare water permit applications

All consultants who prepare water permit applications need to address the National Environmental Standards for Freshwater 2020, as extra consents may be required. This is particularly applicable if applicants are irrigating within 100 metres of a natural wetland (Regulation 54 a non-complying activity) and/or if a dairy farm is wanting to increase the irrigated area by more than 10 hectares (Regulation 21 a discretionary activity) from the existing consent. When preparing the assessment of effects for these applications consultants need to address the risk of contaminants, arising from irrigating the land, getting into any nearby waterway or wetland.

Additionally, anyone applying to straighten or move an existing waterway (whether its permanently flowing, intermittent or ephemeral), which will allow for the old channel to be filled in, will require a reclamation consent under Regulation 57 of the NES. This is a land use consent for a discretionary activity.

What constitutes a kitchen?

There is no specific definition of what constitutes a “Kitchen” in the plans or under the RMA 1991. However, residential unit and dwelling are defined in the RMA and dwelling is defined in the plans. The Council Resource Consent Team rely on those definitions to determine that where a building or part of a building has food preparation and cooking facilities, along with the floor plan, that enable that space to operate independently in meeting the residential needs of the occupant, in determining if it is a residential unit/ dwelling. In practical terms this means a dedicated sink and microwave with space for a small fridge could be a kitchen. This aligns with the Council Building Consent Teams approach in determining where there is space for food storage (including a fridge) and washing/preparation of food it is a kitchen.

It should also be noted that there are no minimum or temporary exceptions. The existence of a microwave or a plug-in electric hob would meet the definition of kitchen.

Consideration of whether a plan includes a kitchen is particularly relevant for sleep outs or separate bedroom wings where existence of such could transform that space into a separate residential unit or dwelling.

The deemed permitted boundary activity process

Plan rules control the position or size of a structure in relation to the boundaries of the site where it is located (or proposed to be located). Effects from infringements to these rules are generally localised and affect the property sharing the boundary where the rule is breached (that is, the neighbour).

Before section 87BA existed any infringement of a plan rule required a resource consent, even if the only effects of that breach were on a neighbouring property who had given their written approval. The effects on these persons would then be disregarded when considering the application.

Section 87BA of the RMA directs Council to treat boundary activities as permitted if written approval is given by the relevant neighbour(s), and the required information is supplied.

To apply for a permitted boundary activity notice the appropriate form needs to be completed online. The following information is also required to be provided:

- a description of the activity.
- a plan/s (drawn to scale) of the site at which the activity is to occur, showing the height, shape, and location on the site of the proposed activity.
- the full name and address of each owner of the site.
- the full name and address of each owner of the allotment with an infringed boundary.
- written approval from each owner of an allotment with an infringed boundary, including their signatures on the plan.
- Application fee of $734.00 (flat fee).

If an application is made for a boundary activity exemption and the Council is satisfied that the activity is a boundary activity and all the necessary information is provided, the Council must provide a written notice within 10 working days, stating that the activity is permitted. However, as a deemed permitted boundary activity application is not a resource consent the refund policy under the discount regulations in the RMA do not apply.

Unlike a resource consent application, the Council has no ability to request further information for boundary activity applications under section 92 of the RMA. This means the 10-day ‘statutory clock’ cannot be stopped.

If the boundary activity application does not provide all the required information, or if the Council determines that other rules are infringed such as if any of the boundary rule infringements are within a public boundary the application is deemed to not qualify as a boundary activity and the Council must return the application to the applicant. In these cases the applicant would be charged $80.00, and the remainder of the lodgement fee would be refunded.

Conversely if an application is made for a resource consent, but the Council determines that the application is actually one that would be deemed a boundary activity, then the Council must return the resource consent application and request and instigate the deemed permitted boundary activity application process.

A deemed permitted boundary activity notice is not a consent under any other Act so a building consent may also be required. The notices are only valid for the specific activity described and shown on the signed plans referenced and the notices lapse after five years if not given effect to.

Update on which applications the discount regulations apply to?

The Council is required to apply the provisions of the Resource Management (Discount on Administrative Charges) Regulations 2010 (the Regulations) on all applications which are not decided within the timeframes set by the Resource Management Act 1991 (RMA).

The Regulations apply to all notified, limited notified and non-notified applications lodged under section 88 of the RMA (new applications for resource consent) and applications lodged under section 127 of the RMA (change or cancellation of conditions).

The Council must provide the discount whenever the relevant timeframes for processing an application are exceeded. The applicant does not need to apply for the discount to be provided.

The discount is 1% of the total charges for each working day the application is not processed after the relevant statutory timeframe. The discount is up to a maximum of 50 working days or 50%:

The discount only applies to administrative charges under section 36AA of the RMA. These are the Council charges for receiving, processing and making a recommendation or decision on an application.

The Regulations do not apply to:

- Deemed Permitted Activities under section 87AAB and 87BA.
- Applications to Extend the Lapse period under section 125.
- Reviews under section 128.
- Certificates of Compliance under section 139.
- Existing Use Certificates under section 139A.
- Designations, Heritage Protection Orders or Notices of Requirements under Part 8.
- Outline Plans under section 176A.
- Water Conservation Orders under Part 9.
- Survey Plans under section 223.
- Completion Certificates under section 224.
- Objections to Council Decision under section 357A.

The Regulations also do not apply to administrative charges for development contributions, monitoring fees and charges, subdivision certifications and any other charges that are not set under the RMA.

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