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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.

Understanding Charges Under the Resource Management Act

When levying additional charges under section 36 of the Resource Management Act 1991 (RMA) Council must ensure that those charges reflect the actual and reasonable costs in relation to the activity. Section 36 of the RMA provides for Council to charge for the receiving, assessing and issuing of applications for resource consent. In terms of the cost structure, Council passes the actual and reasonable costs of processing consent on to the applicant as per the Marlborough District Council Charging Policy.

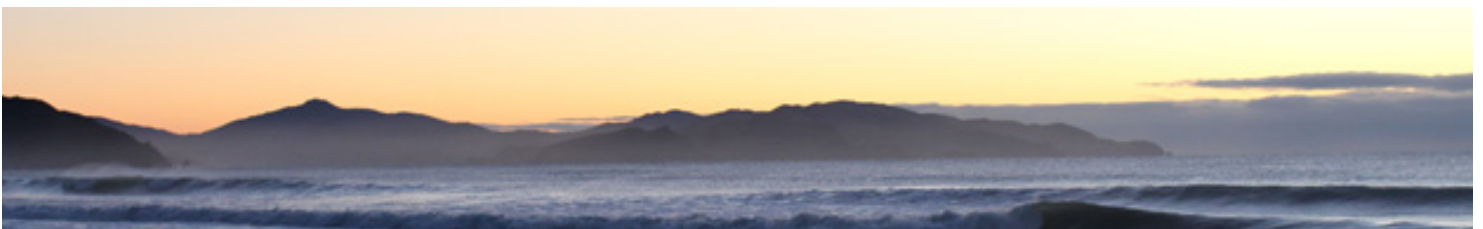
Recently Council received an objection to costs for a two lot subdivision. The objection was to the "additional costs" and referred to the time incurred by the planner (an additional cost) and the engineering charge of \$585.00 for the evaluation of one to three lots (a set charge which is not an additional cost in terms of the RMA). The engineering charges are a flat fee charged by the Assets and Services Section of Council. The fee is reviewed annually and goes through the public consultation process and ratification by Council. It is important to note that it is a cost that can be

anticipated in a subdivision application when estimating the cost of processing the application for an applicant. Secondly it is not a cost that can be objected to as part of an objection to additional fees. There are other set fees which are similarly not able to be objected to and these are listed on our website.

In the case of this recent objection the total cost of processing came to \$2,225. It was made up of fixed charges outlined below and an additional cost of \$170 for the Resource Management Officer's time:

- deposit fee of \$1,480.00 for the subdivision processing fee and
- engineering fee \$575.00 engineering fee (applicable for subdivisions creating one to three lots) making a total base cost of \$2,055.

The only portion that could be objected to was the additional cost (the \$170). The deposit fee is intended to cover the majority, if not all of the Resource Management Officer's time incurred in processing and disbursements but this is not



always the case dependent upon the nature of the application. When considering an objection to additional costs, Council and any decision maker reviewing the objection will consider whether the time taken to process the application was reasonable.

In summary then the final cost of processing a resource consent application is based on the actual and reasonable costs; and includes the charging of officer time at the officer hourly rate and disbursements. Officer's working on the application may include a number of persons, including the Resource Management Officer processing the application, a Resource Consent Hearing Facilitator, an Administrative Officer and an in house specialist advising on the application. Where charges are lower than the lodgement fee paid a refund will be made; where charges are higher than the lodgement fee paid the applicant will be invoiced accordingly.

The RMA Charging Policy and the RC Fee Schedule are also available to view on Council's website. Any questions about or further clarification on charging for resource consents can be referred to the Manager Resource Consents.

Lapse of Consents

Council receives a lot of inquiries about lapse of consent. Lapse of consent is provided for by s125 of the Resource Management Act 1991 (RMA) and is often the bone of contention between Council and consent holders. The test provided for in s125 of the RMA has been detailed by way of case law but is likely to continue to cause tension.

Council has sought to create consistency in its approach to responding to potential lapse of consents. In 2020 it implemented a practice of notifying consent holders both before and after lapse date to seek information to demonstrate effect had been given to the consent and any establishment of conditions had been fully implemented. If lapse is suspected, Council

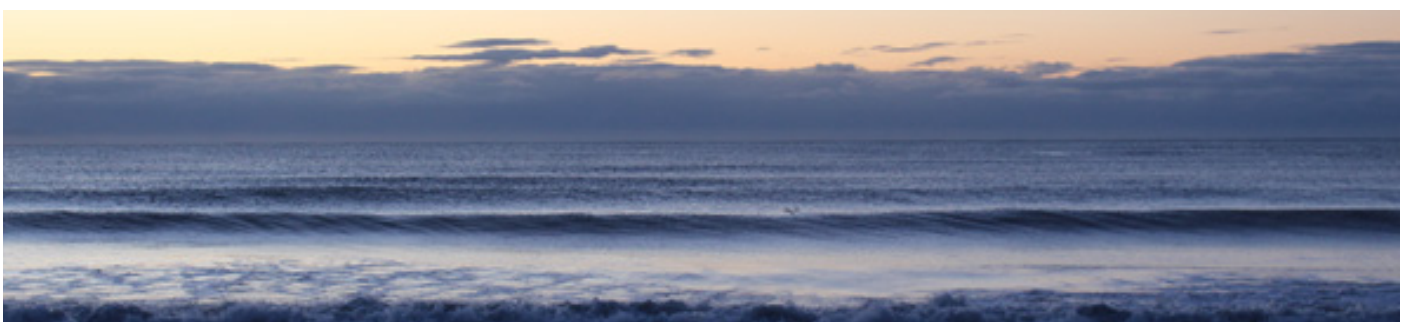
Compliance Officers undertake a careful review of its records and seek information from the consent holders before forming a view. Once a view is formed Council writes to the consent holder and notifies them of its view.

It is generally understood that an activity the consent provides for needs to commence prior to the lapse date. The lapse date is clearly identified in the resource consent. Council has also amended its resource consents to identify which conditions it views as establishment conditions. These are conditions that should be fully implemented prior to the activity taking place (and prior to lapse date) and further go to the heart of managing the adverse effect. A properly installed fish screen in a culvert would be an example, as would a metering condition in a water take.

Lapse is a very serious matter for consent holders and Council is keen to see that Consent Holders fully understand what needs to be done to avoid this outcome. The consequence of lapse of course means they no longer have consent to undertake the activity. This can have disastrous flow-on effects, for example, it may mean that they no longer have a water supply for a business and are in an area where a new take consent is a prohibited activity due to over allocation of an aquifer.

Where there is any doubt that the activity can be undertaken or the establishment conditions can be implemented prior to lapse date Council strongly encourages an application for extension to lapse is made. Further, if you or a consent holder is contacted about lapse by Council to provide additional information, that you provide as much information as possible.

Another scenario that Council comes across with reasonable frequency is in the sale and purchase of businesses or property. Whether you are buying or selling, where your investment is contingent upon a live consent Council recommends you review the consent conditions carefully to consider if they have been implemented and whether the activity has



been commenced. If you have any doubt, contact Council to discuss. Unfortunately Council often is not in a position to assess lapse until its attention is drawn to an individual consent either as a result of an application, transfer or complaint. Council has many thousands of consents to review and it is simply not possible to undertake this detailed assessment as a matter of day to day operational monitoring.

Quick Guide to Ownership Vs Being a Resource Consent Holder

A person (including company, partnership, trust or incorporated society) may hold consent granted under the Resource Management Act 1991 (RMA). The consent enables them to undertake an activity. The term activity is broadly used under the RMA and can include actively carrying out an action (like manufacturing a product), occupying a space (such as keeping an existing jetty in the same location) or discharging a liquid onto land (for example treated domestic wastewater).

A very simple way of describing the focus of the RMA is that it seeks to assess and organise activities in a way that ensures sustainable management of our natural resources and built infrastructure while at the same time enabling the community to look after its' economic, spiritual, cultural wellbeing and health. It does so by assessing what adverse effects on the environment may arise from an activity being carried out and determining some conditions to avoid or manage those effects.

In contrast the law regarding ownership is diverse but has a similar focus arising from a similar purpose; that is the need and desire to organise and define the control and possession of land, structures and assets by individuals and organisations to facilitate economic transactions, provide clarity and consistence of control and possession and enhance a sense of individual security. Unlike under the RMA where effect is the

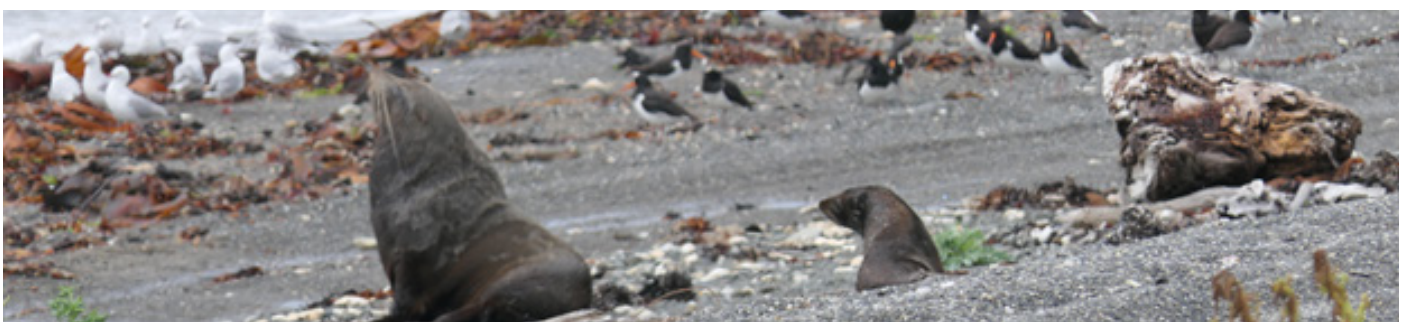
primary focus, effect is not of particular relevance under laws regarding ownership.

Those laws tend to focus on how the land, structure or asset and any rights to it can be acquired or transferred.

Consent under the RMA then is giving the permission to do the activity you propose, so long as it is done in the way that the consent allows. It does not give you the right to access land, or own the infrastructure or assets that you might need to do the activity. Neither does it ensure that other legal obligations you have are met (for example building requirements, work and safety requirements, etc.)

In fact the question of ownership and compliance with other legislation will often not be raised at all during the processing of an application for consent. If it is, it is usually noted but does not become part of the conditions that must be complied with for the activity to take place. This is because of the focus on environmental effect and further there is no mechanism for Council to enforce these other legal matters. An issue of ownership would lie in the civil courts by way of contract. This means you could obtain consent to carry out an activity on another person's land or using their structures and you could carry out that activity without being in breach of the RMA even without arranging lawful use of the land. You will however be in breach of the relevant ownership law and could be trespassed from the land unless you arrange permission to use it (eg. lease, rental agreement or license).

Another example of this might be the use of private land owned by the consent holder as opposed to using the foreshore. Where the foreshore is used, 'ownership' is not considered. If the Department of Conservation requires a license be issued for you to use the land, you will need to arrange that before carrying out the activity under the consent. The use of the foreshore will be considered under the RMA when granting the consent, but not to consider legal access rights by way of ownership, but rather



to consider the effect of allowing private use of land that should be freely available to the public for use. The effects in this case may include the limitation of use of the foreshore by the public, the limitation for Iwi in collecting kai moana and exercising guardianship and the increased likelihood of public perception viewing that area of foreshore as being in private ownership.

Given that consents do not transfer ownership or give ownership rights to the consent holder there is often cases where the ownership rights and the consent rights are split, for example:

- a) Coastal structures (boatshed or jetty) – the structures are usually owned by the consent holder however they do not have to be and, in addition, members of the public are allowed to pass over and use these structures briefly; or
- b) Commercial harvesting – often the consent is held by a forestry company and not the land owner who owns the trees; or
- c) The take and use of water for irrigation of a vineyard – the permit may be held by the company operating the vineyard and not the owner of the land the vineyard is established on.

The issue of ownership Vs consent rights comes up in many different guises:

- a) Where a purchaser buys land with associated water consent. The water consent is not automatically passed to the new owner. A separate transfer is required and will need to be arranged separately.
- b) Where a purchaser buys land with an associated jetty or boatshed. Usually there is a condition in these consents that the jetty or boatshed

consent must be transferred to the new land owner. This condition is usually included to address the adverse effects where properties have insufficient access. The condition must be complied with regardless of whether the value of the land sale included the value of the jetty and boatshed structures. Council is not involved in private arrangements with respect to these sales. If a transfer is not made then the consent holder (previous land owner) is in breach of their resource consent and will remain liable for any non-compliance that may occur.

- c) Where there is consent for frost fans. This consent automatically remains with the land owner whoever that may be over time. It need not have transferred into the name of the new land owner. Again the value of the frost fans would normally be included in the sale of land however; this is not a matter for Council to consider.

This article is part of a larger explanatory document that will up-loaded to Councils website in due course.



Marlborough Environment Word Search

S V Y U C R J G O S N I R E F R I O P S
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