



## Welcome to our Winter 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.*



## S 139 - Certificate of Compliance

### Introduction

Under section 139 of the RMA Council, on request, must issue a certificate of compliance (CoC) if the activity can be done lawfully on the site without resource consent and the required fee is paid. Council can only issue CoCs for matters that we are responsible for. Once issued, a CoC is deemed a resource consent under s139(10) of the RMA.

There are specific informational requirements for CoC applications, and it is the responsibility of the applicant to provide the Council with all the information needed to demonstrate that a CoC can be issued. If any non-compliance exists a CoC cannot be issued. To assist applicants with providing the information required there is now an application form for certificates of compliance or existing use certificates on the Council website. Select icon to take you through to application form. 



### **Information Requirements for Certificate of Compliance Applications**

Pre-acceptance checks on CoC applications follow the same process as for resource consent applications and the informational requirements are like that of a resource consent. The difference between the two applications is that it is the responsibility of the applicant to satisfy Council that the proposal entirely complies with all the relevant permitted activity rules by providing sufficient relevant detail to enable the Council to accept the compliance. An application for a CoC needs to address all the relevant provisions of the operative plan, the proposed plan, and any relevant national environmental standards. A CoC cannot be issued if the activity could not be lawfully carried out without a resource consent.

#### **An application for a CoC requires the following information:**

- A full description of the proposed activity - the level of detail depends on the nature of the proposal and the rules that need to be complied with.
- A description of the site where the activity will be carried out.
- A clear explanation of how the proposed activity meets all the provisions of the PMEP or the relevant operative Plan and any relevant National Environmental Standards. This information can be presented as a table, listing each provision and how the proposed activity complies.
- All necessary plans, details, and calculations to be checked against the PMEP or the relevant operative Plan.
- The application lodgement fee.

### **Requesting Further Information**

Under section 139(4) Council can request further information from an applicant if it is necessary to determine whether the proposal complies with the Plan. There is not a specified time frame for requests for further information but section 21 of the RMA requires the Council to avoid unreasonable delay. A CoC needs to be issued within 20 working days of receipt of the request by the Council. If further information is requested, then the decision needs to be made within 20 working days of the requested information being received.

### **Issuance of a Certificate of Compliance Councils CoCs contain the following information**

- That it is issued pursuant to section 139.
- The date Council received the application, and the date any further information was requested and received.
- A detailed description of the proposal/activity - where required, clearly referencing the plans and any other information submitted by the applicant and used to make the determination.
- A description of the location of the proposal - the address and legal description and any other relevant details.
- The relevant operative plan, the PMEP and national environmental standard provisions at the time the application for a CoC was lodged.
- A statement that the proposal or activity is permitted or could be carried out without a resource consent, as at the date on which the council received the request.





## **Certificates of Compliance and Conditions**

A CoC is treated as if it were a resource consent that contains the conditions specified in the Plan or an applicable national environmental standard (s139(10)).

### **Lapsing of a Certificate of Compliance**

Section 139(7)(b) requires that a CoC states that the proposal or activity was permitted or could be lawfully carried out without a resource consent, on the date the request was received by Council. Effectively, the CoC acts as a 'snapshot' in time, confirming that an activity was permitted at the date the application was received by the Council.

A CoC is deemed a resource consent and section 125 applies, meaning that a CoC lapses in the same manner as a resource consent.

### **Appeal Rights**

The appeal provisions contained in s120 and 121 apply to CoCs. As CoCs are non-notified only the applicant has a right of appeal. Challenges by any other party can only be undertaken as a judicial review.

### **Transfer of Certificates of Compliance**

Sections 134, 135, 136 and 137 of the RMA relating to the transfer of resource consents also apply to CoCs.

## **Engaging with Tangata Whenua on Resource Consent Applications**

### **What is Tangata Whenua?**

In the consenting context, Tangata Whenua means the indigenous people (Māori) who have historic and territorial rights over the land. It refers to iwi and hapū (Māori tribal groups) who have these rights in Marlborough.

Tangata Whenua interests are represented by iwi (tribal) authorities in Marlborough. The following nine iwi have Tangata Whenua status:

- Te Ātiawa o Te Waka-a-Māui
- Te Rūnanga a Rangitāne o Wairau
- Ngāti Toa Rangatira Ki Wairau
- Ngāti Apa Ki Te Rā Tō
- Te Rūnanga o Ngāti Kuia
- Ngāti Kōata
- Te Rūnanga o Ngāti Rārua
- Te Rūnanga o Kaikōura
- Ngai Tahu

Resource consent applicants/agents need to engage with Mana Whenua, in many circumstances and this is done by contacting the relevant iwi authority (contact details are available on the MDC website).



## Tangata Whenua and the Environment

Iwi have a special cultural and spiritual relationship with the environment, which is a matter of national importance under the Resource Management Act.

This includes their relationship with their:

- waahi tapu (sacred sites).
- taonga (treasures).
- water.
- ancestral lands.

Resource consent applicants and the council must consider these matters of national importance.

## When should you consult with iwi organisations?

Resource consent applicants are expected to consult with iwi authorities prior to the lodgement of an application to Council when developments affect Mana Whenua values. Not engaging with iwi prior to lodging an application can result in delays if the application is subsequently placed on hold.

The best way to identify these values and take these into account is through consultation with the relevant iwi authorities.

Mana Whenua values may be affected by developments subject to or involving:

- water.
- significant ecological areas.
- coastal marine area.
- discharges to, or may enter the sea, rivers, streams, lakes, wetlands, aquifers and air.
- sites and places of significance to mana whenua
- statutory acknowledgements.
- ancestral land.
- treaty settlement land.
- māori land.

## Cultural Values Assessment (CVA)

As part of the consent application process, new developments may need to provide a Cultural Values Assessments (CVA), prepared by iwi or their nominee. Not all resource consent applications will require a CVA. This needs to be decided by the relevant iwi authority who after consideration may formally advise that a CVA is not needed.

## Benefits of engaging with iwi

Working with iwi can help you to:

- understand the history of your area and site.
- be informed about the views of iwi.
- ensure the Assessment of Environmental Effects (AEE) that must accompany your application fully identifies and addresses the effects of your proposal.
- get written approvals from potentially affected iwi to help avoid notification.
- reduce the risk of processing delays or appeals due to supplying an inadequate AEE.

## Iwi's expectations

When iwi are engaged by an applicant, they expect that:

- they have access to all relevant consent information.
- there is a willingness to meet face-to-face.
- their views are respected.
- their intellectual property is handled with sensitivity.

Iwi have the right to:

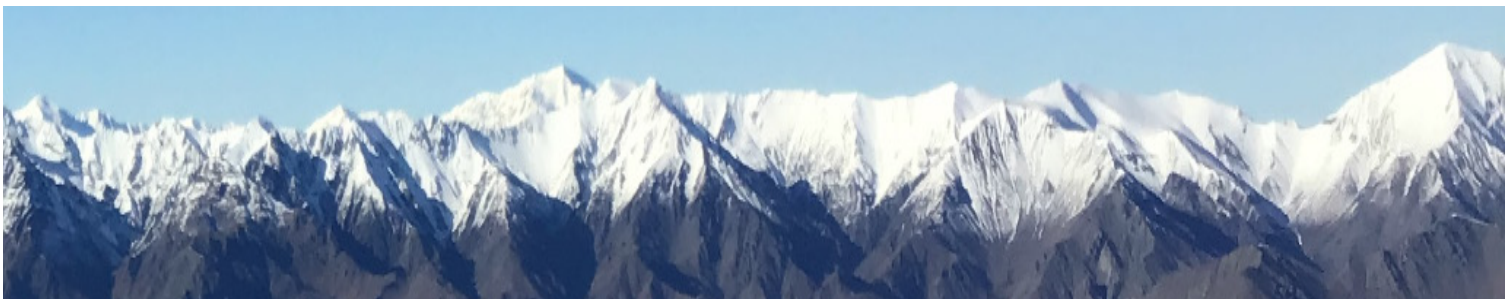
- decide what their interests in an application are and declare those interests.
- make submissions on notified applications and be heard in support of those submissions.

Agreement with iwi may not be reached at times. In such cases the applicant is obliged to report on the outcomes of any consultation they have undertaken. If iwi concerns cannot be resolved and you still want to proceed with the application, then the applicant must demonstrate that they made genuine attempts to engage in an open and honest manner.

## Cost of engaging with iwi

Iwi organisations, or their nominee, may charge a fee to:

- consider an application.
- conduct a site visit.
- meet with applicants and their experts.
- prepare a cultural values assessment if one is needed





## **Applicant Details Required for Resource Consent Applications**

Under section 88 (1) of the RMA (the Act) a person may apply to the relevant consent authority for a resource consent. In the Act a person includes the Crown, a corporation sole, and also a body of persons, whether corporate or unincorporate. A resource consent can only be issued to and held by a legal organisation or fully named individual(s). A legal organisation includes a registered limited company, incorporated group, or registered trust. If the application is for a Trust, the full names of all Trustees are required. If the application is not for a limited company, incorporated group or trust, then all fully named individual(s) are required. Without this information the consenting authority cannot issue a resource consent as it is unable to identify with certainty the consent holder who is ultimately responsible for compliance and any associated costs.

The Council has recently received a few applications that do not include the full name of the applicant and/or do not provide the applicants address for service. This can be email or the contact phone numbers.

John, Peter, and David are the most common male names in Marlborough with Jo, Helen and Barbara being the most common female names. The most common surnames are Smith, Taylor, Jones, Wilson, Anderson, and Brown. Consequently, if an applicant or agent puts in an application for a David Jones without providing a middle name or contact details it could be any one of eleven individuals in Marlborough. Helen Brown could be any one of four individuals in Marlborough.

To enable your application to be accepted under section 88 and to assist Council to process your application as efficiently as possible please ensure that the application form is completed including the applicant's full name or the Companies legal name and contact details including email addresses and phone numbers of the applicant and potential consent holder.

## **Reminder - Replacement Marine Farm Consent**

There are approximately 570 marine farms in the Marlborough Sounds. Many of these sites are leases and licences previously granted under the Marine Farming Act that are due to expire on 31 December 2024. To continue farming these sites marine farmers must apply for a replacement consent called a coastal permit.

Over the past 3 years approximately 200 replacement consents have been applied for, and been granted, by the Marlborough District Council. There are still around 130 sites for which marine farmers need to apply for a replacement consent. Consent holders are able to apply at any time and are encouraged to not wait until just prior to the expiry of their existing consent(s).

It is important to note that if an application is made at least 6 months before the expiry of the existing consent and the activity is the same, the marine farmer can continue to operate under the existing consent whilst awaiting a final decision on the application. For applications received between 3 and 6 months before the expiry date, Council, in its discretion, can allow the marine farmer to continue to operate.

Council staff are ready to receive the remaining applications and are happy to provide information about the resource management plans and the resource consent process.



## Variation 1: Marine Farming and Variation 1A: Finfish Farming

Variations 1 and 1A to the Proposed Marlborough Environment Plan were prepared for the purpose of managing marine farming activity in Marlborough's coastal marine environment. Variation 1 applied to marine farming other than finfish farming, while Variation 1A applied to finfish farming only.

The variations were publicly notified in December 2020 with 115 submissions received. Hearings on the variations were held in November 2021.

Decisions have now been made on both variations. Variation 1 has been confirmed but with amendments to address matters raised in submission. Areas appropriate for marine farming are identified as Aquaculture Management Areas (AMAs) and most existing marine farms are provided for within these AMAs.

Variation 1A was withdrawn after submitters highlighted issues with inadequate consultation, environmental changes and the provisions not providing for current and future technological changes. The hearings panel have recommended a further process occur to develop provisions to manage finfish farming.

The decisions are available on Council's website [www.marlborough.govt.nz](http://www.marlborough.govt.nz) or can be viewed at Council's offices and libraries in Blenheim and Picton.

## Laurie Johnson - Keynote Speaker at the NZPI Conference in Christchurch 20 April 2023

The Resource Consent Team were fortunate to virtually attend the first keynote speaker presentation by Laurie Johnson at the NZPI Conference in April. Laurie spoke about Rising to Disaster Challenges: Planners and the Importance of Planning.

Laurie is the Chief Catastrophe Response & Resiliency Officer at the California Earthquake Authority. She is an internationally recognised urban planner specialising in disaster recovery and catastrophe risk management. She has combined professional practice and research in earth science, urban planning, and public policy to help communities address the complex urban challenges posed by natural hazards and disasters.

Her post-disaster recovery work is the topic of her book, *After Great Disasters: An In-Depth Analysis of How Six Countries Managed Community Recovery* (2017). She has over 30 years of experience researching and practicing disaster recovery planning and management following major urban disasters, including Hurricanes Katrina and Sandy in the United States, the Kobe and Tohoku earthquakes in Japan and the Canterbury earthquake sequence in New Zealand. In her presentation to the NZPI she outlined the key findings from her book.

Recovery and resilience planning offers opportunities to improve building construction and design, renew infrastructure, create new land use arrangements, reinvent economies, and improve governance. If done well, it can also help break the cycle of disaster impacts and losses and improve the resilience of a city or region. The lessons she presented enable planners to develop and implement effective resilience plans before disasters and be ready to rise to the challenges presented by future earthquakes, floods and other disasters. She also presented a framework for planning, managing, and retreating from future hazard-prone areas.

Recovery is always a complex process and is never fast enough for affected people and politicians. Laurie and her book have made an important contribution to the practice of recovery and reconstruction. The lessons that have emerged from her case studies clarify the complex recovery processes and provide insights into institutions, finances, policies, and programs. Essentially, she outlined the essential building blocks of recovery.

Through Laurie's experiences we were able to see what worked and what didn't after a number of recent large disasters. The right strategy can make the difference between a community's renaissance or stagnation.

Laurie provided some very practical and relevant advice on the challenges planners would be likely to experience during recovery phases and how to organise recovery efforts to the best effect. Successful recovery requires effective governance, intensive planning, transparent implementation, and civic participation. There are complex issues and trade-offs underlying recovery programs and there needs to be a balance of rebuilding livelihoods and social networks with reconstructing houses and infrastructure.

The take home message was that successful recovery must be a people centred process. Building back better after a disaster takes consideration and collaboration but must always keep people at the centre.

## Staff Profiles



### Oscar Savage

Oscar is a Blenheim local who has returned to Blenheim after four and a half years studying at Lincoln University in Canterbury. From his studies, Oscar has gained a Bachelor of Environment and Society and a Master of Environmental Policy and Management. After working in a local private planning consultancy, Oscar has joined the Council Resource Consents Team as an Environmental Planner.

### Vicky Wiblin

Vicky (Vic) is a born and raised local who has recently joined the Regulatory Department as a Hearing Facilitator/ Administration Officer. You will probably know Vicky because she has operated her own companies in Marlborough and has accumulated over 10 years in the real estate industry.

Vicky and her family have a love of Marlborough and especially enjoy spending time in the Marlborough Sounds. So much so they managed the Momorangi Bay Campground on behalf of the Department of Conservation for several years (not a small undertaking by any stretch of the imagination!).



## Staff News

The RC Team has farewelled RM Administration Officer Beate Gregory and Duty Planner Lynn Mullens. Lynn retired after over 20 years at MDC.

The RC team has welcomed back Senior Planner Victoria Rhind from maternity leave.

Sue Bulfield-Johnston has had a change in roles. She is now Duty Planner/Hearings Facilitator.

## Next Issue out 1 September 2023