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Remote Access Hearings While In Lockdown

It's fair to say that life under lockdown was not without its challenges. Under the Resource Management Act 1991 (RMA) the statutory clock continued to tick and timeframes remained in play. Like the other councils, Marlborough District Council (MDC) adapted by relocating staff to their homes, as was required under Alert Levels 4 and 3, and to a lesser extent as we moved into Alert Level 2. We became adept at working remotely and connecting with staff, agents, applicants and submitters, etc, via social media such as Zoom.

Thoughts rapidly turned towards how to manage hearings in this new reality where people could not come together in person to present their case or speak to their submissions before a decision maker. A plan for how to conduct hearings remotely was quickly put into place. The approach developed has withstood the test of a hearing with all parties attending via Zoom. Other councils are reporting similar successes. With the Covid-19 Response (Further Management Measures) Legislation Bill now before Parliament, we find the process we put in place will likely be ratified in an amendment to the RMA.

MDC was one of the first to hold a remote access hearing and has led the way on the response to Covid-19 in this regard. The subsequent recommendations issued by Government have confirmed that we took the right approach. Further validation occurred when the Resource Management Law Association invited MDC's Hearing Facilitator, Sue Bulfield-Johnston, onto the panel for a webinar on the subject of council hearings in a virtual world. You can see the webinar and access the presentation documents on the Resource Management Law Association website - <https://www.rmla.org.nz/2020/05/02/rmla-webinar-council-hearings-in-a-virtual-world/>.

So, what did we do?

It quickly became clear that the "old school" in-person participation hearing was not going to take place under the Alert Levels 4 and 3. MDC immediately acquired Zoom licences, enabling the continued scheduling of hearings, albeit in a new remote access format. This approach had implications in terms of the process on the day of, and in the days leading up to, the hearing.

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The RMA directs that the planner's report and evidence for the applicant and submitter be provided at specified points in the timeline before the hearing day. Certain other documents will be tabled at the hearing because the RMA in its current form makes no direction for the provision of these documents prior to the hearing. The documents are the likes of the legal submission, evidence in rebuttal, expert summary statements on evidence pre-circulated and statements tabled by the submitters that are not technical expert evidence. MDC added a new step in the pre-provision of documents prior to the hearing. **All documents that would normally have been tabled at the hearing are now required to be provided electronically two working days prior to the hearing and will be circulated to the parties on the same day.** This approach avoids any delays during the hearing due to potential difficulties with the provision of electronic documents on the day. It also means the parties are better prepared on the day and improved efficiency may result.

To maintain public accessibility, a remote access link to the hearing will be uploaded to the MDC website to sit with the notice of the hearing.

Section 37 extensions to timeframes were applied to applications where it was appropriate to wait until after the Alert Levels 4 and 3 were lifted. This was done in collaboration with the applicant and in recognition that under the restrictions it was not always possible to prepare for a hearing. For example, you cannot compile technical data on traffic volumes when there is no traffic to record.



Winter is not a time for hibernation!

Scheduling a remote access hearing

When scheduling a remote access hearing its important to check in with the parties that they can participate in this format. Not all internet access is the same and we don't all have the same quality computer equipment or the same level of proficiency on it. If a party does not wish to participate in a remote access hearing they need to say why. Under Alert Level 2 it is expected that solutions would be sought for problems preventing participation, whether in-person or remote access. Working with the Hearing Facilitator is important to overcome any hurdles to setting the hearing.

The maintenance of fair process and natural justice for all parties is important, but so to is the need of the applicant to commence the proposed activity if consent is granted. A delay may result in increasing cost and loss of income.

Where to from here?

The ability to hold a remote access hearing has added new tools to the tool box, one that prior to Covid-19 we would not have considered.

The wholly remote access hearing may not be appropriate in all instances and it is likely that in-person participation remains the preferred format. However, as we become more familiar with this method it will likely gain traction. The opportunity now exists for parties to attend a hearing when previously circumstances may have prevented them from doing so. In other words, a hybrid hearing format is now more likely where both in-person participation and remote access occurs in the same event. This has been available for some time but the general expectation was that parties to a hearing would be present wherever possible. The lockdown has raised the level of awareness of the usefulness of this remote access method.

The threshold at which a remote access hearing is no longer appropriate will reveal itself in time. The limit may be a matter of the hearing duration, the number of participants, the complexity of the application, or the contentious nature of the parties and the issues disputed. It will become clear whether for longer hearings it is easier to sit in a hearing venue for a number of days or at home in front of the computer screen.

Remote Access Hearings While In Lockdown continued ...

There will be no one size fits all solution and how a council uses this method will be a reflection of the region it serves.

A new regime for in-person participation hearings has evolved as a matter of necessity. Venues for hearings must now be spacious enough to provide for social distancing. Hand sanitiser and cleaning products will be provided at hearings and are expected to be used. A record of the persons present on the day and where they were located in a room must be maintained for contact tracing, if required. Tea, coffee and water will no longer be provided so people should bring their own water bottle to stay hydrated. Anyone may bring documentation into the hearing venue for their own purpose and must take it with them when they leave. No paper or material is to be circulated at the hearing. Anyone who is vulnerable and/or not able to physically attend the hearing should contact the Hearing Facilitator to arrange remote access attendance.

The requirement to pre-circulate documents that previously would have been tabled at the hearing will remain in place for the term specified in the new Covid-19 Response (Further Management Measures) Legislation Bill. MDC may elect to continue this practice with the agreement of the parties thereafter. With the winter flu season, summer colds and the mid-season ailments in between, the ban on the circulation of hardcopy documents is a good method of reducing the risk of transmission of any ailments that are circulating through the community.

Going forwards MDC will continue to adapt as required by the Government, for example in response to the Covid-19 Response (Further Management Measures) Legislation Bill, when enacted. So the hearing process may yet continue to evolve.



We're heading into winter. Don't let the cold stop you from enjoying everything Marlborough has to offer.

Duty Planning

Revamped, Refreshed, Re-opened

Our Duty Planner Service has always been the go-to for everyone - Council staff, real estate agents, lay persons, and even professionals looking for clarification and information on a range of consent related topics. The Duty Planner Service has grown increasingly popular over time. With increased demand creating a daily influx of enquiries ranging in complexity, it had become difficult to sustain the service over recent times.

As a result of the high level of enquiries the service was suspended in mid-March so that Council could clear the backlog and get back on track. This also gave us time to review the service and assess how we could improve it.

The suspension of the Duty Planner Service coincided with the Covid-19 pandemic lockdown, which has lent more emphasis to the Council's efforts to improve this service to assist Marlborough's economic recovery as it returns to full productivity.

Given the effects of Covid-19, and in a bid to support our community and economic wellbeing, Council has given the service a much needed facelift. The refreshed service is now more streamlined, with the objective being a shortened timeframe for responses to enquiries.

What does this mean for enquiries made pre-refresh?

We are now prioritising responding to requests received from 28 April 2020 onwards in an effort to support the return to 'business as usual' for our community.

We are asking those who made enquiries prior to 28 April 2020 and want to use the Duty Planner Service to either resend their previous email request to the Duty Planner Service or go to Council's website to access the new online form and process - <https://www.marlborough.govt.nz/services/resource-consents/duty-planner-service-information/?ed-step=1>.

Who can make a Duty Planner enquiry?

Prior to the suspension of the Duty Planner Service the high level of demand on this service came in part from professional planning consultants. In the statutory environment planning is a complex process, with different legislation and rules that we are all expected to abide by.

The Duty Planner Service is designed with the intention of providing people who are not familiar with the Resource Management Act a bit of help to get them started and to generally point them in the right direction.

The focus of the new re-vamped service means that Council is no longer able to respond to enquiries from planning professionals or provide specific planning advice.

Having said that, in recognition of the post Covid-19 lockdown drive toward economic recovery, there will be some flexibility to support economic activity recommencing during this recovery phase.

What does the service provide?

The Duty Planner Service will provide a general indication as to whether it is likely that a resource consent may be required for an activity one wishes to undertake or give general advice as to the resource consent process. However, we will not be providing professional advice.

What

Duty Planners can respond to, for example, queries around whether you will need resource consent for a particular activity, what the zoning for a particular site is and rules for that zone. The Duty Planners can also assist with how to apply for resource consent, the information that will be required to be provided and suggestions of other professional bodies that a person may need to speak with.

Council encourages people to get in touch to ask questions and seek clarification where needed. It is useful to talk with Duty Planners in the early stages of a big project.

What not

However, the Duty Planner Service cannot provide a detailed assessment of a non-specific proposed activity, nor can they assist in preparing an application for resource consent. For this level of assistance it is recommended that suitable professional advice is sought.

Duty Planning continued ...

If someone has a more complex proposal on which things have been thought through and to a greater extent the details of a project have been settled on, the Duty Planners can help in providing specific information. Duty Planners can also help arrange a pre-application meeting with the relevant planner for projects that have advanced near to the application stage. We encourage pre-application meetings as they are tailored to one's specific project and give an individual the opportunity to ask more in-depth questions.

Is there a cost?

There is no a charge to lodge a written enquiry to the Duty Planner. One can simply go ahead and fill in the new Duty Planner form on our website. We encourage people to make specific enquiries and we have updated our form for this very reason. Duty Planners will be responding to an enquiry solely based on the information provided by the enquirer. Where an enquiry is complex or requires more than 30 minutes of the Duty Planner's time to respond, a charge may be incurred.

Some people prefer to meet with the Duty Planner. If a meeting is requested there will be no charge for the first 30 minutes of Duty Planner's time spent on an enquiry, whether that time is spent answering the enquiry or attending an appointment. If the enquiry is complex and takes longer than 30 minutes, the enquirer may be invoiced for any additional staff time over 30 minutes. The charge out rate is the same as the rate for the Environmental Planners.

How do I make an enquiry

You can see more information about our re-vamped services on our website - <https://www.marlborough.govt.nz/services/resource-consents/duty-planner-service-information/duty-planner-request/?ed-code=REF200501591&ed-step=1>.

Those persons who do not have access to a computer or internet at home are able to contact the Council's Customer Services Officers on (03) 520 7400. The Customer Services Officers can assist in filling out the online form and lodging it on the enquirer's behalf.

What information do I need to provide?

To complete the form we will need to have the property address where the activity will take place. It would also be preferable to provide us with the legal description or property number for the property. Council will also require the name, address, email address and phone number of the individual making the enquiry. The form also requests that as much information as possible be provided so the Duty Planner can provide an adequate response. We have now updated the form to give one the opportunity to add an attachment to the enquiry, if necessary.

Something to bear in mind

The information provided by the Duty Planner is a response to the details supplied when the enquiry is lodged. It is always possible that by the time the application is lodged the details of the project may have been altered or added to, meaning that the Duty Planner response is out of date.

Additionally, the Duty Planner will not be able to confirm whether the application will be notified, if the proposal will involve any affected parties, if a hearing will be required or if resource consent will be approved. These decisions cannot be made until a complete application has been lodged and assessed.

The Duty Planner responses are not a substitute for a Land Information Memorandum (LIM) and should not be relied upon when making property purchase decisions. A LIM should be obtained in order for one to access all relevant information the Council holds about a property.

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